

**European Union**

**UNITED NATIONS
HUMAN RIGHTS COUNCIL**

**Open-ended intergovernmental working group on transnational corporations

and other business enterprises with respect to human rights**

**4th session (15-19 October 2018)**

**Opening remarks by the European Union**

**Geneva, 15 October 2018

- CHECK AGAINST DELIVERY -**

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Mr. Chairperson-Rapporteur,

The European Union would like to thank the speakers in the opening statements. We express our appreciation to the Secretariat for its work in preparation of this fourth 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 enterprises, and to enable access of victims to remedy when abuses occur. We agree that more needs to be done to prevent, investigate, punish and redress adverse human rights effects of business activities. As we stated during the 3rd session of this Intergovernmental Working Group, testimonies given by victims remind us that current discussions should not serve as an excuse to avoid providing remedy for victims waiting for justice now

We also increasingly see that companies recognize the merit of taking tangible steps to ensure respect for human rights throughout their operations and to seek to prevent advert human rights impacts directly linked to their operations, products or services. Promising initiatives are also underway in the areas of trade, investment and finance.

Mr. Chairperson-Rapporteur,

The international community needs to respond in an appropriate and effective manner. We underline the word "effective" as we believe in effective multilateralism. Therefore, four years after Human Rights Council resolution 26/9 was adopted, we would have liked that the two main sponsors take genuine steps to address the concerns expressed by us and others with a view to overcoming divisions. Unfortunately, most proposals made by us or others to find ways to build consensus have not been taken into account – including the proposals to revert to the Human Rights Council to adopt a new resolution, which could have reaffirmed the mandate for the elaboration of a legally binding instrument, while allowing rethinking the best way forward on process.

We also regret that our proposals for the Program of Work of this session have not been taken on board, as they are substantive proposals. Most States and stakeholders worldwide have concerns with the footnote of resolution 26/9 restricting the scope to transnational corporations. We regret that a footnote allowing the discussions to cover all companies, and agreed by all for the second session, was not accommodated. This is not a procedural matter, but a real substantive issue. 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. Covering all companies is important to ensure non-discrimination and a level playing field. Of course we could apply possible criteria of size and other characteristics, as per principle 14 of the UN Guiding Principles, and also enshrined in EU legislation. Civil society organizations and human rights defenders have documented countless cases of business-related abuses at the domestic level: is the restriction of resolution 26/9 a message that victims of such abuses would not benefit from the provisions of a new legally binding instrument?

We likewise regret that the proposal to invite Prof. Ruggie, former UN Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises and architect of the UN Guiding Principles on Business and Human Rights (UNGPs), to deliver a keynote address at the opening of this session was not accommodated – it would have been possible to accommodate a second keynote for the opening. Again, this is not a procedural matter, but a real substantive issue. An address by Prof. Ruggie would have helped us all to recall and reaffirm the global consensus around the UNGPs and their implementation, and how to build on them as a foundation for further international legal developments in Business and Human Rights. In this regard, we draw attention to the Open Letter published by Prof. John Ruggie on 9 October 2018 providing useful guidance for deliberations in this room and beyond [[‘Guiding Principles’ for the Business & Human Rights Treaty Negotiations: An Open Letter to the Intergovernmental Working Group](https://www.business-humanrights.org/en/professor-john-ruggie-provides-guiding-principles-for-the-business-human-rights-treaty-negotiations-in-open-letter)]. Is there any reason for the "draft legally binding instrument" not to refer to the UN Guiding Principles?

Despite these and other concerns, we have refrained from challenging the election of the Chair-Rapporteur or the adoption of the Program of Work as this could have potentially delayed the start of this session. We have instead come once again to convey our expectations for a transparent and inclusive process. Any Intergovernmental Working Group is expected to be chaired in line with principles set out in the UNGA Rules of Procedures and Annex I - including "impartiality", "respect for the rights both of minorities as well as majorities".

Mr. Chairperson-Rapporteur,

We would like now to make further remarks on substance. Much has been done within the EU and beyond to implement the UN Guiding Principles on Business and Human Rights, the existing authoritative framework. The UN Guiding Principles have been and remain the starting point and compass for EU engagement in the field of Business and Human Rights and unfolding their full potential through worldwide implementation remains our priority.

Within the EU we have developed a smart mix of voluntary and binding regulatory measures, at European and national level. We have developed legislation both at EU and Member States level and do not shy away from binding norms when they are needed. To mention but a few that are widely recognized at the global level, and can be potentially replicated elsewhere: the EU regulation on conflict minerals ((EU) 2017/821); the EU Non-financial reporting directive (2014/95/EU); and public procurement rules. The EU also has legislation on victims' rights granting victims access to justice. The Brussels I Regulation ((EC) No 44/2001, recast) for example enables to take European domiciled companies to European courts for damages caused and/or arising outside the Union. The Rome II Regulation establishes the applicable law for tort cases, including torts relating to human rights infringements. We can also draw on the provisions of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime. In the area of international judicial cooperation, the EU is actively participating in the work in the framework of the Hague Conference on Private International Law.

