

# **Compilation of general statements from States and non-State stakeholders made during the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights**

## **Note by the Secretariat**

### *Summary*

The present document contains a compilation of general statements from States and non-State stakeholders made during the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.<sup>1</sup> It has been prepared in accordance with paragraph 31 (b) (i) of A/HRC/55/59. Statements have been reproduced in the original language of submission and are included only if they were shared with the Secretariat in written form.

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<sup>1</sup> These statements have also been posted online at <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session9/oral-statements>

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# Compilation of general statements from States and non-State stakeholders made during the ninth session

## A. States and Observer States

### 1. Argentina

Muchas gracias Señor Presidente.

En primer lugar, nuestra Delegación desea felicitarlo por la elección para conducir el 9<sup>a</sup> período de sesiones de este Grupo de Trabajo.

La Argentina ha mantenido un activo y protagónico rol en materia de empresas y derechos humanos desde que el tema fue incorporado en la agenda intergubernamental del sistema universal de derechos humanos, en la antigua Comisión y luego en el Consejo.

Al respecto, es dable recordar que nuestro país, junto a un grupo núcleo de Estados de distintas regiones, fue uno de los impulsores de la Resolución N° 17/4 por la que el Consejo de Derechos Humanos aprobó los Principios Rectores de Naciones Unidas sobre las Empresas y los Derechos Humanos y estableció el Grupo de Trabajo sobre la cuestión de los derechos humanos y las empresas transnacionales y otras empresas.

Asimismo, la Argentina apoya y toma como guía en la materia no sólo los Principios Rectores sino también la Declaración tripartita de principios sobre las empresas multinacionales y la política social; las Líneas Directrices de la OCDE; así como otros instrumentos de los que nuestro país es parte, tales como el Acuerdo de Escazú.

En cuanto al proyecto actualizado del acuerdo jurídicamente vinculante, si bien la Argentina se abstuvo en oportunidad de la votación de la resolución 26/9 de 2014 que dio origen a este Grupo de Trabajo, nuestro país ha participado de manera constructiva de todas las sesiones llevadas a cabo.

La Argentina considera que las empresas tienen una responsabilidad de respetar los derechos humanos, no causando daños y haciendo frente a impactos negativos. Asimismo, nuestro país considera que es necesario garantizar medios efectivos de prevención, protección y reparación para quienes hubieran sufrido vulneraciones de los derechos humanos relacionadas con actividades empresariales y para la protección de los derechos de los y las trabajadoras.

El presente proyecto de instrumento sigue bajo consideración de un número relevante de Carteras del Estado, con quienes se planifica continuar las conversaciones con miras a la adopción de una posición nacional. En particular, subsisten en el texto bajo negociación cuestiones sobre las que se tiene que seguir trabajando, tales como jurisdicción, legislación aplicable, prescripción y el concepto y alcance de los términos “debida diligencia” y “abusos de derechos humanos”.

Sin perjuicio de que aún no exista una posición nacional unívoca sobre la conveniencia de un instrumento vinculante en la materia, la Argentina ha elaborado un Plan Nacional de Acción de Empresas y Derechos Humanos (2024-2026), que recoge los compromisos del Estado nacional, a través de sus organismos, agencias y empresas estatales y funciona como marco regulador y puesta en práctica de los Principios Rectores de Naciones Unidas y que se encuentra actualmente en etapa de aprobación administrativa.

Por lo anterior, y en línea con la posición mantenida en todas las sesiones anteriores, la Argentina intervendrá en este período de sesiones con espíritu constructivo y realizará comentarios o propuestas sobre el contenido del proyecto, incluyendo, por ejemplo, los artículos tales como 8, 9 y 14.

Finalmente, nuestra Delegación le desea, Señor Presidente, éxito en el presente período de sesiones y espera que el resultado de éste sea muy fructífero.

Muchas Gracias.

## 2. Australia

Thank you, Chair.

Australia thanks the Chair for convening the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises and for circulating an annotated version of the fourth revised draft.

While we are not in a position to participate in the substantive negotiations during the ninth session, we have reviewed the revised draft and welcome the opportunity to share our further reflections.

Australia is seized of the increasing global interest in business and human rights. As a co-sponsor of the resolution that led to the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs), Australia is committed to the UNGPs as an important framework for ensuring better standards and practices by states and businesses with respect to business and human rights.

The UNGP framework is also reflected in other standards Australia has committed to implementing; for example, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, which the Australian Government expects multinational businesses operating in Australia, or operating overseas from Australia, to adhere to. As part of its OECD obligations, the Australian Government maintains the Australian National Contact Point for Responsible Business Conduct (AusNCP) to help resolve complaints against multinationals, as a non-judicial grievance mechanism for individuals or communities allegedly impacted by adverse human rights and other negative impacts from multinational operations. Australia has also ratified key International Labour Organization instruments including the Forced Labour Protocol and the Minimum Age Convention, which aim to eradicate forced and child labour practices. Additionally, Australia remains engaged in key discussions at the ILO on ensuring decent work in supply chains.

Australia is also working under our Modern Slavery Act 2018 (the Act) to support business and public sector understanding of modern slavery risks in global supply chains. Australia is committed to further strengthening the Act, and we are currently considering the findings of the recently completed statutory review of the Act, including the recommendation for a reinforced due diligence obligation (as relevant to modern slavery). Australia also continues to implement our National Action Plan to Combat Modern Slavery 2020-2025, and to engage regionally and internationally to counter forced labour and all forms of modern slavery.

Australia welcomes the Chair's and the working group's efforts to improve the text from the previous session, incorporating feedback on the third draft and the Chair's draft. We also welcome the inter-sessional consultations which took place earlier this year. As a strong supporter of the UNGPs, we are pleased to see the revised draft is more aligned with the UNGPs than previous iterations. We also welcome attempts to provide more flexibility for national implementation across diverse legal systems.

While the revised draft represents an improvement from the previous versions, Australia continues to have concerns with the text of the proposed draft treaty. Our concerns relate to the treaty's broad scope particularly in relation to jurisdiction, ambiguous definitions, and lack of clarity in the text. We also consider there is a lack of clarity as to how the instrument is intended to interact with existing international law, particularly international human rights law.

Chair, we agree more needs to be done to increase corporate accountability and create greater access to remedy for human rights abuses in supply chains. However, an International Legally Binding instrument should be legally clear, realistically implementable and broadly supported. As it is drafted, the proposed treaty cannot provide a practical and principled approach to avoid and address adverse effects of business activities on human rights. A divisive and ambiguous legally binding instrument with potentially limited ratification by UN member states would detract from broader, more coherent implementation of the UNGPs by states and businesses and would therefore be counter-productive to business and human rights protections going forward.

We appreciate the Chair's efforts to gather broad cross-regional support to this process and encourage the Chair to continue to work towards a constructive path forward that builds on the consensus-based UNGPs and is developed in consultation with businesses and civil society stakeholders.

While Australia is not participating in the negotiations during this session, we will consider the outcomes of the ninth session with interest.

### **3. Brazil**

Mr. Chair-Rapporteur,

Brazil'd like to congratulate you on the election as Chair-Rapporteur.

It's been over 9 years since July 2014, when Human Rights Council's Resolution 26/9 established this Working Group and mandated it to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

The Ecuadorian Chairmanship, for which we reiterate our support, and the United Nations team have done good work in the negotiations mandated by the Council. Civil society organizations have been engaged from the beginning, showing strong support for the process and making concrete contributions to advancing the discussions.

Mr. Chair-Rapporteur,

Several years and a few draft instruments after, we believe it is time to take further steps to advance this negotiating process. And to that end, we need more constructive, substantial and active commitment from States. Brazil is committed to this process and will give its contribution these talks. We hope to work constructively with other delegations. We also hope for their comprehensive participation in the negotiations.

Bearing in mind the primacy of human rights, we believe we should move forward in negotiations towards an instrument with a victim-centred set of norms, and the establishment of mandatory mechanisms for the protection of human rights in the context of doing business.

Let's not forget that the protection of human rights is everybody's business.

The contribution of the UN Guiding Principles has been and will continue to be a fundamental reference. Our mandate here is to advance from that valuable document. Several countries and regions have already moved in this direction. The topic has matured.

This week we can build common positions and move forward in negotiations on a legally binding instrument that is acceptable to the majority of States with developed and developing countries on board.

For Brazil, differences can be worked upon and we should aim at concrete results around the common goal of ensuring effective protection and full reparation for victims of human rights violations in business activities.

We are interested in the discussion of an instrument with clear and predictable rules, applicable in different regional and national contexts and obtaining the support of the greatest possible number of countries. For Brazil such a treaty shall not impose a disproportionate burden on developing countries and their small and medium-size enterprises and shall be taken seriously by the world's most advanced economies.

We expect a document that fills legal gaps and provides effective legal mechanisms for the protection of human rights. This is the balance that we are committed and determined to achieve.

Brazil hopes more countries catch the spirit of the moment and take advantage of the great opportunity that this negotiating process represents.

Once again, we recognize the efforts of the Chair-Rapporteur and its dedicated commitment in conducting these negotiations. We thank the Chair for having circulated a revised draft, which will be our basis for negotiations.

Let us be partners in the promotion and protection of human rights for everyone. This year, as we celebrate 75 years of the Universal Declaration of Human Rights and 30 years of the Vienna Declaration and Programme of Action, we look back and reflect on everything we have achieved. But we must also have the courage to look ahead and see how far we still have to go to guarantee human dignity, peace and prosperity for our peoples.

We expect a productive week and we wish you all here good days of work.

Thank you.

#### **4. Chile**

Muchas gracias Presidente Relator. En primer lugar, Chile quisiera agradecer los esfuerzos que realizó la Presidencia el día de ayer para encauzar las diferentes perspectivas que se han expresado hasta el momento y celebramos el haber adoptado el programa de trabajo por consenso.

Presidente Relator,

Agradecemos la oportunidad para reforzar la importancia que Chile otorga a la materia de empresas y derechos humanos. Como país del sur global, no somos ajenos al impacto que ha tenido, históricamente, la falta de regulación en la materia. Por esto, hemos buscado avanzar en esta agenda a nivel interno, implementando, desde el año 2017, nuestro primer plan de acción sobre derechos humanos y empresas. Actualmente, ya se encuentra vigente el segundo plan nacional de empresas y derechos humanos, para los años 2022 a 2025. Ambos planes se han desarrollado en línea con los Principios Rectores acordados en Naciones Unidas en la materia y tienen como objetivo fortalecer la protección de los derechos humanos por parte del Estado de Chile en relación con la actuación de las empresas, entendiendo esto como una base fundamental del desarrollo sostenible.

Por lo anterior, nuestro país quisiera expresar su apoyo por este proceso, ya que reconocemos la importancia y la necesidad del esfuerzo que estamos llevando a cabo en este grupo de trabajo, a objeto de arribar a un instrumento internacional jurídicamente vinculante, que regule la relación entre las empresas, los Estados y los derechos humanos de las personas.

En consecuencia, esperamos participar constructivamente de estas negociaciones y buscaremos colaborar para lograr avances que nos acerquen de manera tangible a lo mandatado por el Consejo de Derechos Humanos, en su Resolución 26/9.

Muchas gracias.

