

## **Statement by the United States of America**

**As delivered by Catherine Peters**

**at the Open-Ended Intergovernmental Working Group on  
Transnational Corporations and Other Business Enterprises**

October 25, 2021

This year, for the first time, the U.S. government is participating in these Working Group meetings. While we continue to have serious substantive concerns with the text as well as the process by which it been developed thus far, we want to work with the Group to find a collaborative path forward to advance business and human rights.

We wish to thank members of the business and human rights community for their efforts in bringing attention to the important issues this treaty seeks to address.

As President Biden said to the UN General Assembly last month, I quote, “We will strive to ensure that basic labor rights, environmental safeguards, and intellectual property are protected and that the benefits of globalization are shared broadly throughout all our societies,” unquote. Promoting business and human rights is a key component of achieving this aim.

We appreciate the concerns, including those regarding access to remedy, that have motivated support for the treaty process. We also recognize the unacceptable use of violence against human rights defenders working on, among other things, labor, land, environmental and indigenous issues. We are aware of the many reports that this violence is increasing and agree that these issues need to be addressed.

Nevertheless, we continue to believe that the prescriptive approach set out by this draft treaty is not the best way to address these legitimate concerns.

In particular, we remain concerned with the draft Legally Binding Instrument's (LBI) imposition of binding obligations with respect to regulation of business; its extraterritorial application of domestic laws; and its creation of wide-ranging liability for an overly broad, ill-defined range of human rights abuses—all of which may make it difficult, if not impossible, for many states to support or implement the LBI. Furthermore, negotiations around the draft treaty continue to be contentious, resulting in limited participation from key stakeholders—notably a sizable percentage of States that are home to the world's largest transnational corporations.

We appreciate recent efforts by Ecuador to accommodate a broader range of viewpoints. However, dissenting points of view have not historically been adequately taken into account or reflected in the annual reports. For a business and human rights treaty to be successful at improving corporate accountability worldwide, it needs broad acceptance by all stakeholders—a geographically diverse group of States, including States that domicile significant numbers of transnational corporations; civil society; and businesses.

A consensus-based approach has been critical to the progress made under the UNGPs' "Protect, Respect, and Remedy" framework. As we celebrate the tenth anniversary of the UNGPs, we note the important advances governments, business, and civil society have made in developing and disseminating good practices. Yet, we recognize there is still much work to be done to foster a world in which businesses and countries see that economic success includes respect for individuals and the planet, with respect for human rights at the center.

Therefore, the United States is open to exploring alternative instruments, binding or nonbinding - such as a legally binding framework agreement - that build upon the UNGPs and are developed in collaboration with, and ultimately reflect principles broadly supported by businesses, civil society, and other relevant stakeholders. We are convinced an alternative approach would be more effective than the treaty on the table, and we urge the Working Group to reflect this week on how its goals could be achieved through an alternative, consensus-based instrument.

We recognize that many of you here have invested significant time and effort into the current text, and may find it frustrating that we have decided to participate this week to elaborate in the room on our long-stated position. I would like to reassure you that we are here to engage in good faith. We are not the only state with concerns about the treaty, and we seek to collaborate to find a consensus-based way forward, because if the text lacks broad acceptance among all groups of stakeholders it is unlikely to achieve its goal, and worse, it risks undermining, rather than furthering, the important work the international community has made on the UNGPs.

We will not engage in line-by-line negotiations this week, as we continue to oppose the current text as a whole and do not believe that piecemeal improvements to particular provisions hold a reasonable prospect of remedying our concerns, especially our broader concerns about the LBI's prescriptive approach. However, we will provide general comments throughout to explain our concerns and encourage the exploration of alternatives to accomplish what the different sections of the LBI seek to accomplish, with the overall goal of enhancing corporate accountability and access to remedy for human rights abuses, in line with the UNGPs. We encourage the Working Group to take a step back and consider whether it is time to explore alternatives that could achieve multi-stakeholder consensus. Thank you.

