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Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Statement by

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Mr Chairperson, Excellencies, Distinguished Delegates, Ladies and Gentlemen:

I'm honored to be here today to take part in this exchange of views between the United Nations and the Council of Europe on human rights. We've had the chance this morning to hear about various opportunities for our organizations to help reinforce our common aims and objectives around human rights.

What I'd like to do now is focus in on one topic --human rights and business— to give you a sense of how that reinforcement and collaboration between the United Nations and the Council of Europe works in practice.

I'd like to cover 3 areas:

- First, why addressing the human rights impacts of businesses is so important, and how the UN Guiding Principles fits into this space.
- Second, what the UN Working Group on Business and Human Rights, of which I am a member, is doing on this issue and how we're already collaborating with the Council of Europe.
- Third, I'd like to offer some ideas on how we can extend and deepen our collaboration in the coming years in four specific areas.

I'll start with why this field is so important.

Everyone in this room would agree, I think, that business can have a tremendous impact on human rights – both positively and negatively. We all know that companies create jobs, build infrastructure and promote innovation. But we also know that, sometimes, they create exploitative jobs, they build infrastructure through corruption, and they innovate in ways that damage the environment and leave host communities paying the bill.

For decades, we debated what this tremendous potential for impact meant for the responsibilities of companies. Particularly as they started operating further and further from their home countries, in places where they were more powerful, and more present, than the governments hosting them. Some argued that the power of business actors gave them human rights obligations, that they should criticize oppressive governments and use their economic power as a carrot or a stick to push governments toward better human rights practices. Some argued that businesses should promote and secure human rights themselves, for example, by building hospitals and schools in locations where the government couldn't or wouldn't provide them. At the opposite end of the ideological spectrum, others argued that human rights obligations applied exclusively to states. If governments didn't pass laws to protect the population from labor abuses or environmental damage, then businesses couldn't be expected to go above and beyond, and start policing themselves. Under this perspective,

government were zookeepers. It was their obligation to lock the cages, not the animals' responsibility not to escape

This debate ended in 2011, with the unanimous endorsement of the UN Guiding Principles on Business and Human Rights. This didn't happen overnight, of course. The Principles were the culmination of a huge global consultation process that lasted six years and involved hundreds of government, business and civil society actors. The process was led by the Harvard professor John Ruggie (so these are sometimes informally called the 'Ruggie Principles'). At the end, they reached agreement on three broad principles, or 'pillars':

- First, governments are responsible for protecting people from abuses by companies. This doesn't mean just prohibiting them by law. Governments have to systematically create an environment that rewards good business practices and punishes bad—from inspecting workplaces to prosecuting violations to following their own standards in public procurement and state-owned enterprises.
- Second, companies have to respect human rights, wherever they operate. Regardless of whether the government takes up its own responsibility, companies have to know their human rights impacts and take concrete steps to address them. If companies want to pursue corporate philanthropy or promotional development activities, that's fine, but it doesn't offset their obligation not to violate the rights of their workers, consumers and host communities.
- Third, victims of human rights abuses by companies must have access to effective remedy. That means national courts and ombudsman institutions, but also company grievance mechanisms.

Since then, the focus has shifted to bringing these principles into practice.

These are, after all, only the rules. All the players still have to follow them. The UN Guiding Principles provide the framework for solving human rights and business dilemmas and clarifying the roles and responsibilities of each actor. But to apply them in the real world, we have to tailor that frame for the actor and the context. That's the job we face now.

The UN Working Group on Business and Human Rights, of which I am a member, focuses on the implementation of the UN Guiding Principles. We are a five-person team of independent experts appointed by the UN Human Rights Council. We're mandated to get the UN Guiding Principles out there, off the UN paper and into real world practice.

We do this by taking the frame of the UN Guiding Principles, and shaping it to fit at four different levels. I'd like to elaborate briefly on those, as a way to illustrate the areas where the Council of Europe has already collaborated with us, and to suggest where more can be done.

THE FIRST AREA WHERE WE'RE EMBEDDING THE UN GUIDING PRINCIPLES IS AT THE NATIONAL LEVEL.

The UN Working Group undertakes country missions each year to examine how the Guiding Principles are being embedded into specific national contexts. Our most recent mission was to Azerbaijan, a member of the Council of Europe, last August. Our report on that visit will be submitted to the UN Human Rights Council and discussed in an interactive dialogue in June.

Missions target a single state individually. To apply the Guiding Principles in every national context around the world, the Working Group promotes the development of National Action Plans on the UN Guiding Principles. We've studied early efforts of States and released general guidance on how to develop these plans. That includes essential elements like engaging with businesses and affected communities, and tailoring the process to local conditions.

