

Human Rights Responsibilities of Transnational Corporations: Developing Uniform Standards

Introduction

The growth and interest in corporate responsibility issues has in part stemmed from reoccurring examples of corporate irresponsibility which, while not new, are perhaps better publicized in the modern era. For example:

- Just last week, (noted in the Sydney Morning Herald, June 11,2004)¹ it was alleged that Coca Cola is buying sugar from a mill in El Salvador that is supplied by plantations exploiting child labour, using children as young as 8years old.
- Royal Dutch/Shell's oil production in Nigeria, and BHP Billiton's copper mining in Papua New Guinea, seriously damaged the environment and the livelihood of peoples in local communities, which depended on fishing and farming.²
- The alleged use of sweatshops particularly in Central America and Asia to manufacture consumer goods – clothing, toys, footwear, for well-known brands such as Disney, Levis, The Gap and Nike are relatively well known. The firms have been accused of violating their workers' rights to just and favorable conditions of work by paying unfair and inadequate wages, requiring unreasonable overtime, and providing unsafe working conditions.³
- Furthermore, there is the alleged involvement of TNCs in suppressing trade unions and thereby denying workers the right to organize. For example, it has been alleged that Coca-Cola in Colombia and Phillips Van Heusen in Guatemala, have been associated with, or are directly responsible for, the systematic intimidation, torture, kidnapping, unlawful

¹ <http://smh.com.au/articles/2004/06/10/1086749841441.html?oneclick=true> last accessed June 1, 2004.

² In respect of Shell's operations *see* Douglass Cassel, *Corporate Initiatives: A Second Human Rights Revolution?* 19 FORDHAM INT'L L. J. 1963, 1964–65 (1996); and in respect of BHP's actions *see* http://www.business-humanrights.org/Categories/Companies/Individualcompanies/B/BHPBilliton?&&&batch_start=11 (last visited Dec. 18, 2003).

³ See Cristina Baez et al., *Multinational Enterprises and Human Rights* 8 YEARBOOK OF INTERNATIONAL LAW 183, 244–46 (1999/2000).

detention, and murder of trade-unionist employees by the paramilitaries operating as both of these corporations' agents.⁴

Corporate social responsibility, accountability or citizenship, however termed, is not a new concept. What is new is an emerging international consensus on the 'social' i.e. human rights and environmental standards that should be applied to companies and some innovative mechanisms, both voluntary and mandatory, for ensuring companies are publicly obliged to implement such standards both domestically and internationally.

This paper focuses on the ongoing development of uniform standards for assessing the human rights responsibilities of companies, particularly on the recent UN *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* ("the UN Norms")⁵ – what they are and what they mean both for business and international human rights law.

Any Legal Accountability for TNCs?

As a precursor to this discussion it should be noted that in most countries there exists a substantial body of domestic legislation that regulates corporate activities that affect human rights, i.e., anti-discrimination, health and safety at work, environmental protection, labor rights.⁶

Further, there is an expanding body of extraterritorial domestic jurisprudence that focuses on the human rights implications of actions taken by corporations overseas.

- A new wave of litigation against companies alleged to have violated human rights or environmental obligations demonstrates an innovative use of legislation (such as the *Alien Torts Claims Act* in the US, not traditionally applied to business)⁷; and

⁴ See generally David Kinley and Junko Tadaki, "From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law", forthcoming (2004) in the *Virginia Journal of International Law*. Also see, *Coca-Cola (Coke) to be Sued for Human Rights Abuses in Colombia*, available at <http://www.laborrights.org> (last visited April 10, 2004); Human Rights Watch, 1997, *Freedom of Association in a Maquila in Guatemala*, REPORT, available at <http://www.hrw.org/reports/1997/guat2/> (last visited Oct. 9, 2003). This case raised the persistently difficult 'supply chain' question of how far down the supply chain should a corporation at the head of the chain be responsible for human rights abuses committed by others in the chain.

⁵ U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003)

⁶ See further David Kinley, *Human Rights as Legally Binding or Merely Relevant?*, in COMMERCIAL LAW AND HUMAN RIGHTS 25 (Stephen Bottomley & David Kinley, eds., 2002).

