2017 HAS BEEN a very busy year with many business and human rights developments around the world. We have seen the emergence of hard laws, notably the French vigilance law; an increased focus on strengthening corporate accountability and ensuring access to remedy for victims; and a growing spotlight on attacks on human rights defenders, as well as company action to promote civic freedoms.

The debate on how to achieve widespread corporate respect for human rights is far from settled with most attention still focused on consumer-facing global brands. On top of this, States and multilateral organisations are sending two contradictory messages to business:

1. Governments increasingly expect private companies to act more responsibly than companies which are either owned, controlled or heavily supported by the State.
2. Governments, the UN and civil society organisations are, on the one hand, encouraging business to play an active role in realizing the sustainable development goals largely through innovation and investment. On the other hand, different UN agencies are banning a legal sector (tobacco) from their initiatives; the UN is drawing up a “blacklist” of businesses operating in a complex geography (the OPT) that risks unfairly naming/shaming some companies and leading to boycotts; and there are attempts to make MNEs legally liable for their entire global operations in a way that ignores the complex nature of supply chains, the responsibility of all companies to respect human rights and, crucially, the failure of many States to implement and enforce domestic laws.

Against this backdrop, in 2018 companies need to show real progress and continue to:
- Implement the UN Guiding Principles on Business and Human Rights;
- Strengthen relationships with business partners to improve performance up and down the value chain;
- Partner with industry peers and other stakeholders (including Governments and NGOs) to address systemic social issues; and
- Better communicate their efforts (see the IOE’s new “three-part course for SMEs to communicate on sustainability issues” which complements other tools like the UNGPs Reporting Framework).

I wish you all a restful Christmas and New Year, and our sincere thanks for your support of our work over the last 12 months.

Linda Kromjong,
Secretary-General
UN Treaty process on business & human rights (IGWG led by Ecuador)

- The Intergovernmental Working Group (IGWG) met for its third session in Geneva from 23 to 27 October to discuss and negotiate "elements for the draft legally binding instrument" that were prepared by the Government of Ecuador (as IGWG Chair).
- The IOE actively participated in the third session to make clear its opposition to the “elements” paper and its concerns about the Treaty process. It also helped draft a joint business statement on the “elements” paper.

What happened during the third session?

- Ninety-nine States officially participated in the third session with most observing the discussions. Noticeable absences were the USA, Canada and Japan.
- Although UN resolution 26/9 called for "substantive negotiations" on the elements paper, in fact the agenda was dominated by statements from NGOs and academics on the various "elements", followed by State, NGO and business interventions.
- Because Ecuador released the “elements” just three weeks prior to the session and because they include many proposals, most States said they did not have enough time to respond properly.
- The discussions covered possible treaty elements: general framework and scope of application; general obligations; preventing measures; legal liability; access to justice, effective remedy and guarantees of non-repetition; jurisdiction; international cooperation; mechanisms for promotion, implementation and monitoring; and general provisions.
- As in past years, the EU insisted that the third session also include a discussion on the UN Guiding Principles on Business & Human Rights and that the scope of the treaty be extended to "other business enterprises" (OBEs) not just transnational corporations (TNCs). At the same time, the EU came under pressure to express its overall support for the treaty from its own MEPs and from NGOs.
- Global South States (ie: Ecuador, South Africa & Venezuela) endorsed the “elements”. Other States (ie: Australia, Brazil, Russia & Singapore) queried the proposals without giving an official position.
- The IOE was joined by USCIB, ICC and FTA during the third session. Our interventions noted business opposition to the "elements" and we asked for further clarification on many proposals.

