

LATEST DEVELOPMENTS ON BUSINESS AND HUMAN RIGHTS AT THE UN HUMAN RIGHTS COUNCIL

At its 26th session in June 2014, the UN Human Rights Council took the unprecedented step of adopting two resolutions on business and human rights. This short summary outlines the main features of each resolution.

1. RESOLUTION ON THE “ELABORATION OF AN INTERNATIONAL LEGALLY BINDING INSTRUMENT ON TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH RESPECT TO HUMAN RIGHTS”

WHAT DOES THE RESOLUTION SAY?

On 26 June 2014, the Human Rights Council passed a resolutionⁱ introduced by Ecuador, Bolivia, Cuba, South Africa, and Venezuela calling for the establishment of an open-ended intergovernmental working group within the Human Rights Council, “to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.”

The Resolution makes only one reference to the UN Guiding Principles on Business and Human Rights, noting their “approval” by the Council in 2011.ⁱⁱ It also acknowledges, “that transnational corporations and other business enterprises have the capacity to foster economic well-being, development, technological improvement and wealth,” as well as cause “adverse impacts on human rights.” But the resolution does not specifically explain why a new treaty in this area is needed.

The resolution was the subject of significant debate at the Council and required a vote to be adopted, resulting in 20 states voting in favour, fourteen against, with thirteen abstentions (see below right).

The resolution does not address specific abuses or business sectors, but instead seeks to establish an overarching international legal framework governing business conduct in relation to human rights. There have been criticisms, including from international human rights organisations, that the resolution as adopted excludes national companies, so that any proposed legal framework that results from the process would apply only to transnational corporations.ⁱⁱⁱ

ⁱ UN Document A/HRC/26/L.22/Rev. 1 (24 June 2014)

ⁱⁱ UN Document A/HRC/RES/17/4 (6 July 2011) endorses the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.

ⁱⁱⁱ A footnote in the resolution states the following: “‘Other business enterprises’ denotes all business enterprises that have a transnational character in their operational activities, and does not apply to local businesses registered in terms of relevant domestic law.” The resolution is silent on the subject of joint ventures with domestic partners, including state-owned enterprises, and on other forms of state involvement with transnational corporations.

WHAT HAPPENS NEXT?

The resolution states that the first two sessions of the new intergovernmental working group, which will meet for the first time in 2015, “shall be dedicated to conducting constructive deliberations on the content, scope, nature and form of the future international instrument”. It also states that the Chairperson-Rapporteur of the working group “should prepare elements for a draft legally binding instrument” for “substantive negotiations at the commencement of the third session” taking into consideration the discussions from the earlier sessions.

The Council resolution also recommends that the first meeting of the new working group of government representatives should “collect inputs, including written inputs, from States and relevant stakeholders on possible principles, scope and elements of such an international legally binding instrument”. Some governments, which voted against the resolution, have said that at this stage they would not cooperate with the new intergovernmental working group.

The votes were:

20 in favour (Algeria, Benin, Burkina Faso, China, Congo, Côte d’Ivoire, Cuba, Ethiopia, India, Indonesia, Kazakhstan, Kenya, Morocco, Namibia, Pakistan, Philippines, Russia, South Africa, Venezuela, Vietnam).

14 against (Austria, Czech Republic, Estonia, France, Germany, Ireland, Italy, Japan, Montenegro, South Korea, Romania, the Former Yugoslav Republic of Macedonia, UK, USA)

13 abstentions (Argentina, Botswana, Brazil, Chile, Costa Rica, Gabon, Kuwait, Maldives, Mexico, Peru, Saudi Arabia, Sierra Leone, UAE).



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2. RESOLUTION ON “HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES”

WHAT DOES THE RESOLUTION SAY?

The day after the divided vote on the Ecuador led resolution, the Human Rights Council adopted an additional resolution UN Document A/HRC/26/L.1, Rev.1. supporting the existing *expert working group*. This resolution focuses on implementation of the UN Guiding Principles on Business and Human Rights, which were developed by former UN Special Representative John Ruggie and unanimously endorsed by the Council in 2011.

The resolution, introduced by Argentina, Ghana, Norway, and Russia along with numerous other co-sponsors, was adopted by consensus, requiring no vote. It extends for another three years the mandate of the existing expert working group on business and human rights. The new resolution, while recognizing “the efforts made to implement the Guiding Principles by some States, business enterprises, international organizations and members of civil society” also encourages the expert working group to “identify and promote best practices in the national implementation of the Guiding Principles” and to report its findings in its annual reports to the Human Rights Council.

The resolution also requests the High Commissioner for Human Rights to facilitate a consultative process with states, experts, and other stakeholders to explore “the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses.” In addition, it requests the High Commissioner to consult with States and other stakeholders to develop concrete options and proposals on the possible establishments of a new global fund to enhance the capacity of stakeholders to implement the Guiding Principles.

WHAT HAPPENS NEXT?

In addition to the items mentioned left, the resolution decides that the multistakeholder Forum on Business and Human Rights originally mandated in 2011 should continue to be held on an annual basis, “with the addition of one meeting day to allow for the preparation and sharing of new tools and experience.”

Among the agenda items that the resolution invites the expert working group to include for the next Forum in December 2014 is “the issue of access to remedy, judicial and non-judicial, for victims of business-related human rights abuses, in order to foster mutual understanding and greater consensus among different viewpoints.”

