

## **High tide in Lake Geneva.**

### **Business and human rights events at the 26<sup>th</sup> session of the UN Human Rights Council**

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27 June 2014

In his statement at the side event to the UN Human Rights Council in March, Professor Surya Deva, an early supporter of the development of an international binding treaty on business and human rights, compared the debate on this issue to tides, with the momentum of negotiating such instrument going up and down.<sup>1</sup> Depending on your view point, what happened yesterday in Geneva could be compared to that big wave that activists were waiting for years to surf or to a destructive tsunami. The former UN Special Representative on business and human rights, Professor John Ruggie recently said that “from the vantage of victims, an all-encompassing business and human rights treaty negotiation is not only a bad idea; it is a profound deception.”<sup>2</sup>

At the 26th session of the UN Human Rights Council, two resolutions were tabled for adoption. One was a resolution drafted by Ecuador and South Africa and signed also by Bolivia, Cuba and Venezuela.<sup>3</sup> It directs the Council to establish an open-ended intergovernmental working group with the mandate to elaborate an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights.<sup>4</sup> The resolution is the result of months of intense debate on the pros and cons of a binding treaty on business and human rights. While this issue has been on the table for years, the discussions regained momentum after Ecuador made a declaration at the 24<sup>th</sup> session of the UN Human Rights Council in September 2013. With this statement, Ecuador proposed a legally binding international instrument on business and human rights to be concluded within the UN system. The instrument envisioned “would clarify the obligations of transnational corporations in the field of human rights” and “provide for the establishment of effective remedies for victims in cases where domestic jurisdiction is clearly unable” to provide them.<sup>5</sup> This proposal was then supported by the Group of 77 (G77) and a coalition of more than 500 NGOs, regional and international human rights organizations and social movements.

The other resolution was led by Norway and the Core Group that also includes Argentina, Ghana, India and Russia, and was supported by 22 other countries<sup>6</sup> including the USA, UK, and the EU. Norway resolution, broader in scope than Ecuador’s resolution, supports the existing UN Working Group and its role in guiding governments in implementing the UN

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<sup>1</sup> [The Human Rights Obligations of Business: Reimagining the Treaty Business](#), Surya Deva (Univ. of Hong Kong), 12 Mar 2014.

<sup>2</sup> [International Legalization in Business and Human Rights](#), John Ruggie (Harvard Univ.), 11 June 2014.

<sup>3</sup> [Elaboration of an international legally binding instrument on Transnational Corporations and Other Business Enterprises with respect to human rights](#), Ecuador & So. Africa resolution adopted by the UN Human Rights Council on 26 June 2014, signed by Bolivia, Cuba, Ecuador, South Africa, Venezuela.

<sup>4</sup> Para. 1.

<sup>5</sup> [Statement on behalf of a Group of Countries at the 24th Session of the Human Rights Council](#) Ecuador, at UN Human Rights Council, Sep 2013.

<sup>6</sup> [Human rights and transnational corporations and other business enterprises](#), Norway resolution adopted by the UN Human Rights Council on 27 June 2014, signed by Andorra, Argentina, Australia, Austria, Bulgaria, Colombia, France, Georgia, Ghana, Greece, Guatemala, Iceland, India, Lebanon, Liechtenstein, Mexico, New Zealand, Norway, Russia, Serbia, the former Yugoslavia, Turkey.

Guiding Principles, and asks for extending its mandate by another three years. The resolution asks the UN High Commissioner for Human Rights to continue the work on domestic law remedies to address corporate involvement in corporate human rights abuses. It also includes a request that the Working Group launch a consultation process to explore, among other things, the benefits and limitations of a legally binding instrument, and to prepare a report<sup>7</sup>. The first version of this resolution<sup>8</sup> included a footnote to the consultation process: “This paragraph will be included provided that we have only one resolution on Business and Human Rights in this session.”<sup>9</sup> Norway argued that this was meant to strengthen the consensus around the mandate of the Working Group and was not a procedural tactic to defeat Ecuador’s resolution. But civil society complained that this footnote was in fact intended to prevent the tabling of Ecuador resolution - if this resolution was to win by a majority of votes, the resolution to create a binding treaty was not going to be put to a vote.<sup>10</sup> Finally, the controversial footnote was deleted in the final version of the resolution. To many, the hectic consultations prior the vote, seemed a political replay of a time in the 1970s when the UN began negotiating a Code of Conduct for Transnational Corporations and the proposal met the opposition of Western countries as well as the business community<sup>11</sup>. The Treaty Alliance even reported that delegates from African countries at the Human Rights Council complained of “intense US lobbying” followed by threats to withdraw foreign aid and investments.<sup>12</sup>

