

*The Conference Board's
European Council on
Corporate Responsibility
and Sustainability*

In Collaboration with

*The Business
Humanitarian Forum*

Forum Report

Company Responsibilities in Countries with Human Rights Challenges

07-08 February 2008, Geneva



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INTRODUCTION AND SUMMARY



The European Council on Corporate Responsibility and Sustainability and the Business Humanitarian Forum (BHF) hosted a joint Forum meeting on “Company Responsibilities in Countries with Human Rights Challenges.” The Forum took place in Geneva, February 7-8, 2008, and was co-chaired by the Chair of the European Council, and the BHF President.

In addition to addressing the very important subject of the responsibilities of business with regard to human rights, the meeting focused on case study examples in Colombia, Myanmar, and

Sudan. To allow for maximum interactivity, each case study was presented by speakers from various stakeholder groups, followed by open discussion.

The Forum brought together over 40 participants from the senior levels of relevant businesses, international organizations, NGOs and academics. The many inputs reflected the complexity of conducting business responsibly in areas of conflict or weak governance and stressed the need for NGOs and multinational corporations to work more closely to design measures that ensure that human rights issues are better assessed and do not become a competitive weakness for a corporation.

RATIONALE FOR ORGANIZING THE FORUM

Over the last decade, NGO campaigns and media coverage have focused on extractive companies and on whether company investments and operations in weak states contribute to conflict, human rights violations and corruption.

One of the biggest challenges for global businesses is how to operate in countries with repressive or weak governments where basic human rights rules are either absent or routinely not enforced.

In exploring this issue, the meeting focused on three contextual case studies in Myanmar, Sudan and Colombia bringing together the views and experiences of senior corporate social responsibility (CSR) and NGO representatives.

Using these three conflict-sensitive situations and basing the discussions on the work of Professor John Ruggie and his colleagues on the issue of business and human rights, the Forum discussed such questions as: where do the boundaries of corporate responsibility and complicity begin and end? What are the roles and responsibilities of companies in such situations and how to address the issue of corporate responsibility with regard to human rights? What are good practices for businesses operating in such environments, and which ones are not? How can one determine if a company knew or should have known about the abuses?

The Forum also included discussions on experiences of conducting business in other, less extreme, but still challenging environments such as Nigeria and China.

While not ignoring the problems that have arisen in connection with activities of multinational oil corporations in Sudan, Burma and Nigeria, the meeting’s primary objective was to promote a mutually informative discussion on how to address the issue of corporate responsibility and accountability

with regard to human rights in such environments and identify ways in which companies and NGOs can work better to assess and manage human rights risks and take steps to avoid future charges of corporate complicity in problem countries.

By bringing together multinational companies and NGOs to discuss such complex questions in a private yet open setting, the Forum provided critical lessons for both activist NGOs and corporations.

ABOUT THE ORGANIZERS



A case study presentation

About the BHF: The BHF is an international Geneva-based non-profit association. The BHF was founded in 1999 in the belief that the private sector could 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 organizing meetings and related activities.

The BHF uses the synergy of the public-private cooperation to build sustainable economic projects in post-conflict and least- developed societies.

For additional information visit: www.bhforum.org

The Conference Board: The Conference Board Europe is the world's leading business research and network organisation. 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

SUMMARY REPORT

The meeting was held against the background of an initial report prepared by Professor John Ruggie entitled "Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts." The report's major points were:

- Companies have a "relational/shared responsibility" for ensuring that their suppliers act in a socially responsible way;
- Companies have a responsibility to uphold human rights within their area of control;
- International soft law is replacing national hard law on the global playing field;
- Self regulation only works under specific conditions.

Companies that have or wish to operate in areas where there are human rights challenges are often confronted with very difficult situations. They are forced to consider political and social criteria as well as legal liabilities that normally do not fall within their operational fields. Western companies have sometimes had great difficulty, as a result, in adapting to these conditions.