⁷ The ATCA was first passed by the US Congress in 1789 and provides Federal courts with jurisdiction over violations of the "law of nations". In the modern era, courts have allowed foreign victims to use ATCA to address egregious human rights violations. More recently, ATCA has been used against

- Recognition of the potential legal character of codes of conduct and a company's commitments to human rights and environmental standards (for example, *Kasky v Nike*⁸).
- These cases and others (pursued for example, under the law of negligence in the UK⁹ and Australia¹⁰) test the boundaries of existing legal assumptions with respect to the accountability of transnational corporations for human rights and environmental obligations.

At the very least, they sound a warning for transnational businesses to consider more seriously their human rights and environmental obligations and the public commitments they make to them.

However these avenues provide limited redress for addressing accountability and deal rather with the enforcement of very particular rights rather than establishing the broad set of rights under international human rights law that are applicable to TNCs.

At the international law level, the corporate form is barely recognized, still less directly bound, whether in respect of human rights or any other field. TNCs have been able to operate in a legal vacuum because international human rights law imposes no direct legal obligations on TNCs. The traditional vision of international human rights law generally binds only states because it is principally designed to protect individuals from the excess of state power.

However the influence of TNCs on the economic and political life of most countries – and on economic and political relations in general – has increased greatly in recent decades. Despite egregious human rights abuses committed by non-state actors, international law generally, and human rights law in particular, is still undergoing the conceptual and structural evolution required to address their accountability.¹¹

Today, the economic capacities of corporations often go far beyond the economic capacities of the countries in which they operate and their political muscle is often far greater than the ability of small States to regulate them effectively.

corporations that have allegedly been knowingly complicit in human rights violations. For an overview of cases brought under ATCA, such as *Doe, et al. v. Unocal Corporation*, *Wiwa v. Royal Dutch Petroleum Co.*, *Sinaltrainal, et. al. v. Coca-Cola Co* etc, see; <http://www.laborrights.org/>

⁸ 123 SCt 2554 (2003) 26 June 2003. This case (settled September 2003) alleged Nike's report on its labour practices in its supplier factories constituted a misrepresentation, an unfair business practice and false advertising under Californian law.

⁹ *Lubbe v Cape plc* [2000] 4 All ER 268, *Connelly v RTZ* [1998] AC 854

¹⁰ *Dagi and Ors v BHP and Ok Tedi Mining Limited (No. 2)* [1997] 1 VR 428

¹¹ See David Kinley Junko Tadaki, *supra* note 4.

This power should be accompanied by responsibility. The transnational character of TNCs calls for transnational reflection as to the appropriate content and shape of their responsibilities. The natural forum for such a world wide reflection is the United Nations, and the recent UN *Norms on the Responsibilities Of Transnational Corporations And Other Business Enterprises With Regard To Human Rights* as debated by the UN Human Rights Commission this April represent a significant and welcome initiative to address this issue in a conveniently comprehensive way.

So what are the Norms and where did they come from?

Early attempts

To take the second question first. The UN Norms follow a line of voluntary guidelines, declarations and codes of conduct, which, largely since the 1970s, have been developed, by inter-governmental organizations, companies, trade associations, NGOs to attempt to regulate the activities of transnational corporations. Some are better known than others.

●At an international level:

- The OECD *Guidelines for Transnational Enterprises* (revised in 2000) is one of the better known attempts to guide corporate behaviour however it suffers from vague language and sporadic voluntary adoption.¹²
- The International Labour Organisation (ILO) has formulated several documents dealing specifically with the obligations of business with respect to labour rights, notably the *Tripartite Declaration of Principles Concerning Transnational Enterprises and Social Policy* (1977); and the *ILO Tripartite Declaration on Fundamental Principles and Rights at Work* (1998).
- UN Secretary General Kofi Annan's UN *Global Compact* (2000) calls on world business leaders to voluntarily embrace and enact a set of nine principles under the broad headings of human rights, labour rights and protection of the environment.

Faults common to all of these attempts is their selective and non-comprehensive choice of rights/standards and the use often of very broad language in defining the right which has made it difficult to convert them into applicable standards in the real world. A more recent initiative, the UN Norms, however, shows more promise.

¹² (2000 revision), adopted 27 June 2001. The OECD Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises, OECD document number DAF/FE/IME/WPG(2000)15/FINAL The Guidelines were first adopted in 1976.

●Company codes of conduct:

While negotiations such as these occurred at the international level, many transnational businesses began their own self-regulatory initiatives some time ago using the mechanism of codes of conduct. Levi Strauss began the trend about 13 years ago and there are now a vast number of such codes, primarily relating to environmental and human rights issues.

