

55th regular session of the Human Rights Council
Presentation of the report on the 9th session of the Open-ended Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights, by
Ambassador Cristian Espinosa Cañizares, Chair-Rapporteur of the OEIGWG and Permanent Representative of Ecuador to the United Nations in Geneva

Geneva, 15 March 2024

Mr. Vice President,
Dear Members and Observers of the Human Rights Council
Dear colleagues and friends,

I have the honour to address you in my capacity as Chair-Rapporteur of the Open-ended Intergovernmental Working Group, established by this Council in 2014, through its Resolution 26/9, with the mandate to "*elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises with respect to human rights*".

According to the mandate and practice of our Working Group, I present the report of its 9th session, held from 23 to 27 October 2023, but I also wish to share with the Council my personal assessment of that session, and a proposed way forward to enhance our joint capacity as Member States, together with all the other relevant stakeholders, to deliver on our core mandate.

The 9th session had the participation of nearly 80 States Members of the United Nations, several international organizations, national human rights institutions and a significant number of non-governmental organizations. It also counted with the most valuable support of the Office of the High Commissioner, whose professional and commendable work continues to be fundamental not only for the session itself but also during the intersessional period.

In that regard, I wish to extend my gratitude to High Commissioner Volker Türk, who in his opening remarks stated that "*elements of the updated draft of a legally binding instrument are aligned with the UN Guiding Principles*". A future instrument that is fully with those Principles would "*level the playing field, ensuring that business operating in all regions adhere to the same standards worldwide, contribute to sustainable*

development, empower communities, foster economic growth, and contribute to a more inclusive global society”.

During that session, after some clarifications on the updated draft of the legally binding instrument, published in July 2023 and prepared in accordance with the recommendations and conclusions of the eight session, the programme of work was adopted by consensus.

Then all delegations were able to share, in their general statements, their considerations on the updated draft, including on the scope of the instrument, the protection and promotion of human rights in the context of business activities, the prevention of human rights abuses by companies, the guarantee of access to justice and effective redress for victims, as well as on the strengthening of international cooperation in that regard.

During the time allocated for the negotiation of the updated draft legally binding instrument, I started to present article by article, the changes introduced, as a result of a consensual proposal grounded on previous consultations through the Friends of the Chair, and with a view to simplify the language, without affecting the ability of the future instrument to achieve its core objective.

In that regard, I received textual proposals and comments on the initial articles by States and other relevant stakeholders, and I had the honor to facilitate direct intergovernmental negotiations.

Due to time constraints, the working group was able to negotiate only the preamble and Articles 1 to 3, but I recognize in particular, the constructive spirit and interactive participation of a significant number of States, which put forward different positions that helped us to improve the text.

That level of engagement in this negotiation phase should be seen as a sign of an increased commitment of several States and stakeholders on the concrete progress of this working group, notwithstanding the persistence of important areas of convergence, as well as key topics of divergence which would surely require to strengthen and deepen direct intergovernmental negotiations in the future sessions.

Additionally, it is important to strongly highlight that my Presidency never had the intention to modify the original mandate of the Working Group, but only to enhance its capacity to fully comply with that mandate in an effective and efficient manner. Each and every proposal made by my Presidency had the only objective to speed up the negotiations, especially on some key fundamental substantive issues, in order to foster a concrete outcome-driven process.

We must recognize that this process cannot continue at the pace at which the process has been developing so far. The Working Group needs to incorporate certain tools that help us to reach pragmatic consensus on the most sensitive issues of the future legally binding instrument, including with a more concrete timeframe.

Therefore, I am very pleased that in spite of our differences on some substantive issues, all the participants of the working group were able to agree on a common vision reflected in the recommendations of the 9th session, by seeking to create conditions for a more constructive dialogue with all relevant stakeholders, and with a clear and consulted work-plan during the intersessional period towards the 10th session.

In that regard, among those recommendations, I would like to highlight the following ones:

- *“That due consideration be given to presenting a procedural decision to the Human Rights Council to request the additional human and financial resources necessary to move the process forward (...).”*
- *“That the Chair-Rapporteur hold consultations during the intersessional period, with the support of the friends of the Chair, on a methodology to advance more effectively the process for the elaboration of the legally binding instrument (...).”*
- *“That the Chair-Rapporteur convene intersessional, interregional thematic consultations to discuss the draft legally binding instrument, with the assistance of at least five legal experts (...) suggested by the Office of the United Nations High Commissioner for Human Rights. (...).”*

Mr. Vice President,

I intend to fully comply with all those recommendations and conclusions of the 9th session, building upon that common vision and with a view to generate a new momentum towards the full achievement of its mandate.

That is why, I would like to announce that my Presidency will undertake the following activities during the intersessional period ahead:

- First, I will present to this Council, a draft Procedural Decision for its consideration during the June session, requesting the additional human and financial resources necessary to move the process forward, in line with the mandate established by Resolution 26/9, and to enhance the support capabilities of the Office of the High Commissioner in the area of business and human rights.
- Second, a selection process of at least 5 Legal Experts will be soon launched, with the support of the Secretariat, to assist in the substantive discussions of the draft legally binding instrument.
- Third, I will convene consultations, with the support of the Friends of the Chair, on the methodology to be presented for the 10th session of the Working Group and its intersessional activities.
- Fourth, I will make efforts to conduct thematic consultations on prioritized elements of the draft legally binding instrument.

Thus, I will convene a first general consultation in April, right after the present session of the Human Rights Council, which will be open to all States and other relevant stakeholders, in order to discuss a proposed “Roadmap” to comply with the recommendations and conclusions of the 9th session.

Such first consultation of this year, together with other consultations and activities to be carried out until the holding of the 10th session in October, will be undertaken under the principles of inclusiveness, transparency and dialogue. Nevertheless, Me and my team at the Permanent Mission, we remain at your disposal for any questions, comments and suggestions.

To conclude, I trust that all States and other relevant stakeholders will take these proposals as a clear opportunity to participate in a more focused and pragmatic manner, and take decisive steps to move forward our working

group towards our common goal of enhancing the respect and protection of human rights in business activities, as well as the accountability and access to effective remedies for those harmed by such activities.

Thank you.