

Shell Leads International Business Campaign Against UN Human Rights Norms

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One of the hottest topics at the annual meeting of the UN Commission on Human Rights (UNCHR) - Geneva, March 15 to April 23 - will undoubtedly be the future of the proposed Norms on Business and Human Rights. [1] Approved last August by a UNHCR Sub-Commission of human rights experts, the Norms make the human rights obligations of transnational corporations explicit and suggest further steps towards corporate accountability. Corporate lobby groups such as the International Chamber of Commerce (ICC) have launched a fierce counter-campaign aiming to kill off the proposal, with self-proclaimed CSR champion Shell in a leading role.

If approved by the UNCHR, the Norms would make it much easier for companies to abide by their human rights obligations. There is however a real risk that governments meeting in Geneva will decide not to endorse the proposed Norms and instead send them back to the UN Sub-Commission for the Protection and Promotion of Human Rights. This would mean a major blow, if not the end of the process. [2] The Sub-Commission, a respected body of 26 human right experts from around the world, started its work on the Norms back in 2000. A five-member working group, led by Senegalese Judge El Hadji Guisse, spent four years compiling the social, economical and environmental obligations of transnational companies outlined in existing international declarations into a single statement. While confirming that states are the main responsible to protect human rights, the Norms also oblige business to "within their sphere of activity and influence" refrain from activities that directly or indirectly violate human rights as well as actively promote and protect these rights. [3] Although the Norms do not have the status of a formal UN treaty, the proposal moves beyond pure voluntarism and includes the creation of a new mechanism for implementation. The text calls on the companies to directly implement the Norms, and suggests that breaches can result in compensation to the victims. While the enforcement mechanism is still only a proposal without much concrete shape, this is what has caused most outrage among business lobby groups.

Voluntarily Human Rights?

The most vocal opposition has come from the International Chamber of Commerce (ICC) and the International Employers Organisation (IEO). On the national level, groups like the US Council for International Business (USCIB) and the Confederation of British Industry (CBI) campaign heavily to get the Norms sidelined. The ICC, which calls itself the 'world business organisation' and has hundreds of large multinationals in its ranks, stubbornly claims that voluntary industry initiatives are sufficient to protect human rights. Stefano Bertasi from the ICC's Paris headquarters explains: "We don't have a problem at all with efforts that seek to encourage companies to do what they can to protect human rights. We have a problem with the premise and the principle that the norms are based on. These Norms clearly seek to move away from the realm of voluntary

initiatives... and we see them as conflicting with the approach taken by other parts of the UN that seek to promote voluntary initiatives." [4]

Bertasi refers to the Global Compact (GC), the UN's Corporate Social Responsibility (CSR) flagship. The Global Compact was launched in July 2000 by UN Secretary General Kofi Annan, after several years of preparations in close partnership with the ICC. [5] The Compact states nine very general principles concerning human rights, labour and environment to which companies can sign on to, but lacks any meaningful system of monitoring or enforcement. The ICC, the main corporate architect behind the Global Compact, has forcefully fought against any form of monitoring or enforceability. The failure of the Compact to prevent corporate abuses is now becoming increasingly apparent and recognised also among parts of business. Chip Pitts, Chief legal officer of Nokia and delegate to the UN Commission on Human Rights, explains that "for all the good done thus far by the Global Compact, fair observers must admit that the uptake by businesses has not been what it could." [6] "Recurring significant problems of corporate social responsibility", writes Pitts, "demonstrate the need for even more helpful and effective approaches to build upon the foundation already laid by the GC while - frankly - moving beyond its limitations."

Shell in Action

Meanwhile, the ICC's efforts to sideline the UN Norms are led by Robin Aram, Shell's Vice-President of External Relations and Policy Development. Aram's lobbying campaign against the Norms happens under the banner of the ICC's Commission on 'Business in Society'. [7] Shell, meanwhile, keeps silent on the issue. When asked directly about his company's position, Aram replies: "From a Shell perspective we don't find the Norms helpful". [8] According to Aram, Shell has already adopted high human rights standards, which are now in the implementation phase, therefore "from a narrow Shell perspective the draft Norms add little value." Aram also repeats the main ICC arguments against the Norms, such as the claim that they transfer responsibility for human rights from states to business. Aram argues that the Norms have been drafted in a very problematic process, "in effect driving a wedge between companies and human right organisations and undermining voluntary initiatives like the Global Compact." [9] Aram concludes stating that "Shell supports the views of ICC and other national and international industry organisations that the draft Norms initiative is misguided."

A burning question remains: if Shell has really come so far in embracing human rights, why is the company dedicating resources to a campaign to undermine a UN initiative that would help businesses implement their commitment to responsible business conduct? Is this not the kind of campaign one could expect only from companies lagging behind and from free-riders refusing to adapt to social and environmental concerns? How to explain that it is self-proclaimed CSR frontrunner Shell that is leading this campaign, together with the ICC, which has dozens of other well-known CSR-enthusiastic TNCs as active members?