“Elements” that cause particular concern

1. The IGWG would seek to impose international human rights obligations directly on TNCs and OBEs, thus taking the debate back to the politically-charged period of the UN Norms.
2. While the elements often refer to both “TNCs” and “OBEs”, the proposed scope is on the activities of a company “that has a transnational character” and the suggested international enforcement mechanisms reference only TNCs.
3. TNCs could be legally liable for the conduct of all companies and business partners down the entire supply chain, including globally.
4. By focusing on the “activities of TNCs and OBEs that have a transnational character”, the drafters would avoid the challenge of defining “TNC” and “OBE” in international law. However, shifting the focus on to the “activity” instead of the “entity” raises an automatic question: what do “the activities of TNCs and OBEs that have a transnational character” mean in legal and practical terms?
5. Obliging TNCs and OBEs, under international law, to carry out human rights due diligence on “their activities” (which is undefined) risks unintended consequences and creating confusion with the UNGPs.
6. The elements “broad concept of jurisdiction” does not respect national sovereignty and attempts to focus on parent company liability and expand the concept of extraterritorial jurisdiction.
7. Encouraging States to adopt mechanisms that reverse the burden of proof violates due process principles and fundamental notions of fairness in numerous jurisdictions.
8. The “elements” suggest the primacy of international human rights law over other international legal regimes, including in the areas of trade and investment.
9. Suggested enforcement mechanisms include: (a) creating an international court on TNCs and human rights; (b) strengthening existing international judicial mechanisms such as proposing special chambers on TNCs in existing international or regional courts; and (c) establishing a UN Treaty Committee to "assess, investigate and monitor the conduct and operations of TNCs."

Points of ongoing confusion

- UN resolution 26/9 established the IGWG with a mandate "to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises" without stipulating any timeframe. It also outlined what the first three sessions of that mandate would look like. However, the third session ended in confusion because the Chair (Ecuador) appeared to ignore many Governments' request for the UN Human Rights Council to discuss future IGWG sessions (not the mandate itself). It is, therefore, possible that the IGWG will continue until its mandate ("to elaborate an international legally binding instrument") is fulfilled without further deliberations by the HRC in 2018 on the process.
- It is also not clear from the draft summary report of the third session if the interventions made by business will be clearly annotated (previous IGWG reports described the IOE as an "NGO").

What next?

- We expect the IGWG to hold its fourth session in the autumn 2018 (possibly October) during which States will begin negotiations in earnest on a legally-binding treaty.
- We will closely monitor if UN Human Rights Council gets to discuss the next phase of the IGWG mandate (not the mandate itself) either in March or June 2018.
- We expect the IGWG chair (Ecuador) to make public a draft legally binding instrument at least four months before the fourth session (approx. in June/July 2018).
- Because Ecuador released the "elements" paper only three weeks before the IGWG's third session, States and other stakeholders can also submit comments and proposals on the "elements" before the end of February 2018.
- Other important points to note:
  - We understand that the IGWG can determine for itself how many States in total will need to sign up to and ratify a new Treaty for it to come into effect. We understand that the figure could be as low as 20-30 States.
  - Ecuador said it would consult with States and other stakeholders on the fourth session's "programme of work" but it is not clear what that means in practice (ie: would consultation take place by the HRC or would Ecuador consult with States, not business, days before the fourth session as happened this year?).

Other UN updates

2018 marks the 70th anniversary of the Universal Declaration of Human Rights

The UN will celebrate the 70th anniversary of the Universal Declaration of Human Rights (UDHR) throughout 2018 and encourages business to get involved!

- Visit OHCHR’s dedicated website: www.standup4humanrights.org
- Anniversary hashtag: #standup4humanrights

Anniversary objectives
1. PROMOTE: Raise public awareness of the UDHR as a critical milestone for human rights and highlight what it means for people in their everyday life.
2. ENGAGE: Mobilise people including key actors to express commitment to and engage in the promotion and protection of human rights.
3. REFLECT: Take stock of what has been achieved, of the state of human rights in the world today and reflect upon the challenges and opportunities to come.
IOE's "access to remedy" session at UN Forum on Business & Human Rights

The IOE's all-female panel explored "how MNEs can use their leverage to help enable remediation by their business partners." Representatives from Rio Tinto, Disney, CBR Fashion Holding and Aviva discussed how companies are currently exercising leverage to advance access to remedy in practice, what can be done to strengthen MNEs’ efforts and what the challenges are. Participants also examined how leverage extends beyond MNEs to other actors, such as Governments. The session helped demonstrate policy coherence between the ILO’s revised MNE Declaration and the UNGPs, with the focus on how to apply abstract standards to real-life situations.

UN Global Compact severs ties with tobacco companies

In September, the UN Global Compact announced its decision to exclude tobacco companies from participating in the corporate sustainability initiative.

