



UN ANNUAL FORUM

The UN Treaty Process on Business and Human Rights: Business and Other Perspectives

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Please note that this document does not constitute a verbatim transcript of the speech delivered at the Annual Forum, but is a summary of key talking points and concepts addressed. This does not constitute a statement or opinion piece on behalf of the Global Business Initiative on Human Rights or its member companies, but is a response to questions posed by the panel Chair to the Executive Director in his personal capacity.

Thank you to the IOE for initiating this session and for their ongoing leadership in putting a clear and constructive voice into international policy developments in the field of Business and Human Rights. This session and others like it over the past 18-months represents a genuine commitment to engage with diverse stakeholders, even on issues that can be polarising.

I have been asked to comment on the impact of the treaty process on the human rights endeavors of companies. Of course, I cannot answer the question totally. I do not have visibility of the human rights endeavors or reactions of all of global business to the Treaty process. And my observations are very personal based on exposure to a handful of business leaders.

My response to this question is in fact the same as 12-months ago at the 2014 Annual Forum. This is not a function of laziness or the fact that it is before 9am in the morning. The reason is that I don't in fact see much change since last year and my view on how business should react is similarly unchanged. The treaty process has not impacted company endeavors. But it is an important inquiry to keep open. So I will reiterate two points, but also want to end with some (possibly provocative) questions for all of us about unintended consequences or risks associated with the treaty process.

First, it seems that companies engaged seriously in this agenda are continuing to focus on the implementation of the UN Guiding Principles (UNGPs). They have not been sidetracked or distracted by the launch of the Intergovernmental Working Group. This is good news and exactly what should be happening, in part because any Treaty is likely (as we have just heard) to be based strongly on the UNGPs. But, it is also happening because the UNGPs offer a pragmatic, even if challenging, road map for companies to address real issues and change practice to ensure they operate with respect for human rights. As an important aside, companies not engaged should not get confused by the 'voluntary' vs 'mandatory' / or 'hard' vs 'soft' discourse around the UNGPs and the Treaty. Respecting human rights is not an option and good HRDD is a must. This is independent of the status of a document under international human rights law. It is based on the changing imperatives of the market and on the need for social license from customers, communities and workers.

Second, and as I said last year, companies should, and in some instances are beginning to, react to the underlying drivers and root causes of the Treaty process – namely a frustration with lack of access to remedy felt by impacted populations and expressed by human rights NGOs. We do need more business leadership on access to remedy, even to promote and call for stronger rule of law and accountability. It is true that calls for more attention on this are often couched in political, ideological and even anti-business sentiment. But the key is to be part of an evidenced-based dialogue – something that I think leading businesses are ready for. There is a lot to explore here, but as a starting point business and those of us that work with business might consider:

- Ensuring the right to access to remedy is addressed in impact assessments and human rights due diligence. At times, remedy is seen only as a procedural issue to apply when things go wrong not a substantive right that companies must assess actual and potential impacts on, and then prevent and mitigate.
- Engaging in-house lawyers and external counsel about the responsibility to respect to establish good practices when responding to legal or non-legal complaints and grievances.
- Pay attention to the realities faced by human rights defenders and the protections of local civil society who can in fact be partners in supporting stronger rule of law and improved human rights risk management.
- Engage more actively with the OHCHR Remedy and Accountability project. Often it is only the IOE at the consultations.

In closing, even if our answer to the question of the impact of the treaty process on business implementation is the same as last year and does not change, we should 100% keep this inquiry open. Underlying the question is whether there might be unintended consequences at play or some kind of freezing of business commitment to align to the UNGPs. So, here are some questions that perhaps we can discuss now or in the coming year. Imagine we are 3 to 5 years down the road ...

- What if we have treaty text consistent with the UNGPs but only five States ratify it? What message does that send to corporations domiciled or doing business in States that don't ratify it? Do they have to operate with respect for human rights?
- What if we have a treaty text but governments engage in dealing away certain rights? Maybe forced labour gets left out of responsibility to respect? Maybe economic development and attracting investment becomes an exception to FPIC? In essence, we would see an erosion of Guiding Principle 12 that sets the normative base for corporate respect for human rights.
- What if the focus does end up being entirely on major brands using a Sphere of Influence model instead of the cause, contribution, directly linked model of the UNGPs? Would we see companies less willing to use leverage to address actual or potential human rights impacts and systemic abuses deep in the value chain?

Please note, I am not raising these issues to be a scaremonger. Rather, I think it's just about conducting a responsible and constructive risk assessment so everyone's effort can be maximised in terms of good outcomes in business conduct and the lives of rights-holders. I have not really thought through these types of questions, hopefully some people in the room have and we can discuss that today.

Thank you again for the opportunity to speak here.