



6 March 2014

## Speaking Points

### Workshop

## **“Human Rights and Transnational Corporation: Paving the way for a legally binding instrument”**

11 March 2014, Room XXIII, Palais des Nations, Geneva

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**The International Organisation of Employers (IOE) strongly supports greater efforts to secure the enjoyment of human rights.** The IOE was actively engaged in the mandate of the Special Representative of the Secretary-General on business and human rights from the outset, and endorsed both the UN “Protect, Respect, Remedy” framework and the UN Guiding Principles on Business and Human Rights as the basis for the ongoing and progressive implementation of the UN framework. The IOE, moreover, has also worked very actively with the UN Working Group on Business and Human Rights, as well as with other stakeholders to advance the dissemination and implementation of the framework and the UN Guiding Principles.

The proposal for a legally binding instrument on Human Rights and Transnational Corporations **comes less than three years after the unanimous endorsement of the UN Guiding Principles** on Business and Human Rights. **The uptake of the UN Guiding Principles by enterprises, international organisations, multi-stakeholder initiatives, etc has been impressive** so far. The EU Commission acts on them, the Council of Europe develops a non-binding standard, and governments around the world are launching national action plans for their implementation. What is more, the successful 2<sup>ND</sup> UN Forum on Business and Human Rights which took place in Geneva on 2-4 December 2013 welcomed more than 2000 participants and demonstrated the huge interest and support for the UN Guiding Principles.

This does not mean that we have already achieved our objectives; it was never envisaged that the issue of business and human rights would be settled after three years. However, the great uptake of the UN Guiding principles and the successful work of the UN Working Group on Business and Human Rights show that **we are on the right track and that we should continue this approach.**

Moreover, open issues which deserve special attention such as the access to remedy, are addressed by the OHCHR through special initiatives. The OHCHR issued a report very recently on “Corporate liability for gross human rights abuses. Towards a fairer and more effective system of domestic law remedies”. The report concludes “that the best way forward

– that is, the one most likely to deliver real and practical benefits to affected individuals and communities as well as greater legal certainty for companies – is an inclusive, multi-stakeholder, consultative process to be conducted in two parts. The first part would be directed towards clarifying certain issues of policy and principle. The second part would be aimed at creating new opportunities for technical cooperation and capacity building in relation to the practical and organisational issues that have a bearing on whether there is an effective remedy in individual cases.” It is imperative that no premature action is taken on this issue, but that the OHCHR first conducts this inclusive, multi-stakeholder, consultative process.

Furthermore, the access to remedy must focus on the realisation of the right. We need to strengthen judiciary systems in host states to improve the access to remedy locally. Indeed, the root causes need to be addressed, which calls for governments and the international community to help build functioning institutions - including courts - in countries where access to remedy is not properly given.

The key issue now is whether in view of these dynamic developments it would make sense to work on a new treaty on business and human rights. First of all, what kind of provisions would such a new treaty entail? **Such a treaty must not water down the clear separation of responsibilities which are described very precisely in the UN “protect, respect and remedy” framework:** It is the duty of the state to protect human rights, the responsibility of companies to respect human rights and there also needs to be access to remedies.

Thus, because **governments are already obliged to implement and enforce the main human rights conventions at national level through their commitments at international level**, the added value of a new treaty would be limited. If governments are not implementing the existing human rights, they will not do so with a new human rights treaty. The effect on the ground of a new treaty would be very limited.

Without a doubt, **the aim must be to support states** which do not properly fulfil their duties to protect the human rights of their citizens, instead of just adding an additional commitment.

In fact, it is to be feared that the **impact of the development of such a treaty would even be negative**. Instead of promoting the integration of the responsibility to respect into businesses through the UN Guiding Principles, everyone would turn their attention to the treaty negotiations.

Moreover, the consensus which John Ruggie achieved would be seriously jeopardised. **All stakeholder groups would go back to the trenches to pursue their objectives** with

regards to the treaty instead of constructively finding joint solutions to the most pressing issues.

The IOE therefore suggests to continue to promote the implementation of the UN Guiding Principles, to support the work of the UN Working Group on Business and Human Rights, as well as to support the Office of the United Nations High Commissioner for Human Rights, and to give them the necessary resources to fulfil their mandate and meet the expectations of stakeholders around the world.

Thank you for your attention.