



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/Sub.2/2003/13  
6 August 2003

Original: ENGLISH

---

COMMISSION ON HUMAN RIGHTS  
Sub-Commission on the Promotion  
and Protection of Human Rights  
Fifty-fifth session  
Agenda item 4

**ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Report of the sessional working group on the working methods and  
activities of transnational corporations on its fifth session**

Chairperson-Rapporteur: Mr. El-Hadji Guissé

**Summary**

The sessional working group on the working methods and activities of transnational corporations held its fifth session on 29 and 31 July 2003. Mr. El-Hadji Guissé was re-elected Chairperson-Rapporteur. The other members of the working group were Mr. Park, Mr. Weissbrodt, Mr. Alfonso Martínez and Mr. Malguinov. Other members of the Sub-Commission also attended.

After the Chairperson-Rapporteur opened the session, Mr. Weissbrodt presented the draft Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights (draft Norms) (E/CN.4/Sub.2/2003/12) and the Commentary thereto (E/CN.4/Sub.2/2003/38). Mr. Weissbrodt highlighted the fact that the working group had consulted widely in the preparation of the draft Norms and Commentary, including with business groups, civil society, intergovernmental organizations, trade unions and some Governments. Other members of the working group and the Sub-Commission raised issues concerning the binding nature of the Norms once adopted as well as their relationship with the work of the

Working Group on Indigenous Populations. Several non-governmental organizations spoke in support of the draft Norms.

Experts and non-governmental organizations made proposals for amendments to the draft Norms and Commentary. The working group considered those proposals in private session on 30 July 2003. At its second meeting, on 31 July 2003, the working group adopted the draft Norms and decided to submit them with the Commentary to the Sub-Commission for consideration as revised documents E/CN.4/Sub.2/2003/12/Rev.1 and E/CN.4/Sub.2/2003/38/Rev.1.

In introducing item 3 of the working group's agenda, "Activities of transnational corporations", the Chairperson-Rapporteur noted that the working methods and activities of transnational corporations could affect a range of human rights, including "solidarity rights" such as the right to development and the right to a healthy environment, as well as economic, social and cultural rights.

## Contents

	<u>Paragraphs</u>	<u>Page</u>
Introduction .....	1 - 9	
I. DRAFT NORMS ON THE RESPONSIBILITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH REGARD TO HUMAN RIGHTS .....	10 - 31	
II. IMPACT OF TRANSNATIONAL CORPORATIONS ON THE ENJOYMENT OF CIVIL, CULTURAL, ECONOMIC, POLITICAL AND SOCIAL RIGHTS .....	32 - 33	
III. ADOPTION OF THE REPORT OF THE WORKING GROUP .....	34	

## **Introduction**

1. In its resolution 1998/8, the Sub-Commission on the Promotion and Protection of Human Rights established in 1999, for a period of three years, a sessional working group to examine the working methods and activities of transnational corporations. In its resolution 2001/3, the Sub-Commission decided to extend, for a three-year period, the mandate of the sessional working group of the Sub-Commission established to examine the working methods and activities of transnational corporations, so that it could fulfil its mandate. The present, fifth session of the working group was therefore the second under its extended mandate..

2. The Sub-Commission nominated the following experts as members of the working group: Mr. El-Hadji Guissé (Africa), Mr. Soo-Gil Park (Asia), Mr. David Weissbrodt (Western Europe and other States), Mr. Miguel Alfonso Martínez (Latin America and the Caribbean), and Mr. Oleg Malguinov (alternate to Mr. Vladimir Kartashkin) (Central and Eastern Europe)).

3. The working group held two public meetings during its fifth session, on 29 and 31 July 2003. The working group also met in private session on 30 July and 31 July 2003.

4. Mr. El-Hadji Guissé was elected Chairperson-Rapporteur.

5. The following members or alternates of the Sub-Commission who were not members of the working group also attended the meetings: Mr. Emmanuel Decaux, Mr. Asbjörn Eide, Ms. Iulia-Antoanella Motoc, Ms. Florizelle O'Connor, Mr. Soli Sorabjee, Ms. Halima Warzazi, Mr. Yozo Yokota, Ms. Leila Zerrougui.