The five states that have already completed National Action Plans are all Council of Europe members, though the 20 or so processes underway at the moment are in all regions of the world. That's where the Council of Europe comes in: Your member states have an important role to play in helping these efforts, both in promoting this approach to countries without National Action Plans, and in sharing your experiences and lessons with countries who are early in the process.

It was also very helpful to have the Council of Ministers' Declaration last April supporting the UN Guiding Principles: it stressed the importance of National Action Plans as the central vehicle for implementation. I hope we can continue to collaborate on this push for National Action Plans in Europe and beyond.

THE SECOND AREA WHERE WE'RE EMBEDDING THE GUIDING PRINCIPLES IS AT THE REGIONAL LEVEL.

The UN Working Group holds a regional forum each year to discuss challenges and opportunities in implementing the Guiding Principles in the specific regional context, and works to galvanize regional efforts.

Our first was in Latin America in 2013, after which the Organization of American States made a Declaration supporting the Guiding Principles. Our second was in Africa in September 2014. The African Union has committed to developing an African framework on human rights and business, and it is now working with the EU to include business impacts in the AU-EU Human Rights dialogue later this month. Our 2015 Regional forum will be in Asia. We'd like to see a Council of Europe representative at the Asia forum, sharing the experience from your work.

The Council of Europe has, after all, been a leader in helping to promote this regional embedding. The Council's Declaration supporting the UN Guiding Principles recognizes them as the "globally agreed baseline" for the work of the Member States of the Council of Europe and the Council itself. And that work continues with the effort to create a non-binding human rights and business instrument. My colleague, Dr Michael Addo, has addressed and engaged the working group in charge of that effort, and I understand we'll hear more about that from Professor LaFaber later in this session.

THE THIRD AREA OF EMBEDDING THE GUIDING PRINCIPLES IS AT THE SECTOR LEVEL.

A pharmaceutical company will be more concerned with issues like the right to health, testing on human subjects and access to medicine. An extractive company will be more concerned with issues like environmental pollution and the conduct of security forces guarding their installations. So the type of company matters a lot in the implementation of the Guiding Principles. In response, industry organizations, like the International Council on Mining and Metals (ICMM) and IPIECA, the oil and gas industry sustainability body, have expressed support for the UN Guiding Principles and are working to implement them through sector-specific tools and guidance.

Just last month I was in meetings with companies from the oil and gas sector, discussing dilemmas for how we address human rights impacts at a collective level. If you're just one company operating in an area with 5 others, and the entire sector is destroying the local environment, how do you manage your part of the impact? How would you set up a company grievance mechanism, for example—would you accept only one-fifth of the cases that the community brings to you? I'm vastly oversimplifying, but to illustrate a point: Sector organizations and companies are rolling up their sleeves and getting into some tough, but necessary, discussions.

I understand the Council of Europe offers a good space for engaging in some of the deeper thinking about how sectors relate to human rights too. Your work on Internet Governance and your Steering Committee for Media and Information Society are examples of this. This learning and development on sector-specific impacts, while generated in Europe, is transferable and applicable around the world. But could it be put into a more explicit Guiding Principles framework—where these groups not only address the responsibilities and actions of governments, but also discuss what measures businesses in the IT sector can and should take to respect rights like privacy and freedom of expression, as well as access to remedy when things go wrong.

FINALLY, ALONGSIDE THESE NATIONAL, REGIONAL, AND SECTOR LEVEL INITIATIVES, A GREAT DEAL OF WORK NEEDS TO TAKE PLACE AT THE GLOBAL LEVEL TOO.

First, we need to pull all of the knowledge and learning together from all these national, regional and sector efforts so we can learn from and build off each other's efforts. To do that, UN Working Group holds an Annual Forum on human rights and business each year in Geneva. Last year we brought

together 2,000 people from 130 countries to discuss challenges and share experiences on the implementation of the UN Guiding Principles.

A notable intervention at the Forum was made by the Chair of the Council of Europe's expert group, Professor René Lefeber, who shared information on the Council of Europe's activities and your Declaration on the Guiding Principles, so that other regional organizations could benefit from this experience.

One further effort underway at the international level is worth mentioning. Last year the UN Human Rights Council established an inter-governmental working group on a legally binding instrument on transnational companies and human rights. The question of what this instrument will cover and what form it will take are still open for discussion. But it's critically important that this effort builds upon, and complements, the UN Guiding Principles on Business and Human Rights. I hope the Working Group and the Council can work together in this respect, and contribute to making these deliberations a valuable development for our field.

To close, I want to come back to the point I started with: the huge impact that companies have on human rights—both good and bad. There is no debate about this impact, and there is no debate that we have to design our national and international governance systems to manage it. We need to ensure that the power and drive of business works toward the interests of society, rather than against it. The Guiding Principles, simply put, are the way forward for doing this, that our world has agreed upon.

Thank you.