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Panel on Thursday morning

Speaking notes

Check against delivery

Thank you for the invitation to participate in this panel today.

There will be three points to my presentation this morning – first two findings of fact; second some comments on the structure of the Agreement; and third some reflections on special roles of this future convention

Findings of fact - 1

We have heard a large number of unresolved HR abuse cases involving TNCs

Representatives of campaign have described a large number of HR abuse cases that have not made headway in national or international courts

CSO spokesperson have presented cases where no one has found the appropriate court to apply for remedy

What has not been heard of any claims that the Remedy component of the GP is robust and working

First statement of fact : the Remedy arm of the GP does not work adequately

Finding of Fact -2

Some delegations feel strongly that the GP effectively addresses all relevant issues relating to TNCs and HR and that a legally bindeing agreement is not necessary;

Some delegations feel that the GP fails to provide a binding legal structure and it fails to provides an effective remedy system;

And some other delegations feel that GP is a sound global framework but that the remedy component needs to be strengthened.

Give these facts it might be useful for the Governments to consider borrowing from the WTO the practice of using plurilateral agreements for such situations. A plurilateral agreement between 50-90 countries which fill the need to strengthen international HR law, particularly with regard to effective measures for remedy, and it could work in a complementary fashion to the third pillar of GP. It would also establish in international law a basic international regime on TNCs and HR, one that could be expanded in membership and in scope over future years.

2. Structure of a Procedural Agreement to enhance the system for global remedies for abuses of human rights by TNCs

First let me share a crucial component to the over-all structure, one that is borrowed this time from the Montreal Protocol on ozone protection.

Overall structure could consider of (a) a group of general principles on human rights and a group of statements on the general responsibilities of TNCs in this period of globalization; (b) a group of articles on Procedural Matters; and (c) an annex containing TNC-human rights statements. The annex, following the Montreal Protocol approach, can be expanded over time by the Conference of Parties as they clarify and define additional specific statements on the relationship of TNCs with each separate human right.

A more detailed structure of this proposal for a convention with a central body of procedural arrangements and a annex with declarations on specific TNC-human right standards might look like the following :

1. General Principles regarding HR, TNCs, TNCs and HR and reference to GP
2. Definitions
3. Enhanced procedures along the investigation to outcome chain (e.g. multi-country investigation procedures … implementation of final court orders)
4. Removing barriers to effective processes (e.g. clarification of rules of liability, due diligence etc)
5. Establishing functioning legal platforms
   1. Support to national and sub-national legal systems
   2. The role and procedures for international or regional ombudsperson(s)
   3. The role and procedures for extra-territorial application of law,
   4. the role and procedures for international or regional court(s) on TNCs and HR
   5. the function and operation of a register of all pending TNCs and HR cases
6. Prevention Methods (e.g. use of corporate human right due process, a public human rights impact statement)
7. Operational elements, the COP, and the relationship with other COPs and IGOs dealing with HR and TNC matters
   1. receive reports from Governments (normal practice), but also receive reports from CSO, TNCs, Judges, Prosecutors, and plaintiff lawyers, Special representatives, other COPS dealing with TNCand/or HR
   2. review the registry of pending cases to look for patterns of issues that need further attention, patterns of cases that may be best combined, and issues that need additional research
   3. approve new standards on TNCs and specific human rights which will be placed in the Annex
8. Adoption and final provisions, including the primacy of human rights elements over other pre-existing intergovernmantal agreement

Annex with specific TNCs and HR legal statements

In conclusion

Most of us have had this week an extraordinary crash course in comparative international civil and criminal law. This body of laws and procedures in each country is the result of efforts by more powerful domestic actors to control significant sections of the communities in their countries AND the result of many political struggles. But in the end we have this history of laws and regulations as part of the normal reality in many countries. These laws and regulations can be used within countries to argue for redress of damages and to prosecute criminal matters. Another part of ‘normal national reality’ is that State has a managing, mediating, or corrective role in national economic markets.

What has happened with globalization is that there is now a relative disappearance of national boundaries for the movement of capital, for the trade in technologies, and sale of products. But that the boundaries have remained rigid for the rule of law and the movement of people. The effort here is to create a cross boundary system of law, particularly for human right principles. This in an important beginning to real the opportunity to redress abuses from the cross border movement of capital, technology, and products. At the national level, we know it ‘normal’ for laws and courts to function along side the national market for capital, technology, and products. The effort here is to in ‘normal’ for the post WWII globalizatied realities – that’s all.

Thank you.