
BUSINESS AND HUMAN RIGHTS

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I. INTRODUCTION

Whether it is Nazi industrialists using slave labor from concentration camps or central African rebels exploiting local farmers and natural resources to supply international businesses, human rights atrocities are all too often committed in the name of corporate profitability. The international community's tendency to look the other way has been similarly, and regrettably, frequent. Although some treaties could be interpreted as applying to non-state entities, most of the development of international law has focused on state actors. As human rights abuses have persisted worldwide, so too have various attempts to establish international standards for corporate actions. Those efforts have been less than productive, however, because they have largely been without strong implementation methods or support from the United Nations.

But now, the United Nations has begun to develop a significant international standard: Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (the Norms). While maintaining a state's duty to enforce human rights, the Norms go a long way toward ensuring that international companies respect workers' equality of opportunity and treatment; avoid corruption; follow national and local laws; and protect the environments and residents where they operate. The U.N. Sub-Commission on the Promotion and Protection of Human Rights has approved the Norms and has submitted them to the U.N. Commission on Human Rights. While issues with the proposed Norms remain to be resolved, the Norms represent a crucial step toward ensuring international corporate social responsibility.

This Article begins with a discussion of why one should be concerned with, or at least interested in, the human rights conduct of corporations.

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Hence, Part II presents some historical and current situations that require attention and standard setting. Part III focuses on past efforts of international law, particularly international human rights law, to treat non-state actors as corporations. Part IV discusses five major attributes of the U.N. Human Rights Norms that build upon the previous efforts to deal with the human rights conduct of corporations. Part V traces the process by which the Norms were prepared and are now being considered by the U.N. Commission on Human Rights. Part VI identifies three principal issues raised by the opponents to the Norms. And the Article concludes in Part VII with an account of how the Norms are already being used by businesses, mutual funds, and others.

II. HISTORICAL AND CURRENT HUMAN RIGHTS CONCERNS AS TO THE ACTIVITIES OF BUSINESS

This year marks the 60th anniversary of the initiation of the Nuremberg trials of the Major War Criminals after World War II.¹ During the trials, German industrialist Alfried Krupp and nine other officials of the huge Krupp industrial firm were convicted of charges relating to, *inter alia*, the use of slave labor. During that era, the Krupp firm became an inextricable part of the German policy for occupied countries such as France, Norway, and Poland. The Krupp corporate officers received terms of imprisonment with Krupp himself being sentenced to twelve years imprisonment. In addition, all his properties—public and private—were forfeited.² In a subsequent case, twenty-four directors and officers of the German conglomerate I.G. Farben Industry were convicted for using slave labor, for designing and producing poison gas used in the concentration camps of the Third Reich, and for other crimes.³ Thirteen I.G. Farben corporate defendants

1. Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, 82 U.N.T.S. 279, *entered into force* Aug. 8, 1945, *available at* <http://www1.umn.edu/humanrts/instreet/imt1945.htm>.

2. United States v. Krupp, 9 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10 (1950). As the trial court said in *Doe v. Unocal Corporation*, 110 F. Supp. 2d 1294, 1310 (C.D. Cal. 2000), *aff'd*, 395 F.3d 932 (9th Cir. 2002) (citations omitted): “The Tribunal found the defendants guilty of employing slave labor because their will was not overpowered by the Third Reich ‘but instead coincide[d] with the will of those from whom the alleged compulsion emanate[d].’ Moreover, the ‘Krupp firm had manifested not only its willingness but its ardent desire to employ forced labor.’”

3. United States v. Krauch, 8 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10 (1952) (“While the Farben organisation, as a corporation, is not charged under the indictment with committing a crime and is not the subject of prosecution in this case, it is the theory of the prosecution that the defendants individually and collectively used the Farben organisation as an instrument by and through which they committed the crime enumerated in the

were found guilty and were sentenced to terms of imprisonment.

A more recent example of corporate greed and crimes against humanity involves the brutal war in which more than three million lives have been lost over the past seven years in the Democratic Republic of Congo (DRC). In this war, companies engaged in forced labor practices reminiscent of World War II.⁴ The U.N. Panel of Experts on the Illegal Exploitation of National Resources and Other Forms of Wealth of the Democratic Republic of the Congo identified more than eighty companies from developed nations⁵ that exploited Congolese natural resources during the war. Some of those companies have used forced labor; others have facilitated the transfer of weapons to the warring parties that have been implicated in committing war crimes. The companies were evidently motivated by the mineral wealth of the DRC. For example, mineral columbo tantaline (coltan) is found in the eastern DRC and tantalum can be extracted from that ore for use in the production of electronic components commonly used in cell phones. Because of increases in the price of coltan in world markets, some rebel groups and unscrupulous businesses forced farmers and their families to leave their agricultural lands and compelled them to work in coltan mines.⁶

Companies may violate human rights not only in periods of armed conflict⁷ but also by employing child laborers; discriminating against

indictment. All the members of the Vorstand or governing body of Farben who were such at the time of the collapse of Germany were indicted and brought to trial.”).

4. Final Report of the Panel of Experts on the Illegal Exploitation of National Resources and Other Forms of Wealth of the Democratic Republic of the Congo, U.N. Doc. S/2002/1146 (2002), available at <http://www.natural-resources.org/minerals/law/docs/pdf/N0262179.pdf>. See also All Party Parliamentary Group on the Great Lakes Region, The OECD Guidelines for Multinational Enterprises and the DRC (February 2005).

5. Those identified were thirty developed nations of North America, Western Europe, and Asia that are members of the Organization for Economic Cooperation and Development (OECD).

6. The U.N. Panel brought to the attention of banks several companies and individuals that had engaged in illegal activities, causing the banks to close the relevant accounts. The U.N. Panel also worked closely with the National Contact Points of the Organization for Economic Cooperation and Development to seek information and to resolve identified problems.