Although the codes are not generally legally enforceable (unless for example if incorporated into a contract with a firm's suppliers), to a greater or lesser extent the corporation stakes its reputation on compliance with the code. Many companies which rely heavily on a brand image have managed to make code compliance a marketing plus, for example, the Body Shop. Divergences from their stated code have led corporations to be held accountable in the court of public opinion e.g. Nike.

●Multistakeholder codes of conduct:

Following the growth and subsequent criticism by NGOs and unions of company specific codes, that phase was followed, in the latter 1990's, with various multi-stakeholder approaches to developing consensus on code standards, guidelines and monitoring mechanisms. Codes such as the:

- Fair Labor Association's Workplace Code of Conduct,¹³
- Social Accountability 8000,¹⁴
- Ethical Trading Initiative,¹⁵
- Global Reporting Initiative,¹⁶

are just a few of the plethora of codes and guiding principles that have been developed all largely focused on multinational corporations who bear responsibilities, either directly or via their supply chain for the protection and promotion of human rights and environmental norms.¹⁷

An obvious limitation of relying solely on codes such as these to indicate a consensus of relevant issues is that many were developed as a result of public criticism of specific business practices. These reactive codes reflect issues that

¹³ www.fairlabor.org

¹⁴ www.sa8000.org

¹⁵ www.ethicaltrade.org

¹⁶ www.globalreporting.org

¹⁷ Several of these codes and guidelines can be distinguished by their focus on performance or reporting standards (for example SA800 vs GRI). AA1000 is more of a 'process' standard advising companies on how to approach these issues from a systems management point of view. For the purposes of this research, no distinction is made between reporting and performance or process standards as all of these codes/guidelines/principles are useful in considering where there is repetition and overlap of issues in the interest in developing consensus on those concerns most relevant to business.

companies, consumers, workers and others were motivated to address in a very public manner. Child labour is far more likely to figure on a list of key issues than the less headlining grabbing concerns of freedom of association or the right to health.¹⁸ They are not always useful as a comprehensive guide as to what human rights standards should apply to business.

●Growth of the SRI market

The interest in corporate accountability for human rights has also exemplified by the development of the socially responsible investment (SRI) market and the growth of 'triple bottom line reporting' mechanisms such as the:

- *Dow Jones Sustainability Index* (launched in 1999)¹⁹ and
- the *FTSE4Good* (launched in 2001 by the Financial Times Stock Exchange)²⁰

both aiming to establish a baseline of "challenging but achievable" standards for corporate responsibility but again like previous codes and guidelines, all adopting and emphasizing different standards as considered applicable to business.

●Project financing guidelines

More recently, public pressure has extended to financial institutions to develop standards that more clearly define the expectations and responsibilities placed on these businesses to respect human and environmental rights. The notion of extending both culpability and responsibility for promoting, respecting and protecting human rights to the traditional 'silent investment partners' illustrates the ever-increasing relevance and acceptance of such responsibilities to business.

One example is the Equator Principles²¹ (June 2003), which are an industry approach for financial institutions in determining, assessing and managing environmental and social risk in project financing. The voluntary set of guidelines developed by banks (such as ABN Amro, Credit Suisse Group, Barclays plc, Citigroup Inc. and Westpac Banking Corporation) provide another useful instrument for identifying those human rights and environmental issues considered relevant to business. But again it is selective in the human rights and the (principally) environmental issues it focuses on.

¹⁸ Kathryn Gordon & Maiko Miyake, *Deciphering Codes of Corporate Conduct: A Review of their Contents*, OECD Working Paper on International Investment No. 1999/2, revised March 2000.

¹⁹ <http://www.sustainability-index.com/>

²⁰ The FTSE4Good is not itself an SRI fund but is a tool that can be used by fund managers to assess the social, ethical and environmental 'worth' of a company.
<http://www2.ftse.com/ftse4good/FTSE4GoodCriteria.pdf>

²¹ The Equator Principles apply to projects with a total capital cost of at least \$50 million and establish criteria that a project should satisfy as a condition to obtaining financing. <http://www.equator-principles.com/principles.shtml>

2003: The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights

This ongoing movement to develop standards that would apply to TNCs led to the drafting of the 2003 UN *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* ("the UN Norms")²².

How were the Norms drafted?

