



General Assembly

Distr.
GENERAL

A/HRC/4/NGO/113
8 March 2007

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Fourth session
Item 2 of the provisional agenda

**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Written statement* submitted by the International Federation of Human Rights
Leagues (FIDH), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[28 February 2007]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

Business and Human Rights

FIDH has closely followed the work of Professor John Ruggie, the Special Representative of the UN Secretary General, on the issue of transnational corporations and other business enterprises and human rights.¹ The Special Representative offered a detailed response to the position paper FIDH prepared, on the basis of the interim report submitted to the Council in February 2006.² This has constituted the beginning of a sustained dialogue, focused in particular on the second component of the mandate of the Special Representative, which requests that he *'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'*.³

No one denies the need to further improve the accountability of transnational corporations which commit human rights violations directly or by complicity. When large corporations operate in weak governance zones, where the territorial State has essentially retreated, or where they operate under the jurisdiction of authoritarian States who routinely commit serious human rights abuses, the territorial State is either unable or unwilling to effectively control the operations of transnational corporations. Where the competition for inward investment places States in a weak bargaining position vis-à-vis foreign companies, they may be led to offer tax holidays, exemptions from local regulations, or special advantages which seriously limit both the beneficial impact of the presence of foreign investors on the territory, and the ability of the host State to monitor the behaviour of corporations thus induced to invest within the State concerned. Similar to individuals, transnational corporations should not be authorized to commit human rights violations, or be complicit with such violations (whether by aiding, abetting, encouraging the violations, or by benefiting from them), and be left unpunished – and the victims, without effective remedies.

When the UN Sub-Commission for the promotion and protection of human rights adopted the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights,⁴ FIDH strongly supported both this initiative and its result. The Norms represent the most elaborate effort to date, clarifying implications for the activities of companies and human rights universally recognized by the international community.

At the same time, like the UN Commission on Human Rights itself in Resolution 2005/69, FIDH does acknowledge the weaknesses and ambiguities of the Norms adopted in August 2003 by the Sub-Commission on Human Rights, in particular the vagueness of notions such

¹ UN Commission on Human Rights, Res. 2005/69, 'Human rights and transnational corporations and other business enterprises', adopted on 20 April 2005 by a recorded vote of 49 votes to three, with one abstention (chap. XVII, E/CN.4/2005/L.10/Add.17).

² Both the position paper of FIDH, of March 15, 2006, and the answer of the SRSG J. Ruggie, of March 20, 2006, are available on the website of FIDH : www.fidh.org

³ On 3-4 November 2006, a seminar on extraterritorial state legislation as a tool to improve the accountability of transnational corporations was organised in Brussels under the mandate, jointly with the Secretary General of FIDH and in cooperation with the Office of the High Commissioner for Human Rights. The seminar benefited from the support of the Belgian Ministry of Foreign Affairs, External Trade and Development Cooperation, and of the Human Security Policy Division of the Canadian Department of Foreign Affairs and International Trade.

⁴ U.N. Doc. E/CN.4/Sub.2/2003/38/Rev.2 (2003).

as “sphere of influence” or “complicity,” to delineate the extent of their human rights obligations. It acknowledges that the Norms leave open a crucial question: how the means of implementation, in particular regards to the State, ensure that no human rights violation committed by a transnational corporation is left unpunished and without remedy.

However, doctrinal and practical uncertainties cannot be used to remain passive. FIDH believes that market-based solutions and voluntary initiatives are not an adequate alternative. FIDH believes other routes must be explored, in particular regarding the obligation of States to control transnational corporations.

FIDH supports the continuation of the mandate of the Special Representative of the UN Secretary General on Transnational Corporations and Human Rights, and is confident that he will offer constructive recommendations in his final report.

In keeping with the classical understanding of the international law of human rights as primarily addressed to States, we might seek to emphasize the obligation of States not only to protect the human rights of all persons under their jurisdiction, but also to contribute to the protection of human rights outside their territory, both by controlling the private actors on which they may exercise extra-territorial jurisdiction and by taking into account fully their human rights obligations in the negotiation and conclusion of international agreements, especially where such agreements liberalize trade or investment, and thus grant rights to transnational corporations. As stated in resolution 2005/69 of the Commission on Human Rights, that **the responsibilities of States should be clarified and, if necessary, expanded, in order to meet the need to effectively protect the rights of the victims of the activities of transnational corporations.**

In the view of FIDH, the primary responsibility of the territorial State, under the jurisdiction of which the violation occurs, is not necessarily exclusive of the responsibility of other States, in particular that of the national State of the parent corporation of the multinational group. By agreeing to consider a company as its ‘national’, a State should accept the responsibilities this entails. By analogy to the 1982 Montego Bay Convention on the Law of the Sea which defines the duty of the flag State to ‘effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag’,⁵ States could be imposed an obligation to adopt legislation, applicable to all the activities of any corporation considered to have its nationality, wherever the corporation operates, and ensuring in particular that a) the company respects the human rights recognized in the main international instruments, in particular the core UN human rights treaties and the 8 main conventions of the International Labour Organization ; that b) the company effectively controls its subsidiaries, affiliates or franchises, whatever their nationality, in order to ensure that they respect basic human and labour rights ; and that c) it inserts a provision concerning respect for the rights listed in all its contracts with suppliers or sub-contractors.⁶ In addition, States could be obliged to impose sanctions and to provide

⁵ See Article 94 of the United Nations Convention on the Law of the Sea (UNCLOS), signed in Montego Bay on 10 December 1982.

⁶ Inspiration could be sought from international instruments imposing extraterritorial obligations on States (obligations to control their nationals), such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on 21 November 1997 (in force since 15 February 1999), or the International Convention for the Suppression of the Financing of Terrorism, adopted by UN General Assembly resolution 54/109 of 25 February 2000.

for remedies, ensuring that any violation, by a company to whom such legislation is addressed, of its prescriptions, will lead to effective, proportionate and dissuasive sanctions, and that the victims will have a right of access to courts in the home State in order to seek compensation, unless the victims have access to effective local remedies, in the jurisdiction in which the abuses were committed.

FIDH asks the Council to request the Special Representative on business and human rights to highlight, in the framework of his mandate, the obligations of States to protect human rights they are bound to comply with, both within their national territory and extra-territorially.
