

Report: UN Special Representative of the Secretary General on Business and Human Rights, Regional Consultation, Bangkok, 25.-27.6.06

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Mandate of the Special Representative on Business and Human Rights

In its resolution 2005/69, the Commission on Human Rights requested the Secretary-General to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises, to report to the Commission on Human Rights, with the following mandate:

- (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;

Subsequently, in July 2005 Secretary-General Kofi Annan appointed John Ruggie, Professor at John F. Kennedy School of Government of Harvard University and prominent expert in the field of business and human rights as his Special Representative on Business and Human Rights (SRSG). Formerly, Professor Ruggie had been appointed Assistant Secretary-General and senior advisor for strategic planning and Advisor for the Global Compact.

Regional Consultations and support by the Friedrich Ebert Foundation

In carrying out this ambitious mandate Professor Ruggie decided to hold three Regional Consultations to get input for his report, recognizing that a desk study alone would not be sufficient to tackle the issue. As the mandate and position of a SRSG is not provided with any funding through the United Nations, Professor Ruggie had to raise funds for all additional activities – including the Regional Consultations. The Friedrich Ebert Foundation (FES), being engaged in the area of business and human rights and convinced of the importance of Professor Ruggie’s work agreed to support one of the three planned Consultations financially.

These events are aimed at getting views on and suggestions for Professor Ruggie’s mandate from national and multinational enterprises, trade union and (local) NGO representatives. The first Consultation took place in Johannesburg focusing on business in conflict zones; the second in Bangkok, focusing on the human rights situation in the supply chain of footwear, apparel and toy industry; the third one will take place in Latin America, focusing on the human rights situation in the extractive industry. As the Consultations are at the same time focusing on a region and on a

specific industry, an evaluation can not be undertaken yet as the ensemble of the three Consultations will have to be taken into account.

Through its “Dialogue on Globalization” program, the Friedrich Ebert Foundation was supporting Prof Ruggie in convening the Regional Consultation in Bangkok. Financial support was provided to NGO and trade union representatives for travel and accommodation costs as well as for the meeting costs of all 80 participants. Besides the logistical support by the Bangkok and Geneva offices, FES was also actively involved in the nomination of possible participants, panellists and keynote speakers. In this task the vast network of country offices provided invaluable support. Upon the initiative of Prof Ruggie, FES Geneva also commissioned a study by Roseann Casey on “Meaningful Change – Raising the Bar in Supply Chain Workplace Standards” which served as a background paper to the Consultation.

The Consultation was opened on Sunday 25 June with a welcome dinner hosted by FES. In a rather informal setting the participants had the opportunity to get to know each other and already become aware of the scope of positions on the topic of business and human rights.

The Consultation sessions on the following two days were convened and moderated by Prof Ruggie. During the panel discussions he was assisted by Lene Wendland from the Office of the High Commissioner for Human Rights (OHCHR). Although the audience did not turn out to provide the balance between NGOs, trade union and business representatives that had been envisaged¹, the exchange of opinions and the presentation of different realities on the ground was interesting and fruitful for the discussion.

Opening and Keynote speeches

Opening the Consultation, Prof Ruggie conveyed the best wishes from the Secretary-General for a successful meeting. After outlining his mandate, he recalled the duality of objectives of the Consultation: he wanted to hear about general issues, lessons learned, overall problems and examples of best practice but at the same time receive information about specific issues of the region and industries concerned.

The keynote speeches on ***Human Rights and Supply Chains Management – Challenges and Practices*** were delivered by Mr. Govindasamy Rajasekaran, President of ICFTU and (jointly) Mr. Alan Hassenfeld CEO of Hasbro Toys and Ms. Harriet Mouchly-Weiss of Strategy XXI.² The keynote speakers agreed in the fact, that a unified and binding standard for business would be needed. An example for such a code was presented by Ms. Mouchly-Weiss in the CARE code of ICTI, which is applied by various international enterprises in the toy industry. While Mr. Hassenfeld pointed out that Corporate Social Responsibility (CSR) was not philanthropy but actually good for business itself, Mr. Rajasekaran regretted that only a very small percentage of companies world wide had embraced any CSR policy. He

¹ The business and especially supply chain sector was not represented as numerous as civil society. (See list of participants)

² Strategy XXI was involved in the creation of the ICTI CARE process, which serves as a CSR standard and monitoring tool for a number of international enterprises in the toy industry.

reminded the audience that the ILO had been around for 80 years by now and asked not to wait another 100 until the introduction and implementation of binding standards for business, especially as he saw a reversed trend in current national labour legislation.