#### **5. Colombia**

Señor presidente:

Han pasado 10 años desde la adopción de los principios rectores sobre las empresas y los derechos humanos, sin que estos hayan podido impedir que los titulares derechos, en especial los pueblos indígenas, los campesinos, las comunidades rurales y en general quienes se han visto afectados por las violaciones de sus derechos por parte de empresas, puedan contar con la garantía de acudir a acciones legales que garanticen su reparación y pongan fin a la relativa impunidad. De la misma manera los daños causados al medio ambiente por parte de empresas multinacionales continúan en su gran mayoría en la impunidad.

Un instrumento vinculante es indispensable para abordar los retos relacionados con las violaciones de derechos humanos por parte de las empresas multinacionales, este es un problema global, el instrumento que aquí negociamos nos debe permitir establecer reglas de conducta y crear herramientas vinculantes, que sean comunes, para enfrentar una gran diversidad de situaciones y de casos, que están sucediendo en la realidad y que afectan la vida de personas y sus los derechos en todos los continentes.

Tenemos la obligación de responder adecuadamente a las expectativas de nuestras sociedades y dejarles como legado de estos debates, un instrumento que incorpore una diversidad de puntos de vista de los Estados del sur global que fueron expresados en las negociaciones

anteriores y se encontraban en el tercer borrador y de aquellos en los que se encuentran las casas matrices de las multinacionales, que en muchos casos pueden tener mayor poder e influencia que algunos Estados.

Señor presidente, reconocemos que en su intento por hacer avanzar este proceso el texto que usted nos presenta como base para la negociación hoy, incluye algunos aspectos positivos como la inclusión de los derechos de las mujeres, de los derechos de los pueblos indígenas, de mecanismos colectivos de demanda y una ampliación del concepto relacionado con el derecho a la información, la referencia a la carga dinámica de la prueba y finalmente la inclusión del derecho de las víctimas a participar en procesos legislativos pertinentes y en la definición de las reparaciones.

Por otra parte creemos que en este proceso de negociación es indispensable poner especial atención a temas que se encuentran en el corazón mismo de los problemas y las crisis actuales de la humanidad, puntos de vista y posiciones que se han venido expresando y que están incorporadas en el texto conocido como borrador tres, como por ejemplo, la protección del medio ambiente y su afectación por parte de empresas multinacionales, los derechos de los campesinos, y en especial un texto claro en este instrumento que defina una fórmula clara y amplia para la determinación de la responsabilidad jurídica. La determinación de la responsabilidad jurídica está en la base y es la razón por la cual estamos adelantando este proceso de negociación, sin ella el instrumento estaría vacío y no cumpliría su objetivo principal.

Este proceso de negociación requiere en nuestra opinión señor presidente, que tengamos y acordemos una clara metodología de negociación, deberíamos concentrarnos en definirla de común acuerdo, una metodología que nos permita avanzar y superar desacuerdos y tensiones, una metodología que tenga en cuenta las posiciones expresadas por los diferentes Estados y la sociedad civil, que recupere y reincorpore las posiciones que no se incluyeron en el documento del presidente, garantizando así, que este proceso sea inclusivo y teniendo en cuenta la diversidad de situaciones en los diferentes continentes. Proponemos que los Estados, puedan discutir en espacios o sesiones informales, aquellos temas más complejos o en los cuales veamos que existe un nivel menor de acuerdo o consenso, en esas sesiones informales debería participar la sociedad civil, de esta manera podemos dinamizar la negociación.

Este proceso cuenta con pocos recursos presupuestales, por lo que sería pertinente que discutiéramos como solucionar esta carencia, deberíamos abordar este tema en una resolución exclusivamente orientada a obtener mayor presupuesto para poder facilitar la negociación, para contar por ejemplo con la traducción de documentos, a las tres lenguas oficiales de la ONU, la realización de sesiones regionales de consulta, sesiones de consulta informal, invitación de expertos, elaboración de la metodología de trabajo acordada por consenso, para dinamizar el proceso. Quisiéremos escuchar sus propuestas para este asunto, así como el los otros Estados aquí presentes.

Para nuestro gobierno la aprobación de un instrumento vinculante está estrechamente relacionado con la lucha contra el cambio climático, la protección del medio ambiente, la consulta con las comunidades indígenas y campesinas, la protección de la biodiversidad, y la Amazonía, la justicia social, la transición energética, las empresas sostenibles, el uso de nuevas tecnologías y la defensa y respeto de los derechos humanos con la posibilidad real para las víctimas de acudir a acciones concretas para la reparación cuando sea necesario.

Este instrumento no debería ser interpretado como un intento de atacar a las empresas, ni de impedir que realicen inversiones sostenibles, entra más claro sea el instrumento tendremos más y más empresas que realizaran un esfuerzo por prevenir las posibles violaciones de los derechos humanos por su parte.

Cuento señor presidente con el ánimo constructivo de Colombia para apoyar una negociación inclusiva, y dinamizada con la incorporación de metodologías innovadoras de negociación, estamos dispuestos a aportar a usted y a este grupo de trabajo nuestra capacidad de escucha, de mediación y de facilitación, queremos escuchar a la sociedad civil aquí presente, a los empresarios y a los trabajadores, así como a todas aquellas organizaciones que participan activamente en este importante proceso desde su inicio.

Gracias señor presidente.

## **6. Ecuador**

Señoras y señores:

A nombre del Ecuador quiero agradecer al Alto Comisionado de las Naciones Unidas para los Derechos Humanos y a su equipo por todos los esfuerzos y el respaldo que brinda al Grupo de Trabajo en la tarea de elaboración de un instrumento jurídicamente vinculante sobre empresas y derechos humanos.

Así mismo, deseo felicitar al Presidente-Relator de este Grupo de Trabajo por su designación y extender nuestro deseo de éxito en sus funciones.

Saludo a los Estados, autoridades, organizaciones de la sociedad civil, intergubernamentales, organismos internacionales, funcionarios de las Naciones Unidas y demás participantes que colaboran con este proceso y que han decidido unirse a esta Novena Sesión del Grupo de Trabajo.

Mi delegación expresa su reconocimiento al Presidente Relator del Grupo de Trabajo por la actividad desarrollada entre sesiones, como resultado de lo cual se han plasmado documentos que servirán de insumos para este proceso de diálogo y debate.

Avanzar en el proceso de negociación requiere la participación de los Estados, organismos nacionales de derechos humanos, instituciones, sociedad civil, organizaciones intergubernamentales y empresariales, sindicatos y todos los demás partes interesadas; sus aportes redundarán en una versión más enriquecida del instrumento jurídicamente vinculante para regular, en el marco del Derecho internacional de los derechos humanos, las actividades empresariales.

El equilibrio es la base fundamental para que podamos superar las diferencias que puedan surgir en los próximos días de este ejercicio de negociación. Debemos tener como meta el llegar a construir una norma vinculante en la que ganemos todos. Las decisiones que tomamos hoy repercutirán en el futuro, por lo que esta negociación es relevante. De allí el compromiso del Ecuador de seguir participando en este espacio y de apoyar el trabajo de la Presidencia-relatoría. Estamos seguros que cada una de las delegaciones tiene el mismo espíritu de edificar y aportar de manera positiva a este importante instrumento.

Mi delegación reafirma su compromiso con los objetivos para la elaboración de un instrumento jurídicamente vinculante, basados en las normas de derechos humanos y en los Principios Rectores de las Naciones Unidas sobre Empresas y Derechos Humanos.

En ese marco, es necesario seguir trabajando en la definición de varios aspectos fundamentales que hagan posible la adopción de un instrumento jurídicamente vinculante con un texto inclusivo y equilibrado.

Muchas gracias.

## **7. Egypt**

Thank you, Mr. Chairperson Rapporteur,

I will not repeat our statement delivered yesterday that contained our concerns in this process, We just wanted to echo South Africa and other colleagues concerns raised today and yesterday and we reiterate that the text should remain faithful to the mandate of HRC resolution 26/9, which limits the scope of the LBI to activities of TNC's and OBE's, // a specific gap in international law that needs to be filled, and we recall that in spite of the importance of the UN Guiding Principle on Business and Human Rights - it is no longer sufficient to rely on voluntary, soft-law instruments that are not enforceable.

We also stress the importance of the inclusion of peasants and environmental rights which are very frequently subject to abuse by TNC's and OBE's. According to customary international law, activities should not take place in one State's territory that led to the abuse of certain human rights extra-territorially.



Finally, we reiterate Egypt commitment to this state-led process, in which we are willing to intervene in a constructive approach that has been pursued by our delegation for 8 years since the inception of the open-ended working group.

## **8. France**

Merci Monsieur le Président et toutes nos félicitations,

La France souscrit à la déclaration de l'Union européenne.

Rappelons-nous collectivement de ce qui a justifié l'élaboration de ce projet d'instrument international juridiquement contraignant: le drame du Rana Plaza. Dans cet esprit, la France est attachée à ce que les entreprises s'efforcent d'identifier les risques et de prévenir les atteintes graves envers les droits de l'Homme et les libertés fondamentales, la santé et la sécurité des personnes ainsi que l'environnement.

La France a adopté dès 2017 une loi pionnière relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre. Au niveau européen, elle a accueilli favorablement la proposition de la Commission européenne portant sur le devoir de vigilance des entreprises en matière de durabilité et prend part à l'élaboration du projet de directive sur le devoir de vigilance de la Commission. Elle soutient la mise en œuvre des principes directeurs des Nations Unies relatifs aux entreprises et droits de l'Homme, ainsi que les principes directeurs de l'OCDE à l'intention des multinationales.

Cet engagement, qui justifie sa participation au groupe des amis de la présidence, est assorti de demandes sur la nature du document. Le projet d'instrument doit être réaliste, équilibré, clair et précis au plan juridique. C'est la condition de son effectivité future.

La France vous fait part de son appui dans ce processus, que nous souhaitons constructif et transparent.

## **9. Germany**

Germany fully aligns itself with the statement of the European Union.

We would like to thank Ecuador and the Group of Friends of the Chair as well as the community on BHR for their efforts to bring the process forward.

Germany has followed closely the Treaty negotiations since their beginning in 2014. We have taken note of the Updated Draft presented by the Chair-rapporteur in July. We have also followed the 8th negotiation round last year.

Overall, notable progress has been achieved regarding the establishment of binding standards for Business and Human Rights in the last few years. In Germany, the Supply Chain Due Diligence Act has entered into force on 1st of January this year. At the EU level, the negotiations for a Corporate Sustainability Due Diligence Directive are in their final stage. Due to the remarkable size of the European market, this Directive could potentially influence business policies way beyond the borders of the European Union.

Against this background, we believe this is the right moment to reflect on the appropriate shape a future Legally Binding Instrument could take. Indeed, the German Supply Chain Act and the legislation negotiated in the European Union have in common that they set binding standards for business conduct, with Due Diligence provisions and provisions on access to remedy based on the UN Guiding Principles on Business and Human Rights.

According to these instruments, companies need to exercise due diligence to identify, prevent, mitigate and remedy adverse impacts on human rights.

We believe that this kind of approach can be a source of inspiration for the Treaty process which could combine due diligence standards and rules on access to remedy.

At the same time, the project of a Legally Binding Instrument on Business and Human Rights will only have a chance to succeed if it is as little intrusive into national legal systems as possible. It might therefore be appropriate to explore enhanced flexibility by considering

State choices (or State reservations) in relation to appropriate aspects of the Treaty. In the same vein, a tier system with opt-in options may be considered. I would also like to mention the possibility to explore new ideas including a framework agreement structure.

In this respect, we welcome the greater flexibility that we see in the latest developments and are looking forward to the further discussions.