In 1998, the United Nations Sub-Commission on the Promotion and Protection of Human Rights, a 26-member group of experts reporting to the 53 government members on the Commission on Human Rights, established its own working group on the activities of transnational corporations, which in 2001, was asked to "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."²³

Why? One of the aims as expressed by Prof. David Weissbrodt (a then member of the Sub-Commission) was to try and help 'companies do it right' i.e. learn how and why they should be addressing their human rights responsibilities and more specifically what those responsibilities are.

Over the next 3 years, various versions of the Draft Norms were drafted by a diverse group including representatives from governments, intergovernmental organizations, nongovernmental organizations, transnational corporations, other business enterprises, unions, and other interested parties. The Norms were disseminated widely and public discussions held. Then last August 13, 2003 the Sub-Commission unanimously adopted the Norms and sent them to the Commission on Human Rights, which considered them in April this year at their annual session in Geneva. Before we get to their current status lets take a closer look at the Norms.

What are the human rights obligations of business?

The rights encompassed by the Norms cover a wide spectrum of human rights. Certain rights are described in broad terms, others are more precise but might be difficult to implement and others are sufficiently well defined so as to present few problems of interpretation.

²² U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003)

²³ (U.N. Doc. E/CN.4/Sub.2/RES/2001/3)

Key issues referenced in the Norms as relevant to business are:

- **The right to equal opportunity and non discriminatory treatment** (paragraph 2 of the Norms).

The Norms begin with a very broad nondiscrimination clause, which prohibits discrimination based, *inter alia*, on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, and age (except for children). This is extended in the Commentary (accompanying the Norms) to include HIV/Aids status, marital status, pregnancy and sexual orientation. Many of these provisions are based on existing international agreements, including those relating to HIV/Aids and disability. Nevertheless, their implementation may well face challenges arising from national legislation, social policy and sensitivities

- **The right to security of person (including no engagement in or benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage taking, extrajudicial, summary or arbitrary executions** (paragraphs 3-4).

The conduct of security forces in protecting installations or reacting to demonstrations is one of the major recent causes of criticisms of corporations. The Norms require such security services to observe international human rights norms, such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the UN Code of Conduct for such officials, and set out detailed guidance on managing security forces. The Norms also place restrictions on the sale of police or security equipment and prohibit the production or sale of weapons that are illegal under international law

- **The rights of workers (including forced or compulsory labour, child labour, safe and healthy working environment, remuneration, freedom of association and collective bargaining)** (paragraphs 5-9).

The Norms pay particular attention to the rights of workers, based principally on ILO conventions and recommendations. The issues dealt with include forced or compulsory labour, child labour, safe and healthy working environments, and remuneration ensuring an adequate standard of living, collective bargaining and the right to strike. While these rights benefit from rather detailed commentaries, it is acknowledged that concepts such as 'remuneration ensuring an adequate standard of living' are difficult though not impossible to apply in practice.

- **Respect for national sovereignty and human rights (including prohibitions against bribery and corruption and respecting rights of indigenous people and use of intellectual property, right to development, adequate food and water, highest attainable standard of physical and mental health, adequate housing, education, freedom of thought, conscience and religion and freedom of opinion and expression)** (paras 10-11).

Some of the terminology used (for example in relation to these economic, social and cultural obligations to development, adequate food and drinking water, the highest attainable standard of physical and mental health, adequate housing, privacy, education, etc) is similar to how the obligations of states are described in international human rights treaties and declarations, and may raise similar concerns as to the exact nature of the obligations and how to measure compliance.

This broad terminology could it has been suggested²⁴ give free range to those interested in corporation bashing rather than in working to improve performance. However, going from broadly framed principles to more clearly defined obligations is not a new challenge. Over the years, the United Nations and other organisations have developed mechanisms, generally based on dialogue, aimed at more clearly defining human rights responsibilities and giving those responsible for action the required space for carrying out their obligations. Moreover, many of the rights such as these, protected by the Norms have already been given relatively clear interpretations in existing treaties, and through the interpretation machinery of international organisations.²⁵

- **Consumer protection (including fair business practices, marketing and advertising)** (paragraph 13).

Provisions are included on protecting the consumer from harmful products, ensuring the safety and quality of the goods and services provided and observing the precautionary principle. Reference is made to international standards on breast-milk substitutes and ethical criteria for medical drug promotion

²⁴ Thomas McCarthy, "Business and Human Rights: What do the UN Norms mean for the business lawyer?", *International Legal Practitioner*, November 2003.

