

Liber Amicorum for Roel Nieuwenkamp

The Academic Network of the OECD Guidelines for Multinational Enterprises

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Background

The goal of this short recall is to narrate an important development which occurred in 2013 around the time of the First Global Forum on Responsible Business Conduct (RBC) held at the OECD in Paris. It was my first international conference that focused on the OECD Guidelines for Multinational Enterprises (Guidelines) and that's where I met Roel Nieuwenkamp the first time.

In preparation of the conference, I read the programme and related documentation and took note of the following. The participants that were listed in the programme represented the main stakeholders from governments, business (Business and Industry Advisory Committee to the OECD (BIAC)), Trade Unions (Trade Union Advisory Committee to the OECD (TUAC)), and non-governmental organisations (NGOs) (OECD Watch, a global network of civil society organisations).

I was impressed by the presence of the four key stakeholders but was also curious to know whether other stakeholders were part of the OECD's process on RBC. I subsequently consulted the website of the OECD on RBC and found out that under the heading "other important partners" also listed the UN Working Group on Business and Human Rights; UN Global Compact; the International Labour Organisation; the International Coordinating Committee on National Human Rights Institutions; the Global Reporting Initiative; the International Organisation for Standardization; and the UN Economic and Social Commission of Asia and the Pacific (ESCAP).ⁱ

The representation looked very inclusive and participatory except, I, however, did not discern an adequate number of academic speakers who were not at the same time also members of any of the stakeholders listed above. After all, the same webpage mentioned above states:

The true intent and purpose of the Guidelines can only be realised through collaborative and multi-stakeholder action. Adhering governments engage with stakeholders in different ways in the implementation of the Guidelines. On a national level, many of these interactions are channelled through NCPs. On an international level, business, trade unions, civil and **other partners** regularly interact with the OECD. (emphasis added by author)

In view of the importance of the Guidelines and its many impressive years of existence, I realised that “independent and neutral” academic stakeholders - I thought they might be subsumed under “other partners” – were actually missing. Academic partners could add useful analytical perspectives, broaden the discussions and provide suggestions for further development of the Guidelines that would not be co-opted by the positional interests of the various other official stakeholders. More importantly, academic partners could be the important transmitters in getting the words out to the future generations of business people and members at large of societies who might be affected by the Guidelines.

Some of the academic speakers listed then and in subsequent Global Forum programmes are either members of National Contact Points (NCPS), consultants to governments in charge of NCPs, or work for BIAC, TUAC or OECD Watch. Hence, I concluded that adding academic participants which are not affiliated with any of the main stakeholder groups could be useful for the OECD RBC dialogue process.

Emerging Academic Network

Seeking to get feedback on my idea, I approached Roel Nieuwenkamp during the 2013 Global Forum and subsequently discussed my idea during bilateral meetings that same year while I was in Paris teaching at Sciences Po in their Master of Public Affairs Programme.

I quickly sensed commonality of views between myself and Roel and an interest to turn the idea into practice. While acting as chair of the OECD Working Party on RBC, Roel also continued to teach as part-time Professor of Public Administration at the University of Amsterdam. Having held important jobs in government, in business and in academe, Roel agreed that giving space for academic reflections and discussion could be beneficial for the implementation and further development of the Guidelines.

Roel was interested in several potential avenues of academic activities related to the OECD Guidelines such as mapping corporate social responsibility (CSR) on a global level and comparing CSR with the Guidelines. We also talked about

comparisons between the other related instruments like the UN Guiding Principles on Human Rights (UNGPs), the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the UN Global Compact and its 10 Principles.

Our discussions continued during the 2014 Global Forum and resulted in us providing related information about our idea to create an academic circle on an informal basis. We went through re-naming the group from Academic Circle, to Academic Friends and on to Academic Network. As a first step, we established a list of academics who expressed interest in joining our network. We started with 37 and are now at 57 members of the network. Members also include John Ruggie, Karl Sauvant, Lisa Sachs and other academics located in different parts of the world.

Network taking shape

In 2015, we moved towards organising phone conferences with the membership of one-hour duration. Barbara Bijelic, Legal Expert in the RBC of the Investment Division, Directorate for Financial and Enterprise Affairs at the OECD worked with Roel and helped us set up the phone conferences for keeping the membership à jour and provided us with very useful suggestions as to how we could proceed with our network.

The phone conferences were organised according to the following structure. Roel would give an update on the latest developments concerning the Guidelines including narration of latest case examples and news from various NCPs.

Participants were subsequently informed of plans that we wanted to suggest to them, for instance, organising informal meetings during the Global Forum in Paris or during the annual meeting of the UN Business and Human Rights meeting in Geneva. And at the end of the phone conference, I would open the floor for questions and comments coming from the membership of the academic network.

In 2016, we put out a call for abstracts for papers in the lead up to the 40-year anniversary of the Guidelines suggesting that accepted papers may be discussed or presented at the 2016 OECD Global Forum on RBC. Potential ideas for papers are copied below. Participants were also encouraged to propose additional research topics.

- What can we learn from the 40-year history of the development of the Guidelines for Multinational Enterprises since their introduction in 1976? What did they deliver and what should the next 40 years bring? What is the

impact of the co-existence of the Guidelines for Multinational Enterprises, the Global Compact and the UNGPs? Do business, government or civil society groups "go shopping" when deciding on which framework to use? If so, what are the expected advantages/disadvantages of using either or the other for the different actors?

