

From Principles to Practice:

The European Union operationalizing the United Nations Guiding Principles on Business and Human Rights

Expert Conference hosted by the Danish EU Presidency in Copenhagen on
7-8 May 2012

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EXECUTIVE SUMMARY

Business and human rights is now a permanent, if somewhat, nascent fixture of European public policy. It first came to prominence under the Swedish Presidency of the European Union in 2009 and was the focus of the Danish EU Presidency Conference of 7-8 May 2012. Much has happened in the intervening three years. The main achievement has been the consensus adoption of the Guiding Principles on Business and Human Rights¹ (here after ‘the Guiding Principles’ by the United Nations Human Rights Council, in June 2011).

The challenge now is for the European Union, its Member States, and its partners in other regions of the world, to move from ‘policy to practice’. The Danish Presidency Conference focused on a fundamental part of this challenge: the role of the state in protecting human rights in relation to the activities of business (with particular emphasis on promoting business’s respect for human rights through due diligence and access to remedy).

Keynote speakers at the Conference acknowledged that at a time of pressing financial crises and many other international challenges, the European Union – as well as the rest of the world – has many other priorities besides the promotion of business and human rights. However, without exception, speakers declared that exactly because of the wider systemic financial, economic and social insecurities, security risks and governance gaps in the world, the issue of human rights and business, addressed at the Conference, was most timely. In many ways, business and human rights is an idea for which time has now come. At the Conference there was a general call for greater accountability, greater transparency and for more attention on how to prevent human rights abuses from occurring through due diligence.

The Conference included presentations on some of the work already underway to align the policies of the European Union and those of the Member States with the Guiding Principles. It is clear, however, that most Member States and most Directorates of the EU Commission have yet to become more engaged in this process. The policy incoherence is a major concern as it limits the capacity of the EU Member States to exercise necessary leverage to adequately protect the human rights of potential victims. Participants also emphasized policy incoherence as an impediment to creating a level playing field for companies *and* for those whose human rights are impacted by their actions.

Policy coherence within the EU needs to start with aligning public procurement, export credit and bilateral trade policies with international human rights commitments, as with investments, development aid and in-country diplomatic assistance. Business representative at the Conference

¹ “Guiding Principles” refers to the “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” A/HRC/17/31 and fully endorsed by all Members of the United Nations Human Rights Council in June 2011. A portal on all the reports and materials relating to the UN mandate of Professor John Ruggie can be found at www.business-humanrights.org.

called on governments to improve the enforcement of existing laws and to facilitate a “level playing field” for those companies already making significant commitments to respecting human rights. The importance of state-to-state co-operation and assistance in regard to the state’s duty to protect, especially pertaining to emerging markets and developing countries, was emphasized throughout the Conference.

At the Conference presentations were made on the enabling role that states could play in advising companies of their responsibilities and helping to clarify the international and national expectations of them – both in relation to respecting and taking additional steps to promoting the protection of human rights. Several governments spoke of the role their diplomatic posts would play and, for some governments, the role of multi-stakeholder initiatives in setting thresholds of good practice. Other states referred to the role of national contact points (NCPs) under the revised OECD Guidelines for Multinational Enterprises as important non-legal setters of minimum expectations around human rights due diligence. Several speakers referred to the Danish Government's own legislation on non-financial reporting as a possible model for the rest of Europe. The European Commission itself is currently developing human rights guidance in relation to three business sectors (Oil and Gas, Employment and Recruitment Agencies and the Information and Communication Industries), with different but significant human rights related issues. Likewise guidelines are being developed for small and medium-sized enterprises as a follow up of the EU to the Guiding Principles.

Access to remedy constitutes an essential pillar of the Guiding Principles, and a number of significant concerns were raised during the Conference about access to justice both within and beyond the EU. The barriers facing those seeking legal redress for human rights violations that have occurred outside the EU were explored, as were the remaining lack of adequate extraterritorial mechanisms. Many grievances can be resolved much closer to the ground and some companies have made real progress in aligning their grievance mechanisms with the effectiveness criteria stated in the Guiding Principles. The OECD NCP network was presented as an example of a state-based non-legal mechanism that was increasingly well positioned to mediate over a broad range of business and human rights disputes.

On 8 May 2012, the Danish Government presented its own Key Messages on how to translate the Guiding Principles into practice with a number of recommendations. This report also summarizes the main thematic areas that were discussed over the two days and contains a range of proposals, not necessarily all the opinion of the Danish Government, or the opinion of all or a majority of the participants of the conference, but for consideration by the European Union and its Member States.

INTRODUCTION

*"Changing habits and attitudes is like Elizabeth the First of Britain taking a bath more than once a month; when the secret came out everyone was shocked - it was un-natural to wash so often. Let's hope that they will laugh at us in the future – and wonder why human rights and business hasn't always gone hand in hand."*²

When planning the conference, the Danish Government made direct reference to the EU Strategy on Corporate Responsibility (2011-2014)³ that commits the European Commission to publish a report on EU priorities for the implementation of the Guiding Principles by the end of 2012. The same communication also invites Member States to develop national plans for the implementation of the Guiding Principles and expects European enterprises to address their own responsibility to respect human rights. It was noted in the EU Strategy that the process of integrating human rights considerations into European approaches to corporate responsibility started under the Swedish Presidency in 2009 and has been developed since by important work undertaken by a.o. the European Commission over the past three years.⁴

Participants in the Conference recognized these various activities and therefore looked in particular at specific measures that both the European Commission and Member States might undertake with the view to encourage, and sometimes to require, businesses to engage in the corporate responsibility to respect human rights. In particular measures relating to human rights due diligence and access to effective remedies were discussed. This links the so-called first pillar of the Guiding Principles pertaining to the 'state duty to protect' with the other two concerning corporate responsibilities and access to remedies. So, whilst all the Guiding Principles were relevant to the discussions in Copenhagen, and whilst they are all very much interrelated, the Conference focused primarily on Guiding Principles 1-10 pertaining to the 'state duty to protect'. For example, Guiding Principle 2 was addressed, which establishes that: "States should set out clearly the expectations that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations". Likewise Guiding Principle 8 was discussed, which clearly states the need for governmental "policy coherence" not least within "multilateral institutions" as stated in Guiding Principle 10.

Within the abovementioned context, the objectives of the conference were stated as providing:⁵

- Opportunities for dialogue and interaction amongst stakeholders;

² Quote from a speaker at the Conference.

³ "Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions: A renewed EU strategy 2011-14 on Corporate Social Responsibility", European Commission, Brussels, 25 October 2011, COM(2011) 681.

