



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

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## **‘Business, human rights and accountability’**

Speech by

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Ladies and gentlemen, we stand at a crossroads in the debate about business, human rights and accountability. There is growing acceptance rhetorically that companies *should* respect the rights set out in the Universal Declaration of Human Rights.

The outstanding question is how to ensure that companies *are* responsible and accountable. This has become the acute issue over recent years. Are voluntary initiatives by companies enough? Or do we need obligation? Over the last couple of years the international debate on this question has become polarised and we have especially seen a controversial debate within the United Nations.

Let me lay my cards on the table. I see no alternative but to move gradually towards developing a set of legally binding rules, a set of global standards about the ways in which companies should respect human rights. These should be rules that not only require

states to ensure companies do not violate human rights, but which can also apply directly to companies when states are unwilling or unable to enforce them.

I agree with business and lawyers and government officials that governments do have, and should have, have the primary obligation to respect human rights. No one is advocating shifting this primary responsibility from governments to business.

The point is simply to make businesses accountable when their actions seriously impact on human rights. When I say human rights, I mean the rights found in the Universal Declaration of Human Rights, all of which have been elaborated in human rights treaties, International Labour Organisation treaties and other conventions and documents. It is worthwhile going back and reading again the simple yet powerful Universal Declaration of Human Rights, the most authoritative human rights document in the world. It includes rights such as the right to non-discrimination, women's rights, labour rights, freedom of expression, assembly and association, rights to food, health, housing and education, the right to a livelihood, rights to liberty and to life, the right to a fair trial, the right not to be tortured or arbitrarily detained.

I see at least seven reasons why there is need to develop clear, common and binding global rules on corporate accountability and human rights.

## **1. Documented abuses and complicity**

There is no denying the contribution that companies can make to the well-being of societies. Unfortunately, however, we also have no option but to recognise the sorry catalogue of past and present human rights violations committed by companies or human rights

violations committed by governments in which companies are complicit. When we talk about accountability we must answer how to ensure the worst, and not only the best, respect the rules.

In Iraq, we have witnessed how some companies have been implicated in the torture or ill-treatment of prisoners. In Bosnia-Herzegovina there are companies who are discriminating against returning refugees by only employing Croats. In Burma, UNOCAL was well aware that its business partner, the Burmese Government, was using forced labour and torture to clear land around the Yadana oil pipeline. The deBeers group has admitted buying diamonds from rebels, knowing that this money funded these groups' military activities and serious violence against civilians. The South African Truth Commission documented how mining companies in South Africa under *apartheid* helped the Government create a discriminatory migrant labour system for their own advantage and how they called the police into factories to brutally disperse striking workers. These are just a few examples from many well-documented cases.

## **2. Market forces are not enough**

Some have argued that we should leave it to the marketplace - economic forces - to regulate the behaviour of companies. This argument overlooks, however, that respecting human rights are not, unfortunately, always good for business. It is clear that companies can thrive in countries with abusive regimes, such as in South Africa under the *apartheid* regime, in Burma now, in Nigeria under military rule.

We do need to move towards the idea of the triple bottom line: that companies should be judged in the market place on the basis of their financial, environmental and ethical performance.

But human rights situations and business responses are too complex for the market to understand and respond to, to give a competitive advantage to those who act ethically.

### **3. Need for binding, common benchmarks**

We must go beyond voluntarism. Voluntary codes of conduct and initiatives have been important steps on the road to accountability but they're not enough. We need a mix of voluntary initiatives *and* legally binding rules.

Voluntary codes can be useful: individual company or industry-wide codes, ethical programmes. They can build a consensus around some rights, such as not using child labour. They can build a culture of compliance, to a certain extent. Some codes even go beyond the minimum human rights standards, which are set out in documents like the Universal Declaration of Human Rights.

Voluntary codes are, however, only respected by those who want to respect them. Too often they fall by the wayside when there is a clash against hard commercial interests. They can be easily rejected when faced with the harsh competitiveness of the commercial world. Studies of voluntary codes have shown how most codes leave out the most difficult rights for business, such as the freedom of association and collective bargaining.

There is a proliferation of voluntary standards that has brought confusion. The very best companies say to me they would rather have obligations and clarity than voluntarism and confusion.

The history of human rights in relation to states is instructive - you cannot just have voluntary initiatives, you need a mix of enlightened voluntary action with binding obligations. That is the history of progress on human rights in all spheres.

#### **4. Victims' rights to remedy and reparation**

Victims of human rights violations need rights and remedies, not merely charity or philanthropy.

We need to move from the good intentions of voluntary codes to the idea that if victims suffer and their rights are violated, they do have a right to compensation and restitution. A regime that emphasises legal accountability would incorporate that perspective.

Providing remedies for victims is not about engaging in costly and drawn out court cases, but it is about building legal rights that encourage a culture of compliance, because companies try not to breach rules that bring consequences.

