Forum Report

Company Responsibilities in Countries with Human Rights Challenges

23-24 October 2008, Geneva

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INTRODUCTION AND SUMMARY

On October 23-24 2008, The Conference Board's European Council on Corporate Responsibility and the Business Humanitarian Forum hosted a joint meeting in Geneva on "Company Responsibilities in Countries with Human Rights Challenges." This meeting was the second in a series on this topic and built on the results of a first joint meeting in February 2008. The meeting was chaired by the Director of the Business Humanitarian Forum (BHF) and moderated by the Director of the European Council on Corporate Responsibility and Sustainability at The Conference Board Europe (TCBE). Chatham House rules applied (no attribution of remarks to either individuals or organizations).

The October meeting gathered together 40 participants including senior corporate executives, representatives from non-governmental and international organizations, and academic professionals as well as students. The discussions, which were held against the background of the June 2008 report on the topic prepared by John Ruggie, the UN Secretary General's Special Representative on Business and Human rights, drew on the results of the previous meeting and focused on how to implement effective human rights policies going forward.

The meeting heard new case studies involving company and NGO experiences in dealing with human rights problems in countries with poor governance practices. The June 2008 Ruggie report was discussed, particularly the ways in which it was expected to be helpful as a guide to company practices and risk management in countries with poor human rights records. The meeting also underlined the progress being made regarding the ways in which companies were dealing with the problem so as to minimize their exposure to charges of complicity.

RATIONALE FOR ORGANIZING THE FORUM

The February 2008 meeting on "Company Responsibilities in Countries with Human Rights Challenges" sought to focus attention on specific case studies of corporate experience and lessons learned in these areas. Participants focused their comments on various facets of the overall problem for companies in areas where human rights abuses were occurring, especially in determining the best way to react. The meeting's outcome provided critical "state of the art" lessons for both companies and activist NGOs in dealing with the complex questions associated with the topic.

The organizers of the October 2008 meeting sought to build on these lessons and to update them against the backdrop of deeper and wider experience accumulated in the interim as well as the insights of the June 2008 Ruggie report which was still in preparation at the time of the earlier meeting. The October meeting considered the following questions: What are the various kinds of good practices now being followed? How well are the expectations of various stakeholders being met? How does the current state of best practices relate to the preliminary work reported by Professor Ruggie? Through a candid discussion and with the participation of several industry representatives, the October meeting was intended to give participants a chance to hear about some of the emerging tools, developing ideas and continuing challenges from stakeholders' perspectives. This useful exchange of information and viewpoints would hopefully lead to appropriate conclusions on behavior to adopt going forward.

Today, while many companies have human rights policies and principles, they are still in the minority compared to the vast number of multinationals. Thus the meeting's organizers intended for this meeting report to provide a basic framework for a wider comprehension of the issue among stakeholders, acknowledging that there would be further evolution over the coming years.

ABOUT THE ORGANIZERS

The Conference Board (TCB) is the world's leading business research and network organization. It brings together senior executives from 2,000 of the world's largest companies in nearly 60 countries. It publishes widely respected economic indicators and research on a range of business and management issues, including productivity, diversity, corporate governance and CEO opinion. The Conference Board has operated in Europe for 30 years, supporting the continent's major businesses by providing insight on subjects such as corporate citizenship, CEO compensation, and the structure and composition of boards. The Conference Board produces monthly business cycle indicators for nine countries including the UK, France, Germany and Spain. For further information, please visit www.conference-board.org.

The Business Humanitarian Forum (BHF) is an international Geneva-based non-profit association. The BHF was founded in 1999 to encourage the private sector to do more to alleviate humanitarian problems, mainly through its unique investment and job creation functions. One of the objectives of the BHF is to encourage communication and cooperation between business and humanitarian/development organizations by convening meetings and related activities. The BHF uses the synergy of public-private cooperation to build sustainable economic projects in post-conflict and least- developed societies.
For additional information visit: www.bhforum.org.