⁴ For example: DG Enterprise and Industry's work on "Legal framework for human rights and the environment applicable to EU enterprises when they operate outside the EU" (October 2010) and DG Employment and Social Affairs' work on "Responsible Supply Chain Management"

⁵ Final programme sent to all participants by the Danish Government.

- Recommendations for the European Commission and to Member States on the implementation of the Guiding Principles;
- A Conference report summarizing key recommendations.

This final report from the Conference is also available online at www.csr.gov.dk together with the submissions received from different stakeholders. These submissions, along with the concrete proposals recorded in this report, do not necessarily reflect the views and policies of the Danish Government. The ‘Key Messages’ delivered by the Danish Presidency of the European Union are included in this annex to this report, together with the conference programme.

MAIN THEMES RAISED IN THE CONFERENCE

The conference agenda was divided into the following five main parts:

- The relevance of business and human rights at a time of financial crisis and other global challenges;
- The international policy context of business and human rights;
- The state duty to protect human rights and assisting partner states;
- Human rights due diligence and the role of the state in promoting or requiring this;
- Access to remedies and the role of the state in ensuring access for victims of human rights abuses.

A representative overview of the discussion is attempted in the main body of this conference report.⁶ It cannot claim to capture every view, but nor does it restrict perspectives to consensus views or those that are necessarily the opinion of the Danish Government itself. Attendees were also invited to make their own firm proposals to the European Commission and Member States and some of the most representative of these are captured in text boxes following each of the sections below.

The main issues raised by participants at the Conference were:

- Policy and legislative coherence within the European Union;
- Achieving a global level playing field;
- Capacity-building and development priorities;
- EU guidance to business;
- Accountability: access to justice and adequate remedies;

⁶ The report also follows the ‘Chatham House Rule’ in that no opinions repeated here are attributed to specific participants or organizations.

- Transparency: non-financial reporting and disclosure;
- Public private partnerships and multi-stakeholder initiatives.

Each of these main themes is sub-divided into a number of sections, which try to capture the main substance of the discussion drawn from various sections of the conference agenda. This report does not attempt any interpretation of the Guiding Principles, rather it follows the main contours of what are becoming the main **practical issues** for all stakeholders working to apply the Principles in specific contexts.

Policy and legislative coherence within the European Union

"My company is impatient – governments and businesses are taking too long to implement the UN Guiding Principles. I would encourage a greater sense of urgency among governments and businesses alike. The launch of the Principles was ‘the end of the beginning’ and since their launch a year ago very many companies have done nothing. They are still like ostriches – they are ignoring the Principles and will use the current financial crisis as an excuse.”⁷

The October 2011 Communication from the European Commission sets out the EU’s 2011-14 strategy for corporate social responsibility, including the following reference to the Guiding Principles:

“Improving the coherence of EU policies relevant to business and human rights is a critical challenge. Better implementation of the UN Guiding Principles will contribute to EU objectives regarding specific human rights issues and core labour standards, including child labour, forced prison labour, human trafficking, gender equality, non-discrimination, freedom of association and the right to collective bargaining. A process involving enterprises, EU Delegations in partner countries, and local civil society actors, in particular human rights organisations and defenders, will raise understanding of the challenges companies face when operating in countries where the state fails to meet its duty to protect human rights.”

⁷ Quote from a speaker at the conference.

The Communication then makes a number of specific commitments in relation to business and human rights:

“That the Commission intends to:

- Work with enterprises and stakeholders in 2012 to develop human rights guidance for a limited number of relevant industrial sectors, as well as guidance for small and medium-sized enterprises, based on the UN Guiding Principles.
- Publish by the end of 2012 a report on EU priorities in the implementation of the UN Guiding Principles, and thereafter to issue periodic progress reports.

The Commission also:

- Expects all European enterprises to meet the corporate responsibility to respect human rights, as defined in the UN Guiding Principles.
- Invites EU Member States to develop by the end of 2012 national plans for the implementation of the UN Guiding Principles.”⁸

These commitments and expectations were referred to often by a range of conference speakers and will accordingly be addressed in different parts of this Conference report. It was clear, however, that we are at early stage both of the Commission’s work on its own ‘Report on EU Priorities’ and that there was awareness of only a handful of Member States that had actually started working on their national implementation plans.⁹

Greater coherence within Europe itself

Business impacts on human rights are not just external to the European Union. During the discussions there was reference to the growth of precarious and temporary work for many European workers as well as the particular vulnerability of particular groups such as indigenous peoples, migrant workers, Roma and other minorities. The importance of gender equality was emphasized as well as the negative impact that the high levels of youth unemployment will have on the realization of human rights. The need for the European Union to work much more closely with other European institutions was highlighted – namely the Council of Europe and the Organisation for Security and Cooperation in Europe, as well as the investment policies of the European Investment Bank and the European Bank for Reconstruction and Development. It was noted that none of these other European Institutions, all with a proclaimed interest in human rights, had yet aligned with the UN Guiding Principles on Business and Human Rights.

⁸ Ibid.

⁹ Those EU Member States cited at the conference as having started work on national implementation plans were Denmark, Germany, the Netherlands and the United Kingdom.

Repeated reference was also made to the issue of public procurement, which accounts for around 15% of GDP in most EU Member States. One speaker noted that updates to the EU Directive on public procurement were currently under negotiation and there was no concerted attempt, even from the EU Member States most committed to the UN Guiding Principles, to insert human rights criteria into these discussions.

A smarter mix of mandatory and voluntary approaches

"The Guiding Principles are a fundamental conceptual change... it is important to rethink CSR in light of the Guiding Principles and not just make a retrofit. It is a new and exploratory project. The EU definition is useful – the compliance angle has been brought in and we have moved beyond the voluntary understanding. With the growth of precarious work and many indirect relationships between workers and employers, the 'due diligence' concept is extremely important in this respect."¹⁰

The issue of what aspects of the Guiding Principles should be mandated within the European Union and its Member States remained one of the issues with least consensus at the Conference. However, it was interesting to note that a number of businesses, including representatives from SMEs, called for better regulation and enforcement by governments in order to help to secure a 'level playing-field' in terms of human rights expectations. Any business that had invested a serious amount of time and money in improving its human rights performance could be undercut by less responsible competitors with no adverse consequences for the competitor. Some speakers commented that business would be served by the greater clarity and certainty that only regulation could bring; that it was a natural manifestation of the state duty to protect human rights; and in situations where an adequate remedy was unlikely to be secured, prevention was the hope for the potential victim.

The Danish Government's own mandatory corporate social responsibility reporting requirement was discussed, now strengthened in terms of human rights and climate change content, and whether this might be a model for DG Internal Market's own proposals due later this year. Outside Europe, the recent Californian Transparency in the Supply Chain Act was seen as a similar effort to require companies to report on their human rights impacts or explain why not. It was also noted that many aspects of business and human rights were already regulated by European and national law, such as health and safety, corporate manslaughter and non-discrimination legislation.