²⁵For example, see the general comment No. 12 and No. 15 of the Committee on Economic, Social and Cultural Rights which provide guidance on the right to adequate food and the right to water.

- **Environmental protection (particularly including bioethics, and the precautionary principle and sustainable development)** (paragraph 14).

Regarding the environment, the Norms acknowledge the relationship between the environment and human rights and require companies to apply the precautionary and prevention principles and adopt a conservative approach to carrying out impact assessments.

How is responsibility for human rights apportioned?

• **States have primary responsibility**

A more detailed look at the Norms reveals first that the role of the state is reaffirmed - the Norms emphasize that the primary responsibility rests on States to respect human rights - and to ensure that corporations active on their territory do so. (thus allaying the International Chamber of Commerce's fears regarding the privatization of human rights).

• **Corporate responsibility limited by "sphere of activity and influence"**

However, the Norms go further than some previous documents by clearly acknowledging that corporations have an obligation within their "respective sphere of activity and influence" to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognised in international as well as national law.²⁶

The definition of 'respective sphere of activity' is likely to be the subject of great attention in the coming years but the terminology used in the UN Norms suggests that corporations are seen as having an obligation to do more than simply refrain from acting in a way that constitutes a violation of rights: they are also seen as having a positive duty to prevent violations of rights and to play a proactive role in promoting the specified rights.

For example the Commentary accompanying the Norms notes that they should not contribute directly or indirectly to human abuses, nor directly or indirectly benefit from abuses of which they were aware or ought to have been aware.

²⁶ "Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment 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. (paragraph 1, UN Norms).

To what businesses are the Norms intended to apply?

The intended reach of the Norms is extensive. "Transnational corporation" is defined as referring 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 (paragraph 20).

'Other business enterprises' 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 Norms clearly acknowledge that companies have an obligation to ensure that these rights are adhered to throughout their supply chain. Defining the scope of application of the Norms both in terms of the entities addressed and the meaning of 'spheres of activity and influence' will clearly be one of the important topics of discussion as work proceeds, but it is clear that their intended reach goes well beyond the approach of a traditional transnational corporation.

Implementing the Norms

The general provisions regarding implementation of the Norms are set out in paragraphs 15, 16 and 17.

- **By companies**

As an initial step towards implementing the Norms, a number of steps are suggested that businesses should take:

1. Adopt, disseminate and implement internal rules of operation in compliance with the Norms – including providing training for their managers and workers on the Norms.
2. Periodically publicly report on and take other measures fully to implement the Norms including making known the location of their offices, suppliers and factories.
3. Incorporate the Norms in their contracts or other arrangements and dealings with contractors, subcontractors, suppliers, licensees, distributors

Generally make business's commitment to human rights more transparent and accountable.

- **By the UN**

The Norms envisage a process whereby steps are taken to:

1. Monitor the implementation of the Norms by UN treaty bodies

2. The Commission on Human Rights establishes a group of experts, special rapporteur or working group to receive information and take effective action when a business fails to comply with the Norms.
3. The Sub-commission could monitor best practice by receiving information from NGOs, unions, individuals and others on the activities of TNCs and give the TNCs a venue to respond.
4. The UN could generally use the Norms as a basis for procurement

- **By governments**

Governments should use them as a model for legislation regulating corporate behaviour. The Norms specifically refers to usage of the Norms for guidance in labour inspections or by human rights commissions – but they could also be a useful tool in standardizing company risk assessment reporting.

- **By NGOs, unions, individuals**

It is recommended that the Norms be used by unions as a basis for negotiating agreements with business, by NGOs as a basis for their expectations of the conduct of business and by the socially responsible investment community as the basis for benchmarks of ethical investment initiatives.

Current status

The Norms were debated before the United Nations Human Rights Commission in Geneva in April this year and their placement on the agenda resulted in a war of words between business, NGOs, human rights lawyers and governments in the lead up to the 2004 session.²⁷

On the positive side, the Norms, in the words of Sir Geoffrey Chandler, (Founder-Chair of AI's UK Business Group and former Director of Shell International) 'provide significant value for business by bringing together, in a single comprehensive and authoritative document, accepted international standards . . . based on international declarations and treaties. Others also welcomed the Norms, which, in the words of one human rights organization (HRW), 'fill an important gap in the protection of human rights world-wide . . . and help to level the playing field for companies that want to do the right thing for human rights'.