On 26 June, the Human Rights Council adopted Ecuador and South Africa’s resolution with 20 votes in favour, 14 against, and 13 abstentions.<sup>13</sup> Countries that supported the resolution included China, as well as India and Russia that, part of the Core Group, had previously signed Norway’s resolution. The day after, Norway resolution was also adopted by consensus.<sup>14</sup>

The adoption of both resolutions was met by celebrations, but also by disappointment and concerns. The International Organisation of Employers said that it “deeply regrets” that the adoption of Ecuador’s resolution has broken the unanimous consensus on business and human rights achieved three years ago with the endorsement of the UN Guiding Principles; that the vote at the Council is a “genuine setback” to the efforts of improving access to remedy on the ground; and that this decision means a “return to approaches that have failed before”.<sup>15</sup> Human Rights Watch said that the UN’s decision to move ahead with the development of an international treaty is compromised by the opposition of key governments

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<sup>7</sup> Para. 8.

<sup>8</sup> Norway's draft resolution [version of 12 June 2014](#).

<sup>9</sup> Footnote Para. 6.

<sup>10</sup> [Core Group's Surprising Maneuver Obstructs Vote on Resolution for a Binding Instrument](#), Nora Mardirossian (Treaty Alliance), 17 June 2014.

<sup>11</sup> [EU Aims to Scuttle Treaty on Human Rights Abuses](#), Thalif Deen, UN Inter Press Service, 24 June 2014.

<sup>12</sup> [US & EU Oppose Stronger Regulation of Corporations at HRC Despite Compatibility with Guiding Principles](#), Nora Mardirossian, Treaty Alliance, 22 June 2014.

<sup>13</sup> 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 Yugoslavia, UK, USA) and 13 abstentions (Argentina, Botswana, Brazil, Chile, Costa Rica, Gabon, Kuwait, Maldives, Mexico, Peru, Saudi Arabia, Sierra Leone, UAE).

<sup>14</sup> [Resolution «Human Rights and transnational corporations and other business enterprises» adopted in the Human Rights Council](#), Permanent Mission of Norway in Geneva, 27 June 2014.

<sup>15</sup> [Consensus on Business and Human Rights Is Broken With the Adoption of the Ecuador Initiative](#), International Organisation of Employers, 26 June 2014.

and it is too narrow since it only focuses on transnational corporations and will not address national or other businesses. ESCR-Net Corporate Accountability Working Group also released a statement calling on governments at the Human Rights Council to ensure that all business enterprises, not just transnational corporations, are the subject of new normative international developments.<sup>16</sup>

The intergovernmental process that will start with the adoption of Ecuador's resolution will face a number of challenges. Is this a good time to negotiate a treaty? Is it too early to judge the UN Guiding Principles? Can a binding treaty be complementary to the Guiding Principles, or would instead jeopardize their progress, and compete for limited resources? Will this process, as many fear, break the constructive dialogue and the delicate consensus that Ruggie had achieved? Ruggie has highlighted the possible insurmountable problems of enforcement and the complexity of norms that such instrument would have to encode.<sup>17</sup> The International Commission of Jurists (ICJ) recently released an extensive report on the needs and options for such new international instrument.<sup>18</sup> The ICJ concluded that "notwithstanding the progress achieved in international and domestic legal standards and practice, there are substantive areas in the sphere of business and human rights that remain in dire need of international regulation, particularly the need for ensuring legal accountability and access to remedies, which must be addressed on priority."<sup>19</sup> So possibly the ultimate question is, will this process help or hinder efforts to address corporate human rights abuses and impunity?

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<sup>16</sup> On file with Business & Human Rights Resource Centre.

<sup>17</sup> John Ruggie, [A UN Business and Human Rights Treaty? An Issues Brief by John G. Ruggie](#), 28 Jan 2014; [A UN Business and Human Rights Treaty Update](#), 1 May 2014; [International Legalization in Business and Human Rights](#), 11 June 2014; [A Business and Human Rights Treaty? International legalisation as precision tools](#), 13 June 2014.

<sup>18</sup> [Needs and Options for a New International Instrument in the Field of Business and Human Rights](#) International Commission of Jurists (ICJ), June 2014

<sup>19</sup> Page 46.