Panel sessions (panellists see agenda)

The following panel discussion was divided into five sessions dealing with specific topics, complemented by an open session where any concern related to the SRSG's mandate could be voiced.

The first session focused on ***Supply Chain Monitoring and Auditing: Best Practices***. While CSR had been introduced in many companies since a decade, not all of them were showing positive results. Auditing and monitoring, so the general consensus, was not able to do the job. Panellists as well as the audience were pointing out the limitations of auditing. While some thought it was hard to monitor qualitative factors in general, the limitations due to poorly trained or corrupt auditors and missing knowledge and capacity on the side of the suppliers/factories was the most prominent concern. Further the fact was highlighted that all kinds of auditing only grasp the formal sector, neglecting the huge masses of irregular and migrant workers. Mentioning best practices, the representatives of brands and auditing organizations pointed out that they did many audits per year, certifying but also rejecting numerous applying factories. Some expressed the wish for international guidelines supported by OHCHR.

The second session on ***Impediments to Improvement*** looked at the reasons for the slow speed of change in supply chain factories, realizing that there were many factors to blame. The session was dominated by self-criticism, but also brought up some suggestions on how to change the situation. The business model of large supermarkets as Wal-Mart and Sears/Kmart for example was identified as being very problematic for any improvement in the human rights situation in their supply chain. The lack of continuity and constant change of suppliers do not allow for capacity building measures and sustainable improvement in supplying factories. Through audits, many human rights violations are identified, but if the business relation does not continue, there will be no follow up to the development of the situation. This can be traced back to the role of the customer: most customers will shop for value brands, without regard to the human rights records of the producers. Furthermore the confusion and large number of standards (about 60), their inconsistencies and duplication and the associated costs for the factories were named as another impediment. Finally on the side of suppliers it was the fact that they would never turn down an order, even if they knew that their capacity would be overstretched. They would go into overtime or hire subcontractors who were out of reach of any monitoring or auditing process.

The third session aimed to find ways for ***Raising the Bar***, going as far as suggesting a UN monitoring body and complaint mechanism for individuals just as it exists to some extent for human rights violations committed by states. Nevertheless, the UN

Norms on transnational corporations were not even mentioned once.³ The only way to reach a sustainable and substantive amelioration for the situation of workers and a strengthening of their rights would be through a change in the whole industry. Transparency of business relations and capacity building would be needed at all levels. While some companies (especially premium brands) are very actively engaged in bettering the situation for workers of their own suppliers, only about 10% of the workforce is reached by the large number of CSR policies, standard setting initiatives and monitoring efforts. The other 90% are left outside. While the wish for a unified code and its implication was reiterated, suggestions on how this could be reached were missing.

The fourth session looked at ***The Role of Governments*** realizing with concern, that labour legislation was on the decline and even existing legislation all too often not executed. Especially Export Processing Zones were an area of concern as countries did not even try to apply their legislation in these “out of bound” areas but rather engaged into a race-to-the-bottom concerning labour and environmental standards. The ILO system, which was meant to hold countries accountable at least to the Core Labour Standards, would not live up to the expectations concerning the implementation of its conventions. Where the ILO conventions were not enforced, civil society had moved into that gap – the business side with the creation of its own norms, codes and standards and the NGOs as watchdogs and human right defenders. As there were limits to the reach and legitimate mandate of civil society engagement, the prevailing aim was to give this responsibility back to the states and international agencies on the basis of a tripartite framework as soon as they would again prove to be able to act responsibly.