The decision to de-list companies that produce or manufacture tobacco (not those that finance, sell or distribute tobacco) was approved by the UN Secretary-General António Guterres. The UN Global Compact said it recognizes that tobacco products are in direct conflict with UN goals, particularly with the right to public health (SDG 3).

The move builds on the WHO Framework Convention on Tobacco Control (that entered into force in 2005), which calls on governments to ban tobacco-related CSR activities, and the UN General Assembly’s 2008 decision to ban smoking and tobacco sales at the UN headquarters in New York.

What’s the ILO’s position?

• In November, the ILO’s Governing Body deferred for a second time its decision on whether to also sever its ties with the tobacco sector.
• Employers (and others) argue that the ILO’s mandate is to promote decent work, not to eradicate tobacco consumption. The ILO’s cooperation projects with the tobacco industry is helping to eradicate child and forced labour. What’s more, the tobacco sector is a legal activity that employs a large number of workers in many countries, in which there are few ready substitutes for the crop, neither for the families, nor for countries that rely on it. Banning cooperation with the tobacco sector also sets a dangerous precedent - which sector will be next?

OHCHR launches new business standard on LGBTI rights

In September, the UN’s human rights office unveiled a new business standard to help tackle discrimination against Lesbian, Gay, Bi, Trans, & Intersex (LGBTI) people.

The guidance, developed with business and civil society, sets out five core steps (see above image) that every company should take to tackle discrimination and other human rights abuses against LGBTI people in the workplace, in the marketplace and in the community.

Microsoft pushes for a new Digital Geneva Convention

Microsoft renewed its call for a “Digital Geneva Convention” in a November speech at the UN in Geneva and during a session at the 2017 UN Forum on Business and Human Rights.

Microsoft says that a Digital Geneva Convention would aim to protect and defend civil populations and infrastructure against state-sponsored cyberattacks. The company recommends a set of binding agreements between States, which would be backed by a tech sector accord and supported by an independent attribution organization to identify, ban and remedy state-sponsored cyberattacks.

A number of Governments, including the Netherlands, cautioned against creating a new Geneva Convention saying that the title itself creates confusion because most cyberattacks do not concern armed conflict; that efforts should focus instead on clarifying how existing international instruments already cover such attacks; and that efforts to create a new Convention could be used as a delay tactic by States not to apply the current rules.

Microsoft’s President and Chief Legal Officer, Brad Smith, first proposed a Digital Geneva Convention in February saying that “just as the Fourth Geneva Convention has long protected civilians in times of war, we now need a Digital Geneva Convention that will commit governments to protecting civilians from nation-state attacks in times of peace. And just as the Fourth Geneva Convention recognized that the protection of civilians required the active involvement of the Red Cross, protection against nation-state cyberattacks requires the active assistance of technology companies.”

Call for candidates from Africa and Eastern Europe for UN Working Group on Business and Human Rights

- The IOE encourages qualified business and human rights experts from Africa and Eastern Europe to apply to join the UN Working Group on Business and Human Rights in 2018 to replace the two current members representing those continents, Michael Addo (Ghana) and Pavel Sulyandziga (Russia) when their term expires.
- The UN Human Rights Council will likely begin the process to appoint their successors in Q1 or Q2 in 2018.
- To have a reasonable chance of getting appointed, the candidates would need to:
  o Demonstrate concrete action to promote and implement the UN Guiding Principles on Business & Human Rights in their regions.
  o Understand the challenges facing victims of business-related harms and civil society.
  o Have a proven track record of engaging constructively with Governments.
  o Have strong backing of Governments in Africa and Eastern Europe.
  o Be female! There’s currently only one woman on the UN Working Group.

Update: UN report & database on companies involved in OPT settlement activities

After requesting more time, OHCHR is expected to release before the end of December its report to the UN Human Rights Council on a new database on all business enterprises engaged in certain Israeli settlement activity in the occupied Palestinian territory. The database will be updated annually.

