International Organisation of Employers
Organisation Internationale des Employeurs
Organización Internacional de Empleadores

5 November 2014

DRAFT STRATEGY ON IOE ENGAGEMENT IN THE "ECUADOR RESOLUTION" INTERGOVERNMENTAL WORKING GROUP ON BUSINESS AND HUMAN RIGHTS

Background

The Ecuador/South Africa-sponsored Resolution adopted by the UN Human Rights Council on 26 June 2014 resulted in the establishment of an open-ended intergovernmental working group (IWG) with a mandate to elaborate an international legally binding treaty on business and human rights. The IWG will meet annually for five working days. The first session will take place in July 2015. The Resolution provides that the first two sessions of the working group shall be dedicated to conducting constructive deliberations on the content, scope, nature and form of the future international instrument. The Resolution itself does not elaborate on the scope; it only states that the treaty should exclusively address transnational enterprises. This is a complete departure from the UN Guiding Principles on Business and Human Rights, which address all enterprises. The UN Working Group on Business and Human Rights has no role in the IWG so far.

A key question is whether the Western countries that announced prior to the vote that they would boycott the IWG will now participate. Some of these countries are now considering participating, others are considering boycotting the first two meetings and participating in subsequent sessions, and yet others appear more inclined to boycott the IWG altogether.

Due to its consultative status, the IOE has the right to participate in the IWG.

Key issues for business with regard to the IWG

Should the IOE participate in the IWG?

Proposed approach: although a boycott might succeed in undermining the credibility of the work and outcomes of the IWG, it would effectively prevent business from actively influencing the process. The argument that the IWG will not succeed is not a foregone conclusion. Rather, if industrialised countries and business do not participate directly, the IWG may be able to agree on a text relatively quickly. With this in mind, the IOE should participate in the working group.

If the IOE participates in the IWG, what would be its aims?

Proposed approach: Business has to develop a positive agenda. Simply saying "no" will not be productive. There are government representatives who appear to be in favour of a declaration-type of treaty, which would state certain principles, such as effective access to remedy, etc. This would be a solution business could support (depending on the principles of course). The IOE should also endeavour to push for the treaty to apply to all businesses, and not just MNEs.

What would be the red lines for business?

- A treaty text that would make the UN Human Rights Convention directly and legally applicable to companies;
- A treaty text that would favour access to remedy through extraterritorial jurisdiction over local solutions and/or result in the establishment of an international tribunal for business and human rights;
- A treaty text that would broaden the responsibility of business in comparison to the UN Guiding Principles.

Action Points for the IOE and its member federations

Key business demands on the process: the active participation of the UN Working Group on Business and Human Rights is important to ensure coherence; a balanced approach with regard to the invitation of external experts; a transparent process with regard to drafting.

Development of a positive business agenda with concrete proposals for the text of a treaty. If business agrees that a declaration-type treaty which would state certain principles is a possible way forward, what would these principles be?

Draft discussion papers on the issues that will be at the heart of the IWG's work. Several IOE papers already exist on this topic. The last paper, on access to remedy, touches on one of the key topics of the IWG. However, in-depth papers are lacking on analysis of the proposal to establish an international tribunal and on the difficulties of access to remedy through extraterritorial jurisdiction. Based on the discussions on the UN draft norms ten years ago, a paper should be drafted on the delineation of roles between business and the State, clearly setting out why international human rights conventions do not directly and legally bind companies.

Coordination of the business input. Business has to engage and speak with one voice. It is of the utmost importance that IOE member federations of the IWG member countries approach their national governments with the business message. An IOE ad-hoc group on "Ecuador" should be created which encompasses the IOE member federations of IWG member countries (any UN Member state may join the IWG), the IOE member federations of countries which are members of the Human Rights Council and other interested IOE member federations and partner companies, as well as representatives from international organisations like ICC and GBI.

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