



International Organisation of Employers
Organisation Internationale des Employeurs
Organización Internacional de Empleadores
The Global Voice of Business

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Third session of the Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights

Subject 3: General Obligations

Thank you Mr Chairperson-Rapporteur,

I am speaking on behalf of the IOE, the largest network of the private sector in the world, with more than 150 business and employer organisation members.

My remarks today reflect those in the joint statement from the international business community in response to the "elements" paper. This statement can be found at the back of the room and on the IGWG website. Our overall message is that we do not support the "elements" paper.

The "General Obligations" section of the "elements" paper is especially problematic for the international business community. I will focus on point 3.2 of the "elements" paper, entitled: "Obligations of TNCs and OBE". I have seven points:

First, seeking to impose international human rights obligations directly on TNCs and OBEs represents a big step backwards for the business and human rights agenda. This also breaks the consensus achieved by the UNGPs, and would have a chilling effect on foreign direct investment. The inclusion in the "elements" paper of the "Norms on the responsibilities of transnational corporations and other business enterprises with regards to human rights" – especially when the UN abandoned them in 2005 – is particularly worrying.

Second, international human rights law binds States, not private entities. Non-State actors, including business, do not have the democratic mandate or the authority to assume the same responsibilities and functions of Governments, whose job it is to create an enabling environment to ensure people's fundamental welfare and dignity.

Third, establishing international human rights obligations directly on business when these duties often do not exist at the national level also suggests that States may be seeking to pass the buck onto private entities for their own failure or unwillingness to protect their people's rights. Delegating the State's duties onto companies would undermine the UNGPs and it would be an undesirable outcome for rights-holders, who rely on Governments to develop and enforce national policies and regulations. Eleven years ago, Professor John Ruggie warned against efforts to transfer the State duty onto companies. He said that "corporations are not democratic public interest institutions and that making them, in effect, co-equal duty bearers for the broad spectrum of human rights...may undermine efforts to build indigenous social capacity and to make Governments more responsible to their own citizenry."

Fourth, transferring States' responsibilities and tasks on to companies is also highly problematic because it would amount to the privatization of international human rights law. Only sovereign States can achieve the protection of human rights while balancing the range of societal and political interests. Companies neither have the mandate nor the capabilities to assume traditional Government functions. They can only help to advance human rights as a complement to, and not as a substitute for, national government efforts.

Fifth, some courts have determined that even customary international law on human rights – which is less defined than treaty law and, therefore, open to broader interpretations – does not impose any form of liability on corporations, whether civil, criminal, or otherwise.

Sixth, it's also very undesirable on practical grounds. Any instrument imposing direct obligations on companies under international human rights law is also bound to fail due to the sheer number of actors involved. In 2011, Professor Ruggie explained that we live in a world of "80,000 transnational enterprises, 10 times as many subsidiaries and countless millions of national firms, most of which are small and medium-sized enterprises. When it comes to means for implementation, therefore, one size does not fit all." Advancing human rights, therefore, cannot and will not be achieved by circumventing national political and legal frameworks. Instead, efforts should be focused on strengthening domestic State institutions and frameworks.

Seventh, by re-opening the debate on whether companies have international obligations the UN is also sending a confusing message to the business community that six years after the UNGPs were endorsed companies should now "hang on" because the UN still has not made up its mind on how human rights risks apply to them. This impinges ongoing and much needed future implementation efforts of the UNGPs, which are essential to addressing harms in the here and now. Sending such a confused message is compounded by the fact that the UNGPs are embedded in many other instruments and it raises questions about how the UN wishes business to engage on social issues as part of the broader challenge to achieve the SDGs.

In conclusion: we strongly oppose any proposal to impose on companies, directly under international law, the same range of human rights duties that States have accepted for themselves.

A final point, we would like to repeat the request of many that the different *positions* are properly reflected in the report of the third session.

Thank you very much.

Panel reply – the following morning:

- Good morning and thank you for giving me the floor.
- Firstly, Linda Kromjong apologises sincerely for not being able to come back this morning to complete the panel discussion. Alas, the spillover into this morning meant that Linda could not return due to a prior engagement.

- We would like to thank the Chairperson Rapporteur and the other panellists for the discussion on “General Obligations”, as well as the comments made by States and other stakeholders.
- Yesterday, we stated our objection to the proposal that TNCs and OBEs should have direct obligations under international human rights law. However, we would like to strongly reiterate that the IOE and the international business community is very committed to the UNGPs approach, under which business enterprises should *respect* human rights. Furthermore, we recognise that businesses can *help advance* human rights using their leverage through their business relationships to contribute towards the SDGs. When we’re talking about an international standard, this is an entirely appropriate and practical approach and - while no one doubts that challenges remain - the UNGPs are having a big impact, especially in bringing widespread attention and action to this important agenda.
- I’m also pleased to have the opportunity to clarify what we said about “labour rights” in the separate “scope of application” statement yesterday. I believe that the ITUC may have misunderstood us. We explicitly mentioned “internationally-recognised human rights” in this point and we agree that they are important and relevant. Internationally-recognised human rights include “the eight core labour conventions”. Yesterday we were simply asking what is meant by Point 2.1 in the elements paper, which suggests that the scope of the treaty would be broadened to as yet unspecified set of “other intergovernmental instruments related to labour rights, environment and corruption.”

Linked to this, we also agree with Govts, such as the Russian Federation, that the point under “State Obligations” - which says that that companies should undertake “environmental impact assessments” - is beyond the scope of this initiative.

- Once again, we thank the Chairperson for giving us the opportunity to speak on this point.