Corporate Social Responsibility (CSR) activities have not been sufficient to overcome the political



Forum panel discusses case studies

disadvantages for companies operating in these areas. Furthermore, these company problems are exacerbated by the criticism of some NGOs and other organizations that attempt to hold companies to a higher standard of behavior within their operating areas than the governments of those areas themselves.

Another lesson emerging from the two-day session was that solutions that meet both human rights expectations and business performance standards are at times difficult to achieve. Much depends on the specific conditions in each country and the manner in which the companies operating in those countries carry out their activities.

These were the main lessons derived from a conference in which case studies saw companies explain their position and points of view concerning their responsibilities in operating in countries with human rights problems; these in turn were commented on by NGOs working to improve human rights conditions in those countries. The conference was moderated by a university professor of business ethics, who expressed his view that the primary responsibility of a corporation in the 21st century is to “do no harm.” He also noted the convergence of such factors as globalization, erosion of national regulatory frameworks, the rise of civil society activism, the emergence of international law for non-state actors and the end of a liability model of corporate responsibility as elements affecting company operations.

CASE STUDIES

The forum reviewed case studies of company operations in Colombia, Myanmar and Sudan. Representatives of companies operating in those areas presented their positions, followed by the positions of NGOs and other organizations working in those countries. The Forum also included discussions on experiences of conducting business in other less, extreme, but still challenging environments such as Nigeria and China.

A) Colombia:

A senior CSR representative discussed his company’s operational history in Colombia. He described the various ways in which his company had worked to improve trade union rights and labor conditions for its employees in the country. He particularly emphasized the efforts undertaken to protect employees against death threats from paramilitary groups and the subsequent legal difficulties this created with antiterrorist laws in the United States.

The company’s subsidiary in Colombia was forced to make protection payments to both left- and right-wing paramilitaries to safeguard the workforce. In 2003, the company voluntarily reported the situation to the US Department of Justice. One year later, the company sold its Colombian farms. In 2005 the company agreed to pay a \$25 million fine to settle a lawsuit by the U.S Justice Department, which accused the company of paying paramilitary groups more than \$1.7 million from 1997 to 2004.



An NGO representative comments on a case study

This case illustrated how, in a context of violence and conflict, a company may be forced to stretch legal standards in order to avoid physical harm to its employees. The company faced an excruciating dilemma between its obligation to protect its workers and its obligations to uphold existing laws. According to the presenter, such payments to both left and right wing paramilitary groups were the only solution to protect the workers and there were no alternative protective measures available to the company.

A senior NGO representative then noted that human rights violations cannot be offset with good actions elsewhere and that a company must be able to seek the help of the community in the area of its operations to achieve human rights goals. He also stated that given its long history in Colombia, the company should have known the risks it was exposed to in the context of dealing with armed groups, and that it should have taken corrective action much earlier. He also said that it is important to remind governments of their human rights responsibilities. The company representative added that despite his company's good relations with workers and their trade union and extensive cooperation with local communities, these actions were not sufficient to protect employees in such a violent and unstable environment.

B) Myanmar:

Senior representatives of two extractive companies then described the efforts of their respective companies to operate in Myanmar. Despite the government's longstanding repression and human rights violations, both speakers pointed to the many ways their companies have improved conditions in their particular operating areas and to the subsequent problems this created with the Myanmar government. Both had attempted to work with NGOs in an effort to gain political and practical support for their operating requirements. Both companies also took pains to include environmental aspects in their operating plans.



Both companies met with continuing opposition to their presence in Myanmar, despite their efforts to improve the life of their workers and local communities. However, both felt their companies' efforts in this area had had a positive effect in Myanmar but that international sanctions had a negative counter effect. As a consequence, efforts to engage the Myanmar junta on human rights issues on a larger scale were only marginally effective.

A senior attendee from an NGO described the various efforts of NGOs and others to encourage a corporate divestment campaign in Myanmar.