6. The following specialized agency was represented at the session of the working group: International Labour Organization (ILO).

7. Representatives of the following non-governmental organizations also participated in the meetings of the working group: American Association of Jurists, Amnesty International, Christian Aid, Europe-Third World Centre, Forum Menschenrechte (Human Rights Forum), Human Rights Watch, Indian Movement "Tupaj Amaru", International Federation of Human Rights Leagues, International Service for Human Rights, Lawyers Committee for Human Rights, Pax Romana and World Organization against Torture.

8. The working group had adopted the following agenda in 1999 for the duration of its mandate:

1. Election of officers.
2. Adoption of the agenda.
3. Activities of transnational corporations.
4. Present standards and standard-setting activities.
5. Conclusions and recommendations.

6. Recommendations for the future work of the working group on the effects of the activities of transnational corporations on human rights, including the right to development and the right to a healthy environment.
7. Adoption of the report of the working group to the Sub-Commission.
9. The working group had before it the following documents: “Draft Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights” (“the draft Norms”) (E/CN.4/Sub.2/2003/12); Commentary on the draft Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights (the Commentary) (E/CN.4/Sub.2/2003/38); Note by the secretariat (E/CN.4/Sub.2/2002/12); “Information supplied by the Prince of Wales International Business Leaders Forum (IBLF)” (E/CN.4/Sub.2/2003/WG.2/CRP.1); and “Amendments to document E/CN.4/Sub.2/2003/38” (E/CN.4/Sub.2/2003/WG.2/CRP.2).

## **I. DRAFT NORMS ON THE RESPONSIBILITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH REGARD TO HUMAN RIGHTS AND COMMENTARY ON THE DRAFT NORMS**

### **Comments by the members of the working group and Sub-Commission experts**

10. Mr. Weissbrodt presented the draft Norms and the Commentary. He stated that the draft Norms constituted a very inclusive effort by the five members of the working group to draw together human rights norms and practices as they related to transnational corporations and other business enterprises. The Commentary provided a practical interpretation of the draft Norms.
11. Mr. Weissbrodt noted that transnational corporations in particular had increased their power and with that should come greater responsibility. With that in mind, the Sub-Commission had established the working group which had spent the last four years preparing the draft Norms. Mr. Weissbrodt highlighted the fact that the drafting process for the draft Norms and Commentary had included business groups, trade unions, some Governments, intergovernmental organizations and non-governmental organizations (NGOs). In March 2003, two NGOs – Europe-Third World Centre and the American Association of Jurists – had organized a seminar to discuss the draft Norms and Commentary. They had previously given the working group detailed comments for which the experts were very grateful.
12. Mr. Weissbrodt, referring to a letter sent by the International Organization of Employers (IOE) and the International Chamber of Commerce (ICC), then noted several issues concerning the draft Norms. First, he stated that the working group in preparing the draft Norms had decided, with a view to avoiding a situation whereby only some business enterprises would elect to adhere to them, that adherence to the Norms should not be entirely voluntary. Second, Mr. Weissbrodt emphasized that the draft Norms were not a “one-size-fits-all” proposal, noting that the draft incorporated the notion that larger corporations would have greater responsibility vis – à-vis human rights. Third, Mr. Weissbrodt explained that the draft Norms also covered business enterprises other than transnational corporations, as restricting their application to transnational corporations could provide loopholes by which transnational corporations could avoid applying

the Norms once adopted. Finally, Mr. Weissbrodt emphasized the importance of developing implementation procedures for the draft Norms including periodic monitoring procedures and verification by the United Nations and the promotion by States of the inclusion of normative frameworks and the provision of reparations.

13. The Chairman-Rapporteur then opened the floor for comments by experts. Mr. Alfonso Martínez referred to the letter of the IOE and the ICC and emphasized the fact that the draft Norms could not be used to coerce corporations. The United Nations did not possess an instrument of coercion. Thus, the value of the Norms was not in their binding effect but rather in their ethical and moral value, which should be reinforced by monitoring mechanisms. The Chairperson-Rapporteur supported Mr. Martínez's comments.