In essence this view emphasizes that the Norms are merely making real the responsibility of companies as corporate citizens to uphold some of the most

²⁷ The Human Rights Commission is the main body within the United Nations dealing with human rights issues and is comprised of (rotating) representatives of 53 member governments. Australia was the chair of the 2004 session. See UN doc. E/CN.4/2004/L.73/Rev.1 (16 April 2004) (Agenda Item 16 at the Sixtieth Session).

fundamental and basic rights that have been agreed as accepted standards for nation states and individuals for decades.²⁸

On the other side, early on in the drafting process and continuing in 2004, the International Organisation of Employers (IOE), which represents employers, in particular those from the developing world, at the International Labour Organization (ILO), argued for a voluntary approach and against the idea that 'one size fits all' in an area where realities differ greatly.

The United States Council for International Business (USCIB) referred to the Norms as 'unworkable, unnecessary, and counter to efforts to promote corporate responsibility' and argued that it was 'totally inappropriate' to transfer responsibility for protecting human rights from governments to companies. The International Chamber of Commerce (ICC) also argued that the Norms are "an extreme case of privatization of human rights".²⁹

What did the Commission decide?

The Commission confirmed the importance and priority that the Commission accords to companies' responsibilities in relation to human rights by accepting that this issue as one firmly within its agenda.

Its decision, adopted by consensus, asked the UN Office of the High Commissioner for Human Rights (OHCHR) to – continue this investigation into the international human rights responsibilities of business – and specifically to compile a report setting out the scope and legal status of all existing initiatives and standards on business responsibilities with regard to human rights, including the Norms.

Are they legally binding? No

On the one hand, it is clear that the Norms are not 'black-letter law', but rather a work in progress that will be refined if and when it makes its way through the UN system. In fact, under pressure from governments and business the Commission stated, "*as a draft proposal [the Norms] have no legal standing and that the Sub-Commission should not perform any monitoring function in this regard.*"³⁰

²⁸ See Thomas McCarthy, *infra* note 24.

²⁹ Joint views of the IOE and ICC on the draft "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights", 22 July, 2003 available at <http://www.uscib.org/docs/Joint%20ICC-IOE%20Statement%20July%202003.pdf>. Last accessed August 26, 2004.

³⁰ E/CN.4/2004/L.73/Rev.1 (Commission on Human Rights, Agenda Item 16, 16 April 2004).

On the other hand, the Norms are viewed as more authoritative than other current or prior attempts to develop such guidelines and will no doubt be of continuing and increasing relevance for companies in the future.³¹ It would not be unexpected for countries to translate these obligations (which are based on international law) into national legislation binding a business enterprise for example in terms of reporting on their performance.³²

While the moral weight of pronouncements by expert groups such as the Sub-Commission should not be dismissed the real and most immediate relevance of the Norms is that they can be seen as expressing the expectations of public opinion and civil society regarding the conduct of enterprises.

Future directions

The development of authoritative comprehensive 'soft law' standards, such as the Norms, in conjunction with the increasing adaptation of more traditional methods of accountability (such as lawsuits) ensures the mainstreaming of human rights as a core issue of relevance to transnational business now and in future years.

The Norms will almost certainly become a key element in future United Nations activities regarding the human rights impact of transnational business and will continue to be used by civil society to define their very public expectations of business with respect to human rights. Attention given to particularly egregious cases of human rights violations by corporations can only be expected to increase in the future.

Although a legally binding global compliance framework may be many years off, national enforcement of human rights standards on companies could accelerate change.

It will now be very important to begin to give more precision to the content and limits of corporate human rights obligations as set out in the Norms and provide the predictability required in legal obligations. The various existing international treaties and the other private-public codes and declarations will be useful instruments in this search for further clarity.

³¹ See for example, comments by the former UN High Commissioner for Human Rights, Mrs. Mary Robinson, *Financial Times*, December 19, 2003.

³² With respect to the UK, see Regulation 11A of the Occupational Pension Schemes (Investment) Regulations (1996) UK and U.K. Government's July 2002 White Paper "Modernising Company Law" in which the Government gave its support to a proposal to require companies of 'significant economic size' to prepare an Operating and Financial Review (OFR) that would cover a number of issues, including a company's impact on the community and environment. In France, the New Economics Regulations (NRE) were adopted in May 2001 by the Parliament and came into force on January 2002. Law No.2001-420; for South Africa, see the King Committee on Corporate Governance, March 2002 report.