- What are the trends and impacts of RBC and the Guidelines in trade and investment agreements?
- What impacts have NCPs' final statements brought for companies (for example commercial consequences to business (positive or negative), impacts to access to benefits and services (for example through export credits, investment promotion), reputational consequences)?
- What submission criteria and standard of proof should NCPs require given that the objective of the mechanism is to promote dialogue and implementation of the Guidelines? How is this reflected in practice and how does it compare to other systems?
- How can NCPs be strengthened with regard to their role of providing access to remedy for human rights and environmental damages?
- How are the core criteria of NCPs (visibility, accessibility, transparency and accountability) reflected in their handling of specific instances?
- What has driven or dissuaded companies from engaging in the specific instance procedure of the NCPs?
- How do governments themselves perform against the expectations of the Guidelines (for example in terms of environmental, social and governance (ESG) reporting, procurement, due diligence for RBC)?
- What role should the Guidelines and the NCP mechanism play in the following contexts and how have they been applied in practice with regard to:
 - modern slavery/ human trafficking in supply chains
 - conflict minerals other than tin, tantalum, tungsten and gold (for example precious stones, coal, jade, et cetera.)
 - labour conditions and human rights abuses related to mega sports events
 - human rights and labour standards in the fisheries industry
 - internet freedom/ privacy related issues
 - climate change related RBC risks
 - encouraging enabling sectors such as the financial sector to 'enable' RBC in other sectors
- Where do the current gaps lie with regard to the Guidelines?

Some of the abstracts were well written and the authors were encouraged to write papers that could be presented during the 40-year anniversary conference scheduled to be held in December 2016 in Paris and some of the presenters accepted the call for written papers to be included in a book jointly edited by Nicola Bonucci (OECD), Catherine Kessedjian (ILA- International Law Association) and Laurence Ravillon (SFDI- Société française pour le droit international). This book will be presented during the coming Global Forum in June 2018.

Current project outlook

It was difficult for Roel to participate in the creation of the academic circle since he held at the same time the chair of the Working Group on RBC and needed to keep a distance between the new informal academic group and his position at the OECD. Nevertheless, we were able to organise conference calls and met during the Global Forum in Paris and I was also able to organise a side-event during the annual conference in Geneva on Business and Human Rights in November 2015.

It was nevertheless clear that we needed to find a university which would be interested, willing and able to host the secretariat for the Academic Network. We could not continue counting on the OECD Secretariat to support us which would have meant putting undue work pressure on the OECD Secretariat. In any case, a distance needed to be established between the Academic Network and the OECD itself for integrity sake.

Roel and I searched for candidate universities in the USA and in Europe and got initial indications of interest. But at the final end, committed offers to take on the responsibility to provide resources and competent leadership came from two Dutch Universities namely Nyenrode Business Universiteit and Erasmus University Rotterdam. Colleagues representing both Dutch universities finally concluded that Erasmus University Rotterdam under the guidance of Martijn Scheltema, Professor of Law, will establish the secretariat of the Academic Network around the Global Forum in June 2018 which will also coincide with the stepping down of Roel as Chair of the Working Party on RBC.

In closing

I am happy that a solution could be found that will ensure the continuity of the Academic Network and also provide the opportunity to make our network more formal and more performing on a regular basis. The new start will also help us all to

provide a continuity to what Roel and myself were able to initiate and to go beyond what has been achieved so far.

I cherished the opportunity to collaborate with Roel. He was an inspiration and a very reliable colleague always ready to respond wherever in the world his professional assignments took him. Throughout the period 2014-2017, I could also count on Roel to provide inputs to conferences that I either organised or co-organised which had a link to the OECD Guidelines such as the conference on Business Diplomacy at Windesheim, Netherlands in 2014,ⁱⁱ the biannual conference on negotiations in Paris in (2016)ⁱⁱⁱ and in the Colloquium on Living Wage at the University of Geneva, 2017.^{iv}

We both agree that more work needs to be done in regard to the development of sector-specific standards, ensuring complementarity with the other guiding principle documents, strengthening the functioning of the NCPs, improving dissemination of the Guidelines in the wider public and deepening the link to the United Nations Sustainable Development Goals.

I wish Roel continued success in his diplomatic career and thank him for all the great contributions that he was able to make while being Chair of the Working Party on RBC and thank him for letting us know that he will remain available in the future for eventual advise and support to our Academic Network.

ⁱ <http://mneguidelines.oecd.org/partners-stakeholders.htm>

ⁱⁱ R. Saner, L. Yiu (2014) “BusinessDiplomacyCompetence: ARequirement for Implementing the OECD’s Guidelines for Multinational Enterprises, The Hague Journal of Diplomacy, 9 (2014) 311-333

ⁱⁱⁱ Most NCP activities are based on negotiations and hence competence in conducting bilateral and plurilateral negotiations are required to find mutually beneficial solution. Roel gave insightful examples of how negotiations were crucial for NCP mediation processes.

^{iv} Living Wage is a policy that goes beyond Minimum Wage and is crucial for future relations between employers’ associations and labour unions, all the presentations are available at: <http://www.csend.org/conferences-and-forum/labour/467-a-colloquium-on-is-a-living-wage-bad-for-the-economy?highlight=WyJsaXZpbmciLCJ3YWdlIiwibGl2aW5nIHdhZ2UiXQ==>