CASE STUDY PRESENTATIONS

As in February, the meeting reviewed case studies of company operations in various countries with human rights problems, but differed in that the problems described were spread among several such countries rather than just one. As before, representatives of those companies presented their positions, followed by presentations of NGOs and other organizations working in those areas.

A) An Extractive Industry Company's Approach to Human Rights

The company representative explained that to contribute to economic development a company has to understand more about its impact on human rights and develop new skills, new tools and more comprehensive engagement of people they are impacting. All this was set in a context of company business principles and commitments to established international human rights principles and instruments such as the Universal Declaration of Human Rights. Voluntary national and international initiatives, such as the Extractive Industries Transparency Initiative, also had an important part to play. Once a major new industry settles into a community, the whole dynamic of the community often changes. The company's corporate citizenship role is to be aware of this, to understand it, and to agree with all relevant stakeholders on the elements of a human rights concept.

A series of tools for assessing socio-economic impacts has proved to be an effective way to address human rights problems and helps to avoid their politicization. These had been applied in more than 60 sites across the world, in each case producing key performance indicators and measurable outcomes. To build up the use of such processes, an awareness of direct as well as indirect impacts raised by the company's activity is important. On this point, the company representative noted that there were limits to the company's level of expertise on the topic and that its solution was to involve third parties that know how to handle the situation. Building capacity at the local level – in the company and the community - effective stakeholder engagement and increased local procurement were key to success, as were the development of local complaints and grievance processes.

An NGO representative then noted that companies are an intrinsic part of today's world and they play an integral role in driving economic growth internationally. To improve human rights issues, a good partnership between companies and NGOs should be established that has transparent objectives; agreed expectations; clear roles and responsibilities built on each others' expertise, experience and knowledge; sustainability; clear links between poverty amelioration and core business objectives; openness and trust. Only in this way can such a partnership address the underlying causes of poverty in a manner commensurate with the economic objectives of the company.

Good governance also plays a major role, but companies in general lack the legitimacy to tell local governments what they should do. To improve governance in areas like human rights issues and improve the situation of the local community, transparency and good communication are vital. The objective is to reach a sense that there is an equal power relationship. In doing so, a company will find it easier to understand local needs and priorities. For a company to do business effectively, the community has to trust the company to act appropriately.

For their part, NGOs seek to uncover the root causes of poverty and social injustice. They seek to promote community empowerment by supporting people's right to take control of their lives, realize their rights and be actively engaged in development processes. Those rights cannot be implemented without the participation of the operating company's host government, which is why NGOs work to influence policy on good governance and state capabilities, accountability and responsiveness. Companies can play a role in this process, although it is recognized that there are limitations to what they can do.

B) Operating in High Risk Zones

Two speakers, one from a company and another from an international NGO, addressed the problems associated with company operations in high risk zones. The NGO speaker noted that the concept of "complicity" is a rather vague term. According to his « non legal » point of view there are two types of complicity: (1) in the case where a company provides benefits to locals and there is discrimination in the distribution of it or abuses from it, the company is considered directly responsible: and (2) if those benefits are misused by third parties to deprive the local civilian population of their rights, the company can be considered indirectly responsible.

Indeed, since the extraction of natural resources almost always leads to conflicts of interest or abuses, especially in fragile states where access to justice simply doesn't exist, any corporate entity, especially executives or other company officials have to take extra security measures to avoid exposure to risk.

The speaker introduced and distributed a leaflet prepared by his NGO, entitled "Red Flags"

(http://www.redflags.info/). This leaflet sets out the changing nature of liability risks, based on case law, and lists nine simple rules that companies can follow to keep out of trouble and avoid prosecution for possible complicity with human rights abuses. He emphasized that if a company is facing sanctions because of its actions in a country with human rights problems, ignorance of the law is no defense. In this regard, companies have to be aware that the law applies to their dealings with non-state actors as well, and they should be aware of the consequences of their actions. The speaker suggested that one way to reduce or avoid risks was to build a "corporate culture" that emphasizes the application of "due diligence" and that behavior which might lead to abuses of human rights is not permitted. This sort of culture will help a company avoid unpleasant incidents. He also suggested a two step procedure to build such a culture. The first step is to enforce constant due diligence concerning how a company's economic activity, projects and relationships impact on human rights. The second step is to analyze where there is potential or actual violation of human rights that the company may not be aware of. If a problem is identified, a solution based on human rights standards can be applied.