While the scandal around Shell's overstatement of its oil reserves forced CEO Phil Watts to resign in early March, the company generally gets away easily with its inflated claims concerning its social responsibility record. A recent report by Christian Aid documents that Shell's operations in the Niger Delta (Nigeria) are still causing serious problems for local communities. [10] The report also highlights that most of the community development projects presented in various glossy Shell reports on CSR are in fact failing.

Hospitals, schools and water supply systems are built but never start working, and roads are mainly used to boost oil production. But beyond the debate about the extent to which Shell's CSR claims are actually greenwash and poor-wash, it is clear that the company is determined to prevent the emergence of international mechanisms through which communities could hold it accountable to its pledges. Shell wants free hands to decide its choices on how to weigh 'people, planet and profits', to the extent that it takes the lead in campaigning against the UN Norms on Business and Human Rights, in alliance with the most reactionary parts of international business.

US Hardliners

An example of such an ally is the US Council for International Business (USCIB), the US affiliate of the ICC. Also USCIB says to be committed to the protection of human rights but only through voluntary actions. USCIB opposes amending of the language or cutting back the scope of the Norms: the group wants the Norms buried once and for all. "Let's face it", says USCIB Vice President Timothy Deal, "the 'norms' are a radical innovation. They purport to make private business enterprises liable for 'human rights violations'. This is a revolutionary step". USCIB claims that the Norms would amount to "privatising the enforcement of human rights laws", [11] transferring the responsibility for protecting human rights from governments to business. Human rights experts who have analysed the Norms reject such claims: the Norms would only require business to ('within their sphere of influence and activity') comply with existing international declarations.

In its very aggressive campaign style, USCIB threatens developing countries that the Norms would lead to disinvestments. [12] Its mudslinging against the UN Sub-Commission ("a lower body of the UN") includes the false claims that the Norms were developed "in a very closed process that presented few opportunities for business input" and that "business comments that were submitted were completely ignored." [13] In reality, the UNHCR working group conducted a thorough multi-stakeholder consultation, involving business, governments and NGOs. Business was throughout the drafting process continuously kept informed and received new drafts, with the invitation to comment. The reality is that USCIB, instead of communicating their views directly to the working group, chose for back-channel lobbying against the Norms. Groupings like the International Business Leaders Forum (IBLF) and the World Business Council for Sustainable Development (WBCSD) did engage constructively and have no complaints about the process. [14]

In fact, the fierce campaign against the Norms by the ICC and USCIB causes raised eyebrows among other business actors. "It has become a tradition for these organisations to oppose any kind of legislation or regulation that limits the behaviour of companies", comments Sune Skadegard Thorsen, senior advisor on CSR at Novo Nordisk. [15] Novartis, Novo Nordisk and Barclays Bank are part of a coalition of companies that last December agreed to give the Norms a chance. Also the WBCSD and CSR Europe are among those industry groupings that have taken a less hostile stance, but the division between progressive and reactionary factions in international business is less clear than it may seem. [16] The WBCSD and CSR Europe have in other contexts campaigned against enforceability of CSR guidelines, for instance in the decision-making on the EU's 2002 White Paper on CSR. Numerous large TNCs (including Shell) are members of and active players in both the ICC, WBCSD and CSR Europe. Good cop, bad cop tactics are an integral part of the lobbying and reputation management strategies of large TNCs.

Geneva Showdown

In the decisive run-up to the annual session of the UN Commission on Human Rights, the corporate campaigns against the Norms have stepped up the pressure on governments. The ICC, IOE and USCIB have visited powerful government ministries in key countries, such as the US Department of Commerce and the UK Department of Trade and Industry. [17] These industry-friendly ministries are expected to put pressure on those parts of the governments that are generally more supportive of human rights. The US and the UK governments are the most sceptical towards the Norms, although they have recently downplayed their opposition in public. The official line of both governments is that they do not oppose the Norms, but at the same time UK and US diplomats in Geneva continue to actively undermine the Norms. When the European Union (EU) delegations met on February 4-5 to decide a common position, the UK pushed for rejecting the Norms. In the end the EU failed to agree on a common position, as some governments (including Sweden, Norway and Denmark) wanted to give the Norms more time.