7. “In the field of human rights, there are growing expectations that corporations should do everything in their power to promote universal human rights standards, even in conflict situations where governance structures have broken down.” Andrew Clapham & Scott Jerbi, *Categories of Corporate Complicity in Human Rights Abuses*, 24 HASTINGS INT’L & COMP. L. REV. 339, 339 (2001); see also Ilias Bantekas, *Corporate Social Responsibility in International Law*, 22 B.U. INT’L L.J. 309 (2004); Surya Deva, *Human Rights Violations by Multinational Corporations and International Law: Where from Here?*, 19 CONN. J. INT’L L. 1 (2003); Surya Deva, *UN’s Human Rights Norms for Transnational Corporations and Other Business Enterprises: An Imperfect Step in the Right Direction?*, 10 ILSA J. INT’L & COMP. L. 493 (2004); David Kinley & Junko Tadaki, *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law*, 44 VA. J. INT’L L. 931 (2004); Harold Hongju Koh, *Separating Myth from Reality about Corporate Responsibility Litigation*, 7 J. INT’L

certain groups of employees (such as union members and women); attempting to repress independent trade unions and discourage the right to bargain collectively; failing to provide safe and healthy working conditions; and limiting the broad dissemination of appropriate technology and intellectual property. Companies also dump toxic wastes, and their production processes may have consequences for the lives and livelihoods of those in neighboring communities. One of the most visible examples of corporate human rights abuses occurred in Bhopal, India, in 1984, when forty-one tons of methyl isocyanate were released from a plant owned by Union Carbide Corporation.⁸ At least 15,000 people were killed, and more than 170,000 people were disabled. Local water and soil still remain severely contaminated, and birth defects continue to be reported. Five years after the disaster, Union Carbide was held legally accountable by the Indian Supreme Court, which ordered the company to pay civil claims of \$470 million. Twenty years after the disaster, however, many victims still have not received any compensation. Union Carbide has refused to release information about the chemicals that caused the harm, including the results of tests completed on the health effects of the spillage. In 2001, Union Carbide became a subsidiary of the Dow Chemical Company, which claims that it has no responsibility for the prior actions of its new subsidiary.

While corporations have the capacity to cause catastrophic damage, they also bring new jobs, capital, and technology capable of improving working conditions and raising local living conditions. They certainly have the capacity to assert a positive influence in fostering development and achieving prosperity. The issue becomes maximizing the good that companies do while eliminating the abuses they commit.

Whether one thinks of businesses as critical for the prosperity and economic success of the community or focuses upon the problems they may cause, companies are certainly powerful forces in local communities, around the nation, and throughout the world. The three hundred largest corporations account for more than one-quarter of the

ECON. L. 263 (2004); Jordan J. Paust, *Human Rights Responsibilities of Private Corporations*, 35 VAND. J. TRANSNAT'L L. 801 (2002); Ernst-Ulrich Petersmann, *Time for a United Nations 'Global Compact' for Integrating Human Rights into the Law of Worldwide Organizations: Lessons from European Integration*, 13 EUR. J. INT'L L. 621 (2002); Kerrie M. Taylor, *Thicker than Blood: Holding Exxon Mobil Liable for Human Rights Violations Committed Abroad*, 31 SYRACUSE J. INT'L L. & COM. 273 (2004).

8. Amnesty International, Union Carbide Corporation (UCC), DOW Chemicals and the Bhopal Communities in India: Amnesty International AI Index: ASA 20/005/2005 (2005), available at <http://web.amnesty.org/library/eng-ind/reports> (follow "India: Union Carbide Corporation (UCC), DOW Chemicals and the Bhopal Communities in India - The Case" hyperlink) (last visited Sept. 14, 2005).

world's productive assets.⁹ For example, General Motors Corporation's sales in a single year are greater than the gross national product of 179 countries, including Malaysia, Norway, Saudi Arabia, and South Africa.¹⁰ Transnational corporations (TNCs) hold 90% of all technology and product patents worldwide,¹¹ and are involved in 70% of world trade.¹² TNCs directly employ ninety million people (some twenty million of whom live in developing countries) and produce 25% of the world's gross product. The top thousand of these TNCs account for 80% of the world's industrial output.¹³ TNCs are active in some of the most dynamic sectors of national economies, such as extractive industries, telecommunications, information technology, electronic consumer goods, footwear and apparel, transport, banking and finance, insurance, and securities trading.¹⁴

III. APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW TO NON-STATE ACTORS SUCH AS CORPORATIONS

Given their importance in the world, it is really remarkable that corporations have not received more attention in the evolution of international law, particularly international human rights law. International law and human rights law have principally focused on protecting individuals from violations by governments. There has been increasing attention, however, to individual responsibility for war crimes, genocide, and other crimes against humanity based on: the Nuremberg tribunals in the 1940s;¹⁵ the criminal tribunals established in the 1990s for the former Yugoslavia¹⁶ and Rwanda;¹⁷ and the

9. MEDARD GABEL & HENRY BRUNER, *GLOBAL INC.: AN ATLAS OF THE MULTINATIONAL CORPORATION* 5 (2003) (citing *A Survey of Multinationals*, *ECONOMIST*, Mar. 27, 1993, at 9.).

10. *Id.* at 2.

11. "TNCs reportedly control 90% of the world's technology patents." Howard A. Kwon, *Patent Protection and Technology Transfer in the Developing World: The Thailand Experience*, 28 *GEO. WASH. J. INT'L L. & ECON.* 567, 570 n.13 (1995) (citing Suwanna Asavaroengchai, *Seeking a Fair Deal in Global Trade*, *BANGKOK POST*, Oct. 19, 1994, at 31).

