

***Permanent Mission of Brazil to the United Nations in Geneva***

**Human Rights Council**

**Open Ended Working Group on the elaboration of a international legally binding instrument on transnational corporations and other business enterprises with respect to human rights – OEIGWG – 4th session**

**October 15th 2018**

Mr. President,

I take this opportunity to congratulate Ambassador Luis Gallegos for his election as the chair of the Open Ended Working Group on the elaboration of a international legally binding instrument on transnational corporations and other business enterprises with respect to human rights.

I would like to thank Ecuador for presenting the zero draft of the binding instrument on business and human rights.

As Brazil has highlighted on previous occasions, we reiterate our view that limiting the scope of the instrument to transnational activities of companies may create protection gaps and render implementation ineffective. In line with the Guiding Principles on Business and Human Rights (UNGPs), an internationally binding instrument should apply to all business enterprises, regardless of size, sector, location, ownership and structure.

Brazil believes that the UNGPs should be the basis for the future binding instrument. We should build on the existing guidelines to elaborate the normative framework for business enterprises, in all their activities. In this regard, we believe that the proposed definition of "transnational activities" gives rise to the perception that certain categories of companies are not obliged to follow human rights standards and that states need not regulate them.

We are pleased to note that the draft text addresses the crucial area of prevention, in order to avoid human rights violations and abuses from occurring in the first place. In this sense, Brazil shares the view that states hold the primary responsibility under international law for the promotion and protection of human rights. We also believe that it is incumbent upon governments to exercise due diligence to prevent violations and abuses and ensure accountability for the actions of business enterprises that take place within its territory or jurisdiction.

As the draft currently stands, however, it is not clear to us how due diligence measures can be undertaken on the "transnational activities" of business enterprises, since these business operations by definition normally take place in other jurisdictions. The text appears, also, to be silent on the question of due diligence on local business activities of transnational enterprises, which may also have a bearing on human rights.

Likewise, Brazil considers that the definition of the appropriate jurisdiction, the applicable law and the consistency of international obligations are central to the operationalization of the proposed agreement. We understand that the "international activities" undertaken by business enterprises poses challenges for state authorities in the enforcement of human rights standards, which merits special consideration. As contained in the draft, the proposed disciplines raise risks of unwarranted litigation, forum shopping and legal uncertainty which may hamper business activities, without necessarily protecting the human rights of affected individuals.

Given the complexity of the issues raised in the draft binding instrument and the potential impact on foreign activities of business enterprises, Brazil believes that we must proceed with caution in our deliberations, building consensus and bridging gaps to reach a common understanding.

In this regard, we welcome the initiative taken by Ecuador to publish the proposed work program for the current OEIWG meeting, together with draft program for the next session.

Brazil is convinced that the current session can contribute to improve our understanding of the draft and promote convergence between negotiating parties. There is a long road ahead. We are ready to engage constructively with member states and civil society on this important matter.

I thank you.

(556 words)