We are intensively working both internally and with partners from across regions to implement the UNGPs with a wide range of policies, project and tools. Already 15 EU Member States have adopted a National Action Plan. We are determined to work swiftly with partners across regions for the adoption and implementation of more National Action Plans. One such illustration is the ambitious project developed by the EU under the EU Partnership Instrument on Responsible Business Conduct in Latin America and Caribbean which will inter alia allow working with the governments of Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama and Peru in the establishment and/or implementation of National Action Plans. Likewise, EU Member States have been engaging with partner countries in different world regions to jointly implement measures which aim at aligning policy frameworks with the UNGPs and building relevant capacities in the social, judicial and business sectors to better realise human rights due diligence and access to remedy in very concrete forms. The recently adopted OECD Due Diligence Guidance for Responsible Business Conduct will provide support to enterprises on the implementation of the OECD Guidelines for Multinational Enterprises to avoid and address adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance that may be associated with their operations, supply that may be associated with their operations, supply chains and other business relationships.

Mr. Chairperson-Rapporteur,

The EU also welcomes the progress made at the UN level thanks to the leadership in the UN Human Rights Council of the core group on Business and Human Rights (Argentina, Ghana, Norway, Russian Federation). We would like to particularly highlight the various work streams of the UN Working Group on Business and Human Rights[[1]](#footnote-1), and the fast approaching annual Forum on 26-28 November. We thank the High Commissioner and the Office of the High Commissioner for Human Rights for the continued leadership on the Accountability and Remedy Project with findings and concrete recommendations allowing for tangible progress in the implementation of third pillar of the UN Guiding Principles on access to remedy. It is important that all these work streams at the UN level can bear fruit and that their substantive existing and future results be fully mirrored and valued also in the discussions in this session or in other formats.

We are also pleased to see progress in other initiatives such as the first Ministerial of the Alliance for Torture-Free Trade and the Political Declaration issued on 24 September 2018 in New York which, inter alia, requested the UN Secretary-General to *"establish a group of governmental experts to examine the feasibility, scope and draft parameters for a range of options including a legally binding instrument to establish common international standards for the import, export and transfer of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment."*

As discussion on possible further legal developments is planned this week, we would like to reiterate that these exchanges do not take place in a legal vacuum. The UN Guiding Principles recall a set of existing obligations. It is enough to quote the first UN Guiding Principle: *"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 the existing human rights obligations by States to protect against abuses within their own territory and their own jurisdiction would respond to the numerous cases referenced in the context we currently discuss.

We also need to address a series of legitimate questions about implementation of current or indeed any future obligation. How can victims expect to have access to justice and to remedy in cases of abuses related to business activities in a State where the legislation fails to comply with existing international human rights law? In a State where the judiciary system is not independent? In a State where corruption impacts negatively on the fulfilment of all human rights? If a new legal instrument was to be created why would victims believe that those States currently failing to protect human rights would implement new obligations?

Mr. Chairperson-Rapporteur,

We believe the added value of any possible legally binding instrument should be to enhance the protection of and respect for human rights as well as to ensure a level playing field for companies globally. Therefore, it is essential for any proposal to reach sufficient traction amongst UN member states. We are aware that a number States are not in the room, and that many more are not ready to engage in negotiations in the current format. It is also important to ensure policy coherence and avoid any duplication of efforts. We have been reflecting internally about which type or format of a legally binding instrument would stand the best chance of achieving this level playing field.

On the basis of these various considerations from the EU’s perspective, we are not yet at a stage where a formal negotiating mandate could be sought to engage in this format of discussions. The EU therefore reserves its position on the draft legally binding instrument presented in this session and requests that this reservation be recorded in the report of this session. We look forward to listening to the positions expressed by all and expect that the report of the session will reflect accurately and nominally all views and positions.

In closing, the EU is committed to building on our solid set of legislation and policies and to working globally with all States and stakeholders to make genuine progress on the Business and Human Rights agenda. We are committed to continuing to engage at the UN level or in other formats to consider the best way to ensure that any further legal development addresses the real needs to prevent abuses and ensure access of victims to remedy when abuses occur. We are committed to a meaningful and tangible progress on Business and Human Rights as this agenda is connected to wider issues, linking the promotion and protection of human rights to other global issues: trade, investment, environment, social and labour protection, tax evasion, corruption, and the list is long. In short, collectively, we need to harness globalization.

I thank you Mr. Chairperson-Rapporteur

1. Link to the latest contribution by the European Union, dated 20 June 2018: Consultations by the UN Working Group on Business and Human Rights on “Corporate human rights due diligence – identifying and leveraging emerging practice” <https://www.ohchr.org/Documents/Issues/Business/WGSubmissions/2018/EU.pdf> [↑](#footnote-ref-1)