For evidence of attempts to regulate human rights due diligence itself, the 2011 Dodd Frank Wall Street Reform Act (Section 1502) from the USA was cited as the most recent example and one affecting a range of European industries sourcing metals and commodities from central Africa (so called 'conflict minerals'). Those citing this example were also critical of the US Securities and Exchange Commission for delaying so long in publishing its due diligence criteria and urged

¹⁰ Quote from a speaker at the Conference.

European legislators to be much more thoughtful if similar approaches to mandating due diligence were to be followed.

Many civil society organizations called on the EU and Member States to consider mandating human rights due diligence in contexts of high human rights risk. The fact that the EU Foreign Ministers had explicitly referred to the Guiding Principles within the context of suspending sanctions on Myanmar (Burma) on 23 April 2012 was referred to by some speakers. Whether mandated or not by specific laws, there seemed to be a consensus that adequate human rights due diligence in situations of significant risk was now a clear expectation of every European company, even if most of these companies were not aware of this yet.

Some proposals from participants relating to policy and legislative coherence across the European Union:

- Ensure the EU's own report on its priorities for implementing the Guiding Principles is published by December 2012 and progress on implementation is reviewed regularly;
- Ensure that each of the 27 Member States produces its own national implementation plan by the end of December 2012. With this aim, draft strategies and templates should be shared between Member States as early as possible during 2012 – a process in which the EU should lead facilitation;
- Priority should be given by each Member State to those areas where the state is a commercial partner of business, such as public procurement, state-owned enterprises or joint ventures, or in the provision of export credit guarantees. The respect for human rights needs to inform the negotiation process as well as appearing in specific contractual clauses;
- Mandate human rights due diligence for companies operating or sourcing from high risk zones should now be considered, building on the OECD's recommendations for conflict minerals for example;
- Conduct meaningful and adequate impact assessments of any legislative proposals with respect to any potential conflicts with the Guiding Principles;
- Provide a mandate for an independent institution to analyze gaps in existing policy and regulatory frameworks and to monitor the application of the EU's own report on implementation;
- Work towards much greater coherence between European institutions and in particular align the work of the Council of Europe, and the European Court of Human Rights, with the Guiding Principles.

Achieving stronger global capacity

Europe's role in setting the global policy

The fact that the new EU policy on CSR is outward looking in global terms was seen at the Conference as an important starting point in considering the role the EU might play in promoting and applying the Guiding Principles in other global regions. Several EU Member States relayed how they are already doing this through diplomatic efforts and training across a range of other states, such as China, Brazil, Egypt, South Africa, Ghana, Chile and India. Added to this is the capacity-building work that some OECD National Contacts Points (NCPs) are doing with NCPs in other OECD and non-OECD states (those that adhere to the Guidelines from outside of the OECD such as Egypt, Morocco and Colombia). 'Leverage' was cited as an important concept for governments as well as business when applying the Guiding Principles and clearly there are a range of policy arenas, where the EU has significant leverage on other governments, not least through bilateral trade negotiations. Many speakers felt there was more EU Member States could do, through diplomatic means to promote the Guiding Principles and to use their 'convening power' to ensure that businesses worldwide were much more aware of the expectations placed on them.

Europe's support for the UN Expert Working Group

The UN Expert Working Group on Business and Human Rights¹¹ was seen as having a unique role in safe-guarding the integrity and legitimacy of the UN Guiding Principles and that all EU Member States should offer the group as much assistance as possible in interpreting and fulfilling their mandate. Key to their role is 'dissemination' (with a particular focus on 'multipliers' and internal dissemination); 'integration' via a range of leverage points and promotion through other 'global governance frameworks'. In this context, the UN Working Group tabled a number of specific questions for the EU and its Member States:

With regard to dissemination:

- What are you doing to use "multipliers"?
- How are you working with internal dissemination?

¹¹ Four of the five members of the Working Group attended and spoke at the conference. The strategic considerations for engaging with their mandate, including the focus on dissemination, integration and global governance institutions, can be found in their first report: "Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises", United Nations Human Rights Council, 10 April 2012, A/HRC/20/29.

With regard to integration:

- How do you intend to carry over EU learning to other non-EU states?
- How will sector guidance be carried over and made more global?

With regard to global governance frameworks:

- How do you intend to make the national plans a result of stakeholder inclusion and make them robust?
- Are you using your muscle to get traction on the Guiding Principles?
- Are you supporting/encouraging EU business initiatives to do the same?
- How are you making sure that the EU communications are actually hitting the mark – especially for the most vulnerable groups?

The need for policy coherence within and between other intergovernmental organizations

Presentations were made relating to the role of the Working Group and other UN agencies and how European Member States needed to avoid duplication. The Guiding Principles were seen to be coherent with the core labour standards of the International Labour Organization (ILO) and therefore the ILO's tripartite structure should be central. It was noted that the EU's CSR Communication also invites all European-based multinational enterprises to make a commitment by 2014 to respect the ILO Tri-partite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Like the Guiding Principles, the UN Global Compact calls on companies to respect human rights and make sure they are not complicit in human rights abuses. The Global Compact thus plays an important role in the dissemination of human rights among business globally. The importance of looking beyond the issue of merely respecting human rights was stressed as an important voluntary contributing by businesses.

Some proposals from participants relating to achieving a global level playing field:

- Enhance dialogue and exchange of experience with other regions and states in appreciation of the fact that all states and regions will meet challenges in implementing effectively the Guiding Principles and that all regions and states have much to gain by learning from each other, avoiding duplication and creating synergies of work;
- Ensure that all intergovernmental organizations, including the European Union itself, neither restrain the ability of their Member States to meet their duty to protect nor hinder business enterprises from respecting human rights;
- Engage directly with ASEAN and other global regional bodies to exchange practice and collaborate, with direct involvement of the Expert Working Group on Human Rights;
- Provide clarity of expectation for all European companies operating in high-risk areas around the world. Within the context of Myanmar (Burma) for instance, to make good of the commitment of EU Foreign Ministers, given on 23 April 2012, in applying the Guiding Principles within the context of all state and business engagement with the country now that many of the sanctions have been suspended.

Capacity-building and development priorities

“My vision is clear: First, we must move the Guiding Principles from paper to visible results in all regions and assist partner states as needed. Secondly, we must continue to encourage additional voluntary action to maintain the positive contributions of businesses in advancing sustainable development. Corporate responsibility is an important multiplier for economic and social progress.”¹²

The lack of institutional capacity to implement the Guiding Principles was a recurring theme, in particular when focusing beyond OECD Member States. The rights-based approach to development was stressed and how the Guiding Principles could be seen as parts of wider attempts to secure greater transparency and accountability in societies and between powerful actors and those most marginalized. National Human Rights Institutions were felt to be a key institutional partner when looking to contextualize human rights within the developmental priorities of any specific geography.