14. Mr. Eide stated that the draft Norms were a major achievement of the Sub-Commission and noted that the future would clarify the status of the Norms as binding or otherwise. Mr. Eide indicated that the treaty bodies could have a role in monitoring the application of the Norms during their review of States parties' reports. Mr. Eide noted his appreciation of the letter from IBLF contained in document E/CN.4/Sub.2/2003/WG.2/CRP.1 which explicitly endorsed the draft Norms.

15. Mr. Yokota welcomed the inclusion of references to indigenous peoples in the draft Norms, noting that the Working Group on Indigenous Populations might develop further norms within the framework of the draft Norms that would be of specific relevance to indigenous peoples.

16. Mr. Park welcomed the comment of Mr. Yokota and agreed on the need to consult with the Working Group on Indigenous Populations. Ms. Motoc also emphasized the need for the working group to ensure coordination with the Working Group on Indigenous Populations.

17. Mr. Malguinov praised the work of the working group and highlighted the fact that the draft Norms helped fill a gap in international human rights law.

#### **Amendments proposed by experts of the Sub-Commission**

18. Amendments to the draft Norms were proposed by Mr. Eide and Mr. Yokota.

19. Mr. Eide identified two areas needing attention:

- a) The drafting of paragraph 10 suggested that corporations should respect all social, economic and cultural policies, however some policies are not always respectful of human rights. A distinction should be made.
- b) In paragraph 10(d) of the Commentary, corporations should "respect, protect and apply" intellectual property rights rather than "protect and enforce" intellectual property rights.

20. Mr. Yokota suggested reordering the reference, in paragraph 12, of civil, cultural, economic, political and social rights so that it would read “economic, social and cultural rights as well as civil and political rights”.

### **Comments made by non-governmental organizations**

21. NGOs generally welcomed the draft Norms. Several NGOs emphasized the importance of the draft Norms as a complement to existing voluntary corporate social responsibility efforts such as the Secretary-General’s Global Compact. NGOs also highlighted the need for effective monitoring mechanisms. Some NGOs welcomed the draft Norms as a restatement of the human rights law applicable to the activities of transnational corporations, thus providing a useful checklist for human rights activists. Several NGOs indicated the broad civil society support for the draft Norms.

22. One NGO suggested that a centralized data base could be established to ensure effective monitoring of the draft Norms. This would avoid duplication of efforts and add to the credibility and effectiveness of the draft Norms. The NGO also believed that the working group or other forum should have a mandate to receive and consider individual and collective complaints under the draft Norms.

23. One NGO requested the inclusion of a reference to the International Convention on the Promotion of the Rights of All Migrant Workers and members of Their Families which had recently come into force. The NGO also suggested a reference to gender mainstreaming in the draft Norms and Commentary. Finally, the NGO suggested that a reference should be included concerning the responsibility of corporations that have committed crimes against humanity.

24. Another NGO provided a letter with criticisms of the draft Norms. The NGO noted a lack of clarity in the definition of transnational corporations and suggested the inclusion of the joint and several liability of subcontractors, licencees, distributors and other entities: The NGO also proposed the inclusion of a reference to the individual liability of corporate executives and board members for human rights, including through penal sanction.

25. Another NGO also raised the importance of the draft Norms being applicable not only to head offices of transnational corporations but also their subsidiaries, subcontractors and so on. The NGO called for the conclusion of a code of conduct for transnational corporations and emphasized the need for transnational corporations to respect cultural rights and cultural values. Finally, the NGO emphasized the importance of avoiding interference by transnational corporations in the dealings by States of domestic affairs.