According to Robin Aram, Shell will not be attending the meeting of the UN Commission in Geneva, but "the views of the ICC, International Organisation of Employers and various national industry organisations will however be made available to government participants in the meeting." [18] The mood among business in advance of the Geneva conference of the UNCHR is confident. USCIB, for instance, believes that the UNCHR will send the Norms back to the Sub-Commission "for further study and discussion". [19] NGOs fear this outcome, which would mean a major step backwards in the pursuit of corporate accountability. An appeal has been sent to governments meeting in Geneva, asking them to support the Norms as a step forward in making corporations accountable for their activities. [20]

Whichever way the UN Commission on Human Rights will decide, the corporate campaign against the UN Norms raises fundamental questions, not only about the depth or shallowness of the commitment to human rights by self-proclaimed CSR champions like Shell. Another pressing question is when, if ever, Kofi Annan and the UN leadership will lose its patience with the ICC. Will Annan start reconsidering whether a group that is trying to kill the development of UN Norms on human rights is an appropriate partner for the Global Compact and other joint projects?

Notes

1: The full name is UN Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, but throughout the article we will refer to them as the Norms or the Norms on Business and Human Rights. The Norms were unanimously approved by the UN Sub-Commission on the Promotion and Protection of Human Rights on 23 August 2003. See the full text on: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/64155e7e8141b38cc1256d63002c55e8?Opendocument>

2: The Sub-Commission has transmitted the Norms to the Commission on Human Rights, in which the governments are taking decisions, and recommended that the Commission asks various stakeholders such as governments, UN bodies, business, NGOs and other interested parties to begin to use and understand the Norms over the coming year and a half and then submit comments during the 61st Session of the Commission in 2005.

3: Areas included are core labour rights, consumer and environmental protection, indigenous peoples' rights, the use of security forces, operations in conflict zones, corruption and security of persons.

- 4: Stefano Bertasi quoted in "CSR Europe background note: United Nations Norms on the Responsibilities of Transnational Companies." <http://www.csreurope.org>
- 5: For background reading on the scope, limits and campaigns around the Global Compact, see for instance the website of the Alliance for a Corporate-Free UN, <http://www.earthrights.org/un/index.shtml>
- 6: Chip Pitts quoted in "CSR Europe Q&A session: United Nations Norms on the Responsibility of Transnational Companies", September 2003.
- 7: The ICC Commission published the report "Business in society: making a positive and responsible contribution". See: http://www.iccwbo.org/home/business_society/commission.asp
- 8: E-mail correspondence with Robin Aram, 8 March 2004.
- 9: Ibid
- 10: "Beyond the Mask" (Christian Aid, January 2004), <http://www.christian-aid.org.uk/indepth/0401csr/>
- 11: Timothy E. Deal, "Business and Human Rights: The Proposed Norms on The Responsibilities of Business Regarding Human Rights", statement to the Fund for Peace, Human Rights and Business Roundtable, Washington DC, 6 February 2004.
- 12: "UN to Review Proposed Code on Human Right for Business", USCIB, 5 March 2004.
- 13: "The draft code would virtually eliminate the very investment that is the best hope for economic development and improved human rights," claims Deal. Statement by Timothy E. Deal, Senior Vice President, USCIB, to the Frank Hawkins Kenan Institute of Private Enterprise Seminar, "Are Human Rights the Business of Business?", Washington DC, 10 December 2003.
- 14: Those business groups that wanted to discuss the content of the Norms were able to do so, including in meetings with members of the UNHCR working group on the Norms.
- 15: Sune Skadegard Thorsen, attorney specialised in Human Rights and Business and senior advisor on CSR at Novo Nordisk, quoted in "CSR Europe Q&A session: United Nations Norms on the Responsibility of Transnational Companies", September 2003.
- 16: CSR Europe, whose working group on Business and Human Rights includes companies such as BP, Levis, Mattel, Nike, Procter & Gamble, Coca Cola or Nestle sent a background paper on the Norms to their members. In September 2003, CSR Europe organised a question & answer session in which five experts on human right issues from the NGO, business and academic world answered a series of questions posed by members. CSR Europe "does not take position on the draft UN Norms, since we are no trade organisation." E-mail correspondence with CSR Europe communication manager Imre de Roo, 9 March 2004.
- 17: Before joining Shell, Robin Aram was a high-level government official in the Trade and Industry Department (Cabinet Office Economic Secretariat).
- 18: E-mail correspondence with Robin Aram, 8 March 2004.
- 19: "Indications are that members of the Commission on Human Rights shares at least some of the substantive and procedural concerns" , USCIB wrote recently in a press release, "It will therefore likely decline to approve or reject the proposed code during its upcoming session, but will instead send it back to the sub commission for further study and discussion." "UN to Review Proposed Code on Human Right for Business", USCIB newsletter?, 5 March 2004.
- 20: See for instance "Statement of Support for the UN Human Rights Norms for Business" (to be delivered at the 60th Session of the Commission on Human Rights, 15 March - 23 April 2004, Geneva), <http://web.amnesty.org/library/Index/ENGIOR420052004?open&of=ENG-393>