12. TOM ATHANASIOU, *DIVIDED PLANET: THE ECOLOGY OF RICH AND POOR* 194 (1996); DAVID C. KORTEN, *WHEN CORPORATIONS RULE THE WORLD* 124 (1995).

13. *Id.* at 7 (citing UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD), *WORLD INVESTMENT REPORT* 2001 at 9 (2001)).

14. GABEL & BRUNER, *supra* note 9, at 34. For an analysis of TNCs' activities in various economic sectors see *id.* at 36-119 (describing TNCs in motor vehicle, petroleum, chemical and pharmaceutical, construction, forest and paper products, computers, and other sectors).

15. See Agreement for the Prosecution and Punishment, *supra* note 1.

16. Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, S.C. Res. 847, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993), *reprinted in* 32 *I.L.M.* 1163 (1993).

International Criminal Court,¹⁸ which has now been accepted by one hundred nations (although not by the United States).¹⁹

In addition to state responsibility and individual criminal responsibility, international humanitarian law has placed direct obligations on armed opposition groups—particularly in the context of civil wars and other non-international armed conflicts.²⁰ International criminal law has also been applied to terrorists²¹ and traffickers in human beings.²² Yet, there is one category of very powerful non-state actors that has not received sufficient attention. That category includes transnational corporations and, indeed, all businesses.

Some human rights treaties and other law-making instruments may be interpreted to apply to businesses. Most prominently, one can find a relevant passage in the Universal Declaration of Human Rights,²³ the primary non-treaty instrument that in 1948 first established an

17. Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda, S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg. at 3, U.N. Doc. S/RES/955 (1994), reprinted in 33 I.L.M. 1598, 1600 (1994).

18. Rome Statute of the International Criminal Court, 2187 U.N.T.S. 3, entered into force July 1, 2002. The International Criminal Court has jurisdiction only over natural persons (including corporate officers), but not over legal persons, such as corporations. *Id.* art. 25. See Andrew Clapham, *The Question of Jurisdiction Under International Criminal Law Over Legal Persons: Lessons from the Rome Conference on an International Criminal Court*, LIABILITY OF MULTINATIONAL CORPORATIONS UNDER INTERNATIONAL LAW 143-45 (Menno T. Kamminga & Saman Zia-Zarifi eds. 2000).

19. Currently the Rome Statute of the ICC has 139 Signatories and 100 Ratifications, Coalition for the ICC, available at <http://www.iccnw.org/countryinfo/worldsignsandratifications.html> (last visited Apr. 3, 2005).

20. See, e.g., Geneva Convention relative to the Protection of Civilian Persons in Time of War, Common Art. 3, Oct. 21, 1950, 75 U.N.T.S. 287, entered into force Oct. 21, 1950.

21. See, e.g., Convention against the Taking of Hostages, 1316 U.N.T.S. 205, entered into force Jun. 3, 1983; Convention for the Suppression of Terrorist Bombings, U.N. Doc. A/RES/52/164 (1997), entered into force May 23, 2001, 37 I.L.M. 249; Convention for the Suppression of the Financing of Terrorism, U.N. Doc. A/RES/54/109 (1999), entered into force Apr. 10, 2002, 39 I.L.M. 270; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 974 U.N.T.S. 177, 24 U.S.T. 564, entered into force Jan. 26, 1973, 10 I.L.M. 1151; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1678 U.N.T.S. 221, entered into force Mar. 10, 1988, 27 I.L.M. 668; Convention for the Suppression of Unlawful Seizure of Aircraft, 860 U.N.T.S. 105, entered into force Oct. 14, 1971.

22. Convention Against Transnational Organized Crime, G.A. Res. 55/25, 55 U.N. GAOR, Supp. No. 49, U.N. Doc. A/45/49 (2001), entered into force Sep. 29, 2003; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 U.N.T.S. 271, entered into force Jul. 25, 1951; Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Crime, G.A. Res. 55/25, 55 U.N. GAOR, Supp. No. 49 at 65, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force Jan. 28, 2004; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, 55 U.N. GAOR, 55th Sess., Supp. No. 49, U.N. Doc. A/45/49 (2001), entered into force Sep. 9, 2003.

23. Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 (1948).

authoritative, worldwide definition of human rights. While the Universal Declaration principally focuses on the obligations of states, it also mentions the responsibilities of individuals and “every organ of society,”²⁴ including businesses. The Universal Declaration thus provides that

a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance²⁵

Under the International Covenant on Civil and Political Rights,²⁶ a treaty that has been ratified by 154 nations, including the United States, each state party “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant”²⁷ Accordingly, if a corporation endangers the rights of an individual, the state has a duty to ensure respect of human rights and, thus, to take preventative action. In addition, the Covenant indirectly covers the responsibilities of companies in declaring “[n]othing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein”²⁸

Other treaties express the idea that the state can ensure that non-state entities respect human rights. For example, Article 2(d) of the International Convention on the Elimination of All Forms of Racial Discrimination²⁹ (ratified by 170 nations, including the United States) requires states to “prohibit and bring to an end, by all appropriate means, including legislation . . . racial discrimination by any persons, group or organization”³⁰ Hence, states have the indirect responsibility to prevent racial discrimination by corporations. Similarly, Article 2(e) of the Convention on the Elimination of All Forms of Discrimination

24. *Id.* preamble.

25. *Id.*

26. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

27. *Id.* art. 2.

28. *Id.* art. 5(1).

29. International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), 20 U.N. GAOR, Supp. No. 14, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969.