¹² Quote from a speaker at the Conference.

The European Union itself is also not without capacity challenges in what has, until now, been a very specialized area – that of business and human rights. The Danish Institute for Human Rights has been almost unique amongst European National Human Rights Institutions for its active work on business and human rights over many years and other EU Member States might reflect on the role their own National Human Rights Institutions might play, recognizing that many EU members do not yet have such institutions. There was also a reflection that business and human rights had been too much of an “Anglo-Saxon” debate historically and one where more materials needed to be regularly translated into other EU and UN official languages.

Some proposals from participants relating to capacity-building and development priorities:

- Establish and strengthen multi-stakeholder initiatives to create country-level awareness and capacity to deal with the Guiding Principles;
- Enable National Human Rights Institutions (NHRIs) to ‘expand the bubble’ of business and human rights through a transparent and multi-stakeholder process;
- Use NHRIs as a trusted bridge between business, state and civil society interests in relation to business and human rights within specific countries;
- Promote State-to-State co-operation and assistance to improve framework conditions for the implementation of the Guiding Principles.

EU Guidance to business

It was noted that companies must be made aware of the Guiding Principles and the way they raise the bar for responsible business by clearly stating stakeholders’ expectations with respect to their human rights compliance. There is an important role for governments, business associations, trade unions and other stakeholders to play in this regard. Governments need to explain to business what is good and bad practice on the Guiding Principles.

The corporate responsibility to respect human rights (including the practice of effective due diligence) is a pro-active, forward-looking process that involves the assessment of human rights risks and impacts. As such, it may seem alien and difficult to many companies that have focused their CSR practices on more retroactive and ring-fenced activities, such as social audits in supply chain management. From the perspective of business, the need for companies to get country-specific information on what the Guiding Principles mean in practice was stressed – the EU and its Member States must be consistent in their country-level guidance to European companies. It was also pointed out that national and local authorities have to be engaged on the Guiding Principles if

all companies (in particular SMEs) are to achieve in practice their responsibility to respect. The importance of effective multi-stakeholder fora at country level was reiterated in this regard.

It was also noted at the Conference that one of the concrete deliverables of the new Communication on CSR was the development of human rights guidance to business commissioned by DG Enterprise. The focus of this work during 2012 is to develop guidance which interprets the UN Guiding Principles in ways relevant to specific business sectors and also, in parallel, in ways accessible to small and medium-sized enterprises. Whilst this guidance is being developed with European business in mind, its applicability is clearly more global and the methodology of interpretation will hopefully be of interest to states and inter-governmental organizations in other global regions. An “expert steering committee” has been developed to guide the European Commission in this work and it consists of representatives from business, trade unions and civil society.

Guidance relating to specific business sectors

The European Commission¹³ is working to develop guidance relating to three business sectors during 2012. The sectors were selected according to objectively stated criteria at the start of the year and these are: (1) Oil and Gas, (2) Employment and Recruitment Agencies and (3) the Information and Communication Industries (ICT). “Sector advisory groups” have been developed for each of the three sectors to guide the work and discussion papers have been circulated, based on existing data from research interviews, which were presented during wider stakeholder meetings in Brussels between 30 May and 1 June 2012. These meetings have now set the direction for the remaining research during the year as well as the formulation of the guidance documents themselves.

Guidance relating to small and medium-sized enterprises

The European Commission¹⁴ is also working to develop guidance for small and medium-sized enterprises (SMEs). The SME project is informed by illustrative examples and case studies in order to produce a very user-friendly guide relevant to any SME from any business sector in the formal EU economy. SMEs have an almost complete lack of information in relation to country risks outside of the EU, where they might have business relationships, and how to comply both with local laws as well as the expectations of home governments in Europe. A multi-stakeholder forum will be held in Brussels in September 2012 in order to consult on the draft guidance.

¹³ Work led by DG Enterprise and Industry on behalf of the European Commission in partnership with the *Institute for Human Rights and Business* and *Shift*. Details and papers relating to this project can be found at www.ihrb.org.

¹⁴ Work led by DG Enterprise and Industry on behalf of the European Commission in partnership with *Global CSR* and *Bernard Brunhes International* and supported by UEAPME (the *European Association of Craft and Small and Medium-sized Enterprises*).

Some proposals from participants relating to the EU’s guidance to business:

- Ensure that the guidance produced for business is fit-for-purpose, adds real value to existing resources and is seen as legitimate from the perspective of all stakeholders;
- Ensure the guidance is fully translated into relevant EU and UN languages and disseminated and promoted widely;
- Use the methodology of producing the guidance to develop similar work for other business sectors and categories of company, as well as encourage other global regions to undertake similar work with the involvement of the UN Expert Working Group.
- Recognize such guidance as only the start of a process, and look to building greater capacity and practice where most needed across the European Union and beyond.

Accountability: Access to justice and adequate remedies

Access to justice within the European Union

A major barrier to access to justice for the victims of business-related abuses is financial costs. Examples were given from the Czech Republic and the UK of what was presented to be a wider issue across the EU. Some speakers reported that financial assistance for tort cases is hard to come by and even where it is available, such as on a “no win no fee basis”, the laws governing insurance might make it too risky for most law firms. The lack of alignment between the Council of Europe (and the European Court of Human Rights) and the Guiding Principles (and therefore also the current direction of the EU) was also cited as a potential problem that needed to be addressed. The EU Agency on Fundamental Rights or the EU Special Representative on Human Rights were both cited by some participants as important intermediaries that needed to be more fully engaged in the integration of the UN Guiding Principles into the EU.

Extra-territorial remedies

The lack of adequate extra-territorial remedies for victims of human rights abuses outside the EU, where a European company has been in some way responsible for human rights violations, remains a vexed and complex question – as was shown in the Commission’s own research of 2010¹⁵. It was

¹⁵ Report published in October 2010 by the European Commission on the “Legal framework for human rights and the environment applicable to EU enterprises when they operate outside the EU” undertaken by the University of Edinburgh.

noted that the issue was not new and also that extra-territorial legislation had been introduced by some Member States in relation to other business-related issues, most notably corruption. Some participants cited the “Maastricht Guidelines” on the Extraterritorial Obligations of States¹⁶ as a possible point of inspiration. The lack of access to information was seen as a major barrier for victims seeking redress and some speakers demanded that companies should be required to publish information about risks and possible incidents around the world closer to real time and not just in annual CSR reports.