The IOE has warned that a UN database on business enterprises in any context - not just in relation to settlements in the OPT - creates a UN-endorsed quasi-sanction mechanism and a boycott of such entities.
New IOE-GRI tool: "Three-part course for SMEs to communicate on sustainability issues"

What?
- The IOE, together with GRI, has produced a simple three-part course to help SMEs meaningfully show the ways in which they are acting responsibly and contributing to the Sustainable Development Goals (SDGs).
- The course helps SMEs to identify:
  - Why they should actively communicate on their sustainability issues;
  - Whom they should communicate information to and how best to do so;
  - How to realize the benefits of telling their story openly;
  - How to determine their sustainability issues; and crucially,
  - What information they need to disclose.

How? The course is divided into three parts:
- Part 1: Introduction to sustainability and communication methods
- Part 2: Determine your company’s sustainability issues
- Part 3: Important information to communicate.

Access the course (free): click here!

FYI - another practical IOE tool:
- IOE-ILO Guidance: Doing business without child labour – click here

ISO update
- ISO 26000 "confirmed" for 3 more years
  - After two national ISO member votes and a discussion by the Technical Management Board in 2017, ISO has decided to “confirm” ISO 26000 guidance for another three years.
  - The next systematic review of ISO 26000 is scheduled to take place in 2020.
- Proposal for new Technical Committee on Social Responsibility rejected
  - ISO national members also voted to reject a separate and bigger proposal to create a new Technical Committee on Social Responsibility.

Thank you: Together with other business associations, ITUC, the UN, the ILO, and civil society organisations the IOE and its members lobbied hard to achieve both results. A big THANK YOU to everyone for your help.

Mega Sporting Events

In November, a grand coalition of sports bodies, intergovernmental organisations, Governments, athletes, hosts, sponsors, broadcasters, civil society representatives, trade unions, employers and their associations, and NHRIs pledged a commitment to launch an independent “Centre for Sport and Human Rights” in 2018.

Also, in September, FIFA’s independent “Human Rights Advisory Board” released its first report with recommendations to FIFA, as well as an update from the soccer body itself, on how to implement the UNGPs. The Advisory Board recommends that FIFA: (1) adopt a human rights policy; (2) embed respect for human rights; (3) identify and evaluate human rights risks; (4) address those risks; (5) track and report on implementation; and (6) enable access to remedy.
National legal developments

**European Union:** The EU’s “Conflict Minerals Regulation” comes into force on 1 January 2021. The law aims to help stem the trade in four minerals – tin, tantalum, tungsten and gold - which sometimes finance armed conflict or are mined using forced labour. European companies will have to ensure that their trade of minerals from conflict-affected areas is not linked with human rights abuses. Click to read the “Guide for business”.

**Australia:** A parliamentary inquiry in December provided a blueprint for the creation of a Modern Slavery Act in Australia. The final report of the Joint Standing Committee on Foreign Affairs, Defence and Trade called for new Modern Slavery Act, compensation for victims, and an Anti-Slavery Commissioner and measures to force big corporations to root out exploitation in their supply chains. Under the proposed law, companies with a revenue of $50m or more will need to prove they are not profiting or gaining a competitive advantage from slavery in their supply chains. In August, the government released a plan to make large corporations file annual reports on modern slavery. The Walk Free Foundation welcomed the report.

**Switzerland:** In November, the Legal Affairs Committee of the Swiss Upper House took a first step towards the introduction of mandatory due diligence, including parent company liability for the most serious violations. Current proposals focus on:

- Due diligence: Large companies and SMEs active in risk sectors would be required to conduct human rights and environmental due diligence (under the UNGPs and the OECD Guidelines’ approach). Risk sectors will be defined by lawmakers.
- Enforcement: control and sanction mechanisms could be sector-specific.
- Legal liability options: The Swiss parliament will explore (i) civil liability of parent companies where a subsidiary causes death or serious bodily harm (modelled after employers’ liability), and alternatively (ii) violations could be included in existing corporate criminal liability regimes for economic crimes.

Once the Swiss Parliament has completed its deliberations (we do not know how long this will take), the “Responsible Business Initiative” will likely be subject to a popular vote.

**Netherlands:** On December 19, the Dutch Senate will vote on a proposed law to mandate companies to carry out due diligence to prevent child labour in their supply chains. The Senate appears split on the vote. Chocolate company Tony’s Chocolonely has started a petition calling on political parties to vote in favour of the law.

