5th sessions of the IGWG for the International Legally Binding Instrument on Transnational Corporations

14-18 October 2019

Makbule Sahan, International Trade Union Confederation

Item 4, Article 5. Prevention (Tuesday afternoon)

I speak on behalf of the International Trade Union Confederation, representing more than 207 million workers, the International Transport Workers Federation, UNI Global Union, International Union of Food Workers, Public Services International and IndustriALL Global Union.

At the outset, I would like to reaffirm the strong support of the international trade union movement for the development of a legally binding instrument.

The current draft has taken into account a number of suggestions that were made by trade unions. However, a number of shortcomings still exist. You can find the Joint Trade Union Position at the back of the room with our views on all articles. We will also share it with the chairmanship.

The text is a clear attempt at a compromise to accommodate various concerns and priorities, including those expressed by industrialised countries and the business community. It provides a strong basis for further negotiations on an instrument that we expect will help combat impunity against the violations of human and labour rights.

We therefore call on all parties to come to the negotiation in a spirit of compromise and good faith.

For this afternoon, I’ll focus my comments mainly on article 5 on prevention.

Before coming to that though, I would like to highlight the need to recall in the preamble international labour standards, as a whole, in addition to the fundamental Conventions of the ILO.

As pointed out by Carlos Lopez yesterday, the 1998 ILO Declaration on Fundamental Principles and Rights and Work obliges all ILO member states to respect and promote principles and rights, whether or not they have ratified the relevant Conventions.

In addition to the four areas currently covered by the 1998 Declaration, the ILO Declaration on the Future of Work adopted this June also designated occupational health and safety as a fundamental right.

However, we would also insist to include a broader reference to international labour standards in light of the massive violations of workers’ rights in global supply chains. Such violations also include informality and precarious short-term work and the absence of social protection, which would not be entirely captured only with a reference to the 1998 Declaration.

The inclusion of a broader set of standards in the preamble would not oblige ratifying states to be party to such instruments and would therefore not constitute a barrier to the ratification of the Legally Binding Treaty as suggested by some.

Moreover, a reference to the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy should be included. This declaration, updated in 2017, reflects the consensus position of trade unions, employers organisations and governments.

Coming now to article 5 on prevention, we can clearly see that this provision is now further aligned with the UN Guiding Principles. Many national governments and indeed the EU are either already or considering adopting legal and policy measures in line with this draft.

Trade unions have called for a clear state obligation to adopt regulatory measures that require business to adopt and apply human rights due diligence policies and procedures.

Despite the overall alignment of the provision with the UN Guiding Principles, certain concepts still diverge in an unhelpful manner. For example, under art.5.2.c., the text uses the term “monitor” instead of “track”, which may potentially be interpreted more narrowly.

Art.5.2.d. refers to communication with stakeholders. This is a critical aspect of preventive measures. However, in addition to stakeholders, the text should also refer to trade unions under 5.2. and 5.3.

As workers, we are part of companies, ensuring their operation and activities, but that also puts us at continuous risk of adverse human and labour rights impacts.

The ILO MNE Declaration points at the need to take account of the central role of freedom of association and collective bargaining as well as industrial relations and social dialogue as part of an ongoing due diligence process.

It is also important to recognize in the text under art. 5.3 that meaningful consultation is a right in itself in many labour-related instruments and should be respected as such.

The OECD Due Diligence Guidance for Responsible Business Conduct makes this very clear and this should also be reflected in the Legally Binding Instrument.

The introduction of ***Art.5.5*** protecting from undue corporate influence in the implementation of the draft Binding Treaty is important. The draft draws directly on the WHO Framework Convention on Tobacco Control in this regard. While we would have liked this provision to be more prominent, in light of the detrimental impact of corporate capture for human rights, and indeed democracy, we nevertheless welcome that the text provides guidance in this regard.

We also welcome that the requirements for preventative measures no longer exempt small and medium sized undertakings. In the majority of developing countries more than 50% of total employment creation in the private sector can be attributed to enterprises with less than 100 employees. Such enterprises are equally tied into global supply chains but respect for labour rights is often extremely weak. Poverty wages, hazardous work, lack of access to social security and weak industrial relations are rampant in SME. Incentives and other measures to ensure compliance under ***art.5.6*** may be helpful.

In addition, I would like to draw attention to the suggestions of the feminists for a binding treaty with respect to article 5 calling for a strengthening of the text by including an explicit reference to the need to carry out gender-sensitive and responsive assessments. In this regard, we also welcome the reference to ILO Convention No.190 on violence and harassment in the world of work, which also lays down preventive measures at company level.

[Finally, we welcome that the draft legally binding instrument does not impose an explicit link between article 5 on prevention and article 6 on legal liability. Undertaking due diligence steps is a separate obligation that should not serve as an absolute shield for liability.]