30. *Id.* art. 2(1)(d).

against Women³¹ (ratified by 180 nations, but not the United States) requires states to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”³² The Committee on the Elimination of Discrimination Against Women has interpreted that provision as including the responsibility of states “for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”³³

Accordingly, human rights treaties and interpretive pronouncements of treaty bodies at least provide for indirect human rights responsibilities of businesses.³⁴ The persistent occurrences of human rights abuses by businesses, however, have prompted several international efforts to define the direct responsibilities of companies. For example, the U.N. Commission on Transnational Corporations unsuccessfully attempted to draft an international code of conduct for TNCs in the 1970s and 1980s.³⁵ The Organisation for Economic Co-operation and Development (OECD) undertook a similar effort in 1976 (updated in 2000) when it established its Guidelines for Multinational Enterprises to promote responsible business conduct consistent with applicable laws, but the OECD Guidelines mentioned human rights only once in a single paragraph.³⁶ In 1977 (updated in 2000) the International Labor Organization (ILO) developed its Tripartite Declaration of Principles Concerning Multinational Enterprises, which calls upon businesses to

31. Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR, Supp. No. 46 at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981.

32. *Id.* art. 2(e).

33. Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 (1993), *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 243, para. 9 (2003).

34. For example, in interpreting the International Covenant on Civil and Political Rights, the Human Rights Committee observed, “Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. In the view of the Committee this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons.” Human Rights Committee, General Comment 16 (Twenty-third session, 1988), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 21, para. 1 (1994).

35. *See* Development and International Economic Cooperation: Transnational Corporations, U.N. Doc. E/1990/94 (1990). *See also* United Nations Draft International Code of Conduct on Transnational Corporations, 23 I.L.M. 626 (1984).

36. Organisation for Economic Co-operation and Development, Guidelines for Multinational Enterprises, 15 I.L.M. 967 (1976). The OECD updated these Guidelines in 2000. OECD Guidelines for Multinational Enterprises, Revision 2000, *available at* <http://www.oecd.org/dataoecd/56/36/1922428.pdf>.

follow the relevant labor conventions and recommendations.³⁷

Further, in January 1999, U.N. Secretary-General Kofi Annan proposed a “Global Compact” of shared values and principles at the World Economic Forum in Davos, Switzerland.³⁸ The original Global Compact asked businesses to voluntarily support and adopt nine succinctly expressed core principles, which are divided into categories dealing with the following: general human rights obligations, standards of labor, and standards of environmental protection. In 2004 the Global Compact added a tenth core principle on corruption.³⁹ The ILO, OECD, and Global Compact initiatives all indicate that they are voluntary, although the ILO⁴⁰ and the OECD⁴¹ have established rarely used mechanisms for interpreting their guidelines.⁴²

In addition, scrutiny of the activities of global businesses by civil society and an emerging concern of companies themselves for social responsibility have, since the 1980s, led hundreds of companies and several industry associations to adopt voluntary codes of conduct.⁴³ Some socially conscious businesspeople, such as the Minnesota

37. International Labour Organisation, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 17 I.L.M. 422, ¶ 6 (1978), *available at* <http://www.ilo.org/public/english/employment/multi/index.htm>.

38. Secretary-General Kofi Annan, Address at the World Economic Forum in Davos, Switzerland (Jan. 31, 1999), in U.N. Doc. SG/SM/6448 (1999).

39. The principles are that businesses should:

[(1) S]upport and respect the protection of internationally proclaimed human rights [within their sphere of influence]; [(2)] make sure they are not complicit in human right abuses[;] . . . [(3)] uphold the freedom of association and the effective recognition of the right to collective bargaining; . . . [(4)] eliminat[e] all forms of forced and compulsory labour; . . . [(5)] abol[ish] child labour; . . . [(6)] eliminat[e] discrimination in respect of employment and occupation[;] . . . [(7)] support a precautionary approach to environmental challenges; . . . [(8)] undertake initiatives to promote greater environmental responsibility; . . . [(9)] encourage the development and diffusion of environmentally friendly technologies[;] . . . [and (10)] work against all forms of corruption, including extortion and bribery.

The Global Compact’s Ten Principles, *available at* <http://www.unglobalcompact.org/Portal/Default.asp?> (follow “The Ten Principles” hyperlink) (last visited Sept. 14, 2005).

40. Tripartite Declaration, Interpretation Procedure, International Labor Organization, *available at* <http://www.ilo.org/public/english/employment/multi/dispute.htm> (last updated July 5, 2004).

41. Guidelines for Multinational Enterprises, Organisation of Economic Co-operation and Development, *available at* http://www.oecd.org/document/60/0,2340,en_2649_34889_1933116_1_1_1_1,00.html; http://www.oecd.org/document/43/0,2340,en_2649_34889_2074731_1_1_1_1,00.html (sites last visited Apr. 3, 2005).

42. See Kinley & Tadaki, *supra* note 7, at 956.

43. See PETER FRANKENTAL & FRANCES HOUSE, AMNESTY INTERNATIONAL & THE PRINCE OF WALES BUSINESS LEADERS FORUM, HUMAN RIGHTS: IS IT ANY OF YOUR BUSINESS? 23 (2000); *see also* Human Rights Codes of Conduct, *available at* <http://www1.umn.edu/humanrts/business/codes.html> (last visited Apr. 3, 2005).

Business Partnership and later the Caux Roundtable, developed voluntary principles applicable to a broad range of companies. Although there is a very important educational value in company codes and other voluntary initiatives, they often are very vague in regard to human rights commitments and lack mechanisms for assuring continuity or implementation. For example, only ninety-two corporations have even mentioned human rights in their respective company codes.⁴⁴

Accordingly, one can summarize the situation when the U.N. Sub-Commission on the Promotion and Protection of Human Rights entered this field as follows: There existed significant concerns about the conduct of transnational corporations and other businesses. The OECD, an institution of thirty governments from only developed countries, had produced voluntary guidelines with a rudimentary implementation mechanism, but those guidelines only mentioned human rights once and lacked the support of a worldwide institution such as the United Nations. The ILO had issued another overlapping set of guidelines focusing almost exclusively on labor issues. Companies, industry groups, and nongovernmental organizations had prepared their own voluntary guidelines, but they rarely mentioned human rights, generally lacked implementation procedures, and could be posted on the Internet one day and taken down the next.