## **10. Honduras**

Gracias, Señor Presidente.

Honduras agradece a la Presidencia por su labor al frente de este Grupo de Trabajo que tiene como propósito elaborar un instrumento jurídicamente vinculante para regular, en el derecho internacional de los derechos humanos, las actividades de las empresas transnacionales y otras empresas y a la vez transmitimos nuestro apoyo a este proceso.

Hemos analizado cuidadosamente el instrumento a través de sus diferentes versiones, así como los comentarios realizados por las delegaciones en las sesiones pasadas. Por ser esta la primera vez que nos involucramos activamente de las negociaciones, reiteramos nuestro interés en incluir como parte de la documentación un razonamiento más claro respecto a la supresión de ciertos elementos claves en este borrador actualizado. Creemos que esto garantizará un involucramiento más constructivo y en igualdad de condiciones de nuestra parte, así como una mayor calidad en los intercambios que se llevarán a cabo durante esta semana.

En temas más específicos, también nos gustaría ver que la protección del medio ambiente se fortalezca a lo largo del texto, especialmente considerando la evidencia sobre el impacto negativo que las actividades de las empresas transnacionales y otras empresas han tenido sobre el medio ambiente.

También nos interesa resaltar los términos de “actividades de carácter transnacional” o “actividades de empresas transnacionales” para que haya mayor consistencia a lo largo del texto en apego a la resolución 26/9. Parece ser que mencionar “las empresas en general” o “todas las empresas” puede restarle importancia al impacto que ocasionan las empresas transnacionales, o puede desviar nuestras discusiones, incluso diluyendo el valor agregado que representa este proceso tomando en cuenta que, lo que aquí debemos hacer, es cerrar las lagunas en el derecho internacional con respecto a las actividades de carácter transnacional debido a su compleja regulación y sus desafíos de rendición de cuentas a través de las fronteras.

En este sentido, también nos interesa fortalecer el 'carácter internacional' de este instrumento y su relación con los acuerdos comerciales de inversión que están causando impactos adversos sobre los derechos humanos, particularmente en el derecho al agua, a la tierra, a la alimentación y a un medio ambiente limpio, sano y sostenible.

Es de nuestro interés encontrar puntos comunes para delimitar las obligaciones de empresas transnacionales y otras empresas y de esta manera garantizar que el comportamiento empresarial transnacional y particularmente la inversión extranjera, contribuyan al desarrollo y crecimiento económico respetuoso de todos los derechos humanos.

Honduras actualmente impulsa una serie de iniciativas estructurales para eliminar esquemas de corrupción público-privada, en un contexto de captura corporativa, así como también ha iniciado un proceso de renegociación de contratos para garantizar el suministro de la energía como un derecho humano. En este debate, creemos que es de gran valor que este foro considere la mejora de las normas aplicables a la inversión extranjera como un medio, no para disminuirla, sino para mejorar su calidad y garantizar su respeto a los derechos humanos.

Respaldamos las palabras del Alto Comisionado el día de ayer respecto a que la elaboración de este instrumento tiene el potencial de contribuir significativamente a la protección de los derechos humanos que están siendo afectados por empresas transnacionales y otras actividades empresariales de naturaleza transnacional, creando situaciones de precariedad laboral, daño ambiental, afectación a Pueblos Indígenas y otros.

Participaremos de manera constructiva durante esta semana especialmente con el propósito de lograr avances significativos en el instrumento en el contexto de la resolución 26/9.

Muchas gracias.

## **11. Indonesia**

Thank you, Mr. Chair,

Indonesia welcomes the convening of this session and congratulates Your Excellency on your election as the Chair-Rapporteur.

We also commend the able stewardship of Ecuador in guiding this process and thank for submitting the updated draft legally binding instrument, which consolidates various positions and proposals.

Mr. Chair,

Indonesia reaffirms its commitment to promote and protect human rights and fundamental freedoms against human rights abuses within our own territory and jurisdiction, committed by transnational corporations and other business enterprises.

On 26 September 2023, we adopted the Presidential Regulation Number 60/2023 on National Strategy on Business and Human Rights, which serves as a legal and policy guidance for government agencies, private sector and other stakeholders...

to prevent, mitigate and address adverse human rights impacts of business activities;

and to provide effective remedies to the victims.

The enactment of this regulation is also part of our commitment to implementing and mainstreaming the Guiding Principles on Business and Human Rights at the national and local levels, in order to...

strengthen the pre-existing policy measures on business and human rights;

and create business environment that is sustainable and respects human rights.

Mr. Chair,

While appreciating your hard work to consolidate all inputs into a single updated draft text, we regret that a number of important proposals made by delegations, including my own, are not accommodated in the clean version...

especially with regard to the definition and scope as provided in the updated text.

We view that the text has been shifted away from the core spirit of the Resolution 26/9... which we supported... that mandated an elaboration of an international legally binding instrument with particular focus on...

transnational corporations; and

other business enterprises that have a transnational character in their operational activities, and does not apply to local businesses registered in terms of relevant domestic law.

We believe that provisions on definition and scope are the crux of a legally-binding instrument, which determines the course of the entire text and its applicability.

Therefore, they must be well-crafted in such a way that serve the main purpose when this instrument was initiated in the first place.

It is also pertinent to carefully define “a transnational character” of business activities... since businesses in today’s world, regardless of their sizes, are also operating online in digital platforms, which do not recognize national borders.

I am confident that we all share common interest to establish a legally binding instrument that would promote, rather than undermine, the development of businesses run by individuals or small, micro, and medium enterprises.

In many cases, they are the backbones of economic development in a large number of countries, especially the least developed and developing countries.

We support the inclusion of constructive provisions relating to international cooperation, including on financial and technical assistance and capacity building...

which will benefit the States and businesses as duty bearers, but also other stakeholders who are the rights holders.

Our further views and inputs will be shared during the negotiations.

Finally, Indonesia reiterates its support towards this process and looks forward to engaging constructively with other delegations during the negotiation of the draft text.

I thank you.

## **12. Iran**

Mr. Chair-Rapporteur,

My delegation extends congratulations to you on your re-election as the Chair of the Working Group.

The Islamic Republic of Iran stands in support of the work carried out by the Working Group and its mandate. I would like to take this opportunity to emphasize that the work of the Working Group and the scope of the legally binding instrument must closely align with the Resolution 26/9.

Therefore, the presented draft, while containing significant elements, still requires further inclusive negotiations and elaboration among all States to align with HRC resolution 26/9 and to ensure comprehensive coverage of all dimensions of this critical issue.

While TNCs and OBEs with transnational character have the potential to positively contribute to human rights through job creation, economic growth, and technology transfer, they must also be associated with human rights violations, environmental degradation, and labor exploitation resulting from their activities.

In accordance with the current regulations and guidelines applicable to the activities of companies and economic entities operating in Iran, they are subject to legal responsibilities regarding the respect for human rights, and in case of any violation, they should be held accountable.

Individuals who, for any reason, suffer harm as a result of the activities of these companies and whose human rights and environment are adversely affected can seek remedies through the legal system or through the dispute resolution mechanisms of local chambers of commerce. They can assert their rights, and if their claims are substantiated, the judicial system supports the compensation of their damages. Consequently,

It is worth mentioning that these entities on a voluntary basis actively participate in the development of educational, cultural, health, social, and welfare infrastructures in the regions where they operate, as well as during times of natural disasters and emergencies.

Mr. Chairpersons, I cannot conclude my statement without addressing the dual impact of unilateral coercive measures, which run contrary to international law, on the activities and human rights responsibilities of transnational corporations and business enterprises.

UCMs violate the human rights of people in targeted countries, including economic rights, the right to health, the right to food, the right to work, the right to education, the right to science, right to development and the right to non-discrimination. These measures also disrupt international cooperation, technology transfer, investments, and the operations of TNCs and OBEs with transnational character in the targeted countries, affecting the life and livelihoods of communities that rely on their activities.

I thank you Mr. Chair-Rapporteur,

### **13. Japan**

Firstly, we would like to thank the Chair and the Secretariat of the High Commissioner's Office for organizing this session. Business and human rights is a key area for Japan that we are addressing in all sincerity. Japan is committed to the promotion and protection of human rights. Based on recognition of the UN Guiding Principles on Business and Human Rights (UNGPs) as a global consensus, in 2020 Japan launched the National Action Plan (NAP) on Business and Human Rights. Following this, in 2022 the Government of Japan released the "Guidelines on Respecting Human Rights in Responsible Supply Chains", which are the cross-industry guidelines to be followed by business enterprises, with the aim of supporting efforts by businesses to respect human rights. Through these kinds of initiatives, we consider it crucial that all States and stakeholders take tangible actions based on the UNGPs.

While we appreciate the efforts the Chair-Rapporteur has made so far, Japan would like to emphasize that it is a fundamental prerequisite that internationally legally binding instruments regarding business and human rights are realistic, effective, and well balanced to ensure that many States can agree on their basic contents. This means that such instruments must reflect the views of the greatest possible number of stakeholders and governments, each of whom are responsible for people faced with greatly varying circumstances. To achieve this when formulating such instruments, it is necessary to have a wider range of relevant States and stakeholders discuss any proposed drafts and to undertake a consensus-building process, which would build upon the UNGPs, during the drafting process.

However, the current draft is not sufficient to meet this prerequisite. Indeed, it contains fundamental points that need to be improved in various provisions, such as the ones concerning: consistency with international agreements concluded by each State; the manner of conducting human rights due diligence; the scope of rights to be remedied; and procedures and methods to realize remedy, including the definition of the statute of limitation. As such, we are concerned that the current draft is still not ideally suited to achieving our common goals of promoting and protecting human rights in the context of business activities. We hope that differences in position will converge and that we will be able to work towards an outcome on which as many stakeholders as possible can agree.

Finally, we would like to conclude our statement by reaffirming our commitment to the significant issue of respecting human rights in the course of business activities. We will continue to strive to promote and protect human rights in this field in the spirit of the UNGPs, which reflect a broad consensus of relevant stakeholders.

### **14. Mexico**

Señor Presidente Relator,

Nuestra delegación quisiera felicitarlo por su nombramiento como Presidente Relator de este 9º periodo de sesiones del Grupo de Trabajo Intergubernamental sobre las empresas transnacionales y otras empresas respecto a los derechos humanos, así como agradecer por la convocatoria a este periodo de sesiones.

Como lo hemos manifestado con anterioridad, México está convencido de la importancia de promover el respeto y protección de los derechos humanos en el contexto de la actividad empresarial. Estamos conscientes de que existen prácticas empresariales que pueden afectar, de manera directa o indirecta, el pleno goce y disfrute de los derechos humanos, especialmente de personas que se encuentran en situación de vulnerabilidad.

Por ello, hemos acompañado las iniciativas que sobre este tema se han impulsado en diversos foros internacionales y regionales, incluyendo el Consejo de Derechos Humanos de Naciones Unidas; la Organización de Estados Americanos; el Global Compact, OCDE, el Proyecto CERALC, por mencionar algunos ejemplos.

Hasta ahora, los principios y directrices adoptados en dichos foros han servido como herramientas prácticas que guían a las empresas en la adopción de medidas de prevención, protección y reparación, siendo los Principios Rectores de Naciones Unidas sobre Empresas y Derechos Humanos uno de los ejemplos más importantes en este sentido.

Al respecto, las autoridades mexicanas se encuentran actualmente desarrollando una política nacional en materia de empresas y derechos humanos – una herramienta de política pública que busca implementar los principios rectores en el país y establecer líneas de acción para las diferentes dependencias gubernamentales.

