

ICC BRIEFING: THE UNITED NATIONS TREATY PROCESS ON BUSINESS AND HUMAN RIGHTS

26 October 2020

Sixth Session of the Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights

As the institutional representative of more than 45 million companies worldwide, the International Chamber of Commerce (“ICC”) fully recognises the critical importance of ensuring that businesses have the knowledge, skills, and incentives to respect human rights. In 2019, ICC issued a landmark Centenary Declaration setting our commitment to enable business worldwide to secure peace, prosperity and opportunity for all. Ensuring that the billions of people whose lives are impacted by corporate activities are treated with respect for their dignity and fundamental wellbeing is, to be sure, a core tenet of this vision. In fact, many businesses are leading – or, one could say, are ahead of the curve – when it comes to prevention of, and protection against, human rights violations.

In this context, we would like to share our institutional perspective on a number of key developments and challenges in the business and human rights landscape – as well as some specific observations with regard to the draft treaty to be discussed by the IGWG this week.

The primacy of the UN Guiding Principles

We continue to believe that the United Nations Guiding Principles on Business and Human Rights (“UNGPs”) represent a transformational roadmap to a future where human beings and corporations alike can thrive and prosper. Nine years on from their adoption, however, we share the frustration of many stakeholders that their implementation remains incomplete – and fear that the global collaborative approach enshrined in the UNGPs may be at risk of erosion without concerted action.

In this connection, it remains of significant concern that only a limited number of governments have brought forward national action plans under the UNGPs to date. We urge all governments who have not done so to commence the development of robust action plans without delay. Our global network stands ready to contribute constructively to the elaboration of any new action plans – with the singular goal of ensuring that national frameworks enable meaningful action from the private sector at all levels.

With specific reference to business, the work of embedding the UNGPs into corporate practices is picking up impressive speed – with risk assessments, enhanced supply chain due-diligence and human rights training all now routinely implemented in many enterprises. It is imperative that we work together to accelerate these positive trends. The challenge ahead is two-fold: (i) to ensure that these new practices translate into improved human rights performance; and (ii) to enable all businesses – regardless of size, sector or location – to embed respect for human rights throughout their operations.

ICC continues to actively support its members to scale implementation of the UNGPs – and we will intensify these efforts to achieve the maximum on the ground impact. We also encourage the

UN and its member states to enhance the efficacy of follow-up mechanisms under the UNGPs to allow for enhanced sharing of best practices and to catalyse collaborative approaches to enduring challenges.

In this context, and in light of the tenth anniversary of the UNGPs in June 2021, ICC has committed to support the important initiative of the United Nations Working Group on Business and Human Rights – “business and human rights: towards a decade of global implementation” (UNGP 10+) – through a range of business consultations. This project will review the past ten years of implementation, and look forward to develop a roadmap for the future. The engagement of business in this multi-stakeholder consultation process will be critical to its success.

Principles for future legal developments

While much remains to be done in operationalizing the UNGPs, ICC still remains unconvinced that a treaty-based approach can be truly effective in dealing with the web of complex interrelationships between business and human rights.

That said, we do not in any way discount the potential for further legal developments in this space – and, indeed, such developments are foreseen in the UNGPs. Many of our members in a number of jurisdictions are active in consultations with their respective governments and stakeholders around emerging approaches and frameworks, with a view to clarifying and to improving the standards of responsibility and accountability for states and businesses throughout the world.

In this context, we would like to take the opportunity to stress the imperative for any future national frameworks to: (i) be internationally consistent; and (ii) align fully and completely with the standards embodied in the UNGPs. Absent of meeting these criteria, it is our concern that future legal developments may inadvertently disrupt the efforts of companies already working to implement the UNGPs – as well as eroding incentives for actors who have yet to step up to their responsibilities to take action.

We encourage all governments considering possible independent legislative initiatives to have full regard to these two principles as a cornerstone of any future efforts aimed at meeting business and human rights challenges, and to engage in multi-stakeholder consultations as policies are being developed.

The draft treaty

With regard to the specific provisions of the draft treaty, ICC recognises that efforts have been made to revise the draft text for a second time – including by attempting to clarify issues that many governments and business groups have raised in past IGWG sessions. We again thank the facilitators of the IGWG for their efforts in this regard, but we believe – as do many delegations, reflected in the statements we have heard this morning - that the current revised draft has serious deficiencies.

There are clearly still many areas of the draft text where a significant divergence of views remain amongst government delegations. The issues raised by ICC and other stakeholders, and many

delegations, during the fifth session - most notably, those that pertain to scope, rights of victims/remediation, burden of proof, and jurisdiction – still raise serious concerns.

In this context, and in light of (i) the initiative of the UN Human Rights and Business Working Group; (ii) the important legal developments being considered in many jurisdictions; and (iii) the lessons being learned from existing legislation in others, ICC would ask delegations to consider whether now is perhaps the moment to draw breath, to take a pause, and to consider whether the revised draft is actually moving in the right direction, and – indeed whether that process might benefit from reflection and consultations intersessionally to review alternative approaches – including in relation to structure and areas of focus.

ICC stands ready to contribute constructively to such a process of reflection, drawing on the experience of the many companies in our network who are leading in the field of human rights promotion and protection.

Conclusion

It is incumbent on us all to support the development of robust, effective and coherent policy settings in the field of human rights and business, and to do so in ways that have real and positive impact on those most at risk of human rights abuses. We stand ready to work with all stakeholders to this end, and we encourage commitment by all to the multi-stakeholder consultations being organised in the context of the UNGP 10+ initiative in the lead up to the ten-year anniversary in 2021.

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