IV. THE U.N. HUMAN RIGHTS NORMS FOR BUSINESS AS THE NEXT LOGICAL STEP

Building upon the previous initiatives regarding corporate social responsibility, in August 2003 the U.N. Sub-Commission on the Promotion and Protection of Human Rights approved⁴⁵ the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.⁴⁶ There are at least five significant attributes of the Norms that should be identified. First, the Norms evince a strong commitment that nothing in the Norms shall

44. Policies, Business & Human Rights Resource Center, *available at* <http://www.business-humanrights.org> (follow "Company policy/steps" hyperlink; then follow "Policies" hyperlink; then follow "Companies with human rights policies" hyperlink) (last visited Nov. 25, 2005).

45. Sub-Commission Resolution 2003/16, Responsibilities of transnational corporations and other business enterprises with regard to human rights, U.N. Doc. E/CN.4/Sub.2/2003/L.11 at 52 (2003), *available at* <http://www1.umn.edu/humanrts/links/res2003-16.html>.

46. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003); *see also* Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/38/Rev.2 (2003), *available at* <http://www1.umn.edu/humanrts/links/commentary-Aug2003.html>.

diminish the human rights obligations of governments. Accordingly, in its first and most important operative paragraph, the Norms establish that:

States have the primary responsibility to promote, secure the fulfillment 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 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.⁴⁷

Second, this core provision of the Norms further addresses an issue that not only was considered in preparing the Norms, but also arose in preparing the ILO,⁴⁸ OECD,⁴⁹ and Global Compact⁵⁰ guidelines: whether these standards apply only to TNCs or to all businesses. On the one hand, most media attention has focused on the activities and misdeeds of major corporations, such as Enron, Union Carbide, and Worldcom. Further, TNCs have the mobility and power to evade national laws and enforcement because they can relocate or use their political and economic clout to pressure governments to ignore corporate abuses.⁵¹ On the other hand, if one applies human rights standards only to TNCs, that differential treatment could be considered discriminatory. Further, it is not easy to define a transnational corporation and there is a risk that sophisticated corporate lawyers will be able to structure any business so as to avoid the application of international standards. The Norms use one of the most comprehensive definitions of a transnational corporation, “an economic entity operating

47. *Id.* ¶ 1.

48. Paragraph 11 of the ILO Tripartite Declaration provides that “[m]ultinational 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.” ILO, Tripartite Declaration, *supra* note 40, ¶ 11.

49. “Multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both.” OECD Guidelines for Multinational Enterprises, Revision 2000, *supra* note 36, ¶ I-4 (emphasis omitted).

50. The Global Compact is aimed at “businesses,” rather than multinational or domestic enterprises in particular. U.N. Global Compact, *supra* note 39.

51. Claudio Grossman & Daniel D. Bradlow, *Are We Being Propelled Towards a People-Centered Transnational Legal Order?*, 9 AM. U. J. INT’L & POL’Y 1, 8 (1993) (“The fact that they have multiple production facilities means that [transnational corporations] can evade state power and the constraints of national regulatory schemes by moving their operations between their different facilities around the world.”).

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.”⁵² In the globalized economy of today, however, that definition is not adequate. For example, a company might employ only two hundred workers in Zurich and own only a single, but very popular, trademark. The company might contract with shirt manufacturers in China and India to purchase shirts and put the trademark on the front pocket. The Zurich company could then agree with a wholesaler to handle the transportation and distribution of the shirts for sale through retailers in Europe and the United States. The Zurich company could retain an advertising agency in London and New York to promote the sales worth many millions of dollars, pounds, euros, and eventually Swiss francs. In a real sense, the Zurich company should be considered a transnational corporation even though it has assets and employees in only one city.

Accordingly, the Norms apply not only to TNCs but also to national companies and local businesses in that each will be responsible according to “their respective spheres of activity and influence.” This approach balances the need to address the power and responsibilities of TNCs and to level the playing field of competition for all businesses, while not being too burdensome on very small companies.

A third significant attribute of the Norms and the related Commentary⁵³ is that they take a very broad and comprehensive approach to human rights as compared with the ILO Guidelines that focus on labor standards, the OECD Guidelines that mention human rights only once, and the Global Compact that contains ten short sentences. The Norms comprise twenty-three paragraphs and are augmented by a more detailed Commentary to reflect the source of the principal provisions and to describe how the provisions apply to companies. As the most comprehensive set of standards developed thus far, the Norms and Commentary require TNCs and other business enterprises to respect the right to equality of opportunity and treatment; the right to security of persons; the rights of workers, including a safe and healthy work environment and the right to collective bargaining; respect for international, national, and local laws and the rule of law; a balanced approach to intellectual property rights and responsibilities; transparency and avoidance of corruption; respect for the right to health as well as other economic, social, and cultural rights; other civil and

52. Norms, *supra* note 46, ¶ 20.

53. Commentary, *supra* note 46.

political rights; consumer protection; and environmental protection. Regarding each of those subjects, the Norms principally reflect, restate, and refer to existing international norms.

Fourth, while the Norms apply to all companies, they are not legally binding but are similar to many other U.N. declarations, principles, guidelines, standards, and resolutions that interpret existing law and summarize international practice without reaching the status of a treaty. Eventually, of course, the Norms could be considered what international law scholars call “soft law” and could also provide the basis for drafting a human rights treaty on corporate social responsibility.