The benefits of collective redress were mentioned by some speakers, and it was noted that the “Trafigura Case”¹⁷ in the UK the largest ‘class action’ in UK legal history, was only possible because of existing provisions with regard to ‘no win no fee’ provisions which are currently under review. It was noted also the “Kiobel Case”¹⁸ (currently under review by the US Supreme Court) might set the direction of future extra-territorial tort cases in the USA, some of which involve European companies.

State-based non-legal mechanisms

Twenty of the Twenty-Seven EU Member States are also members of the OECD, as is the European Commission itself, and therefore party to the OECD Guidelines on Multinational Enterprises. The “OECD Guidelines” were cited as about the only example of a state-based non-legal mediation process that was fully aligned with the UN Guiding Principles. Speakers reported that the widening of the scope of the Guidelines in 2011 to include an array of business relationships (including supply chain) as well as the creation of a human rights-specific chapter is likely to result in an uplift in the number of complaints to many National Contact Points (“NCPs”).

The challenge posed by one NCP at the conference to other NCPs and other OECD Governments was:

“Do you want to do it properly or do you want to do it sloppily?”

Some NCPs operate very independently of their Governments, as is the case in the Netherlands or (non-EU) Norway for example, and some also issue assessments of business behavior (so-called ‘determinations’) even if a business is unwilling to enter into mediation. Some speakers eagerly

¹⁶ www.icj.org

¹⁷ For details of the legal cases against Trafigura and the company’s responses (the world’s third largest independent oil trader) in the Ivory Case, the UK and the Netherlands, go to www.business-humanrights.org.

¹⁸ The Supreme Court of the United States is currently reviewing (at the time of writing this report) the decisions of lower courts in relation to the complaint filed by Esther Kiobel (of Nigeria) against Royal Dutch Shell, No. 10-1491, Vide 11-63, www.supremecourt.gov.

awaited the legal proposal by the Danish Government of March 2012 to strengthen the current Danish NCP, expected to pass through Parliament in June 2012.¹⁹

Grievance mechanisms

The ‘effectiveness criteria’ set out in the Guiding Principle 31 were referred to as the quality standard when trying to understand which grievance mechanisms might be ‘fit for purpose’ from a human rights perspective. Examples of company-based mechanisms were given from the panel, including the application of these criteria to the grievance mechanism of a major international company in relation to operations in east Russia and Canada.

Businesses relayed that their emphasis is on the prevention of abuses and accordingly they see a strong link between due diligence and access to remedy. Most issues, it was assessed, are relatively small and can be solved. There was felt to be a need for different solutions to different problems: there is an entire prism of ways to address abuses prior to occurrence and after. Corporate culture was also seen to be an important factor and global hotlines can be very successful if matched by zero tolerance for all kinds of intimidation.

Remedies and prevention

Remedies are about justice but they are also about prevention. As one speaker put it, there is an intricate relationship between the “ex post” and “ex ante”. There is yet to develop much jurisprudence in most criminal and tort law systems, not least because many torts are settled out of court. However, mechanisms such as OECD National Contact Points might increasingly be seen as having a non-legal but ‘jurisprudence-like’ role in establishing thresholds of expectation in relation to the application of the Guiding Principles. This might include questions such as how much human rights due diligence might be expected of a company in a specific context below which its actions might be seen to be non-diligent or even negligent. The benefit of clarifying ‘thresholds of expectation’ in the application of the Guiding Principles in specific contexts will be felt well beyond the NCP system itself and will be of benefit to all state-led, multi-stakeholder and industry-led efforts in relation to the application of the corporate responsibility to respect human rights.

The consequences for any company in this situation are not yet clear, but some of the business representatives at the conference called for consequences in terms of the state’s economic relations with that company (e.g. public procurement or export credit) and it was noted that the Norwegian Pension Fund (Europe’s largest Sovereign Wealth Fund) has divested from companies when other NCPs have made determinations against them.

¹⁹ The law was adopted on 12 June 2012. The Danish version of the law can be found at http://www.ft.dk/samling/20111/lovforslag/L125/som_vedtaget.htm. The law is expected to be translated into English.

Some proposals from participants relating to access to justice and adequate remedies:

- Take effective measures to lift existing obstacles to justice and to ensure effective remedies for victims of corporate-related violations (within and outside the EU), in particular when addressing the separate legal personality and the excessive costs related to accessing courts;
- Consider a range of consequences, judicial as well as non-judicial, for business that do not demonstrate adequate due diligence for adverse human rights impacts for conflict and other high risk areas;
- Ensure adequate remedies exist for all significant abuses of human rights, including those with extra-territorial effect where necessary;
- Work towards the effective implementation of the OECD Guidelines for Multinational Enterprises and to ensure that all EU Member States have effective National Contact Points and that those not members of the OECD are encouraged to become parties to the OECD Guidelines themselves.

Transparency: non-financial reporting and disclosure

"What are the drivers of change? In a world of asymmetric information – transparency and accountability are increasingly important. The Danish Government's 'report or explain' paradigm is a good example of how governments can make a difference without being too intrusive."²⁰

The Conference discussed a number of developments in relation to reporting on human rights: from the ISO 26000 standard to the latest iteration of the Global Reporting Initiative. In its own 2011 CSR Communication, the EU Commission intends to:

"Monitor the commitments made by European enterprises with more than 1.000 employees to take account of internationally recognised CSR principles and guidelines, and take account of the ISO 26000 Guidance Standard on Social Responsibility in its own operations."

²⁰ Quote from a participant at the Conference.

The Commission invites:

“All large European enterprises to make a commitment by 2014 to take account of at least one of the following sets of principles and guidelines when developing their approach to CSR: the UN Global Compact, the OECD Guidelines for Multinational Enterprises, or the ISO 26000 Guidance Standard on Social Responsibility.”

Greater transparency was likened by one speaker as being like “cow ointment to a Danish farmer” – it is good for a multitude of things. It is clear from the Danish experience relating to CSR reporting that even not proscribing the specific content on what needs to be reported has resulted in a significant increase in the number of business reporting on human rights since the legislation was first introduced (38% in the financial year 2010, compared to 16% in the financial year 2009).²¹ Now that greater clarification has been given in relation to human rights, in legislation of June 2012, the quality and quantity of this reporting might rise still further.

There was no specific presentation relating to the forthcoming proposal from DG Internal Market on a common CSR reporting approach for the whole of the European Union, due to appear in draft form later in 2012. Other speakers relayed the importance of revenue transparency in the extractive sector, in relation to the Extractive Industries Transparency Initiative and Section 1504 of the Dodd Frank Wall Street Reform Act in the USA. The case for applying current EU proposals for fuller traceability in timber was made.

