**UN Human Rights Council**

**6th Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises with respect to Human Rights**

**Statement by the Government of the United Kingdom**

**of Great Britain and Northern Ireland**

**26 October 2020**

Thank you, Chair.

We would like to begin by expressing our gratitude to OHCHR for organising this session in a hybrid - physical and virtual - format, and for thereby enabling the essential participation of civil society organisations and business stakeholders in this week’s session.

We are also grateful to the Chair for circulation on 6 August of the revised text of the proposed treaty. We have analysed and considered it carefully.

Before commenting on that text, we recall that the UK was the first country in the world to produce a National Action Plan for implementation of the UN Guiding Principles on Business and Human Rights, in 2013. In 2015, our innovative Modern Slavery Act introduced requirements on businesses to report on the steps they take to tackle modern slavery in their operations and global supply chains. And in 2016, after further broad consultation with business and civil society, we were the first country in the world to publish an updated National Plan Action. We take business and human rights seriously.

It is regrettable, therefore, that the process adopted by this intergovernmental working group does not engender serious engagement. By failing to return to the Human Rights Council in 2017 when the group’s mandate was due to be renewed, the leadership of this group forfeited a key moment to secure both cross-regional political backing for its continuation, and the Council’s guidance for its direction. Instead, year after year, fewer and fewer delegations appear here, in this negotiation room. This absence signifies not apathy for this important topic, but lack of faith in the text before us.

It is of course true that the text has improved incrementally over the last three years: for example, it applies to all business enterprises, not only to transnational corporations; and the current version expressly applies to state-owned enterprises too.

But fundamental flaws remain. In the UK’s view, the current draft is incompatible with a several key principles of international law. Rather than engage in line-by-line critique, we will set out today our key concerns:

First, the scope of this draft is too vague to be workable. Preambular Paragraph 8 and Article 6 extend its application beyond States parties’ “territory and jurisdiction” to businesses which are somehow “otherwise under [their control]”. Article 3.3 applies the treaty to “all internationally recognised human rights”, including those found in ILO conventions and customary international law. Compounded by the breadth of the jurisdictional provisions, this category of rights is imprecise and indeterminate. And Article 4, as well as duplicating existing human rights, gifts new rights to a generic category of “victims”, rather than framing the rights of victims with reference to the obligations imposed on States which are party to the treaty.

Second, the legal liability provisions create unrealistic burdens on business, far beyond the standards of due diligence: Article 8, as drafted, means that businesses could be held liable for human rights abuses “from their business relationships”, even if harms perpetrated by other businesses are unforeseen and appropriate due diligence is carried out. This legal burden is simply unworkable.

Third, the provisions on adjudicative jurisdiction appear to breach key principles of sovereignty and due process. Article 9 requires the courts of a given State party to hear claims against businesses for abuses, acts or omissions on the State’s territory, even if there is another jurisdiction which is more convenient or in which parallel proceedings are underway. Most egregiously, this provision requires the courts of a State party to hear a claim under this treaty against a business even if the State where the business is domiciled is not a party to the treaty.

For these and other reasons, the UK remains sceptical that this text can gather the political support that it would need to succeed in our shared goals of enhancing respect for human rights by businesses globally, and ensuring access to effective remedy for all victims.

As things stand, the landmark UN Guiding Principles remain the most clear, global and legally sound framework for putting respect by businesses for human rights on governments’ respective national agendas. Next year will be the Principles’ tenth anniversary. We remain unwavering in our commitment to their implementation, nationally and internationally. And we look forward to supporting the OHCHR in their mandate to support their dissemination and implementation over the course of the next decade.

Thank you.

725 words