Aunado a dichos esfuerzos, somos conscientes de que se requiere contar con reglas claras tanto a nivel nacional como internacional para que las compañías nacionales y transnacionales se conduzcan de manera respetuosa de los derechos humanos y hagan frente a las consecuencias negativas derivadas de sus actividades. La certeza y la seguridad jurídicas benefician no sólo a la población y a las víctimas, sino también a los Estados y a las empresas mismas.

Por ello, como lo hemos expresado en periodos de sesiones previos de este Grupo de Trabajo, estimamos que un instrumento jurídicamente vinculante puede abonar a una mayor y mejor protección de los derechos humanos, incluyendo el acceso a la justicia y a medios de reparación para las víctimas.

Para lograr ese objetivo común, resulta importante que el texto, de manera balanceada, logre recoger las preocupaciones y sugerencias expuestas por los diferentes actores involucrados; que las reglas sean precisas y den certeza jurídica; y que entendamos y discutamos cuando se trate de normas ya previstas en el derecho internacional o en nuestro derecho interno o, en cambio, cuando nos encontremos frente a normas que respondan al desarrollo progresivo del derecho internacional.

Agradecemos los esfuerzos de la Presidencia, a cargo de Ecuador, para preparar y presentar un borrador actualizado del instrumento jurídicamente vinculante conforme a las conclusiones y recomendaciones discutidas y acordadas durante el 8º periodo de sesiones de este Grupo de Trabajo Intergubernamental. Consideramos que esta versión actualizada proporciona una base para avanzar en este proceso, tras haber discutido el contenido de la tercera versión revisada del borrador durante dos años consecutivos.

Sobre esta versión actualizada, expresaremos algunas observaciones y sugerencias en su debido momento, cuando se discuta artículo por artículo, con el objetivo de simplificar y hacer más clara la redacción de algunas disposiciones, así como de incorporar algunos elementos que hemos ya propuesto en periodos de sesiones pasados y que consideramos fundamentales para un instrumento jurídico de esta naturaleza.

Señor Presidente Relator, como siempre, podrá contar con una posición constructiva de nuestra delegación a lo largo de las consultas.

Muchas gracias.

## **15. Norway**

Chair,

At the outset, Norway would like to emphasize our commitment to preventing business-related human rights abuses. We recognize the efforts by the chair and others to continue to develop and improve the revised draft text before us. These are much appreciated.

Norway recognizes the need for increased transparency regarding the production chains of goods and services, especially relating to how businesses respect human rights and decent working conditions as part of these processes.

The UN Guiding Principles on business and human rights provide important guidance for due diligence and transparency on a voluntary basis. Norway has long been a steadfast champion of responsible business conduct and a strong supporter of the UN Guiding Principles.

As of last year, we have taken this a step further in our domestic context. Building upon and inspired by the UN Guiding Principles, as well as the OECD Guidelines for Multinational Enterprises and ILO's core conventions, many of these principles are now legal obligations for companies under the Norwegian Transparency Act.

The Transparency Act is designed to ensure enterprises' respect for human rights and decent working conditions to an even larger extent than before. The Act also allows consumers to make better informed decisions. It has been in force for just over one year, and we are encouraged by the strong interest it has received, at home as well as from actors in the international arena.

Chair,

While we follow this process with great interest, Norway is not in a position at this time to enter into detailed negotiations on a possible new legally binding instrument.

As stated, we appreciate the efforts being made to consider the views and concerns that have been expressed earlier. Yet, in our assessment the revised version still contains wide-ranging obligations, the consequences of which are very difficult to foresee.

And in light of the existing guidelines that assist us in achieving the goals that we all strive for, we continue to ask ourselves whether such a legally binding instrument, in its current suggested form, will provide genuine added value and complementarity.

Thank you.

## **16. Pakistan**

Thank you, Chair,

Once again, we congratulate you on your re-election as the Chair-Rapporteur of this Working Group and commend your efforts aimed at fostering consensus around the mandate of the working Group and key elements of the draft Legally Binding Instrument.

We also appreciate remarks of the High Commissioner for Human Rights.

Pakistan reaffirms its support for the Working Group's mandate in line with HRC resolution 26/9. We reiterate the need for broader consultations with key stakeholders aimed at developing clear consensus and harmony on key contours of a legally binding instrument such as scope, applicability, remedy, legal liability and adjudicative jurisdiction.

We also reiterate that during our negotiations, it remains imperative to differentiate between TNCs, SMEs and local businesses.

All businesses differ significantly in their structure, level of operations, pool of resources and, most importantly, in their influence. While SMEs and local businesses are limited to operating within a certain territory and are usually governed by the legal and administrative mechanisms of that respective state – this legal uniformity includes any alleged violation of human rights as well. Regulating the human rights impact of TNCs, meanwhile, is the gap in international law that this Working Group and intended Legally Binding Instrument are mandated to bridge.

In this globalized world, business activities are instrumental in augmenting the state's role in building societal resilience and movement, facilitating livelihoods and standards of living, promoting socio-economic development and achieving headway in our 2030 Development Agenda. The multifaceted socio-economic challenges brought forth by a global financial crisis, climate catastrophes and the pandemic have further reasserted this role in stimulating economies, fulfilling people's essential needs and improving their standards of living.

We acknowledge the numerous contributions of TNCs towards economic and social progress, including through corporate social responsibility to stimulate welfare of people. It must be noted, however, that the challenge of striking the right balance between profitability and respecting human rights remains a persistent one.

Even though the primary responsibility for implementing human rights agenda lies with states, this, however, can become a reality only when supported by appropriate and timely steps by civil society organizations, TNCs, SMEs and other influential actors.

Considerations and debates on safeguarding respect for human rights responsibility by TNCs have gained more urgency and significance due to:

Firstly; owing to their geographic expanse, transboundary operations, and considerable influence - as several of these companies have a greater turnover than annual incomes of some developing and least developing states;

Secondly; varying stipulations of laws, in theory and in practice, often result in legal lacunas that are exploited by certain TNCs;

Thirdly; the overriding profit motive may push TNCs to engage in actions which damage the greater public interest or are contributing to environmental degradation and undermining the pursuit of sustainability.

Due to their scope, size and influence, SMEs have been disproportionately impacted by the macroeconomic headwinds facing our world today, with far greater negative consequences as compared to the impact on TNCs. Moreover TNCs have been the largest beneficiaries of stimulus measures rolled out in various parts of the world, whereas SMEs have not been assisted proportionately. The disparity is even greater in developing countries.

Keeping in view these realities, my delegation reiterates that the focus of the instrument should remain limited to the activities of TNCs only as mandated by HRC resolution 26/9.

We assure the Chair of our constructive engagement and contribution.

I thank you, Chair.

## **17. State of Palestine**

Thank you Mr. Chair,

As a representative of Palestine and the Palestinian people I come here today with a heavy heart. Since October 7 throughout occupied Palestine, more than 5000 Palestinians have been killed by Israel, the occupying Power, including more than 2000 children, and more than 15000 injured. More than one million Palestinians have been forcibly displaced. More than 50 families have been wiped off the population registry in Gaza- they have been decimated. Israeli officials have issued genocidal and hateful calls for ethnic cleansing publicly and unashamedly.

What happened on October 7 did not occur in a vacuum it is the result of 75 years of domination and subjugation of the Palestinian people, 56 years of occupation and 16 years of blockade. Any narrative that does not acknowledge the root causes is simply inaccurate and hypocritical. What is even more horrifying is the complicity of Israel's allies, many of whom are former colonial powers whose purpose has been the accumulation of wealth and control at the expense of other countries and peoples. They are now aiding and abetting the commission of international crimes and genocide, including through sending further military aid to exterminate the Palestinian civilian population in Gaza. Domestically, they are also criminalising peaceful forms of protest in solidarity with the Palestinian people, including the BDS movement, and suppressing freedom of speech.

For this we come here today to reaffirm our support to the process towards a legally binding instrument. Now more than ever we believe it is crucial to adopt a legally instrument in an effort to end corporate colonialism and to create effective mechanisms to remedy and compensate affected communities, including communities in contexts of conflict, occupation and colonization. This process had the support of more than 1000 civil society organizations and affected communities, we owe the victims of transnational corporations and other business enterprises, the victims who for decades been denied their rights, victims who have been living an injustice due to violations and abuses and even genocide committed by colonial corporations.

When this process started, it gave hope to the victims and affected communities that this system is going to stand by them, is going to ensure that justice is served. Are we going to truly stand by them now and ensure corporate accountability? While the answer should be yes, though we come here today with doubts if this process will truly serve this purpose. We believe that any outcome that will not bring justice to affected communities is an offense to those who are suffering and would be normalizing and enabling corporations to continue to violate international law, and it further entrenches the status quo established by the legacy



of colonialism. In this regard we totally reject counter agendas in negotiations that prioritize political and economical interests over the rights of people. For those reasons, we were clear in previous sessions that we reject alternative approaches that would weaken the core elements of the treaty.

Transnational corporations' main interest has always been capturing power through economic and social factors, and then using their power to exploit humanity for a massive profit. Colonialism never ended it only transformed into new forms. This process is a small step to put an end to neo colonialism and to dismantle the systems and ideologies that inflict this violence on all oppressed and affected communities.

I thank you,

## **18. Switzerland**

Monsieur le Président,

En entamant cette neuvième session du Groupe de travail intergouvernemental, j'aimerais avant tout vous féliciter pour votre élection et vous remercier pour la présentation d'un nouveau projet de texte qui tient compte des contributions fournies par les 'Amis de la présidence' pendant la période intersessionnelle.

Comme lors des sessions précédentes, la délégation suisse, faute de posséder un mandat de négociation, observera les travaux sans s'engager dans les discussions de substance. Elle se réservera toutefois la possibilité de poser des questions de clarification sur certaines propositions du projet et sur leur cohérence avec les Principes directeurs des Nations Unies relatifs aux entreprises et aux droits de l'homme.

Le gouvernement suisse est actuellement engagé de manière prioritaire dans le processus de mise en œuvre et actualisation du Plan d'action national sur les entreprises et les droits de l'homme. La mise en œuvre du plan d'action 2020-2023, actuellement en vigueur, a été analysée par le biais de deux études externes. La première a évalué la mise en œuvre du Plan d'action par le gouvernement suisse ; tandis que la deuxième s'est focalisée sur la mise en œuvre, par les entreprises suisses, des Principes directeurs de l'ONU relatifs aux entreprises et droits de l'homme et des Principes directeurs de l'OCDE à l'intention des entreprises multinationales. Les résultats et recommandations de ces études serviront de base pour la mise à jour du Plan d'action national pour la période législative 2024-2027. Afin d'assurer la pleine participation des parties prenantes lors du processus de la mise à jour, un dialogue multipartite regroupant des représentants de l'économie, de la société civile, du monde académique et de l'administration fédérale sera organisé en amont.

Le gouvernement suisse s'engage aussi dans la mise en œuvre du Plan d'action concernant la responsabilité des entreprises à l'égard de la société et de l'environnement. Ce plan focalise entre autres sur la promotion des Principes directeurs de l'OCDE pour les entreprises multinationales qui ont été mis à jour récemment. Le gouvernement suisse continue de vouloir des règles harmonisées à l'échelon international en ce qui concerne la gestion durable des entreprises dans le but d'assurer notamment la protection des droits de l'homme et de l'environnement.