²¹ For the annual study of Danish companies currently reviewing in partnership with the Commission in partnership with the Commission, please see <http://www.csrgov.dk/sw64814.asp>. In 2008 a new provision was introduced in the Danish Act on financial reporting that a large company or a financial institution must either (i) give information on its policy on CSR, how it is implemented, the results that have been achieved and the expectations for the future or (ii) expressly state that the company will not be engaging in CSR. On 12 June 2012 the Danish Parliament adopted an amendment to the legal requirement for reporting on CSR to specifically include human rights and climate policies. This means that companies subject to the provision will in future also have to give information in their financial reports on their human rights and climate change policies or state that they have no such policies. The Danish version of the law can be found at: http://www.ft.dk/samling/20111/lovforslag/L125/som_vedtaget.htm. The law is expected to be translated into English.

Some proposals from participants relating to non-financial reporting and disclosure:

- Ensure plans for non-financial reporting requirements for European business (to be announced by DG Internal Market later in 2012) make specific reference to human rights and fully align with the UN Guiding Principles;
- Ensure transparency: adopt clear requirements for the disclosure of a company's due diligence and mitigations in relation to significant risks and possible negative impacts;
- Adopt pending legislation on revenue transparency for the extractive and forestry industries and require both country-by-country and meaningful project-by-project reporting.

Public private partnerships and multi-stakeholder initiatives

The importance of multi-stakeholderism

A broad range of speakers underlined the importance of multi-stakeholder approaches within the context of the European Union and its Member States at different stages of the conference. It was also cited as one of the key successes of Professor John Ruggie during his mandate as Special Representative of the UN Secretary-General on Business and Human Rights (2005-11) which allowed him to develop the 'Protect, Respect, Remedy' framework and subsequently the Guiding Principles, through a process of consensus and with wide global agreement. Some speakers warned that the approach – key to the legitimacy of UN and EU processes on business and human rights to date – might be under threat if stakeholders develop their own applications of the UN Guiding Principles in isolation. Speakers felt that this was clearly an area where the UN Expert Working Group on Business and Human Rights, as well as the European Union itself, could lead by example – thus ensuring every voice was part of any process to apply the UN Guiding Principles and in particular the voice of most powerless and marginalized of all in many cases – the victim of human rights abuses

The specific role of multi-stakeholder initiatives (MSIs)

Europe now hosts a range of MSIs – several relating to the apparel sector, others to the extractive sector, construction, private military companies, agriculture and pharmaceuticals. The British and Dutch Governments were seen to be the most active EU Governments in these MSIs at present, as are Switzerland and Norway outside the EU. It was noted that the range of non-OECD Governments joining such processes was increasing – in particular those relating to the extractive

sector (e.g. the Extractive Industries Transparency Initiative, the Kimberly Process and the Voluntary Principles on Security and Human Rights) and also in agriculture (e.g. the Roundtable on Sustainable Palmoil).

The representatives from MSIs speaking at the conference called on the EU to support the role MSIs play to addressing specific ‘governance gaps’ in contexts of high human rights risk and specifically in the application of the Guiding Principles. There was a warning not to interpret human rights due diligence as a ‘new word for auditing’ as MSIs have been working hard to move beyond audit-led approaches to compliance towards those that can deliver greater and more sustainable impact across the whole value chain. As one speaker put it: “there is a ‘compliance gap’ as well as a ‘governance gap’ and that needs a multi-stakeholder that looks at systemic issues, whether it be the complex factors surrounding a living wage, corruption, building the capacity of the host government and local institutions or other development priorities”. There were seen to be many ‘proactive steps’ necessary to undertake human rights due diligence as set out in the Guiding Principles. Steps in which MSIs could assist, and any tick-box approach to compliance needed to be avoided.

Some proposals from participants relating to public private partnerships and multi-stakeholder initiatives:

- Consider multi-stakeholder initiatives (MSIs) as valuable partners to the EU and its Member States when implementing and promoting the UN Guiding Principles. MSIs provide a valuable platform for local engagement across a range of EU Member States, including with SMEs, as well as specific focal countries around the world;
- The European Commission should consider a European Framework for national multi-stakeholder initiatives to meet common challenges in global supply chains as well as other issues;
- Human Rights due diligence must not become the new word for auditing; Focus on process incl. capacity building

CONCLUSION

There is no comprehensive formula for the application of the Guiding Principles into practice. A principle by principle tick-box approach should be resisted. The true value of the Principles is that they address both states and businesses together and in this way they represent a governance framework for dealing with very complex and often highly specific issues. Any top-down rigid application of the Principles risks losing their true value and even undermining their integrity. This

means that states have to remain seriously engaged in the application of the Principles over the years to come and it must be done “properly and not sloppily” as a speaker during the Conference remarked. States have a range of ways of doing this: as regulators, as business partners, as facilitators of trade and investment, as resources through diplomatic posts and in partnership through multi-stakeholder initiatives. Fundamental also is the State’s role in ensuring there is an adequate remedy for every harm caused and that justice is accessible to all.

Some things are certain already. Transparency is of the utmost importance and states need to move through legislation and other efforts to ensure that both they and business are more open and inclusive in the dealings with communities and civil society. States need to work very closely with business to show that they are genuine, and also to understand best what good practice really looks like when it comes to the integration of human rights into business: “there has to be an appetite otherwise it will not be eaten” as another speaker remarked. There is a need for states to work to build the capacity of other states, institutions and multi-stakeholder initiatives and through these, and other regulatory efforts, work to develop a leveler playing field of effective law and practice.

Accountability is also crucial. Remedies have to be effective and need to be seen to be effective otherwise the trust of government and business will continue to decline in many markets. The European Union should fix a clear date for the full implementation of the Guiding Principles both by itself and by its companies. After which both need to be fully accountable to each other for failures to respect human rights, and accountable to wider society as a whole. States have wider human rights obligations and these cannot and should not be evaded. Rather business, trade unions and civil society need to work together to advance the government’s ability and willingness to fully protect human rights and their fulfillment worldwide.

It is clear that regulation will have a role to play here, particularly if a level playing field is to be achieved both within and beyond the European Union. Voluntary and mandatory approaches are not mutually exclusive: “We should regulate but not blindly. It needs to be the right regulation.”²²

Voluntary actions taken by companies to promote human rights are acknowledged as an important contribution to development. Change takes time, but change – when it comes – can redefine the social expectations of business.

²² Quote from a speaker at the Conference.

