

Conference Report

sef: Policy Lunch 2017

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Is the window of opportunity still open? Negotiating a UN Treaty on Business and Human Rights

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In 2011, the United Nations Council on Human Rights adopted the United Nations Guiding Principles on Business and Human Rights (UNGPs) to provide guidelines for States and businesses to respect, protect and remedy human rights abuses. Yet, human rights violations are still being reported, often times committed by transnational corporations (TNCs). Initiated by Ecuador and South Africa in 2014, an open-ended working group mandated by the UN Council on Human Rights started exploring grounds for a possible UN Treaty on Business and Human Rights. It may provide the first international legally binding rules for businesses. In fall 2017, the third working group session took place in Geneva. Around 100 states participated, with an increased support of a parliamentary forum and 200 activists from civil society being present. The negotiations were the starting point for discussions on a first draft of a possible treaty.

The sef: Policy Lunch, co-hosted by the Development and Peace Foundation and CIDSE – the International Alliance of Catholic Development Agencies, took place on 20 November 2017. It looked at the negotiations from an European angle, which sparked considerable interest in the Brussels community. The European institutions have not been speaking with one voice at the negotiations so far. What course did the discussions in Geneva take? Was there substantial progress? And how did the EU present itself in Geneva?

Need for a treaty?

As Rainer Steffens, Director of the Representation of the State of North Rhine-Westphalia to the European Union, remarked in his introduction, the process of implementing the voluntary UNGP has already been a delicate and controversial one. Since their adoption in 2011, European member states were supposed to develop National Action Plans (NAP) on the implementation of the UNGP. Especially Germany experienced a complicated process in developing its NAP.

With the UNGP still being in the early phase of implementation, critics question the need for another “tool” at this point. The time frame until such a treaty could be in place is rather vague, since such processes take years. Furthermore, as Sarah Dekkiche, Sustainability Policy Advisor at the Foreign Trade Association, pointed out, some European countries started developing their own national laws – for example in France or the UK. With such instruments being introduced at different levels, businesses needed support to respond to these new requirements. Dekkiche advocated for some middle



Lola Sánchez Caldentey MEP, Mercedes García Pérez, Denise Auclair and Chair Patrick Leusch (l.t.r.)

ground between local initiatives and a supranational and complex treaty as the latter might be impossible to implement.

However, with businesses' important role for society, it is unavoidable to also address its negative impacts, as Denise Auclair, Senior Advisor at CIDSE pointed out. Current instruments still provide a number of accountability gaps especially for transnational businesses, and the access to justice for victims of human rights abuses is still insufficient. With the treaty process taking time, Auclair voiced the hope that the UNGP and the treaty process will be complimentary, eventually providing progress in protecting people from human rights abuses.

Debating the scope of the treaty

Ecuador, as chair of the working-group on business and human rights, presented a holistic view of the challenges requiring international action and potential measures that could be part of a treaty. It is now up to the working-group to specify the scope of the treaty. The discussions in Geneva mainly evolved on a general issue the EU Commission had already presented in previous meetings: The delegation requested to consider a treaty that should include all kinds of enterprises, not only transnational corporations. Mercedes García Pérez, Head of the Human Rights Division at the European External Action Service (EEAS), explained, that the EU does not want to



Mercedes García Pérez and Denise Auclair (l.t.r.)

let transnational corporations off the hook but wants to make sure that all business enterprises are eventually covered by a treaty. It should not matter where they are headquartered or whether they are domestic or international. However, she also asked for understanding that coordinating the European position with all relevant commission services and all member states is very complex.

Lola Sánchez Caldentey MEP, who spoke on behalf of the European Parliament in Geneva and is part of the

Global Interparliamentary Forum for a Binding Treaty, characterized the Commissions' position as cynical. She underlined the strong support of the European Parliament for a robust binding treaty. Her impression was that the discussion on the scope of the treaty as raised by the European Commission was a means to block the



Lola Sánchez Caldentey MEP

process and not helping to advance the treaty. To her opinion, the States present in Geneva were split between the countries who are suffering from TNCs actions and therefore are in favor of a treaty and those who are exporters of these TNCs and oppose a treaty to protect their businesses. She emphasized that this shouldn't be a geo-strategic issue, but a human rights issue. In her opinion, the treaty provides an opportunity to reshape globalization for the future and balance out its unfair side.

Process vs progress?

While it seemed that much of the negotiations were caught up in procedural questions, Denise Auclair pointed to the fact that there had also been a new level of discussion on the content with the first draft text on the table. This is the starting point for further substantial discussions on the content of the treaty, with a fourth session to come. It is important to continue consultations throughout the year and to avoid further attacks on the process.

It became clear that the negotiations on a possibly UN Treaty on Business and Human Rights have gained some momentum and a new level of support by states and civil society organizations. The window of opportunity remains open for the time being. Yet, there are still a number of controversial issues on the table, and the future meetings will have to address those. The questions on the scope of the treaty and how to ensure access to justice for those suffering from human rights violations remain two of the main issues to be resolved in further negotiations.

Imprint

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