He argued that the campaigners won the battle for corporate withdrawal, but lost the war to help push for political and economic change in Myanmar. He described the tactics of conducting this campaign, noting that the objective was to create public relations problems for Myanmar and all companies working there in order to discourage foreign investment and weaken the Myanmar regime's economic and financial basis. While acknowledging some of the beneficial aspects of CSR programs in Myanmar – when they were done in good faith and not just simply as PR exercise - , he felt that more could have been done to promote economic change by the companies operating there (for instance, insisting on accountable economic and commercial behavior of the state institutions). Also he was scathing in his criticisms towards the international sanctions campaign and noted that it had entrenched the Myanmar junta. Meeting participants underlined the problematic effects for

companies operating in Myanmar, emphasized the difficulties created by international sanctions and noted the limited effects of engaging the military junta. One participant noted the difficulty of trying to impose western ideals onto a non western society.

C) Sudan:

A senior CSR representative from an extractive industry then described the company's activities in Sudan and its efforts to improve human rights and economic conditions in the areas surrounding their operations. The representative described the specific steps taken in this regard and underlined the importance of engaging with various stakeholders, but noted how these steps were undermined by the negative propaganda against the company by some activist NGOs, and stated that managing expectations was important for both local populations and NGOs.

Following this presentation, a senior NGO speaker explained that companies in Sudan in effect assisted the Sudanese government in fighting its war against rebels in the south since the oil boom made resources available for the government to pursue such policies. He called attention to his organization's publication of guidelines for extractive industries in dealing with sensitive business practices.

Participant comments noted the superficial and easy link made by many between company operations and their complicity in government activities, with several observers questioning the fairness of this link. One participant asked whether companies should try harder to influence their home country governments to do more about human rights abuses in the areas where these companies operate.

D) Nigeria and China:

Company operations in these two countries were addressed informally with commentators noting that the difficulties for companies operating in Nigeria were similar to those in the case studies.

An NGO participant opined that foreign companies do not care all that much about the situation in Nigeria but are there solely for profit reasons. However, he noted greater company awareness of key environmental and human right issues. He also appreciated that businesses faced a major security dilemma as well as the necessity to deal with corrupt and inefficient governments. He emphasized that a crisis of legitimacy affects international corporations because of their operations in such areas, and that perceptions are key.



Speakers commenting on case studies

In the case of China, the problem concerned the government's direct involvement with business and the fact that Chinese companies are, on average, less responsive to human rights issues than Western companies. A senior extractive company representative noted that his company had a strong focus on integrating economic and social elements into its operations, and had many partnerships with NGOs. Despite a company's sensitivity to human rights and other social problems, he stated that for any company, business performance was necessarily key.

In his final presentation, one NGO speaker explained the emerging doctrine of corporate complicity, and how companies should pay attention to international crimes trials and literature on international

humanitarian law, in particular the notions of “known and should have known,” “aiding and abetting,” and presented a matrix that could help a company understand its exposure to complicity risk.

CONCLUDING REMARKS

Participants focused their comments on various facets of the overall problem for companies in areas where human rights abuses are occurring, especially in determining the best way to react. Another attendee noted that in some cases companies are expected to accomplish what the national governments of those countries are not doing and he questioned the fairness as well as appropriateness of this role. Furthermore, he stated that Professor Ruggie’s second report will contain recommendations for companies in dealing with these problems but suggested that companies should continue to integrate human rights in their work while avoiding “messy” political aspects. He also observed that the level of mistrust between companies and NGOs operating in countries with human rights problems was very high.



A Forum social event

Finally, the moderator of the event summarized some of the conflictual aspects discussed during the meeting and the need for companies to be more aware of human rights aspects and improve respective company guidelines.

Another participant noted that Prof. Ruggie’s new report will be available shortly and should be helpful to companies in guiding their operations in difficult areas. The report is available on the Business & Human rights Resource Centre website (www.business-humanrights.org). In addition, a follow-on meeting on this subject will be held jointly by the Conference Board and the BHF in Geneva on October 23-24, 2008.