The fifth and final notable attribute of the Norms is that they endeavor to include five basic implementation procedures and anticipate that other techniques and processes may later supplement them. First, the Norms anticipate that companies will adopt their own internal rules of operation to assure the protections set forth in this instrument. Second, the Norms indicate that businesses are expected to assess their major activities in light of its provisions. Third, compliance with the Norms is subject to monitoring that is independent, transparent, and includes input from relevant stakeholders. Fourth, if companies violate the Norms and cause damage, the Norms call for compensation, return of property, or other reparations. And fifth, recognizing the significant responsibility of governments, the Norms call upon those governments to establish a framework for application of the Norms.

V. PROCESS BY WHICH THE NORMS WERE PREPARED AND ARE NOW BEING CONSIDERED BY THE COMMISSION ON HUMAN RIGHTS

The five-member U.N. Working Group on the Working Methods and Activities of Transnational Corporations began preparing the Norms in August 1999.⁵⁴ The Working Group held four public hearings on the Norms during the summers of 2000, 2001, 2002, and 2003 as well as meetings during March 2001 and 2003 in Geneva, at which representatives of business, unions, nongovernmental organizations (NGOs), the scholarly community, and other interested persons were involved in reshaping the document.

The Working Group also posted the various drafts on the Internet⁵⁵

54. David Weissbrodt & Muria Kruger, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, 97 A.J.I.L. 901, 904-07 (2003).

55. Previous Drafts of the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, *available at* <http://www1.umn.edu/humanrts/links/normsdrafts.html>.

and issued them in U.N. publications, so that they were accessible and open to comment. All of the comments received have been taken into account in the drafting process.

After receiving the recommended text from its Working Group, the U.N. Sub-Commission unanimously approved the Norms on August 13, 2003. The Sub-Commission sent the Norms to its parent body, the U.N. Commission on Human Rights. Unlike the Sub-Commission, which is comprised of twenty-six more-or-less independent experts from twenty-six different nations representing all the regions of the world, the Commission is comprised of fifty-three government representatives. The Commission ordinarily meets each year from mid-March until the end of April, so that the Norms had their first hearing at the Commission in March-April 2004. The Commission accepted the Sub-Commission's primary procedural recommendation that the Norms should be disseminated broadly to all potentially interested governments, intergovernmental organizations, businesses, unions, nongovernmental organizations, and others, so that the Commission could receive comments in time for further consideration at its March-April 2005 session.⁵⁶ The deadline for comments was September 30, 2004. The Commission received more than ninety comments.⁵⁷ Also, on October 22, 2004, the Office of the High Commissioner for Human Rights, in cooperation with the U.N. Global Compact Office, held a one-day meeting in Geneva on the topic of the responsibilities of business with regard to human rights. In addition to soliciting comments and views so that the High Commissioner's Office could prepare a report for the 2005 session of the Commission on "the responsibilities of transnational corporations and related business enterprises with regard to human rights,"⁵⁸ the 2004 session of the Commission welcomed the Norms, while noting that the Commission had not actually asked for the document and that, as a draft before the Commission, the document does not on its own have any legal status. Simultaneously, however, the Commission recognized for the first time in its history that corporate social responsibility and human rights belong on the agenda of the Human Rights Commission. That was quite a success in itself.

It is extraordinarily unlikely that the Commission would act substantively upon the Norms without further drafting and several years of consideration—before the Norms or a successor instrument could

56. U.N. Comm. Human Rts. dec. 2004/16, U.N. Doc. E/CN.4/2004/L.11/Add.7 (2004), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca/169143c3c1009015c1256e830058c441/\\$FILE/G0413976.pdf](http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca/169143c3c1009015c1256e830058c441/$FILE/G0413976.pdf).

57. Available at <http://www.ohchr.org/english/issues/globalization/business/contributions.htm>.

58. U.N. Doc. E/CN.4/2005/91 (2005).

eventually be submitted to the Economic and Social Council of the United Nations, and ultimately to the General Assembly for adoption. At the same time, however, any of these bodies could adopt the Norms or a similar standard as its view—carrying some degree of United Nations and thus world support. Obviously, the higher the U.N. institution and the more consensus achieved, the more authoritative would be the imprimatur the Norms should obtain.

At its 2005 session the Commission adopted a resolution⁵⁹ that welcomed the High Commissioner's report⁶⁰ and identified in an extraordinarily balanced fashion precisely the same number of criticisms of the Norms as it found positive attributes. The Commission also called for the appointment by the Secretary-General of a Special Representative on the issue of human rights and transnational corporations and other business enterprises. The Special Representative will serve for "an initial period of two years" implying that the Commission intends to continue the mandate beyond two years. The Special Representative received the following terms of reference:

- (a) To identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights;
- (b) To elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation;
- (c) To research and clarify the implications for transnational corporations and other business enterprises of concepts such as "complicity" and "sphere of influence;"
- (d) To develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises;
- (e) To compile a compendium of best practices of States and transnational corporations and other business enterprises; . . .⁶¹

The Commission also underlined that "the Special Representative of the Secretary-General should take into account in his or her work the report of the United Nations High Commissioner for Human Rights and the contributions to that report provided by all stakeholders, as well as

59. C.H.R. res. 2005/69, U.N. Doc. E/CN.4/2005/L.11/Add.7 at 68 (2005), was adopted April 20, 2005, by a vote of forty-nine in favor, three (Australia, South Africa, and the United States) against, and one (Burkina Faso) abstaining. The United States called for a vote and explained its vote against the resolution. <http://www.humanrights-usa.net/2005/0420Item17TNC.htm>.

60. U.N. Doc. E/CN.4/2005/91 (2005).

61. C.H.R. res. 2005/69, U.N. Doc. E/CN.4/2005/L.11/Add.7 at 68 (2005).

existing initiatives, standards and good practices.”⁶²

While the resolution does not mention the Norms, it focuses on the High Commissioner’s report with regard to the Norms and the resolution underscores “existing initiatives, standards and good practices.”