The next speaker, a company representative, described how a due diligence process was used to address human rights issues involving: investigation and analysis of the facts; identification of challenges; devising solutions in terms of avoidance, mitigation; and involvement of external players. In extreme cases, the human rights issues could be so severe that the project would not go ahead. Introducing new areas of consideration such as human rights into existing management systems presented challenges and there were also legal issues in terms of what should appear in contracts and the consistency of local with international law. NGOs have a legitimate political role to play in society by challenging everyone to raise human rights standards but it creates a problem when they ask a company to assist an NGO with social or political campaigns that are not connected to the company's business. A company can have influence only in areas linked to its business.

An academic questioned why well-meaning corporations run into human rights problems and what can be learned from this? A peacebuilding organization representative answered that unless there is enforcement of human rights standards there will always be problems. Another company representative said that clear guidance is needed on how companies should deal with situations where human rights abuses are occurring. Another participant commented that the key aspect for businesses operating in high risk zones is "risk awareness". An NGO representative noted that in large companies, although there is risk awareness at the headquarters level, it takes time for the proper guidance to filter down to the operating level. Thus mistakes may be made, but an alert company addresses them promptly and knows how to learn from experience and to build the lessons learned into company practices and processes.

Another participant commented on the question as to whether collaboration by corporations in the area of human rights could amount to unlawful collusion under US anti-trust or EU competition laws. While collaboration among corporations that may have a market effect seems presumptively to run afoul of antitrust/competition laws, the following points should be borne in mind: (1) Each State has an international obligation to comply with its international human rights obligations, and that includes making and applying laws in a manner that does not conflict with human rights law; (2) under the U.S. Constitution, U.S. laws should be interpreted consistently with the U.S.'s international obligations unless Congress has clearly intended otherwise in enacting a later statute; (3) human rights is lex specialis, meaning it is a specific body of law in relation to other bodies of law, and under the rules of legal interpretation, specific

law should take precedence in application over general bodies of law that do not specifically address the question at hand; (4) limitations on human rights must be shown to be necessary and serve a legitimate purpose; and (5) certain human rights are nonderogable and may never be limited or derogated from. Full compliance with them is required of every State and individual.

While it is prudent to consider the above factors on a case by case basis, in the area of human rights many legal arguments can be made in support of collaboration, particularly in areas that impact non-derogable rights, which most likely may be affected through security arrangements. Respect for those rights is binding on all persons and at all times.

Another challenge that was raised is that business contracts usually don't address human rights topics. In cases where a government has laws or practices that are not consistent with international standards, the contract could mention what has to be done so that the company can avoid liability for complicity. Related to this is the need to encourage companies to start using the language of human rights internally as a way to increase awareness.

One participant noted that if help were given to people to realize their social rights, this also could help manage social discontent, which in turn could help companies avoid security incidents. Another company participant said that it was useful to recruit and train more locals since this made the rest of the community feel more involved. Companies could do more to create jobs and run small projects to help.

C) Brief Company Reports on Human Rights Challenges

A participant described the role of financial institutions in the area of human rights, highlighting potential impacts on their employees, suppliers, corporate clients and individual clients as well as local communities and governments. These impacts are managed by reference to the institution's own code of conduct; through commitments to external instruments such as the Global Compact and the Equator and Wolfsberg Principles; and using diverse due diligence and sustainability risk management processes. Financial institutions are involved with a wide range of industries that have different impacts on human rights depending on the nature of their businesses. A financial institution itself can have an impact on communities, for instance by setting up microfinance funds and by training locals to run them to help the communities grow and prosper.

Importantly, a financial institution has to pay attention to the projects and business activities which it chooses to finance. Due diligence will require potential clients to show they are capable of conducting successful projects according to international standards. Clients also need to prove they are taking specific measures to respect human rights. The lending institution has to verify this, ideally by conducting an audit. In addition, clients will be monitored throughout the lifetime of their transactions.