Depuis 2022, la législation suisse prévoit désormais, pour les grandes entreprises, une obligation de faire rapport sur les risques engendrés, notamment en matière sociale, environnementale et de respect des droits de l'homme, et à observer un devoir de diligence concernant le travail des enfants et les minerais provenant de zones de conflit.

Finalement, ayant pris acte de l'évolution du droit européen relatif à la gestion durable des entreprises, le gouvernement suisse est en train d'analyser les implications de la directive prévue en la matière pour les entreprises suisses.

Monsieur le Président,

Nous vous souhaitons beaucoup de succès dans la conduite des travaux.

Je vous remercie.

## 19. United Kingdom

Thank you, Chair.

We would like to thank you for the circulation of the number of revised Articles and welcome the enthusiasm shown by parties involved. We would also like to thank OHCHR for organising this session. We have analysed the revised text of the proposed Treaty and have considered it carefully.

The United Kingdom's commitment to the UN Guiding Principles on Business and Human Rights is bound by the UK's strong sense of duty in championing human rights for all. The UNGPs play a significant role in upholding our high standards, as the framework clearly sets out the foundations for the responsibilities of host and home Governments and business enterprises to adhere to, including financial institutions and traders, in mitigating human rights impacts through the prevention, respect, and access to remedy principles, ultimately helping victims worldwide.

Our commitment to addressing business and human rights issues is exactly why the United Kingdom implemented the UNGPs in its domestic approach through its National Action Plan, the first of its kind. We are pleased to see that in recent years other States have been following in our footsteps and urge others who have not yet implemented similar national frameworks to do so. We are keen to share our experience with others on this.

The United Kingdom acknowledges the merits of introducing a new instrument or framework that can elaborate on the responsibilities that businesses, including transnational corporations, play in the field of human rights. However, if we are to strengthen business and human right protections for all meaningfully, the international community must carefully consider what outcomes the text of the Treaty could create for all those impacted by human right abuses. We do not want to create more questions than answers, which unfortunately, the Treaty still does.

Starting with the key definitions used, the UK strongly believes that the use of terms 'victim' and 'abuse' in the current draft needs to be tightened and should remain consistent with other Treaties. The UK does not agree with the approach of broadening victims to entities that cannot be defined as a person, such as institutions. The term 'victim' needs to also reflect the differing approaches at a national level.

Similarly, the language used for the term 'abuse' needs to be fully understood. Under the UNGP framework, businesses have the responsibility to respect human rights and the obligation to protect resides with States. Codification in treaty law of the UNGPs should not upset this carefully considered balance.

We also note the language used on 'internationally recognised human rights'. In this instance, it would be better to clearly define the scope of the legal obligations that apply by references to treaties, so that States and businesses are clear on the scope of the treaty's requirements, noting that the UNGPs do similar.

Secondly, we must reconsider the current disproportionate focus on transnational business activity in parts of the text, noting that the original mandate was on transnational corporations and 'other business enterprises'. The text needs to be rebalanced to consider all forms of business, including those without a transnational character, who often contribute to human rights abuses. International human rights obligations are primarily territorial; therefore, States should reinforce to businesses operating in their jurisdiction – whether transnational or otherwise – that they should respect human rights.

In line with this, the jurisdiction Article within the text is broadly cast. In its current draft, the text could unintentionally lead to multiple suits in different States, which is undesirable from an administration of justice perspective, and could result in exorbitant costs for all parties involved, disadvantaging many in the process.

Finally, to highlight, we are strong supporters of due diligence and are clear that we expect all businesses to comply with all applicable laws. However, the requirement for mandatory due diligence in domestic law is not necessarily desirable. The UK acknowledges that States in recent years have been leading the way with similar provisions, including my own country with our Modern Slavery Act. Nonetheless, States should be entitled to use a "smart mix" of

legal and voluntary measures to regulate businesses in their jurisdiction, according to their particular circumstances.

It is regrettable that the text still does not provide enough clarity in these areas, however, we strongly believe that to date the Treaty has made significant progress. We recommend that the Working Group should consider flexibility both in the exact construction of the instrument itself as well in the negotiations process, to allow for further amendments that reflect State choices in appropriate aspects.

Thank you.

## **20. Venezuela**

Gracias, Presidente.

Venezuela votó a favor de la Resolución 26/9 del Consejo que creó el Grupo de Trabajo sobre las empresas transnacionales con respecto a los derechos humanos, cuyo mandato es la elaboración de un instrumento internacional jurídicamente vinculante en esta importante materia.

Aspiramos a que los debates en esta 9ª sesión del Grupo de Trabajo, sigan dando continuidad a la necesaria cooperación de las naciones en este ámbito, y en especial que sean debidamente considerados los aportes y comentarios de los países del Sur Global.

Sobre el particular, reafirmamos la necesidad del establecimiento de normas internacionales jurídicamente vinculantes sobre las empresas transnacionales y derechos humanos, que coadyuven a prevenir y reparar las violaciones a los derechos humanos que comenten, la cuales en muchas ocasiones quedan impunes.

Al respecto, advertimos que el texto de proyecto presentado no debe apartarse del mandato dado por el Consejo de Derechos Humanos a este Grupo de Trabajo, en cuanto al alcance del futuro tratado internacional, el cual se aplicaría a todas las actividades de las empresas nacionales y transnacionales.

Como antes hemos indicado, consideramos que este proceso no implica duplicidad con ningún otro mecanismo del Consejo, ni que la elaboración de un instrumento internacional jurídicamente vinculante se opone a los Principios Rectores desarrollados en la materia.

Estimamos que un tratado sobre las empresas transnacionales y derechos humanos, será de gran beneficio tanto para las víctimas como para las empresas transnacionales responsables, a fin de atender debidamente sus compromisos y obligaciones en derechos humanos y poner fin a la impunidad por las violaciones cometidas, proveyendo recursos efectivos a las víctimas.

El futuro documento vinculante debe, entre otras cosas, ser claro sobre la naturaleza transnacional de las empresas, y regular de manera diáfana respecto a la responsabilidad de las empresas transnacionales antes las violaciones de derechos humanos, de conformidad con el mandato de la Resolución 26/9 del Consejo de Derechos Humanos.

En tal sentido, debemos seguir avanzando en la regulación de las actividades de las empresas transnacionales y otras empresas con base en el derecho internacional de los derechos humanos, hacia la reparación efectiva de las violaciones vinculadas a tales actividades, en favor de las víctimas.

Es necesario seguir abonando el camino hacia una efectiva protección y reparación por las violaciones de derechos humanos vinculadas a las actividades de las empresas transnacionales y otras empresas. Participaremos de manera constructiva en esta 9ª sesión del Grupo de Trabajo, en la cual aspiramos que los debates se desarrollen en el marco de un diálogo franco y fructífero.

Muchas gracias

## **B. Regional organizations**

### **1. European Union**

Mr Chair Rapporteur,

The EU and its Member States would like to thank you and the secretariat of the High Commissioner's Office for organising this session.

#### **EU policies**

The EU is unequivocally committed to the 2030 Agenda, and is integrating the Sustainable Development Goals into all proposals, policies and strategies, internal and external. A key component of these efforts is making our economy fairer, and more sustainable.

As part of this, the EU is working to ensure that businesses uphold their responsibilities to respect human rights and the environment wherever they operate, taking into account potentially affected groups and other relevant stakeholders - including civil society, human rights defenders, trade unions, the business community and National Human Rights Institutions.

Since the adoption of the UN Guiding Principles on Business and Human rights in 2011, business and human rights has been an important area of work for the EU. We are moving ahead in this area, as foreseen by the EU Action Plan on Human Rights and Democracy 2020-2024

The majority of EU Member States are implementing National Action Plans on business and human rights, many already since several years, and some have adopted corporate due diligence legislation. We are finalising work on an EU Framework for implementing the UN Guiding Principles on Business and Human Rights to provide coherence and coordination of actions taken by Member States and the EU, including at international level.

But we need to go further. Reflecting lessons learnt from voluntary measures, and the growing societal demand to go forward, the EU has moved very decisively with legislation:

The Corporate Sustainability Reporting Directive entered into force in January this year and requires large companies to report on the full range of sustainability issues including environmental, social and human rights, and governance.

We also have a new Batteries Regulation which entered into force in August, which establishes due diligence obligations on the supply chain of raw materials used for batteries, including with respect to human rights.

The landmark Corporate Sustainability Due Diligence Directive proposal is in the final stages of the legislative process. It would require large companies operating in the EU market to identify and address adverse human rights and environmental impacts in their own operations, as well as those of their subsidiaries and their value chains.

Two other important pieces of legislation in preparation are the Forced labour product ban Regulation, which will ban all products made with forced labour from the EU market and the Regulation for a Critical Raw Materials which will foster socially responsible practices, including respect for human rights and meaningful engagement with local communities, in the extraction of critical raw materials.

In the digital sphere, the Digital Services Act entered into force in November 2022 to ensure a safer and more open digital space. The EU is also finalising the process of adoption of the Artificial Intelligence Act, which aims to promote the development of AI and at the same time address the potentially high risks it poses to safety and human rights.

#### **LBI process**

Mr Chair Rapporteur,

As we have previously stated, the EU believes that a legally binding instrument has the potential to enhance global protection against business-related human rights abuses. In order to do so, an international instrument leading to global standards should build on the

consensual framework provided by the UN Guiding Principles on business and human rights, and be legally sound and effectively implementable.

A legally binding instrument should also be supported ideally by all but at least by a significant number of cross-regional UN members, so that it can enhance the protection of victims and create a global level playing field for all companies.

We would like to express our appreciation for the constructive efforts you- Mr Chair-Rapporteur- have deployed in the inter-sessional period, supported by the friends of the Chair, which include 2 EUMS, to listen to positions and collect contributions by UN Members and stakeholders.

The updated draft text of the Legally Binding Instrument that you issued over the summer is a step in the right direction to rally support by UN members for a future LBI and offers a basis for advancing in the negotiations.

The updated draft text ensures a closer adherence to the UN Guiding Principles on the issue of personal scope. Business-related harms indeed may be associated with acts by companies worldwide, irrespective of whether these companies are domestic or foreign, private run or state-owned.

The updated text in several articles grants state parties the flexibility to adopt appropriate legislative, regulatory, and other measures to ensure business respect of human rights and protection for victims.

We support the call on all state parties in the updated draft text to move forward and adopt or strengthen legally enforceable requirements on corporate human rights due diligence and other supporting measures. Experience on our side has shown that it is legislative measures that clarify corporate responsibilities, and ultimately make a difference.

The EU would nevertheless wish to express a number of concerns with the current text. We would have appreciated that the references to the right to a clean, healthy and sustainable environment, which was recognised first by the UN Human Rights Council in October 2021 and then by the UN General Assembly in July 2022 had been maintained. The proposal by the European Commission for a Corporate Sustainability Due Diligence Directive encompasses environmental due diligence as a whole besides human rights due diligence. We also support the reintroduction of references to the need for companies to report publicly and periodically on non-financial matters. Access to such information is much needed so that investors and stakeholders can make informed choices.

We also wonder about changes made to the provision on legal liability and, in particular, are disappointed with the deletion of references related to liability for failure to carry out effective due diligence, as a result of which harm occurred.

We continue to be concerned by the vague and abstract definition of some key concepts, such as human rights abuse, business relationship. We also remain concerned about the overly prescriptive and detailed provisions, notably on access to remedies for victims and related civil law provisions, several of which are not compatible with our legal system.

