

FROM:
Yves Moreau
Hertogstraat 149
B-3001 Leuven
Belgium

TO:
Open-ended intergovernmental working group on transnational corporations
and other business enterprises with respect to human rights

Office of the United Nations High Commissioner for Human Rights
Avenue Giuseppe Motta 48
UNOG-OHCHR, CH-1211 Geneva 10

igwg-tncs@ohchr.org

Dear Members of the Working Group:

I read with the greatest interest the draft report on a legally binding instrument on human rights and transnational corporations. I thank you most sincerely for your groundbreaking work.

I work on large-scale human rights abuses involving DNA fingerprinting in the western Chinese province of Xinjiang. I was also involved in earlier efforts to push back successfully against similar abuses in Kuwait. Abuses of DNA fingerprinting technology in Xinjiang have only been possible because of the active cooperation of a transnational corporation, Thermo Fisher Scientific, which has supplied DNA fingerprinting technology to Chinese authorities in a reckless manner. Related abuses of camera and internet surveillance technology have similarly involved major international corporations (see for example the ongoing US Supreme Court litigation of *Doe v. Cisco Systems, Inc.*). I have become painfully aware of how large-scale human rights abuse often rely on large-scale supply of technology by transnational corporations and of how current legal instruments in this regard are dramatically lacking.

In a recent breakthrough, Thermo Fisher Scientific has just announced that it would stop the sales of its human identity DNA fingerprinting solutions in Xinjiang (see attachment). Particularly relevant in this announcement is the acknowledgement by Thermo Fisher Scientific that “we recognize the importance of considering how our products are used - or maybe used - by our customers”. This demonstrates that Thermo Fisher Scientific is fully aware of the issues raised by the sales of its products.

I therefore welcome the efforts on the development of a legally binding instrument on human rights and transnational corporations. One dimension that would be worth stressing more explicitly is legal responsibility for product use by customers, if the products play a causal role in human rights abuses and if such abuses were reasonably

foreseeable. The usual standards for penal and civil responsibility are relevant here. Transnational corporations should be liable for purposely, knowingly, recklessly, or negligently aiding and abetting human rights abuses by third parties, in particular by states where they carry out business activities, through their activities or through the sales of their products. Language in the spirit of Articles 16-18 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts might be worth considering for the legally binding instrument.

Another aspect worth considering is that national corporations in a state committing human rights abuses are in first instance beyond the reach of this legally binding instrument. This is the case in abuses of DNA fingerprinting technology in China where national corporations might jump in when foreign corporations stop their activities. To avoid creating an uneven playing field and therefore discourage transnational corporations from abiding by their human rights duties because "someone else will sell it anyway", it would be essential to foresee sanctions for those national corporations when they export their products, and therefore act as transnational corporations.

I personally believe that the development of legal instruments regulating transnational business activities linked to human rights abuses might be the most important way to promote human rights. I therefore thank you for your efforts and encourage you to persevere even in the face of adversity and discouragement.

Best regards,

Prof. Yves Moreau
University of Leuven
Belgium

Responsibility of States for Internationally Wrongful Acts (2001)

Article 16

Aid or assistance in the commission of an internationally wrongful act

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.

Article 17

Direction and control exercised over the commission of an internationally wrongful act

A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.

Article 18

Coercion of another State

A State which coerces another State to commit an act is internationally responsible for that act if:

- (a) the act would, but for the coercion, be an internationally wrongful act of the coerced State; and
- (b) the coercing State does so with knowledge of the circumstances of the act.

Thermo Fisher Scientific Statement on Xinjiang



Statement

Updated Statement on Xinjiang February 20, 2019

Attributable to “the Company” or “a Company spokesperson”:

At Thermo Fisher Scientific, we design our products with great care, follow rigorous trade export policies, and work with governments to contribute to good global policy overall. As the world leader in serving science, we recognize the importance of considering how our products and services are used – or may be used – by our customers. We undertake fact-specific assessments and have decided to cease all sales and servicing of our human identification technology in the Xinjiang region – a decision that is consistent with Thermo Fisher’s values, ethics code and policies.

We are proud to be a part of the many positive ways in which DNA identification has been applied, from tracking down criminals to stopping human trafficking and freeing the unjustly accused. We are committed to continuing to deliver those benefits to our customers, consistent with our mission to enable our customers to make the world healthier, cleaner and safer.

Ronald J. O'Brien
Senior Director Public Relations
Thermo Fisher Scientific
168 Third Avenue
Waltham, MA 02451
781 622 1242 *office*
781 690 7553 *text or mobile*
ron.obrien@thermofisher.com