VI. ISSUES REGARDING THE NORMS

A number of issues have been raised with regard to the Norms by the International Chamber of Commerce (ICC) and the International Organization of Employers (IOE)—bodies that represent some of the largest transnational corporations. While these two organizations were invited to participate in the drafting of the Norms and, to some extent, did participate, they have been most forceful in trying to stop the Norms ever since the Sub-Commission approved them in August 2003. The ICC and IOE lobbied hard to kill the Norms at the 2004 Commission sessions, but they did not succeed. They mounted a further lobbying effort for 2005 in which they have raised questions as to whether companies, as non-state actors, can be subjected to human rights standards. That argument ignores the trend of international human rights and humanitarian law towards applying standards not only to states, but also to armed opposition groups, individuals, and other entities. Even the ILO, OECD, and Global Compact guidelines, while voluntary, speak directly to business. The Norms take a clear and important step towards applying international standards to all business, and that step seems fully justified. Businesses should not be exempted from human rights responsibilities.

Another principal argument of the ICC and IOE has been that they will accept only voluntary guidelines. The voluntary Global Compact has been very successful in educating and encouraging nearly 2,300 companies to join, but there are an estimated 61,000 TNCs in the world.⁶³ What about the other 59,000 companies that are not covered by the Global Compact? The U.N. Human Rights Norms provide an answer to that question.

There is a third argument that the ICC and IOE are reluctant to make at the Commission on Human Rights because they know how unpopular the argument would be in an international forum. That argument has, however, been broached in American academic and political discourse. The argument is most closely associated with Professor Milton

62. *Id.*

63. United Nations Conference on Trade and Development (UNCTAD), World Investment Report 2004, Annex Table A.12 at 273-75 (2004) (61,582 TNCs in 2004), available at http://www.unctad.org/en/docs/wir2004_en.pdf.

Friedman who contended that “there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without deception or fraud.”⁶⁴ Notably, even Friedman’s view that businesses should not pursue socially desirable objectives excluded two social policies—fraud and competition. Those exceptions may be explained by the need to maintain the quality of the free market that Friedman strenuously advocated. It is doubtful, however, that even Friedman would have argued that corporations should pursue profit by committing genocide or using slave labor. Indeed, Friedman would likely have agreed that corporations can only pursue profits in ways that are consistent with legal limitations. That position is consistent with the views of many businesses and business managers who wish to be informed of the law and would be willing to comply with the law.⁶⁵

Focusing only on the self-interest of corporations, however, there is increasing reason to believe that greater respect for human rights by companies leads to greater sustainability in emerging markets⁶⁶ and better business performance.⁶⁷ For example, observance of human rights aids businesses by protecting and maintaining their corporate

64. MILTON FRIEDMAN, CAPITALISM & FREEDOM 133 (1962); *see also* Milton Friedman, *The Social Responsibility of a Business is to Increase Profits*, N.Y. TIMES MAG., Sept. 13, 1970 at 32, 125.

65. Professor Ronald Coase developed an alternative paradigm to Friedman’s understanding of how businesses should act, arguing that businesses are best understood by observing carefully their actual conduct rather than creating artificial models of how they ought to act. *See* RONALD HARRY COASE, *THE FIRM, THE MARKET AND THE LAW* (1988). The past fifteen years have demonstrated that major businesses are, in fact, becoming aware of the interplay between their businesses and their impact on individuals, communities, and the environment; they realize that respect for human rights leads to better business performance and find it beneficial to issue their own codes of conduct that go far beyond a narrow profit motive or legal mandates. Hence, the creation of human rights standards that help attract the best and brightest employees, solicit investments from investors who place at least some socially responsible screen on their stock holdings, and attract consumers who prefer to purchase goods made without child labor or unnecessarily soiling the environment are not contrary to the primary purpose of transnational corporations and other business enterprises. The creation of a uniform set of international human rights standards would aid in this process by helping to make clear what human rights standards a company should follow and which business enterprises are meeting those standards.

66. A large-scale study of evidence from developing countries found that emerging-market companies gain financially from stability. *See* Press Release, International Finance Corporation, Groundbreaking Report Challenges Conventional Wisdom on Role of Business in Emerging Markets, (July 16, 2002), *available at* <http://www.ifc.org/pressroom>.

67. *See* ROGER COWE, ABI RESEARCH REPORTS, *INVESTING IN SOCIAL RESPONSIBILITY: RISKS AND OPPORTUNITIES* (2001) (supporting the proposition that corporate social responsibility has a positive impact on businesses by increasing their potential for competitive advantage and increasing shareholder value through promotion of risk management). *See also* Daniel Farber, *Rights as Signals*, 31 J. LEGAL STUD. 83, 98 (2002) (human rights protection properly encourages investment).

reputation,⁶⁸ as well as creating a stable and peaceful society in which they can prosper and attract the best and brightest employees.⁶⁹ Moreover, consumers have demonstrated that they are willing to purchase products based on a company's compliance with labor, environmental, and other human rights standards.⁷⁰ Similarly, there is evidence that a growing proportion of investors seeks to purchase shares only in socially responsible companies.⁷¹

VII. CONCLUSION: HOW THE NORMS ARE ALREADY BEING USED

While the Norms have yet to acquire legal standing or adoption by the Commission on Human Rights, even in their present format the Norms are beginning to form the basis for corporate action. For example, some investment institutions have begun applying the Norms to persuade

68. *Research: Corporate Reputation*, BRAND STRATEGY, Nov. 2004, at 40 (93% of senior executives believe that their customers and consumers consider corporate reputation to be extremely important or important. "There has also been a surge in the number of brands taking corporate social responsibility (CSR) seriously.")