Additional work is needed to ensure a draft that can garner wide and cross-regional support, but we nevertheless acknowledge the Chair's efforts in moving this process forward.

## Conclusion

The current 9th session is a very important one. Today's discussions will show in particular whether more countries are ready to support the core provisions of the LBI on due diligence and access to effective remedy for victims.

While the European Union does not have a formal negotiating mandate, the EU will contribute to the discussion in a constructive manner, notably based on our evolving policy and legislative framework.

The EU will continue to actively participate in discussions and stands ready to work with the Chair Rapporteur and friends of the Chair, as well as other partners, to explore ways for a consensus-based instrument that can effectively enhance the prevention of harms and the protection of victims and create a global level playing field among companies.

Looking ahead, the adoption of the Corporate Sustainability Due Diligence Directive could provide a basis for the EU's future engagement in the negotiations, especially with respect to human rights due diligence and related provisions.

We look forward to the discussion during this session.

I thank you Mr. Chairperson-Rapporteur.

## **C. Specialized Agencies and other International Organizations**

### **1. International Chamber of Commerce**

UN updated draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

As the institutional representative of more than 45 million companies worldwide, the International Chamber of Commerce ("ICC") recognises the critical importance of ensuring that businesses have the knowledge, skills, tools, and incentives to respect human rights. ICC is committed to enable business worldwide to secure peace, prosperity, and opportunity for all. Ensuring that the billions of people whose lives are impacted by corporate activities are treated with respect for their dignity and fundamental wellbeing is a core tenet of ICC's vision. In fact, many businesses are leading – or, one could say, are ahead of the curve – when it comes to prevention of, and protection against, human rights violations.

In this context, we would like to share our institutional perspective on key developments and challenges in the business and human rights landscape – as well as some specific observations with regard to latest version of the draft treaty to be discussed by the IGWG this week, to the Chair's text, and to the process itself.

#### **The primacy of the UN Guiding Principles**

We continue to believe that the United Nations Guiding Principles on Business and Human Rights ("UNGPs") represent a transformational roadmap to a future where humans and corporations thrive and prosper together. A decade on from their adoption, however, we share the frustration of many stakeholders that their implementation remains incomplete – and fear that the global collaborative approach enshrined in the UNGPs may be at risk of erosion without concerted action from all parties.

In this connection, it remains of significant concern that only a limited number of governments have published - and let alone implemented - national action plans under the UNGPs. We urge all governments that have not yet done so to commence the development of robust action plans without delay. Our global network stands ready to contribute constructively to the elaboration of any new action plans – with the goal of ensuring that national frameworks enable meaningful action from the private sector at all levels.

With specific reference to business, the work of embedding the UNGPs into corporate practices is picking up impressive speed – with risk assessments, enhanced supply chain due-diligence, and human rights training all now routinely implemented in many enterprises. It is imperative that we work together to accelerate these positive trends. The challenge ahead is two-fold: (i) to ensure that these new practices translate into improved human rights performance; and (ii) to enable all businesses – regardless of size, sector or location – to embed respect for human rights throughout their operations.

ICC continues to collaborate closely with the UN Working Group on Business and Human Rights, and looks forward to participating in this year's Forum in November. ICC also continues to actively support its members to scale implementation of the UNGPs – and we will intensify these efforts to achieve the maximum on the ground impact. We also encourage the UN and its member states to continue to enhance sharing of best practices and to pursue its collaborative approaches to enduring challenges.

#### **Principles for future legal developments**

However, ICC still remains concerned at the current approach in this forum on a treaty-based approach. In this context, we would like to take the opportunity to stress the imperative for any future national, regional – and indeed international - frameworks to: (i) be internationally

consistent; and (ii) align fully and completely with the standards embodied in the UNGPs. Absent these criteria, it is our concern that future legal developments may inadvertently disrupt the efforts of companies already working to implement the UNGPs – as well as eroding incentives for actors who have yet to step up to their responsibilities to take action.

We encourage all governments considering possible independent legislative initiatives to have full regard to these two principles as a cornerstone of any future efforts aimed at meeting business and human rights challenges, and to engage in multi-stakeholder consultations as policies are being developed.

### **Conclusion**

It is incumbent on us all to support the development of robust, effective, and coherent policy settings in the field of human rights and business, and to do so in ways that have real and positive impact on those most at risk of human rights abuses. We stand ready to work with all stakeholders to this end.

## **2. World Health Organization**

Thank you, Mr Chair.

The fundamental human right to the highest attainable standard of health implies a clear set of legal obligations on States to ensure appropriate conditions for the enjoyment of health for all people without discrimination. To this end, WHO welcomes the updated draft of the legally binding instrument.

The right to health is indivisible from the set of internationally agreed human rights, and involves progressive realization and non-retrogression.

Noting that transnational corporations and other business enterprises can support the realization of the right to health, and uphold business practices that do not undermine it, WHO offers the following as considerations on the text:

In the context of Preamble PP 2, WHO wishes to highlight the importance of the WHO Framework Convention on Tobacco Control as an evidence-based treaty that reaffirms the right of all people to the highest standard of health.

In Articles 6.2.(c) and 6.4, WHO notes that the efficacy of legally enforceable human rights due diligence by business enterprises can be improved if aligned with, and complementary to the human rights due diligence activities conducted by States Parties, such as human rights impact assessments and other appropriate measures or procedures.

In addition to protecting against undue political influence of businesses, we also note the value of protecting against actual or perceived conflicts of interest between business enterprises and their personal representatives, and the realization of fundamental human rights, including the right to health, through policy coherence and decision making.

Safeguarding against conflicts of interest is important for advancing the progressive realization of the right to health, and the principle of non-retrogression, across the instrument, and specifically for Articles 6, 15.1 and 16.6.

Thank you.

## **D. National Human Rights Institutions**

### **1. Commission nationale consultative des droits de l'Homme (CNCDH)**

Monsieur le Président-rapporteur,

La Commission nationale consultative des droits de l'Homme (CNCDH) se réjouit de l'ouverture de la neuvième session du groupe de travail intergouvernemental à composition non limitée sur les sociétés transnationales et autres entreprises et les droits de l'Homme. Elle espère que les échanges seront constructifs et la session productive, afin de faire avancer les négociations sur le fond du projet d'instrument juridiquement contraignant.

Institution nationale des droits de l'Homme (INDH) en France, la CNCDH vient d'adopter un avis public, le 19 octobre dernier, sur le projet d'instrument juridiquement contraignant, qui s'inscrit dans la continuité de ses précédents travaux sur le sujet. Cet avis poursuit un double objectif. Le premier est d'encourager la France à redoubler d'efforts, aux côtés des autres États membres, pour que l'Union européenne soit dotée d'un mandat de négociation, afin que l'ensemble des États des différents groupes régionaux des Nations Unies participe au processus de négociation. Le second est de se prononcer sur le projet actualisé d'instrument publié le 31 juillet 2023. La CNCDH constate qu'il apporte des améliorations quant à la terminologie employée et renforce certaines dispositions, mais comporte d'importants reculs sur lesquels elle attire l'attention, qui risquent de restreindre l'apport du projet de traité s'agissant notamment de la mise en œuvre du troisième pilier des Principes directeurs des Nations Unies relatifs aux entreprises et aux droits de l'Homme. Elle formule 20 recommandations autour de trois séries d'observations.

D'une part, la CNCDH insiste sur l'importance de conserver un champ d'application large pour couvrir l'ensemble des violations des droits de l'Homme commises dans le contexte des activités des entreprises et recommande notamment de réintroduire une référence explicite au droit à un environnement propre, sain et durable.

D'autre part, une autre série de recommandations vise à améliorer la définition de l'obligation de vigilance et de la responsabilité pour favoriser la sécurité juridique et la redevabilité.

Enfin, la CNCDH formule des recommandations visant à préserver et à renforcer la protection des titulaires de droits et l'accès aux voies de recours afin de remédier aux dénis de justice.

La CNCDH insiste depuis de nombreuses années sur la nécessité d'adopter un instrument juridiquement contraignant à l'échelle mondiale, afin d'agir pour des chaînes de valeur responsables en matière de droits de l'Homme et d'environnement ; de renforcer la concurrence loyale en harmonisant les obligations dans ce domaine (level playing field) ; et de combler les lacunes du droit positif. Elle appelle la France, l'Union européenne ainsi que l'ensemble des États à s'engager activement dans le processus de négociation de façon à trouver un terrain d'entente pour répondre à ces enjeux et mieux prévenir ou réparer les violations des droits de l'Homme commises dans le contexte des activités d'entreprises, privées ou publiques. La CNCDH entend continuer à suivre les négociations en étant force de proposition, y compris avec les autres institutions nationales des droits de l'Homme (INDH) dans le cadre des réseaux francophone, européen et mondial des INDH.

Je vous remercie Monsieur le Président-rapporteur.

## **E. Non-governmental organizations with ECOSOC consultative status**

### **1. The International Commission of Jurists (ICJ)**

Thank you, Mr. Chair.

The International Commission of Jurists (ICJ) congratulates you on your election as the Chairperson-Rapporteur.

The ICJ acknowledges the efforts made by the Chairmanship to propose a revised and streamlined text on the basis of the various inputs received and consultations organized since the 8th session of this working group. We appreciate that this work has resulted in a more concise and clearer text in several places, which, in some respects, may better facilitate the negotiations ahead of us this week. We also acknowledge that there are varying and divergent positions among States on the more difficult issues under discussion in this process and that you have proposed some compromise formulations to bridge the gaps.

We, however, regret that some critical provisions have disappeared from the revised draft in front of us at this session. The ICJ is particularly concerned that articles concerning prevention, liability and jurisdiction have been stripped of key elements that served to clarify international human rights law with regard to accountability for human rights abuses and violations in the context of business activities; and to ensure access to justice for the victims of such abuses and violations including through access to effective judicial remedies.



The ICJ will thus intervene in the negotiations during this 9th session in a constructive spirit with the aim to make proposals and comments addressing these gaps in the protection of human rights in the context of the activities of transnational companies and other business enterprises.

We are convinced that this process, after 9 years, needs to deliver an ambitious enough text so as to meet the needs of present and future of victims and make a real contribution to the necessary development of international law in that area. For these reasons, we urge all States from all regional groupings to participate actively and constructively in the negotiations.

Thank you very much, Mr. Chairperson-Rapporteur.

## **2. USCIB**

Chair, excellencies, and delegates,

I speak on behalf of the United States Council for International Business (USCIB), the sole representative of American business at the International Organisation of Employers (IOE), the International Chamber of Commerce (ICC) and Business at OECD (BIAC).

We align ourselves with the statement made by the IOE.

Chair, we recognize the global community's commitment to human rights and the good intentions of all delegations present. U.S. business is firmly committed to respecting human rights. However, we have serious concerns about the 4th draft of the legally binding instrument.

First, it is unclear what the binding instrument is intended to solve for. If the objective is the full realization of human rights for all, this legally binding instrument would fail to do so because it does not tackle the root causes of human rights abuses.

Second, we want to remind delegates that the reason behind the great success of the UN Guiding Principles (UNGPs) was its multi-stakeholder process and genuine buy-in from all stakeholders involved. Let me be clear – this legally binding treaty does not have the buy-in of the U.S. business community, and we see little to no effort in getting the business community on board.

Third, it must be noted that the substance of the legally binding instrument is far-reaching, poses significant liability risks, and would cause businesses to pull out of many developing countries.

