

AN INTERNATIONAL TREATY ON BUSINESS AND HUMAN RIGHTS?

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Legal Briefings - By **Michaela Widdowson-Kidd**

A proposed treaty is the latest development in the steady march towards strengthening corporate accountability for protecting [human rights](#).

More than half of the world's top one hundred economies are corporations.

Against this backdrop, scrutiny of the private sector's human rights record has been growing over the last two decades.

When introduced in 2011, the United Nations Guiding Principles on Business and Human Rights (**UNGPs**) were seen by many as the conclusive roadmap for corporations' role in respecting human rights.

However, compliance with the UNGPs is voluntary and this has led to calls from some quarters for a treaty, which can impose binding obligations.

This has proven to be a controversial proposal, with support for and opposition to the treaty being roughly divided between the world's less developed and more developed countries respectively.

Some of the States supporting the treaty have particularly poor human rights records themselves, which fuels scepticism as to their motives and likely future compliance with the treaty.

The States resisting the treaty tend to be proponents of the UNGPs and argue that, although theoretically 'binding', a treaty is actually likely to be less effective in securing corporate respect for human rights.

Linked to this is the question of how the treaty would be enforced. Although technically 'binding' on the States which ratify them, in reality international legal instruments rarely have effective enforcement mechanisms.

Then there is a jurisprudential question as to whether it is even appropriate for corporations and other private sector actors to be the subjects of international law, which has historically only addressed public entities.

Despite the lack of consensus regarding the appropriateness of a treaty, a UN working group was established to consider its development.

The working group's first session was held in Geneva in July this year and involved panel discussions and meetings over a five day period.

Representatives from various nations, as well as intergovernmental organisations, non-governmental organisations and civil society organisations participated in the session.

NO CONSENSUS

The working group's draft report on its first session indicates that, even amongst supporters of the proposed treaty, there is a wide range of views on many of its the essential elements.

For example, there was division over whether the treaty should apply only to multinational corporations.

Conceptually, limiting the treaty's scope in this way is appealing because multinationals are more readily identifiable as 'international' entities and therefore, arguably, amenable to the application of international law.

However, some delegates argued that exclusion of national corporations would create a two track system in countries with poor domestic regulation: with multinationals held to international standards; while nationals could perpetrate abuses with comparative impunity.

In addition to being unsatisfactory from a human rights perspective, this could put multinational corporations at a competitive disadvantage.

Turning to the treaty's subject matter, it was generally accepted that it would be insufficient to limit the treaty to 'gross human rights violations'. However, varying views were expressed as to which other rights should be covered, with suggestions including:

- those rights protected by existing UN instruments,
- 'all' human rights, and
- rights specifically relating to women, children and indigenous peoples.

The issue of effective enforcement was discussed. Suggestions for improving accountability included:

- making parent companies liable for the actions of their subsidiaries, and
- abolishing international jurisdictional rules to enable claimants to bring their case in the court which is most convenient for them.

WHAT HAPPENS NEXT?

The working group will hold a second session to gather more views and to explore how a treaty might work and what it might cover.

What will follow is less clear.

Even if the working group is able to produce a draft treaty, it will still require the support of a large number of States if it is to have any practical effect.

In particular, it will be crucial that States actually enforce the treaty's terms within their own territories and/or create and support effective international enforcement mechanisms.

For these reasons, it appears that the introduction of a treaty, with effective enforcement procedures, is a long way off.

However, this does not mean that the pressure on the private sector to respect human rights will lessen.

In fact - while the future of the treaty may be uncertain - there can be little doubt that the scrutiny of businesses' human rights records and the expectations regarding their conduct in this area will only continue to grow.

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