If you are interested in attending or sponsoring this event, please contact:
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THE CONFERENCE BOARD



European Council on Corporate Responsibility and Sustainability

07-08 February 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”

Thursday, 07 February 2008

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|---------------|--|
| 13:00 – 13:15 | Registration & Welcome Coffee |
| 13:15 – 13:45 | Opening and Welcome Remarks
Introduction and Overview |
| 13:45 – 15:00 | COLOMBIA CASE STUDY
Q&A Session: initial observations and conclusions |
| 15:00 – 15:30 | Coffee Break |
| 15:30 – 17:30 | MYANMAR CASE STUDY
Q&A Session: initial observations and conclusions |
| 17:30 | End of session |

Friday, 08 February 2008

09:30 – 10:45 **SUDAN CASE STUDY**

Q&A Session: initial observations and conclusions

10:45 – 11:15 **Coffee Break**

11:15 – 12:15 **Further Observations and Conclusions**

Experiences of conducting business in other less extreme, but still challenging, environments (e.g. Nigeria, China): lessons learned, company policies, approaches and best practices.

- How to ensure that positive spin-offs for peace and development efforts come out of corporate investments in countries with human rights challenges.
- Where do the boundaries of complicity and corporate responsibility begin and end?
- How to determine if a company knew or should have known about human rights abuses.

12:15 – 13:15 **Critical lessons for both NGOs and corporations and actions for the future**

- Characteristics of successful corporate-NGO engagement.
- Ways that companies and NGOs can work together to diminish the risk of complicity in human rights abuses.
- Identification of criteria and agreed-upon definition of corporate complicity.

13:15 – 13:30 **Closing Remarks**

LIST OF ATTENDEES

Ashridge Management College

Mr. Adam Faruk
Assistant Director

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Amb. Jack Maresca
President

Business Humanitarian Forum (BHF)

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Eli Lilly Export SA

Dr. Patrizia Carlevaro
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Mr. Bruno Bischoff
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Mrs. Emma Brooks
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Assistant to the President

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Mr. Auret van Heerden
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Foundation for Environment Security & Sustainability

Mr. Ray Simmons
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International Committee of the Red Cross (ICRC)

Mr. Claude Voillat
Economic Advisor

International Organisation of Employers

Mr. Brent Wilton
Deputy Secretary General

Nestlé SA

Mr. Christian Frutiger
Public Affairs Manager

Siemens AG

Dr. Thomas Kaiser
Corporate Vice-President

UNI Global Union

Ms. Claire Parfitt
Research Assistant

Initiatives of Change International

Ambassador Mohamed Sahnoun
President
Vice President, UPEACE Council
Vice Chair, Board of Interpeace

University for Peace

Ms. Celia Solari
Programme Officer

Medair Humanitarian Organisation

Mr. Franck West
Development Manager

Shell International

Mr. Albert Wong
Head of Policy & External Relations

Syngenta

Mr. Juan Gonzales Valero
Head of Corporate Responsibility

United Nations Office at Geneva (UNOG)

Mr. Gerald Pachoud
Special Adviser to the Special Representative of the Secretary-General on Human rights and transnational corporations and other business enterprises

United States Council for International Business (USCIB)

Ms. Ronnie Goldberg
Executive Vice President & Senior Policy Officer

Ms. Elisabeth Umlas

Independent Consultant
Member of Amnesty Business and Human Rights Group

Guest Speakers

Chiquita International Services Group N.V

Mr. George Jaksch
Senior Director Corporate Responsibility & Public Affairs

Living Earth Foundation

Mr. Dara Akala
Development Director

Permanent Mission of Colombia

H.E Mrs. Clemencia Forero
Ambassador

University of Lausanne, Faculty of Business and Economics

Prof. Guido Palazzo
Assistant Professor of Business Ethics

Unocal Corporation

Mr. John Imle
Former Vice Chairman

International Alert

Mr. Salil Tripathi
Senior Policy Adviser

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Mrs. Christine Batruch
Vice President Corporate Responsibility

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Prof. Maung Zarni
Visiting Research Fellow (2006-2009), University of Oxford and Founder of the Free Burma Coalition

From The Conference Board Europe

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