The fifth session focused on ***The Role of International Cooperation***, which was seen in assisting developing countries (where most of the suppliers are located) in dealing with labour issues and enabling them to uphold human rights standards. Capacity building and a harmonization of CSR policies as well as cooperation projects were pointed out to be the most urgent topics to be addressed in international cooperation. Linking WTO rules to human rights standards was one of the suggestions how to use the full capacity of international cooperation. The leading role of Western companies in CSR was acknowledged while shortcomings were seen in their efforts to convince the whole industry and in their practices avoid buying from traders but rather approach the suppliers directly to enable direct control and impact. An ILO cooperation project in Cambodia was presented as example for functioning state involvement and control. Again the role of the national government was highlighted along with the need of incentives to companies to apply the set standards.

In the ***open session*** criticism on the setup of the Consultation was raised. Focusing only on one specific industry in each region would result in neglecting the problems associated with other industries in the same region. At the same this setup would not

³ The norms, which were compiled by the UN Subcommission on the Protection and Promotion of Human Rights, have been widely rejected by the business community and a number of countries alike. In the current discussion on business and human rights, they still serve as reference point content wise but are not seen as a valuable tool for actual application.

promote the exchange of lessons learned in one industry across regions. The SRSG himself had already referred to this problem in his opening speech, explaining that he was well aware of the existence of different industries (and their human rights problematic) in all three regions, but due to feasibility he had decided to focus at each Consultation only on one specific topic.

Concerning the focus on human rights standards, CSR and monitoring practices in the apparel industry, many participants felt that the issue of informal, unorganized and migrant workers had been neglected. Also, the absence of suppliers and multinational corporations of Asian origin was seen as a flaw. As they were accused to have the worst human rights records, their positions would have been interesting. If the accusations were true it would be most important to change the behaviour of those actors while calling to the representatives of (Western) premium brands to uphold CSR principles might seem like preaching to the choir. If the companies and suppliers who as of now do not feel bound to any CSR policy would embrace strict human rights standards, this would result in a most visible change in the situation of workers and the promotion of labour rights.

Some NGOs suggested that the SRSG take up the UN Norms again and incorporate them more into his work. Further the need for information was reiterated: far too many people would not know their rights, let alone the content of CSR policies. The mandate of the SRSG was perceived as an opportunity to mainstream CSR and support capacity building and information programs for workers. The creation of an international tool comparable to the OECD guidelines would help many human rights defenders on the ground. Additionally the role and great potential of the SRSG was seen in “filling the gap” between the huge amount of standards and the communication needed for their implementation. It was suggested he create a forum for all stakeholders to find ways of implementing human rights standards instead of creating again another standard.

Conclusions

As mentioned before, an evaluation of this Consultation will have to take the other two into account as well. Therefore the conclusions from one Consultation will necessarily have to be limited, too. Clear agreement was on the fact that there existed too many standards and CSR policies, forcing a factory to have up to 60 audits per year, be it for the diversity of standards or because every brand wanted to ensure its own way of auditing, so as not to rely on audits by other brands. Additionally the limits to auditing itself and the lack of a clear definition and common understanding of CSR continue to be a major problem. A global approach and a unification of standards are needed, going further than a completely voluntary approach so all workers can be reached and not only the 10% who are lucky to work for a company that takes CSR seriously.

Abbreviations

CARE	- Caring • Aware • Responsible • Ethical (Code of Conduct)
CEO	- Chief Executive Officer
CSR	- Corporate Social Responsibility
FES	- Friedrich Ebert Foundation
FLA	- Fair Labour Association
ICFTU	- International Confederation of Free Trade Unions
ICTI	- International Council of Toy Industries
ILO	- International Labour Organization
NGO	- Non-Governmental Organization
OHCHR	- Office of the High Commissioner for Human Rights (UN)
SRSG	- Special Representative of the Secretary-General

Reference Documents

- Agenda, Background paper (*Meaningful Change – Raising the Bar in Supply Chain Workplace Standards*), List of participants on www.fes-geneva.org,
- Commission on Human Rights resolution 2005/69 establishing the Mandate,
- Interim report: E/CN.4/2006/97.