### **Responses to the proposals made during the working group**

26. Mr. Weissbrodt responded orally to the propositions made during the first session of the working group. First, he agreed that it would be important to refer to the Migrant Workers Convention and also suggested the inclusion of a reference to the Millennium Declaration in the Preamble to the draft Norms. Second, he stated that paragraph 2 of the draft Norms concerning non-discrimination included the comments made on gender mainstreaming. Third, paragraph 3 included strong language on the concerns expressed in relation to corporate responsibility in

relation to crimes against humanity. Fourth, Mr. Weissbrodt agreed with Mr. Eide in relation to his proposals. Fifth, Mr. Weissbrodt expressed his gratitude for the comments of Mr. Yokota concerning indigenous peoples, noting that the adoption of the draft Norms would by no means be the last step in relation corporate social responsibility in relation to human rights. Sixth, Mr. Weissbrodt believed that paragraph 15 included wording sufficient not only to cover transnational corporations, but also their subsidiaries, contractors, sub-contractors and other business entities. Finally, Mr. Weissbrodt highlighted the inclusion in paragraph 18 of reparations which he believed included concerns expressed by one NGO in relation to individual responsibility of corporate executives for violations of human rights.

27. The working group then considered the amendments and proposals suggested during the working group in private session on 30 July 2003, reflecting their agreed changes in document E/CN.4/Sub.2/2003/WG.2/CRP.2 – “Amendments to document E/CN.4/Sub.2/2003/38”.

28. On 30 July 2003, the ILO forwarded a list of proposed changes to the draft Norms and Commentary to the experts of the working group and the Secretariat. Those changes – adopted by the working group privately - appear in paragraphs 4, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of document E/CN.4/Sub.2/2003/WG.2/CRP.2.

29. At the second session of the working group on 31 July 2003, Mr. Weissbrodt introduced the proposed amendments agreed by the members of the working group and reflected in E/CN.4/Sub.2/2003/WG.2/CRP.2. He also raised two proposals forwarded out of the session by the International Confederation of Free Trade Unions. The first concerned two references to “their workers” in the preamble which suggested that corporations possessed workers. The second proposal was to include the phrase “Bearing in mind the predominant role of trade unions in representing and protecting workers ...” to the beginning of paragraph 16(d) of the Commentary. In response, the working group agreed to delete the references to “their workers”, replacing the term with “persons working for them”.

30. The members of the working group agreed on final amendments to the draft Norms and Commentary in private session after the second session of the working group on 31 July 2003.

31. The working group adopted the draft Norms and Commentary and forwarded them to the Sub-Commission for consideration as documents E/CN.4/Sub.2/2003/12/Rev.1 and E/CN.4/Sub.2/2003/38/Rev.1.

## **II. IMPACT OF TRANSNATIONAL CORPORATIONS ON THE ENJOYMENT OF CIVIL, CULTURAL, ECONOMIC, POLITICAL AND SOCIAL RIGHTS**

32. The Chairperson highlighted the fact that the activities and working methods of transnational corporations affect the enjoyment of economic, social and cultural rights and the right to development of both individuals and communities. First, the Chairperson emphasized the importance of transnational corporations respecting “solidarity rights” – the right to development and the right to a healthy environment. Given the overriding interest of transnational corporations in profit-making, these companies have contributed little to the



development of poorer countries – in spite of the fact that these corporations could transfer technology and know-how that could assist countries to develop. The right to development cannot be realized without an adequate, fair and just international economic order which takes into account the human rights responsibilities of transnational corporations. Further, the right to a healthy environment has undergone a series of challenges due to the activities of transnational corporations. The Chairperson highlighted the case of Bophal in India, the problem of pollution and the international trade in toxic wastes that is particularly harmful for people living in developing countries – particularly in Africa and Latin America. Second, the activities and working methods of transnational corporations also have an impact on the enjoyment of individual rights, such as workers' human rights, the right to health and the right to life. The Chairperson noted that in spite of the enormous wealth of transnational corporations, they contributed relatively little to job creation and at times have been known to retrench workers which has exacerbated poverty and impeded the enjoyment of workers' human rights. Similarly, pharmaceutical companies have obstructed access to medicines which has a negative effect on the enjoyment of the right to health.

33. No other participant intervened under this item.

### **III. ADOPTION OF THE REPORT OF THE WORKING GROUP**

34. The present report was adopted by the working group during the Sub-Commission on 7 August 2003.