In conclusion, Chair, we are severely worried about the feasibility and implementation of this draft Treaty and its many unintended consequences. We remain ready to engage with governments, and we underscore our commitment to respecting human rights and advancing responsible business conduct.

I thank you.

## **3. Joint Statement on behalf of DKA Austria, Child Rights Connect, ECPAT International, Human Rights Clinic of UFMG and PUCPR.**

We would like to thank the chair, the friends of the chair, and the UN member states for promoting the rights of children in the LBI. We have seen crucial amendments that are in line with a child rights-based approach for instance in PP9 on the recognition of the best interests of the child in the context of business activities however, we also felt the absence of some relevant elements that have been there in previous drafts.

We believe that there is still much to be done when it comes to the rights of children to be heard, to a proper child rights impact assessment and due diligence, to child-friendly procedural laws and to the protection of child human rights, with special regard to children environmental human rights<sup>2</sup> defenders.

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<sup>2</sup> Para 30 GC 26.

We call on states to reinstate the right to a clean, healthy and sustainable environment to the text! There is an undeniable connection between the protection of the environment and the realization of other human rights. The environmental degradation, to which businesses activities contribute, and the adverse effects of climate change affect children's enjoyment of rights and endanger the generations to come.

Therefore, we urge the States to take also into account the need to emphasize businesses responsibility to respect child rights in relation to the environment.

The organisations mentioned before will be making wording proposals in line with the convention of the right of the child throughout the week. We thank you all for taking them into consideration!

#### **4. Association for Women's Rights in Development (AWID) on behalf of Feminists for a Binding Treaty**

Thank you Chair.

This statement is made on behalf of the Feminists for a Binding Treaty—a network that has been working collectively to advocate for a gender-responsive treaty since 2016.

The urgency of the ongoing events demand that I first condemn the ongoing genocide against the Palestinian people as part of a larger settler colonial project in which many transnational corporations are complicit.

We continue to express our strong support for the Binding Treaty and recognise the many contributions from States, experts and NGOs, which has resulted in the third revised draft. This draft should form the basis for negotiations.

We aim to ensure that diverse women and non-binary people's voices, rights, experiences and visions are meaningfully included and prioritised throughout the negotiation process. Women bear the burden of multiple crises, including food insecurity and climate change. They are also [at the heart of climate justice](#), including in their fundamental role as human rights and environmental defenders. Yet women's voices and leadership are often suppressed in decision-making processes.

We are encouraged that the draft makes efforts to address gender equality, but we are concerned that the new text weakens the obligation of corporations to respect human rights, by presenting a pared-down definition of human rights due diligence and referring to corporate responsibilities, rather than obligations, and that the draft makes State obligations subject to domestic law, undermining the entire purpose of the treaty to strengthen the core obligations required when conducting business activities.

We look forward to participating in this session throughout the week and emphasize that gender justice must be at the centre of negotiations.

Thank you.

#### **5. Joint statement on behalf of ESCR-Net and Al-Haq**

Mr. Chairperson

I address you today with a heavy heart, burdened by the unimaginable suffering and devastation inflicted upon the Palestinian people. The horrifying reality of their plight casts a shadow upon our collective humanity—a humanity that is being tested in its resolve to stand against injustice and to hold those responsible accountable for their actions.

Amidst this darkness, it is crucial to recognize the origins of this devastation, which like many others throughout history, stem from imperial ambitions, colonialism and the exploitation of religion; facilitated by powerful corporations serving as vehicles of conquest.

It must not be lost on the initial champions of this treaty process, including many in the African and Latin American group, that the same companies historically involved in the suffering of their people are developing interests today in the natural gas fields of the Mediterranean Sea, while arms manufactures are struggling to meet demand and new trade routes are being developed.

It is a stark reminder that the horrors we witness today have deep-rooted connections to corporate interests that know no borders and respect no rights. The devastation in Gaza is not isolated; it is a symptom of a larger problem—a system where transnational corporations stand to benefit from oppression, killings, and destruction in the support of imperial ambitions.

Through this legally binding instrument, we must center the demands of people affected particularly in the Global South. We must ensure transparency in this process; we must also respond to the repeated calls over the last years for the strengthening of the draft treaty on issues related to corporate legal liability, accountability and extraterritorial obligations of States to prosecute corporate actors committing violations and abuses. We must end corporate impunity now.

In our work this week, we can contribute to disincentivizing conflict, apartheid and colonialism in the Palestinian context and elsewhere. It is a mission to stop corporate capture, safeguard human dignity, and to break free from the shackles of corporate greed and the yoke of imperialism, paving the way for a world where justice, equality, and respect for all nations prevails over the pursuit of profit; a world where international law and the right to self-determination are not merely given lip service.

Where are we as humanity when genocidal statements are coupled with promises for economic gain to a domestic audience?

Now, more than ever we need a strong and genuine leadership among states to move this process forward to achieve the virtuous ambitions which inspired it in the first place.

Thank you.

**6. Joint Statement on behalf of American Association of Jurists (AAJ) Fundalatin, Maloca Internationale, Al-Haq, Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP), Associazione Comunità Papà Giovanni XXXXIII, Union Nationale des Femmes Algériennes (UNFA), International Federation for the protection of the rights of ethnic, religious, linguistic & other minorities**

Mister President,

The undersigning organisations reaffirm the importance to achieve the process initiated by Council's resolution 26/9 in a way that will provide the most vulnerable and the victims of human rights violations with an international legal binding instrument offering them the needed protection.

This is not the place to go into detail about the power exercised by TNCs over local, national or regional public institutions, which often have a much smaller financial resource than these companies. But it is essential for everyone to keep this essential aspect in mind at all times when it comes to finalising an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

It is in this spirit that the undersigning organisations denounce counterproductive behaviour of States that, instead of taking victims approach in the negotiation process, are deploying their efforts to weaken the content and scope of the text under discussion in order to protect the particular interests of private entities.

There is a long list of instruments, declarations, resolutions highlighting the necessity of enjoying human and peoples' rights by all as a basis for achieving peace, security and economic development for all. In too many cases, competition for the exploitation of natural resources is the root cause of serious and continuing human rights violations.

In this perspective, the international legally binding instrument shall protect personal and collective rights and offer to individuals and communities, including indigenous peoples, minorities and peoples under illegal foreign occupation, the entitlement to take legal action, without any kind of restriction, in order to enforce these rights against any actor - natural or legal person - who has supported or committed the violation of rights.

We call upon all parties to participate meaningfully and constructively to this session in order to achieve a text that offers the broadest possible protection to victims of rights violations committed by transnational corporations and other business enterprises of a transnational character along the value chain.

I thank you for your attention.

## **7. Joint Statement on behalf of the Africa CSO Group**

My name is Sabelo Mnguni, representing an organization of Mining Affected Communities United in Action, located in South Africa. I make this statement on behalf of the African civil society organizations and coalitions working towards a strong Legally Binding Instrument which is effective and appropriate for our context and our struggles.

As African CSOs, we acknowledge and support the strong and progressive stance taken by the Africa Group in the lead-up to the ninth session of the open-ended intergovernmental working group. In particular, we note the following:

At the eighth negotiations in 2022, many CSOs raised concerns with the document titled ‘Suggested Chair Proposals’, which we deemed to be procedurally defective for departing from the objectives set out in Resolution 26/9; being drafted outside of the scope of the IGWG’s negotiations; and thus, negating the democratic nature of this drafting process. Many States raised the same concerns.

The current updated draft of the LBI circulated by the Chair-Rapporteur in July 2023 is similarly defective, both in terms of procedure and content. In particular, the current draft arbitrarily incorporates suggestions from the ‘Chair Proposals document,’ while at the same time ignores many relevant suggestions made during the eighth negotiations by committed States and written contributions by civil society organizations.

Many of the omitted suggestions are from Member States and civil society groups in Africa, and therefore, we feel that our contributions have not been adequately incorporated in the new updated draft in a manner that will allow this process to move in a democratic, transparent and progressive manner.

In addition, the current draft incorporates suggestions made at the various intersessional consultations held in 2023, in which the Africa Group did not participate. We, therefore, jointly support the recommendations and request made this morning by the Africa Group that the ninth negotiations are conducted based on the third revised draft with track changes.

We consider the current draft to be a document that violates the democratic nature of this process, with several structural gaps that were filled through textual suggestions during the 2021 and 2022 negotiations, which suggestions were not incorporated by the Chair. As African CSOs, we dispute that the Chair-Rapporteur has fulfilled the mandate imposed on him by the plan of action agreed at the conclusion of the eighth session as we consider that the current clean version of the draft is not a correct reflection of the suggestions made during the eighth session of negotiations.

It is only when the IGWG protects the democratic nature of this process, that this process can successfully achieve its urgent and necessary end – namely the adoption of an effective LBI that can appropriately address the struggles faced by communities affected by TNC violations. Those regions most affected by the Human Rights violations of TNCs cannot be left out of this process.

## **8. Joint Statement by FIAN International and Misereor**

Je m'exprime au nom de FIAN International et Misereor, et je parle en tant que membre du groupe africain d'organisations de la société civile participant à cette session.

Je m'appelle Magatte et je représente une communauté sénégalaise dont les droits humains sont bafoués par une entreprise française.

Tout d'abord, nous appelons tous les États à s'engager de bonne foi et de manière constructive dans ces négociations. Ce groupe de travail au sein du Conseil des droits de l'homme doit travailler de manière transparente et avancer dans un mode de négociation qui permette aux États, dans le cadre du travail intergouvernemental, de parvenir à des accords sur les aspects sur lesquels ils ont encore des divergences. Alors que ce groupe de travail ne se réunit qu'une fois par an, les violations des droits humains se poursuivent en permanence sur le terrain, nous y sommes confrontés quotidiennement.

Pour répondre à certaines des déclarations faites par les États

- Les principes directeurs sur les entreprises et les droits de l'homme sont mentionnés par certaines délégations, comme l'Union européenne, les États-Unis et le Japon. Mais il faut enfin aller au-delà de cet instrument qui n'est que volontaire et ne répond pas aux besoins des personnes victimes de leurs droits dans une économie mondialisée basée sur la dépendance.
- La référence renforcée aux lois nationales - telle que proposée par les États-Unis - est également problématique car elle entraînerait des différences importantes lorsqu'il s'agit de traiter les violations des droits humains commises à l'étranger, et empêcherait la mise en place de règles du jeu équitables.
- Il est impératif de s'abstenir d'inclure les entreprises dans les processus dits "multipartites", mentionnés par les États-Unis, le Portugal ou le Japon. Les entreprises n'ont de comptes à rendre qu'à leurs actionnaires, et non aux citoyens, et imposent leurs positions en affectant la prise de décision démocratique.
- Nous soutenons la demande, formulée par exemple par l'Union européenne, le Portugal, la Colombie et d'autres, d'avoir une disposition forte visant à protéger le droit à un environnement propre, sain et durable, car cette dimension a complètement disparu du projet mis à jour.
- La perspective de genre doit être fortement présente dans ce traité, comme l'a mentionné le Portugal.
- Les droits des victimes à participer à l'élaboration des processus juridiques doivent être maintenus, tout comme les droits des paysans doivent être explicitement mentionnés, comme l'a proposé la Colombie.
- Nous soutenons l'affirmation de la Palestine selon laquelle ce traité doit absolument aborder la question de la prévention et de la responsabilité des entreprises dans les conflits et les guerres, y compris l'occupation
- Nous soutenons la Colombie lorsqu'elle affirme qu'un traité ayant fait l'objet de nombreuses ratifications mais ne comportant pas les éléments nécessaires ne serait pas suffisant.
- Alors que certains États soutiennent qu'ils n'ont pas de mandat pour négocier cet instrument, les associations d'entreprises ont le mandat d'influencer le processus, et les entreprises ont le droit de faire du mal. Nous vous rappelons votre obligation de protéger les droits de l'homme.

