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Serving American Business as U.S. Affiliate of:

International Chamber of Commerce (ICC)
International Organisation of Employers (IOE)
Business and Industry Advisory Committee (BIAC) to the OECD
ATA Carnet System

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UNHCHR Norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights

Negotiations started	April 2000
Negotiations end	Unclear, possibly 2003
Sponsor	UN High Commissioner for Human Rights
Players in development	Representatives from United States, Russia, Cuba, Korea and Senegal. Professor David Weissbrodt is the U.S. member and responsible for writing the Norms
Target audience	Multinational enterprises, small and medium sized enterprises and public enterprises
Purpose	“Non-voluntary” norms concerning human rights and international cooperation applicable to transnational corporations
Principles covered	General obligations, right to equal treatment and nondiscrimination, right to security of persons, rights of workers, respect for national sovereignty and human rights, consumer protection, environmental protection
Source documents	<i>ILO Tripartite Declaration concerning Multinational Enterprises and Social Policy, OECD Guidelines for Multinational Enterprises, UN Global Compact, Universal Declaration of Human Rights, Convention on the Rights of the Child, several company codes, UN conventions and declarations, and external corporate responsibility initiatives</i>
Implementation procedures	Enterprises must: <ul style="list-style-type: none">• Adopt/implement internal code of conduct in compliance with Norms.• Apply Norms in their contracts with contractors, subcontractors, suppliers and licensees to ensure implementation and respect.• Subject to periodic monitoring by national, international, governmental, and/or nongovernmental mechanisms.• Conduct periodic evaluations of the impact of enterprise’s activities on human rights.• Provide reparations to persons, entities and communities affected by failures to comply with Norms.
Reporting requirements and verification	A monitoring mechanism to apply sanctions and obtain compensation for infringements committed and damage caused by multinational enterprises

History

In spring 2000, the UN Sub-Commission on Promotion and Protection of Human Rights, which is part of the UN Human Rights Commission, started the review of a "Proposed Draft Human Rights Code of Conduct for Companies." A Sessional Working Group on the Working Methods and Activities of Transnational Corporations was established by the Sub-Commission to consider such a code. In August 2001, the Sub-Commission reviewed a draft of what is now being called "Norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights," which was prepared by Professor David Weissbrodt, the U.S. member of the Sub-Commission.

It is unclear when the Norms will be completed. Another draft of the Norms was made available in November 2002 with an open comment period that ended January 22, 2003. When the Norms are completed, they could remain a Sub-Commission document or be recommended to the UN Human Rights Commission for a decision. If the Commission decides to pick up the Norms, they could be recommended to the UN Economic and Social Council (ECOSOC) and the UN General Assembly to become a UN document. The U.S. Government has been voted off the Commission for 2002, but will be back on in 2003.

In 1996, Weissbrodt was nominated to the Sub-Commission by the Clinton Administration for a four-year term, which was renewed until 2004. He does not represent the U.S. Government nor does he report to the U.S. Government about his activities on the Sub-Commission. He is an independent expert with extensive experience working on human rights issues and international organizations, but he has no experience working with business or on corporate codes of conduct.

None of the Working Group members represent business interests, and business has little to no voice in the development of the Norms. In March 2001, Weissbrodt hosted a seminar on the Norms in Geneva, to which non-governmental organizations, trade unions and companies were invited. Seven companies and three business associations attended. This seminar and any comments sent to Weissbrodt have been the extent of business involvement. The Norms are not being negotiated in a formal manner. They are being written by Weissbrodt based on his research and analysis and comments received from non-governmental organizations, trade unions, companies and intergovernmental organizations.

Position of the International Chamber of Commerce

In January 2001, ICC Secretary General Maria Livanos Cattai sent a letter to Mary Robinson, the UN High Commissioner for Human Rights, voicing concern over the drafting of the Norms. ICC followed up this letter with letters and conversations with Weissbrodt and joint letters with the IOE to the Sub-Commission. The ICC is not commenting on the substance of the Norms, and instead challenges the development of the Norms as a whole. The ICC position on the Norms states:

- The development of another code of conduct for companies does not constitute a positive contribution to the current debate on corporate social responsibility.
- The Norms duplicate existing instruments; it is counterproductive to the United Nation's ongoing efforts to encourage companies to participate in the Global Compact; and it risks inviting a negative reaction from business, at a time when business is increasingly engaging in corporate social responsibility initiatives.
- ICC and its member companies are already demonstrating their desire to encourage good corporate practice and responsible business conduct through actions taken by individual companies - as well as through their participation in the Global Compact, their constructive contribution to the revision of the *OECD Guidelines for Multinational Enterprises*, and various other initiatives such as the Global Sullivan Principles.

- The establishment of the legal framework for protecting human rights and its enforcement is a task for governments. ICC recognizes, nonetheless, that business has an interest in encouraging the improvement of social conditions, which are an important factor for stable development, and in providing an example of good human rights practices.
- The way to ensure a greater business contribution to social progress is not through more – and more prescriptive – codes and regulations. Voluntary business initiatives, be they formal or informal, play an important role in bridging cultural diversity within companies and in enhancing awareness of societal values and concerns. This is primarily a matter of persuasion and peer pressure rather than prescription.

Position of the International Organization of Employers (IOE)

In March 2001, the IOE attended the seminar organized by Weissbrodt on the draft Norms and presented a position paper outlining the IOE's concerns. In August 2001, the IOE sent all the Sub-Commission members letters outlining the IOE's concerns about the Norms. In the last few months, the IOE has sent joint letters with the ICC to Weissbrodt and the Sub-Commission. The IOE position on the Norms states:

- The drafting of Norms should not proceed. The Norms do not fit with current realities and would in fact be damaging if they advance further.
- The IOE does not support a one-size-fits-all approach to corporate responsibility, because the variety of issues, contexts and realities companies face makes it impossible to create universal norms.
- The Norms run counter to the UN Global Compact, which is entirely voluntary and expressly not “code” based. UNHCHR is one of the three lead agencies in the advancement and promotion of the principles approach of the Global Compact. The Norms would create an internal conflict within the UNHCHR should it attempt to promote both the Global Compact and the Norms.
- The Norms move the UNHCHR out of its sphere of competency and into those of other UN agencies. UN agencies should respect and compliment each other's work by adding value rather than confusion. Confusion within the United Nations weakens its credibility with business at a time when it is trying to engage with the business community.
- Lengthy, delicate negotiations took place between governments, trade unions and employers within the ILO to develop the *ILO Tripartite Declaration concerning Multinational Enterprises and Social Policy* and the *ILO Declaration of Fundamental Principles and Rights at Work*. These documents are accepted by both trade unions and business as a satisfactory response to the issues being considered in the Norms. A similar approach is also to be found in the *OECD Guidelines for Multinational Enterprises*, which were revised recently.
- The proposed Norms will add to the “code fatigue” that companies throughout the world are experiencing and may hamper business-led corporate responsibility initiatives. The Norms fail to recognize the efforts of companies to develop their own voluntary private initiatives.
- The proposed Norms place on business obligations that more properly lie with governments.