A company representative described how human rights issues are being addressed in terms of manufacturing, agriculture and supply chain management. Human rights need to be integrated into CSR and sustainability agendas and reputation risks, and other risks relating to human rights, built into overall risk assessments and company governance. There are particular human rights challenges related to agriculture supply chains where issues like child labor and working conditions can be exacerbated by extreme poverty and disease. In addition, farmers are typically independent small holders using mainly family labor and are widely dispersed, which means that they cannot be monitored and audited in the same way that a factory can, for example.

The company's approach to addressing these issues included the support of a foundation dedicated to the elimination of child labor, which undertakes multi-stakeholder community projects to tackle child labor. The company also has a supply chain management tool for its agricultural suppliers, which includes guidance to suppliers on a range of social responsibility issues, including child labor, and sets out roadmaps for suppliers to follow in order to improve their performance on this and other issues.

It was pointed out that country governance (i.e., the enactment and effective enforcement of laws relating to child labor, workplace safety, etc) has a crucial role to play in determining human rights risks in the supply chain, in agriculture and other sectors. It is not clear what companies should do in countries where such legal protection is weak.

On agricultural issues, discussion focused on the child labor problem, which is endemic in agriculture and is the most important issue in that field. Moreover, unlike other sectors, abuses can happen regardless of a particular company's presence. A corporate participant noted that human rights standards do not say a lot about issues specific to agriculture. A peacebulding organization's representative explained that indeed the human rights community is unable to provide clear guidelines on human rights in agriculture, not because it ignored the farm sector, but because the issues are so complex. For instance, if children are forbidden to work in the agricultural sector, they could be forced into worse jobs elsewhere.

One of the main questions of this session concerned the need for more detailed guidance for companies operating in areas where human rights abuses were taking place. It was noted that the subject of human rights covered a wide range of situations and that companies needed more specificity regarding the management of these situations with regard to their business operations. One participant noted that companies' home governments could do much more to provide such guidance, but were not doing so. A sense of priorities would be very helpful. An international organization representative noted that no specific document could articulate ex ante what rights to prioritize. This depended on a number of factors, including business sector or geographic location. The June 2008 Ruggie report in effect said that all rights can be relevant for companies but it is for each company to use due diligence in analyzing which factors are most pertinent to its particular business situation.

D) Business and Human Rights: Where do we go from here?

In the final panel session, one panelist remarked that much progress had been made in just three years, when the general attitude had been that companies had an obligation only to adhere to the letter of the law. The June 2008 Ruggie report set boundaries and parameters, establishing baseline norms and standards for governments and corporations. These baseline norms were very useful in managing the varying expectations and claims of the stakeholders involved. Progress had also been made in how corporations understand human rights, with recognition that they cannot offset bad practices in one area with good practices in another. Importantly, the Ruggie report also codified the notion of "access to remedies," whereby the rights of those affected should be guaranteed as much by governments as by corporations. The panelist mentioned that while good progress has been made thus far, the challenges ahead lie in keeping a broad spectrum of support among stakeholders and not eroding consensus by trying to move too quickly.

Another panelist explained that there remain several challenges for increasing awareness of human rights in problem countries. In many developed countries like Switzerland for example, there can be a perception at the government level that "we are already doing the right thing" or "we are already better than most," which is a risk to further progressive action. Secondly, with the current financial crisis, there is a threat that many

developed countries and companies will re-focus their priorities in a way that will undermine the urgency of dealing with human rights problems.

The Ruggie report, for all its strengths, does not explicitly cover all the problem areas that exist. Where the state has a duty to protect its own citizens, it often cannot effectively monitor or enforce its own legal frameworks. There are also issues of extra-territorial jurisdiction as well as problems for governments to enforce human rights observance in their own territory. Although corporations have the responsibility to respect human rights in their area of operations, monitoring is not always independent, or often there can be a gap between the policies set forth by headquarters versus implementation on the ground. Other challenges lie with small and medium sized organizations that are less likely to take proper action because of lack of knowledge and/or the costs associated with proper action. In terms of access to remedies for victims, mechanisms need to be created that allow for companies and governments to receive complaints and also punish abuses. While many structures exist in companies to do this, they typically address labor or other issues rather than specifically human rights.