**UK:** In October, the UK Government released updated guidance on the reporting obligation set out in section 54 of the UK Modern Slavery Act. The updated “Transparency in Supply Chains etc. A practical guide” does not make any changes to the law and it does not address unclear parts of the Modern Slavery Act, such as the definition of the term “carries on business”, “supply chain” or “operations”. Instead, it intends to drive best practice and to support businesses with tackling modern slavery.

Other updates

**OECD Watch launches “Remedy is the Reason” campaign for “Effective NCPs Now!”**

- In November, OECD Watch launched a campaign to improve the effectiveness of national contact points (NCPs) of the OECD so that the NCP system can provide access to remedy for victims of business related human right violations.
- OECD Watch will carry out national level campaigns aimed at getting policy-makers to ensure that their NCPs meet the obligations laid out in the OECD’s Guidelines’ Procedural Guidance.
- The campaign also aims at getting policy-makers to acknowledge that remedy is the reason for NCPs, so that NCPs are equipped with the necessary political will to carry out determinations of a company’s non-compliance with the Guidelines and help facilitate access to remedy.
- Click [here](#) to learn more about OECD Watch’s demands.
IHRB’s "Top 10 Business and Human Rights Issues in 2018"

This year’s list is divided into two parts. Firstly, it focuses on five key issues where there are significant remedy gaps. Secondly, it highlights five developments aiming to bridge those gaps.

Two new websites

- NGOs have launched "Business & Human Rights in Law" - a website to track legislative and case law developments related to the corporate responsibility to respect human rights, with a focus on mandatory human rights due diligence and parent company liability.
- In November, the Danish Institute for Human Rights launched an online Global NAPs “one stop shop” for information on National Action Plans (NAPs) on Business and Human Rights.

Academic papers on human rights due diligence

- "Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises" (May 2017) by Robert McCorquodale, Lise Smit, Stuart Neely and Robin Brooks - click here to read
- "The Concept of ‘Due Diligence’ in the UN Guiding Principles on Business and Human Rights: A Rejoinder to John Gerard Ruggie and John F. Sherman, III" by Jonathan Bonnitcha and Robert McCorquodale (13 November 2017) - click here to read

USA withdraws from EITI

In November, the US Government withdrew as an “implementing country” from the Extractive Industries Transparency Initiative (EITI), a multi-stakeholder global anti-corruption programme for the oil, gas and mining sector. The US Department of Interior said that “domestic implementation of EITI does not fully account for the U.S legal framework.” Global Witness opposed this decision in a press release.

Expectation on companies to speak out on human rights issues grows

Companies are increasingly expected to use their leverage to help promote human rights in countries where they operate.

In November, the BBC reported that Chevron faced criticized for partnering with the Myanmar Government which has been accused of ethnic cleansing. In response, Chevron said it will “continue to work with other US companies and the government to promote the value of US investment in Myanmar and the need to foster a business environment that respects human rights”.

At the same time, the Sydney Morning Herald also reported in November that “Silence is dangerous: bitter political environment forces businesses to take stand on social issues” in reference to Australia’s same-sex marriage vote and other issues such as climate change.

Equator Principles to undergo a revision process

In November, the steering committee of the Equator Principles Association (EPA) announced that the Equator Principles - a risk management framework, adopted by financial institutions, to determine, assess and manage environmental and social risk in projects – will be updated.

The aim of the update is to consider: “the key issues of scope of applicability, human rights (inclusive of the rights of Indigenous Peoples), and climate change, amongst others.”

The revision process will include consultations with external stakeholders and will be concluded by June 2019. NGOs welcomed the announcement via a press release.
Spotlight on "Better Buying" Initiative

What? **Better Buying** is an online platform for suppliers to rate buyers on their purchasing practices. It uses dialogue and ratings to improve purchasing practices. It is supplier focused, supplier driven and supplier first.

Who? The project is led by Marsha Dickson (University of Delaware) and Doug Cahn (expert on labour and compliance in global supply chains and former VP at Reebok), with technical support from the Fair Factories Clearinghouse.