APPENDICES

Key Messages of the Danish Government (text delivered on 8 May 2012)²³



Key Messages of the Presidency

From Principles to Practice: The European Union operationalizing the Guiding Principles on Business and Human Rights

Copenhagen, 8 May 2012

Human rights are fundamental to the European Union's (EU) external as well as domestic policies and the EU has recognised the significant role of the Guiding Principles on Business and Human Rights. These Principles serve as an important baseline for corporate social responsibility globally, recalling their unanimous endorsement by the UN Human Rights Council in June 2011. The Guiding Principles build upon the United Nation's 'Protect, Respect, Remedy' framework and set out the state's duty to protect human rights in relation to the activities of business enterprises, the corporate social responsibility to respect human rights and the need for both governments and businesses to provide adequate access to remedy for victims of human rights abuses.

The state's capacity and willingness to protect all internationally recognised human rights in relation to the actions of all actors, including the private sector, is essential. As Governments, we must respect, protect and fulfill human rights, but we must also ensure that business is aware of our expectations in regard to its compliance with all applicable laws and respect of human rights, as laid out in the Guiding Principles. In achieving a global level playing field on fundamental issues such as human rights we emphasize the importance of joint efforts to achieve successful implementation, and commends active follow-up on the conference's achievements in turning principles to practice. This includes taking appropriate steps to assist developing countries in promoting relevant policies as well as the effective implementation thereof.

The Expert Conference on 7-8 May 2012, hosted by the Danish EU Presidency, has developed valuable key messages to assist EU Member States, as well as the EU itself, in implementing the Guiding Principles. In parallel, the Conference has contributed to deepening the understanding of what Governments can do to align their own policies within trade, investment, development cooperation, procurement and other activities with the requirements and obligations stemming from

²³ The original version of these 'Key Messages' was circulated to conference participants on 8 May 2012.

their adherence to human rights. In particular, however, experts and stakeholders have explored how EU and Member States can support and facilitate due diligence processes as well as processes to enable remedial actions. Focusing on these specific areas has allowed participants of the conference to be concrete in their discussions and specific in their recommendations on improving the practice by both states and business alike in this area.

We acknowledge the achievements in the European Union since the statement by the Swedish and Spanish Presidencies in November 2009 endorsing the UN framework; in particular the Commission's Communication on Corporate Social Responsibility from October 2011. We look forward to working closely with the EU as well as regional and international partners, including the UN Expert Working Group on Business and Human Rights, the OECD and the UN Global Compact.

We welcome the direct reference to the Guiding Principles in the 23 April 2012 EU Council of Foreign Minister's statement in relation to business investment into Burma/Myanmar and look forward to the implementation of this commitment.

With a point of departure in the Guiding Principles and to foster sustainable growth we encourage the European Commission and Member States to:

- Follow up on the recommendations made in the 2011 Communication on Corporate Social Responsibility (CSR) and in particular the planned report on EU priorities for the implementation of the Guiding Principles, to be published by December 2012;
- Develop national strategies, by December 2012, for national implementation of the UN Framework and the Guiding Principles in line with the invitation made in the 2011 CSR Communication on CSR from the European Commission.
- Provide relevant guidance to European businesses on how to handle human rights due diligence processes in their daily operations. To this end, we welcome the completion of the sector-specific human rights guidance for the Oil and Gas, Information Communication Technologies and Recruitment & Employment Agency sectors by December 2012, as well as the illustrative guide for small and medium-sized enterprises (SMEs) on human rights.
- Ensure on-going policy and legislative coherence across the European Union between business and human rights and other policy areas such as trade, investment, development cooperation, public procurement, corporate law and corporate governance.
- Ensure that adequate remedies exist for abuses of human rights and that governments, businesses and other actors work to put in place comprehensive state-based legal and non-legal grievance mechanisms as well as grievance mechanisms related to businesses directly.
- Promote European or national initiatives for non-financial reporting by European business that make specific reference to human rights and align fully with the Guiding Principles as an important baseline for CSR.
- Ensure joint and aligned efforts within the EU as well as with international partners and regions to achieve a global level playing field.

- Pursue public private partnerships and multi-stakeholder initiatives to fully leverage the private sector's contribution to sustainable development. This includes encouraging the private sector to take additional voluntary action to support and promote human rights.

We draw attention to the forthcoming report of our 7-8 May 2012 Expert Conference that will contain further guidance as to how the EU Commission and EU Member States can effectively implement the Guiding Principles on business and human rights. We commend this conference report to the European Commission, the European Parliament, the Council of the European Union and the 27 Member States.”

Conference Programme



Expert Conference

Copenhagen, 7-8 May 2012

Danish Presidency of the Council of the European Union

Business & Human Rights – Principles to Practice

High-level representatives from Member States, European institutions, business, civil society and academia are invited to a forward-looking dialogue on business and human rights.

In June 2008, a Policy Framework for Business and Human Rights was adopted by the UN. In June 2011, the UN adopted the Guiding Principles on Business and Human Rights providing principles for implementation of the 2008 Framework. This marked the successful culmination of many years of hard work under the dedicated leadership of the Special Representative of the UN Secretary General, Prof. John Ruggie. However, the principles will remain declarations of good intent unless proper and targeted implementation efforts are undertaken.

The EU strategy for Corporate Social Responsibility (2011-14) commits the European Commission to publish a report on EU priorities for implementation of the Guiding Principles by the end of 2012. The Commission also invites Member States to develop national implementation plans and expects European enterprises to address corporate human rights responsibility as defined by the Guiding Principles by the end of 2012.

Taking a business perspective on the challenges of implementing the UN Guiding Principles on Business & Human Rights, the Copenhagen conference aims to provide:

1. Opportunities for dialogue and interaction amongst stakeholders
2. Recommendations for the
 - European Commission to implement the Guiding Principles
 - EU Member States to develop national plans for implementation
3. Documentation - A Conference Report summarising key recommendations

Conference Venue: First Hotel Copenhagen, 11, Molestien, DK-2450 Copenhagen SV

PROGRAMME

Day One: 7 May 2012

- 8:15-9:00 Registration and light breakfast
- 9:00-9:15 **Denmark's EU Presidency and the business and human rights agenda:** Mr Ole Sohn, Minister for Business and Growth, Denmark
- 9:15-9:30 **European Commission appreciation of business and human rights: Creating an enabling framework:** Mr Tom Dodd, CSR Policy Adviser, DG Enterprise and Industry
- 9:30-9:40 **Programme overview:** Conference Moderators Mr John Morrison and Mr Verner Kristiansen present overall conference flow and identify key participant expectations
- 9:40-9:50 **From one Presidency conference to the next - Lessons learnt from the Swedish Presidency conference on business and human rights:** Dr Lisa Emilia Svensson, CSR Ambassador, Sweden

9:50-11.00 Implementation of human rights in a time of crisis

9:50-10.40 Roundtable

How to implement fundamental changes in a time of crisis, Moderator of the session, Mr Herman Mulder, Chairman of the GRI Board of Directors, Former Senior Executive Vice President ABN Amro