Another panelist explained that the Ruggie Report is important for the reason that it underscores the fact that most human rights abuses take place because of governance gaps, ineffective institutions and weak governance practices. The report also gives a clear distinction between the role and responsibilities of States and non-state actors, including business, with regards to human rights. Companies now need clearer guidance on how to integrate best practices into their operations in order to avoid running into human rights problems. The panelist noted that in view of current difficulties, a new paradigm should be established: there should be greater recognition that it is far easier for companies to operate in areas where human rights are protected, and that States which effectively protect human rights will be more successful in attracting long-term, sustainable investment. He also suggested that some of the effective practices that have been used to fight corruption might be applied in the area of human rights.

The final panelist discussed the contributions of the OECD in relation to the Ruggie report and paraphrased from Ruggie that OECD guidelines are currently the most widely applicable set of government endorsed standards. They represent adhering countries' firm expectations for multinational enterprise behavior wherever they operate. As a follow-up to the guidelines, the OECD has also developed a risk awareness tool, providing business with the necessary framework to carry out their due diligence process while operating in high risk environments. The tool is meant to be used by companies. The implementation of this tool would be a way to operationalize the Ruggie report's general framework and help companies understand how they can translate human rights principles in practice and integrate them into their core operational decisions.

CONCLUDING REMARKS

During this meeting, participants were part of an exciting and constructive debate that is now going on between some of the stakeholders in the human rights arena. The discussions emphasized the consensus which the Ruggie process and other stakeholders have established. The extension of Ruggie's UN mandate for another three years will bring another report and hopefully further progress. While participants agreed on the value of the meeting's discussions, many noted that several key stakeholders such as governments

and the directly aggrieved were not present. A future discussion of this kind would ideally include representatives of companies from developing countries and of small and medium-sized enterprises as well as NGOs from the developing world.

It was noted that the meeting's discussions had indicated that continuing progress was being made to help companies deal with human rights challenges in areas where they operate. The touchstone of the effort was the Ruggie report of June 2008, which established the consensus framework through which the problem was to be addressed. The next Ruggie report, which will be issued in two or three years, will take the issue further, although more specific guidance is probably not to be expected since the topic is so complex. In any event, other steps were being taken by stakeholders in the interim to mitigate the problem. Companies themselves had become much more sensitive to the issues and leading companies had developed sophisticated mechanisms ("tool kits") to help them formulate human rights policies, embed international standards and include human rights in risk assessment procedures. In this regard, the meeting showcased a number of examples of such toolkits and described how companies are helping their executives to protect themselves in this area. Further practical tools had been developed by NGOs and international business and governmental organizations, such as the OECD. These tools provided a rich array of tools and processes for companies now wishing to address human rights issues systematically. Dissemination of this good practice guidance to those companies which had yet to address human rights issues was a priority and one to which corporations, business organizations, international organizations and governments could make contributions.

Another indicator of progress was that responsible NGOs and companies were establishing partnerships to help companies improve human rights observance and include sustainable and responsible economic development in their areas of operation. Both NGOs and companies were willing to learn from their mistakes and make a systematic effort to evolve suitable operational practices. NGOs for their part were providing practical guidance for companies on human rights challenges. Continuing problem areas, however, included the need for businesses to give priority to economic pressures, the need to educate and sensitize corporate cultures, the lack of standardized legal codes and definitions, and the sheer complexity of the problem. However, it was clear from the number of meetings and other activities on this topic that there was a high level of questioning and feedback going on that, over time, could only help to clarify the problems further and to develop solutions.