Purpose:
- To allow suppliers to provide anonymous input about how specific buyers’ purchasing practices make it difficult for suppliers to achieve compliance with their own code of conduct for labor standards and working conditions; and
- To create a forum for suppliers and buyers to highlight best practices and discuss potential solutions to the problems.

Watch an Interview with Marsha Dickson

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The Global Deal – IOE position

**What?** The Global Deal is a global partnership – set up by the Swedish Government in 2016 – to encourage governments, businesses, trade unions and other organisations to make commitments to enhance social dialogue.

**Companies/employers that sign "the Declaration of Support" commit to:**
- Respecting in practice the ILO’s core labour rights (as enshrined in the ILO’s fundamental Conventions).
- Operating with social responsibility, including by exercising due diligence in seeking responsible supply chains according to international standards.
- Being prepared to negotiate collective agreements locally, nationally, regionally or globally. This would include "transnational company / international framework agreements".
- Committing to report publicly on actions undertaken to realise the above principles.
- Updating the Global Deal commitments in light of new challenges and opportunities.

**IOE position (supported by BIAC)**
- In autumn 2017, the IOE confirmed its original position not to become a signatory to the Global Deal. It has informed the Prime Minister of Sweden who is leading this initiative.
- The IOE and its members are fully supportive of strong social dialogue, social partnership, decent work and inclusive growth. However, the Global Deal presents many problems:
  - It is an initiative on social dialogue that was not developed with the involvement of all the social partners. International business organisations, such as the IOE and BIAC, were not consulted on the Global Deal, nor were national employers’ organisations (including in Sweden) engaged in the process.
  - The Global Deal creates an unnecessary parallel system and does not provide real or measurable added-value. It risks drawing attention away from existing efforts to improve social dialogue and conditions at work both within and outside the ILO. The ILO, via its tripartite composition, is the proper channel for global activities on social dialogue. It is counter-productive to create another system, whose overall governance is uncertain.
  - It remains unclear how the Global Deal will lead to measurable improvements for workers. However signing up will have resource and cost implications for companies in negotiating "agreements locally, nationally, regionally or globally"; "reporting publicly" and "updating the commitments". The initiative also suffers from a lack of predictability.
Some 2018 events

February: IOE workshops on "Responsible Business Conduct"
- 5-6 February: Bangladesh
- 8-9 February: Cambodia
- 19-20 February: Peru
- 22-23 February: Colombia

What? The IOE, GRI and Centro Vincular will continue their series of two-day workshops with IOE member federations in Asia and Latin America.

Aim: To raise awareness and deepen understanding of the main initiatives and instruments to promote responsible business conduct and meaningful reporting.

Contact: Anetha Awuku (awuku@ioe-emp.com) and Peter Hall (hall@ioe-emp.com)

18 April (Paris): "International Business & Human Rights" Conference
- IOE, MEDEF and Sodexo will jointly host an international business and human rights conference in Paris for business representatives to have practical and frank discussions on how to implement the UN Guiding Principles on Business and Human Rights.
- More information about the programme, the venue and registration will follow shortly.
- Contact: Peter Hall (hall@ioe-emp.com)

28 May-8 June (Geneva): International Labour Conference

Standing items
- Reports of the Chairperson of the Governing Body and of the Director-General
- Programme and budget and other questions
- Information and reports on the application of Conventions and Recommendations

Items placed on the agenda by the Conference or the Governing Body
- General discussion on effective ILO development cooperation in support of the SDGs
- Violence and harassment against women and men in the world of work (standard setting, double discussion)
- Recurrent discussion on strategic objective of social dialogue & tripartism (follow-up to ILO Declaration on Social Justice for a Fair Globalization)
- Abrogation of Conventions Nos 21, 50, 64, 65, 86 & 104 & withdrawal of Recommendations Nos 7, 61 & 62

13-14 September (Atlanta): IOE-USCIB-USCC "10th Atlanta Business & Human Rights Conference" - hosted by Coca-Cola
- IOE, USCIB and USCC convene a two-day conference on "collaboration through partnerships to address business & human rights trends & developments"
- Contact: Matthias Thorns (mthorns@coca-cola.com) and Peter Hall (hall@ioe-emp.com)

10 December: 2018 Human Rights Day & 70th anniversary of the signing of UDHR