#### **5. Inability or failure of host states to hold business accountable**

We need global rules because most large corporations have outgrown the ability of many individual states to regulate them effectively.

We find that the balance has often tilted in favour of transnational corporations. Often the government of a host country is worried that tough regulation will scare away foreign direct investment. This is why the new economic order collapsed in the 1980s. There is even less chance of governments holding corporations accountable in failed states, those embroiled in armed conflict or continuing instability or where the state has little effective control. Governments in countries where multinationals have their headquarters have little interest in holding companies accountable for behaviour far away from home.

International law is not a substitute for effective national laws and policies. But international standards do help to provide common guidance to states, to harmonize rules at times of weak national regulation. International rules set minimum standards as benchmarks. And international law needs to step in where national law is absent or without peace.

## **6. Why human rights standards?**

Human rights are the only existing internationally agreed expression of the minimum conditions we all should enjoy if we are to live in dignity as human beings. It distils what is common across all cultures and adds advocacy power to those who are marginalised. Only last Friday, heads of state meeting at the 60<sup>th</sup> anniversary United Nations Summit, again agreed just that – that they accept the corpus of human rights standards (even if they disagree about how and at what pace to implement them).

Aspects of consumer law, criminal law, environmental law or corporate law can all help companies decide what they should do and not do. But only human rights standards provide the comprehensive normative guide about how human beings should be treated.

## **7. Power needs to be constrained by law**

A role of law is to balance power and obligations and to limit the arbitrary exercise of power. Large corporations are beginning to challenge the traditional economic and political dominance of governments.

Some states are dwarfed by the power of transnational corporations. Governments are losing authority up to supranational organisation bodies and internally as state functions are privatized.

Human rights law and related law such as international humanitarian law (the laws of war) are evolving. Human rights law once only bound states. But we also have the laws of war, developed to bind not only governments but also armed opposition groups – non-state actors – who commit abuses. Human rights law is now developing to focus on new centres of power, as corporations emerge and are able economically to challenge many small states.

The concept of the sovereign state has been eroded over 50 years by a growing acceptance that human rights laws should limit the way that governments can treat their people. The concept of the sovereignty of the state surely should not be replaced by the sovereignty of corporations - unrestricted and unaccountable. Law and human rights have to play their part in limiting the potential for the arbitrary exercise of power by powerful, yet unaccountable, corporations.

There is an advantage in legal rules for many corporations. Those genuinely committed to respecting rights should have nothing to fear from international standards. But when rules are voluntary, the best companies lose out to competitors who make no investment in compliance with human rights. When clear minimum standards exist, those that do *more* than the minimum can rightly claim to be even more socially responsible. But now even the most inadequate voluntary code can be hyped by a company as a sign of commitment to human rights.

Ladies and Gentlemen,

These are seven reasons why I believe there is a need for binding human rights rules relating to corporate accountability.

The most enlightened companies do see that obligations and clarity are better than voluntarism and confusion. They see that if they are spending money on corporate social responsibility, others should also carry such costs. By having minimum standards, it is possible to move towards this.

Perhaps we need to return to a former age, a pre-capitalist period when the corporation was seen as an entrepreneur with a strong moral role in society. There is evidence that the great trading houses in Antwerp would send researchers to religious houses in Paris to help guide their actions. Even then there was a sense of the organisation being more than a profit-making machine. Should we learn something from this history?

To sum up, we need global standards, which need to be legal and based on human rights law and standards. The controversy is on the table now. We have a set of Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights. These were drafted by a group of experts in the United Nations, called the Sub-Commission on Human Rights, after wide consultation with business, governance and civil society. They have brought everyone out into the open, those who have fiercely opposed the norms such as the International Chamber of Commerce and those that see these Norms as one important, imperfect step on the road to the human rights legal accountability of business.



The Norms do not change international law; they do not create new law. They bring together what already exists and point the direction towards a common, universal set of benchmarks. They are not the devil incarnate as they have been portrayed by some. They are a starting point.

There *are* outstanding questions about how companies can put human rights into practice. Some businesses have recognized the value of the Sub-Commission's norms and are testing how they can be put into practice – most constructive is the work of the Business Leaders Initiative for Human Rights (BLIHR). The International Commission of Jurists is also launching a new initiative. I am announcing today that we are setting up an expert panel of jurists to consider over a twelve month period when companies should be held complicit in the most serious human rights violations carried out by governments, that is international crimes such as war crimes and crimes against humanity. These legal principles will help to fill a vacuum. They will help companies understand when they are seriously at risk of being seen to be complicit in the most serious human rights violation.

What divides some companies from many human rights advocates is whether human rights should be a matter of obligation or voluntarism. But what should bring us all together is the need *now*, for a common set of universal standards around which we can all agree and move forward. Then let us see whether voluntary initiatives are enough or we need to continue moving towards obligation.

Thank you.