EUROPEAN COUNCIL ON CORPORATE RESPONSIBILITY AND SUSTAINABILITY

23-24 October 2008, Geneva, Switzerland

In collaboration with the Business Humanitarian Forum

*This Conference Board meeting is held under the **Chatham House Rule**: "participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed"*

AGENDA

THEME: "COMPANY RESPONSIBILITIES IN COUNTRIES WITH HUMAN RIGHTS CHALLENGES"

Against the backdrop of the 2008 report of the Special Representative of the UN Secretary-General on Business and Human Rights: *"Protect, Respect and Remedy: a Framework for Business and Human Rights"*

Thursday, 23 October 2008

13:00 - 13:15	**Registration & Welcome Coffee**
13:15 - 13:45	***Opening and Welcome Remarks***
	Business Humanitarian Forum
	Brief Introduction and Overview
	European Council on Corporate Responsibility and Sustainability
13:45 - 15:00	***First Case Study - "A mining company's approach to human rights"***
	International Mining Company
	International NGO
	Q&A Session

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| 15:00 - 15:30 | **Coffee Break** |

| 15:30 - 17:30 | *Second Case Study - "Operating in High Risk Zones"* |

International NGO

International Energy Company

Q&A Session

| 17:30 | **Meeting Adjourns** |

Friday, 24 October 2008

| 08:30 - 09:15 | *Council Business: for Members of the European CRS Council* |

| 09:15 - 09:30 | **Coffee Break** |

| 09:30 - 10:15 | *Brief Company Reports on Human Rights Challenges* |

International Financial Institution

International Tobacco Company

Q&A Session

| 10:15 - 12:15 | *Business and Human Rights: Where do we go from here?* |

Panel discussion on the implications of the latest UN report of Professor Ruggie on company practices to address human rights challenges.

Panelists:
UN Organization
International NGO
International Business Association
Multilateral Government Organization
Moderator:
European Council on Corporate Responsibility and Sustainability

| 12:15 - 12:45 | *Concluding Remarks* |

End of Meeting

List of Attendees

Mr. Mike Baab
Adviser
Human Rights and Business Project
Danish Institute for Human Rights

Ms. Christine Batruch
VP Corporate Responsibility
Lundin Petroleum

Mr. Bruno Bischoff
Vice President
Public Policy – Sustainability Affairs
Credit Suisse

Mr. Bill Brooks
Vice President
Environment, Health & Safety (Europe)
Huntsman

Ms. Victoria Browning
Chief of Administration
**International Trade Centre
UNCTAD/WTO**

Mr. Bryan Cress
Head, CSR and Globalization
The Confederation of British Industry (CBI)

Ms. Saskia de Koning
Business and Biodiversity Advisor
Shell

Mr. Jean Freymond
Executive Director
BHF Association Council

Mr. Bengt Olof Hansson
Managing Director & VP
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Mr. Mike Hasenmueller
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Ambassador Mohamed Sahnoun
Vice-President
UPEACE Council

Ms. Celia Solari
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Ms. Ylva Stiller
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Mr. Martin Summers
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Guest Speakers

Mr. Edward Bickham
Executive Vice-President, External Affairs
Anglo American plc

Mr. Tim Bishop
Head of Private Sector Engagement
CARE International

Ms. Zaza Curran
Governance Team Leader
CARE UK

Ms. Mitra Forouhar
Lead Advisor, Corporate Integrity & Social
Responsibility
StatoilHydro

Ms. Danièle Gosteli Hauser
Head, Business and Human Rights

Amnesty International Switzerland

Mr. Julian Kassum
Policy Manager, Department of Policy and
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International Chamber of Commerce

Ms. Lahra Liberti
Advisor on International Investment Law,
Directorate for Financial and Enterprise Affairs
OECD

Mr. Salil Tripathi
Senior Policy Advisor
International Alert

Ms. Lene Wendland
Advisor on Business and Human Rights
**Office of the High Commissioner for Human
Rights**

From The Conference Board Europe

Mr. Robin Aram
Council Director

Ms. Antonia Cermak-Terzian
Rapporteur

Ms. Nathalie de Borchgrave d'Altena
Council Coordinator

Mr. Chris Start
Executive Fellow

From The Business Humanitarian Forum

Mr. John King
Director

Mr. Roberto Dotta
Deputy Director

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