69. *MBAs Want to Work for Caring and Ethical Employers*, BUS. & ENV. ISO 14000 UPDATES, Sept. 2004, at 15, 16 (citing a Stanford study in which "more than 97% of MBAs in the sample said that they would be willing to forgo financial benefits to work for an organization with a better reputation for corporate social responsibility and ethics"). See also CHRISTOPHER AVERY, AMNESTY INTERNATIONAL, BUSINESS AND HUMAN RIGHTS IN A TIME OF CHANGE (Feb. 2000), available at <http://www.business-humanrights.org/Avery-Report.htm>; United Nations High Commissioner for Human Rights, Business and Human Rights, available at <http://www.unhchr.ch/global.htm>.

70. Andrew Pendleton, *The Real Face of Corporate Social Responsibility*, CONSUMER POL'Y REV., May/June 2004, at 77, 79 (describing increase in consumer attention to corporate social responsibility). For example, consumer discontent that footballs were made through child labor led to a consumer boycott forcing the manufacturers to stop using child labor. See Robert J. Liubicic, *Corporate Codes of Conduct and Product Labeling Schemes: The Limits and Possibilities of Promoting International Labor Rights Standards Through Private Initiatives*, 30 LAW & POL'Y INT'L BUS. 111 (1998). Another example occurred in regard to the promotion of infant formula in developing countries. Certain companies were encouraging mothers in developing countries to use infant formula instead of breast-milk feeding. The use of infant formula led to increased infant mortality because of lack of clean water and because mothers were not properly instructed on how to use the formula. Once consumers learned about the increased infant mortality, they began boycotting Nestlé products. See Nancy E. Zelman, *The Nestlé Infant Formula Controversy: Restricting the Marketing Practice of Multinational Corporations in the Third World*, 3 TRANSNAT'L LAW. 697 (1990).

71. Paul M. Clikeman, *Return of the Socially Conscious Corporation*, STRATEGIC FIN., Apr. 2004, at 23, 24 (noting investors' demand for information on corporate social responsibility). The ethical market share in the United Kingdom grew 15% from 1999 to 2000. See Deborah Doane, New Economics Foundation, *Taking Flight: The Rapid Growth of Ethical Consumerism* (Oct. 2001), available at <http://www.neweconomics.org> (follow "publications" link; then follow link to page 12). A study in the United States found that one out of every eight professionally managed investment dollars is used in socially responsible investing. See SOCIAL INVESTMENT FORUM, 2001 REPORT OF SOCIALLY RESPONSIBLE INVESTING TRENDS IN THE UNITED STATES (Nov. 28, 2001), available at <http://www.socialinvest.org/areas/research/trends/2001-Trends.htm>.

companies to improve their social responsibility.⁷² Some NGOs—such as Amnesty International,⁷³ Christian Aid,⁷⁴ Human Rights First,⁷⁵ Human Rights Watch,⁷⁶ and OXFAM⁷⁷—have been using the Norms as the basis for their advocacy of corporate social responsibility. Some companies, such as Barclay's Bank and Novo Nordisk, as well as the International Business Leaders Forum, have expressed support for the Norms as a way of understanding their commitment to the Universal Declaration of Human Rights. Several leading companies have begun to road-test the Norms in their own businesses, such as Hewlett-Packard, Novartis, and the other companies that compose the Business Leaders Initiative on Human Rights.⁷⁸ Similarly, a major mobile phone company has inserted a clause in all its purchasing contracts requiring businesses with which it contracts or subcontracts (about a thousand of them) to comply with the terms of the U.N. Human Rights Norms for Business.⁷⁹ The U.N. Human Rights Norms for Business have initiated a process for further identifying, clarifying, and elaborating standards for the responsibility and accountability of transnational corporations and other business enterprises with regard to human rights.

72. Isis Asset Management (based in London) was involved in the drafting of the Norms, has supported the Norms since their inception, and has used the Norms in its efforts to persuade the companies in which it invested to improve its socially responsible conduct. In August 2004, Isis merged with Foreign & Commonwealth investment company and the new company, F&C, has followed the Isis approach to the Norms since the merger.

73. Amnesty International, *supra* note 8.

74. Christian Aid, Submission to the Office of the United Nations High Commissioner for Human Rights: Responsibilities of Transnational Corporations and Related Business Enterprises with Regard to Human Rights (Oct. 2004), http://www.christian-aid.org.uk/indepth/410unchcr/UNCHCR%20submission_formatted.pdf.

75. Human Rights First, Nongovernmental Organizations Welcome the New U.N. Norms on Transnational Business – Press Statement (Aug. 13, 2003), *available at* http://www.humanrightsfirst.org/workers_rights/wr_other/wr_press_st_081303.htm.

76. Human Rights Watch, The U.N. Norms: Towards Greater Corporate Accountability: Statement on the United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights to the Office of the United Nations High Commissioner for Human Rights (Sept. 30, 2004), *available at* <http://hrw.org/english/docs/2004/09/30/global9446.htm>.

77. AI/Oxfam Open Call on Governments in Support of the U.N. Human Rights Norms for Business (Apr. 7, 2004), AI Index: IOR 42/010/2004, *available at* <http://web.amnesty.org/library/Index/ENGIOR420102004?open&of=ENG-398>.

78. Business Leaders Initiative on Human Rights, Submission to the Office of the U.N. High Commissioner for Human Rights Relating to the "Responsibilities of Transnational Corporations and Related Business Enterprises with Regard to Human Rights" (Sept. 28, 2004), *available at* <http://www.blihr.org/Pdfs/The%20BLIHR%20submission%20to%20OHCHR.pdf>.

79. Report of the Sessional Working Group on the Working Methods and Activities of Transnational Corporations on its sixth session, U.N. Doc. E/CN.4/2004/21 at 9 (2004).