

HRC

Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights

3^d session (23-27 October 2017)

Draft Opening remarks by the European Union – Version 20171017

Mr. Chairperson-Rapporteur,

The European Union would like first to congratulate you on your election today, and to thank the outgoing Chairperson-Rapporteur, Minister Espinosa, for her leadership over the past two sessions of this Intergovernmental Working Group. We would like to thank the speakers in the opening statements. We would like to thank the Secretariat for its work in preparation of this second session.

Civil society organisations and human rights defenders worldwide are mobilized to remind the international community that more remains to be done to prevent abuses in connection with activities by transnational corporations and other enterprises, and to enable access to remedy when abuses occur. We are fully aware of these calls and agree that more needs to be done. We continue to take concrete steps to meet these shared objectives with a clear direction of work set out in the Council Conclusions of 20 June 2016 as we marked the 5th anniversary of the UN Guiding Principles on Business and Human Rights. We also increasingly witness that business companies see the merit of taking tangible steps to ensure respect for human rights throughout their operations. Initiatives are also underway in the areas of trade, investment and finance to name but a few.

The international community needs to respond in a responsible and effective manner. Civil society organisations and human rights defenders cannot be left with the impression of a process which would have raised false expectations for victims and their relatives or would not deliver tangible result on the ground. Three years have passed since resolution 26/9 was adopted and we hear growing concerns. Questions are raised about the late circulation of the "elements for a draft legally binding instrument" made available only three weeks before the start of this session, when the document was initially announced for June 2017. There are also concerns regarding the late

availability of a Program of Work, which is meant to structure our discussions. We understand that such delay has impacted negatively on the ability of States, international organisations and all relevant stakeholders, including NGOs, trade unions and the business community, to prepare adequately for this session.

Some may wonder why we insist on process, and our answer is straightforward: steering a process impacts on substance and the likelihood to make progress. Hence, we insisted that the draft Program of Work provides the reassurance that this process does not undermine the much needed continued implementation by all States across regions of the UN Guiding Principles on Business and Human Rights. We also insisted that the Program of Work widens the scope of the Intergovernmental Working Group beyond transnational corporations so that the discussion can also cover all other enterprises. The discussion cannot be limited to transnational corporations as many abuses are committed by enterprises at the domestic level. In today's globalized world, there are complex business networks and many different modes of operation between transnational corporations and a vast number of other enterprises operating at the domestic level. The tragedy in Rana Plaza illustrated this too well. On 24 April 2013, the Rana Plaza building in Bangladesh housing five garment factories that manufactured goods for major retail companies collapsed: more than 1,100 people were killed and thousands of others were injured. Four years on, we find it rather shocking that some insist that the scope of our discussion should be limited to transnational corporations, de facto excluding the possibility to address this and many other incidents. [We appreciate the efforts of the Chairperson-Rapporteur and the Mission of Ecuador as well as the flexibility of all sides to allow for an agreement at the last hour on the Program of Work].

We are pleased to see that other UN tracks allow for pragmatic and tangible progress, with notably a much need focus on access to remedy. UN Human Rights Council resolution 32/10 by the core group (Argentina, Ghana, Norway, the Russian Federation) on "Business and Human Rights: improving accountability and access to remedy" sent the needed signal and commitment from all States that effective and pragmatic steps can be taken without delay to ensure accountability and access to remedy. Resolution 32/10 gave notably a new impetus to the OHCHR-led Accountability and Remedy Project. More recently, and also thanks to the leadership of Argentina, Ghana, Norway and the Russian Federation, resolution 35/7 gave a clear direction of work to the UN Working Group on Business and Human Rights. We welcome that the forthcoming Forum on Business and

Human Rights in Geneva on 27-29 November will focus on "Realizing effective access to remedy". In our view, all these tracks are geared towards tangible and concrete progress for States to implement the wide range of their existing obligations, and business enterprises to meet their responsibility to respect human rights.

As discussion on possible further legal developments begins, we would like to reiterate that we do not currently operate in a legal vacuum. It is enough to quote the first UN Guiding Principle as an illustration of existing obligations: *"States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication"*. Full implementation of these and other existing obligations would probably respond to the numerous cases documented by civil society organisations and human rights defenders. We need collectively to move forward for a proper implementation of existing obligations. We stand ready, including during this session, to share our experience in the development of a smart mix of voluntary and regulatory measures, and to continue to cooperate with States and stakeholders from across regions.

As discussion on possible further legal developments continues we would like to refer once again to a quote from the architect of the UN Guiding Principles, Prof. John Ruggie, former Secretary-General's Special Representative for Business and Human Rights: *"Let there be no misunderstanding: this debate is not about legalization as such. Nor is it about the tired dichotomy between voluntary and mandatory measures. Treaties, after all, are voluntary in that no state can be forced to adopt one, while the Guiding Principles, which are typically described as being voluntary, embody existing mandatory requirements and have given rise to new ones. The debate instead is about carefully weighing the extent to which different forms of legalization are capable of yielding practical results where it matters most: in the daily lives of people around the world—and in the here and now, not some far-off idealized state of being. 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. In contrast, international legal instruments as precision tools, reinforcing and building upon foundations that have been painstakingly established, offer far greater promise."^{*}

We developed this argument at the second session and hoped that the discussion would move towards international legal instruments as precision tools. It seems that we were not heard well. The Chairmanship of the Intergovernmental Working Group seems to have instead opted for the option of an "all-encompassing business and human rights negotiation" risking to delay progress. Without prejudging the outcome of the upcoming discussion, we would like to reserve our position on the document presented to us. We would like our position to be accurately reflected in the report of this session and invite the Chairperson-Rapporteur to indicate already at this stage that that the report will attribute the positions with a view of having a clear record.

The European Union recalls that the global consensus reached on the UN Guiding Principles on Business and Human Rights came as a result of broad, sustained and in depth consultations with States and all stakeholders. We believe that any possible further steps regarding the international legal framework for business and human rights at UN level must be inclusive, firmly rooted in the UN Guiding Principles and address all types of companies. With this understanding, we will do our utmost to engage in this session and other fora. We look forward to meaningful discussions with all States and relevant stakeholders, including civil society organisations, trade unions and the business community.

I thank you Mr. Chairperson-Rapporteur

^{*} <https://www.ihrb.org/other/treaty-on-business-human-rights/a-business-and-human-rights-treaty-international-legalisation-as-precision>