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UNCLASSIFIED

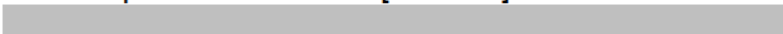
To: **Lotte KNUDSEN – Managing Director Human rights - Global and Multilateral issues**


Subject: HRC – Second session of the “treaty process” on TNCs and other enterprises: a brainstorming, 

Summary: The second session of the Ecuador-led Human Rights Council Intergovernmental Working Group on “an international legally binding instrument on Transnational Corporations and other Business Enterprises with respect to human rights” concluded its brainstorming with much participation from academia and civil society organizations, and less from States. While the EU participation smoothened the process, observers can easily forecast some storm in the run up to the third session given the continued divergences on the principle of elaborating a treaty and its possible content. Indeed, as per resolution 26/9, the process is due to move to the negotiations of a draft treaty at the third session, probably in October 2017. 



Details:

1. The second session of the Human Rights Council's Intergovernmental Working Group on “an international legally binding instrument on Transnational Corporations and other Business Enterprises with respect to human rights”, pursuant to resolution 26/9, ended on 28 October with the adoption of the Chairperson-Rapporteur's report ad referendum [attached] and a deadline of 11 November 2016 to provide comments. 



* With thanks to  and to  for their support in covering the session.

[REDACTED]

2. Overall, the second session and several side-events served the purpose of a brainstorming exercise with contributions from academia and other stakeholders expressing different views: whether the future treaty should apply to States or create obligations on companies; whether it could be satisfactory to use the current Treaty Bodies, or whether new institutions should be set up, such as an international court or a UN Commission of Business and Human Rights – [REDACTED]

Discussions also touched on extraterritorial obligations and possible positive obligations for companies to contribute to human rights. Links were often made by academics and NGOs between this process and other issues: bilateral investment treaties; investor-state dispute settlements; trade agreements; tax evasion. [REDACTED]

[REDACTED]

[REDACTED]

3. The participation of States remained limited: [REDACTED]

[REDACTED]

4. Given the continued absence of key players (e.g. US, Canada) and the limited involvement of States, the EU participation was even more noticed. [REDACTED]

[REDACTED]

5. While the EU participation was broadly welcome in the room as well as on Twitter, some NGOs called for a more active participation of the EU and EUMS on content. In contrast with the limited participation of States, NGOs indeed remained the driving force of this process. Testimonies of victims and human rights defenders came with a high degree of frustration regarding the asymmetry between powerful transnational corporations and States with some openly advocating to "dismantle corporate power". Following on the meeting held at the beginning of the week, EUDEL met NGOs in two other private meetings on 27 and 28 October. EUDEL also attended the several side event organized by civil society organizations throughout the week.

[REDACTED]

[REDACTED]



Signed

Sign-off: 

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