UN Perspective: The importance of the UN Guiding Principles, Ms Lene Wendland, Adviser on Business and Human Rights, Office of the United Nations High Commissioner for Human Rights

Business perspective: The call for a level playing field – corporate support for the Guiding Principles, Mr Ron Popper, Head of Corporate Responsibility, ABB

Civil society perspective: State duty to protect: Not losing sight of impunity, Ms Audrey Gaughran, Director, Global Thematic Issues
Amnesty International - International Secretariat

Trade Union perspective: State duty to protect: What do we need from governments? Mr Jim Baker, Co-ordinator of the Council of Global Unions

10:40-11:00 Dialogue with conference participants

11:00-11:30 Coffee break

11:30-13:00 Panel Session I: Importance of the UN Guiding Principles and existing practices

11:30-12:25 Panel discussion

Setting the scene: UN Expert Working Group on Business and Human Rights, Ms Margaret Jungk, Mr Michael Addo, Ms Alexandra Guaqueta, Mr Puvan Selvanathan, Mr Pavel Sulyandziga

Respondents:

UN Global Compact perspective: Ms Ursula Wynhoven, General Counsel, UN Global Compact Office

European multi-stakeholder perspective: Mr Peter McAllister, Executive Director, UK Ethical Trading Initiative

ILO perspective: Ms Githa Roelans, Senior Specialist in the ILO Multinational Enterprises Programme

Poland: Mr Kamil Wyszowski, Head of Polish UNDP Office and former member in the Prime Minister's strategic advisory group

12:25-13:00 Contributions from participants and input to draft recommendations

13:00-14:00 Lunch

14:00-15:35 Panel Session II: Due diligence - role of the state in effective implementation

14:00-14:10 **Implementation of the Guiding Principles:** Minister for Development Cooperation, Mr Christian Friis Bach, Denmark

14:10-14:20 **Perspective from businesses in Kenya on how to ensure global implementation:**
Mr Patrick Obath, Chairman, Kenya Private Sector Alliance

14:20-15:05 Panel discussion

Addressing government relations and other stakeholders: Ms Rachel Davis,
Managing Director at Shift and former Legal Adviser to UN Special Representative
on Business and Human Rights at Harvard Kennedy School

Do we need minimum requirements for due diligence: Mr Mark Taylor, Senior
Researcher at the Fafo Institute for Applied International Studies in Oslo

How can the European Commission and Member States assist business: Mr
Matthias Thorns, Senior Adviser, International Organisation of Employers

Respondent:

The Netherlands: Mr Lionel Veer, Dutch Human Rights Ambassador

15:05-15:35 Contributions from participants and input to draft recommendations

15:35-15:50 Coffee break

15:50-17.30 Panel Session III: Due diligence - operational challenges for the private sector and how stakeholders can help

15:50-16:00 Presentations on future EU guidance for:

Small and medium enterprises: Mr Aleksandar Nikolov, Senior CSR Expert on
the EU Commission project and President of the National Coordinating Body on
CSR, FYR Macedonia

Sectors: Ms Margaret Wachenfeld, Senior Legal Advisor, Institute for Human
Rights and Business

16:00-16:50 Panel discussion

Large enterprise perspective: Mr Ed Potter, Director, Global Workplace Rights,
The Coca-Cola Company

Medium enterprise perspective: Mr Morten Lehmann, Corporate CR Manager, IC
Companies

Small enterprise perspective: Mr Jakob Stokkeby, Managing Director, Butler's
Choice

Respondent:

Global Business Initiative on Human Rights: Mr Mark Hodge, Executive Director, Global Business Initiative on Human Rights

- 16:50-17:20 Contributions from participants and input to draft recommendations
- 17:20-17:30 **Wrap up of Day One:** Mr Mads Øvlisen, Chair of the UN Global Compact Advisory Group on Supply Chain Sustainability and former President of Novo Nordisk, in a conversation with conference moderator Mr Verner Kristiansen
- 18:30 Guided bus tour of Copenhagen
- 19:30 Dinner, Restaurant Brøndsalen, Frederiksberg Gardens
- Dinner Speech by Mr Richard Howitt MEP, European Parliament Rapporteur on Corporate Social Responsibility
- 22.30 Bus departure from Restaurant Brøndsalen to First Hotel Copenhagen

Day Two: 8 May 2012

- 9:15-10:00 Light breakfast
- 10:00-10:15 **Short recap of main points from yesterday:** Conference Moderators Mr John Morrison and Mr Verner Kristiansen
- 10:15-10:25 **Due diligence – perspectives from Day One:** Ms Pia Olsen Dyhr, Minister for Trade and Investments, Denmark

10:25-11:50 Panel IV: Access to remedy – grievance mechanisms

- 10:25-11:15 Interviews
- The need for access to remedy:** Ms Karin Buhmann, Dr (PhD), Associate Professor, University of Copenhagen
- State-based non-judicial mechanisms and OECD National Contact Points:** Ms Hege Röttingen, Head of Secretariat, Norwegian OECD National Contact Point

Non-state-based grievance mechanisms: Mr Andrew Vickers, Vice President, NGO and Stakeholder Relations, Royal Dutch Shell

Civil society expectations on state-based-judicial mechanism and the role of EU: Mr Filip Gregor, lawyer, European Coalition for Corporate Justice

Respondent:

France: Mr Michel Doucin, Ambassador responsible for Bioethics and Corporate Social Responsibility, French Ministry of Foreign and European Affairs

11:15-11:50 Contributions from the floor and input to draft recommendations

11:50-12:05 Coffee break

12:05-13:30 Key conclusions and recommendations: What should be EU and Member State top priorities in implementing UN Guiding Principles?

12:05-12:50 Reflections:

Business Europe: Mr Emmanuel Julien, Vice-Chair BUSINESSEUROPE Social Affairs Committee

European Trade Union Confederation: Mr Patrick Itschert, Deputy General Secretary ETUC

The International Coordinating Committee of National Human Rights Institutions: Professor Alan Miller, Chair of the European Group of NHRIs / Chair of the Scottish Human Rights Commission

Respondents:

The European Commission: Mr Pedro Ortún, Director, DG Enterprise and Industry

European Parliament: Mr Richard Howitt, Parliamentary Rapporteur on Corporate Social Responsibility

UK: Mr Thomas Kennedy, Deputy Head, Human Rights & Democracy Department, Foreign & Commonwealth Office

12:50-13:15 Questions and reflections from the floor and summing up

13:15-13:30 **Concluding Remarks from the EU Presidency:** Mr Victor Kjær, Deputy Director General, Danish Business Authority

13:30-14:30 Lunch