La protection de solutions réelles pour les personnes affectées et la préservation du caractère démocratique de ce processus sont entre les mains de tous les États.

## **9. Center for Constitutional Rights**

Thank you, Chair,

It is now beyond doubt that the viability of planetary conditions suitable for human life are in jeopardy. What has brought us to this point is the logical conclusion of colonialism and capitalism, borne in large part by the home states of the majority of transnational corporations.

The pathway forward is as clear as it is challenging. To maintain a viable ecological equilibrium that sustains life for us on earth depends on what we do now to begin dismantling all colonial, neocolonial and capitalist global structures.

A strong binding treaty could be an integral component of a new global legal infrastructure. However, to do this the treaty must foreground the primacy of human rights in all political and economic considerations of states. Any addition to the international human rights legal system worthy of the name must safeguard the rights of Indigenous people and many other marginalized people, especially black, racialized, disabled, trans, queer, poor, young and older people, that are forced to work the most dangerous and undignified jobs.

Many states expose these communities to illness and premature death by locating toxic industrial facilities in the areas where they live, destroying their local air, land and water. We hope this treaty will also address the close relationships between government agencies, settler violence, and private military corporations that lead directly to violence against Indigenous peoples and human rights defenders.

Lastly, as a delegation including several Indigenous peoples whose territories remain occupied by the nation states of Canada and the United States, we express our unconditional solidarity with Palestinians as related colonized peoples. We condemn their ongoing genocide and occupation as part of a larger settler colonial project in which many multinational corporations are complicit or profiting from.

The states here today must not fail to meet their obligation to safeguard our future. There is no viable alternative.

Thank you.

## **10. Franciscan International**

Cette déclaration est faite au nom de Franciscans International. Nous faisons partie et soutenons l'Alliance pour un traité, ESCR-Net et Feminists for a Binding Treaty.

Je suis venue ici aujourd'hui du Mozambique, où je travaille dans des camps de personnes déplacées à l'intérieur du pays. Ces personnes ont été déplacées en raison de conflits et de problèmes de sécurité qui, dans la province de Cabo Delgado, sont liés aux industries extractives telles que le gaz et le rubis. L'exploration et l'exploitation des ressources naturelles, y compris par les sociétés transnationales, ont entraîné des expulsions forcées, de l'insécurité alimentaire et la destruction des moyens de subsistance, ainsi que de nombreuses dégradations de l'environnement. Ces projets émettant des gaz à effet de serre, s'inscrivent dans un contexte où le pays souffre déjà fortement de la crise climatique.

Notre expérience est l'une des innombrables qui illustrent le besoin urgent d'un traité contraignant pour régler les sociétés transnationales.

Monsieur le Président,

Nous sommes extrêmement préoccupés par le fait que des éléments importants ont été supprimés du quatrième projet révisé. Nous réitérons la nécessité pour que l'instrument ait un langage fort relativement à l'environnement ainsi que sur les situations de conflits.

Plus généralement, nous regrettons que le processus d'élaboration de ce quatrième projet n'ait pas été transparent et que le texte ne reflète pas les principales préoccupations des communautés. Nous espérons qu'une approche plus transparente sera adoptée pour aller de l'avant.

## **11. International Organizations of Employers (IOE)**

Thank you Chair.

I speak on behalf of the International Organisation of Employers.

Since 2014, the business community has actively participated in this process, despite its evident shortcomings and the significant divergence in viewpoints. Our common guiding star remains the UNGPs. Yet, after more than eight years of negotiations, this process seems **far from reaching any possible consensus.**

As a positive point, we welcome the effort from the Chair **to streamline the text**. As business we consider **this fourth draft as a step in the right direction**, but much work remains to be done.

However, major prescriptive elements remain this new 4th draft which continue to pose **serious risks** to legal certainty, economic development, trade and investment, increased productivity and competitiveness, and the sovereignty of States.

- **First: The unclear and broad definitions in Article 1** continue to create legal uncertainty and extend the **scope of due diligence obligations and liability** without any direct link.
- **Second: Ambiguity remains for the scope of the treaty.** It should apply to all companies but a clause excluding micro, small, and medium-sized enterprises is essential to respect their limitations.
- **Third, on access to remedy:** forum shopping and the reversal of the burden of the proof continue to carry the important risk to erode national sovereignty and the sustainability of national judicial systems.
- **Forth,** introducing legal liability for a company based on a violation occurring **anywhere in its entire value chain** without requiring a causal connection between the business and alleged harm is unrealistic. Extending **liability to natural persons** will deter companies from certain markets and countries.
- **Lastly,** the draft continues to promote **broad extraterritorial jurisdiction**, diverging from the established doctrine of *forum non conveniens*.

Chair, we will continue to express our concerns throughout this session, but we call on States to think about **what can be realistically requested from companies but also from themselves as main duty-bearer under international law**.

We also call on them to think about the **unintended negative consequences of a draft treaty which would miss the target by being too prescriptive and unimplementable**.

**Private enterprises create 9 out of 10 jobs worldwide.** In times marked by inflation, conflicts, and transitions, with the Agenda 2030 around the corner, society requires responsible business conduct as much as business needs supportive society and governments. **Business needs support from States, not an instrument that would deter this through additional barriers or unrealistic requirements via a compliance-driven approach.**

IOE and the business community remain committed to advancing human rights, yet **important changes are necessary to reach a balanced outcome for all**.

Thank you.

## 12. Verein Sudwind Entwicklungspolitik

Sudwind and the other members of the Treaty Alliance Austria, a coalition of over 15 Austrian NGOs and trade unions, appreciate the opportunity to contribute. With regard to the amendments, we see the clear need for the EU and the member states to participate in the discussions. On the occasion of the 30th anniversary of the World Conference on Human Rights, several events took place in Vienna, where our members had the opportunity to exchange ideas with young Human Rights Defenders from all over the world. We have to act in solidarity with these young people and all others, who stand up for human rights and the protection of our planet, although they know that their political engagement can also lead to repression! The ongoing climate crisis also highlights the urgent need for action. Human rights, the environment and the climate are closely linked. Therefore, there is an urgent need

for human rights, environmental and climate due diligence. We clearly call for the re-inclusion of the environmental and climate aspects in the text. Furthermore, we would like to draw attention to the need for improvements in the following areas:

Article 7.4: we welcome that the Article still includes, the reversal of the burden of proof, but it should be clearly defined as an obligation and not just as a possible measure as in Art. 7.

Article 8 should also include administrative sanctions if corporations fail to comply with their due diligence obligations (also if there is no harm).

Article 14.5 needs specific measures to ensure that human rights are not undermined by trade and investment agreements. For this reason, we demand, among other measures, the reintroduction of Article 14.5 (b), which was deleted.

We will come back to recommendations on specific articles during the week and kindly ask for your consideration.

### **13. Joint statement on behalf of CIDSE, Misereor, Broederlijk Delen, CCFD, Trocaire and Fastenaktion**

I am speaking on behalf of CIDSE, Misereor, Broederlijk Delen, CCFD, Trocaire and Fastenaktion.

We deeply regret that the **EU still lacks a mandate** for actively and formally engaging in the negotiations. As the European Commission, the Council and the European Parliament have already formulated their respective positions on the *Corporate Sustainability Due Diligence Directive* and coincide in many key aspects, the EU would have been in a position to develop such mandate and to engage instead of just commenting from the sidelines.

While the **Updated Draft** contains a few improvements with respect to the protection of human rights defenders and financial assistance to facilitate access to justice, we regret **important steps back**, of which we want to highlight the following three ones:

1) Art. 8 still requires the introduction of a comprehensive system of **liability**. However, a new **qualifier** subjects the type of liability to the consistency with domestic and administrative systems. Moreover, the former reference to the need for “**reparations** to victims” was deleted. Both changes create significant legal uncertainty on whether, and under which conditions, business enterprises shall be liable under civil law and have to provide reparation to the victims.

2) Art. 14 still obliges States to interpret and implement **trade and investment agreements** in a manner that does not restrict their capacity to fulfill their human rights obligations. However, under the Updated Draft, States would no longer be required to make sure that **new** trade and investment agreements are compatible with human rights obligations under the LBI. This deletion is unacceptable given the huge negative impact, new trade agreements can have on policy spaces of States to comply with human rights obligations.

3) The deletion of the right to a safe, clean, healthy and sustainable **environment** from Art. 1.2. of the Third Draft is a huge step back behind the international consensus on the inseparability of human rights and environmental protection. The same is true for the complete deletion of environmental due diligence measures.

In these and many more aspects, the **Updated Draft is an unacceptable step back** compared to the Third Draft that already contained many insufficiencies. We call on States to reject these modifications and further improve the text. In our written submission we have proposed concrete wording for such improvement based on our **legal opinion** on the Updated Draft written by Prof. Markus Krajewski and others.

Thank you very much!



#### 14. International Indian Treaty Council

I speak today as a Laguna Pueblo and Dine woman who grew up in a community impacted by 30 years of uranium mining by transnational companies. Today my communities and other Indigenous peoples in the southwestern US deal with numerous environmental and health issues, including contaminated land and water and cancer, as part of the legacy of uranium mining and milling from the 1950's to the early 1980's. We will be addressing these issues for generations to come.

We ask that these negotiations continue to take cognizance of international and regional human rights instruments for Indigenous Peoples, including ILO 169, applications of other human rights treaties, and the UN Declaration on the Rights of Indigenous Peoples.

Between 1970 and 2004, global extraction of major minerals grew by over 75 percent, industrial minerals by over 53 percent, and construction materials by 106 percent. "Worldwide mining has been spurred by a variety of factors..... including increased production of consumer electronic products, and the highest military and industrial consumption rates of these materials in history." Many of these minerals are located on Indigenous Peoples' territory- lands to which the rights of self-determination and the right of free, prior and informed consent are central.

We are keenly aware that this process is a state-driven process, as the chair has reminded us. However, an instrument that fails to take into account the people and communities whose lives have been most impacted by transnational corporate abuses will lack legitimacy. We appreciate those states who have articulated similar concerns. For many of us in the room, this is not an intellectual exercise but ongoing work to protect our communities and our ways of life so that we can have a future.

#### 15. Joint statement of Global Unions

Thank you, Chairperson. I speak on behalf of over 300 million workers belonging to the global trade union organisations:

- ITUC
- BWI
- EI
- IndustriAll
- ITF
- IUF
- IFJ
- PSI; and
- UNI

Chairperson,

The Global Unions appreciate your work during the inter-sessional period. However, we regret the lack of meaningful trade union consultation in the *Friends of the Chair* process despite our multiple offers to engage. We also note with concern that *none* of our comments submitted in March were reflected in the updated draft.

Global Unions continue to reiterate that the third revised draft offers *conceptual* clarity and a text that is politically viable for all. That text, which enjoyed considerable support from a cross-section of governments and civil society should set the *benchmark* for this Session.

We note that the updated draft incorporates a number of the Suggested Chair Proposals. While these proposals are aimed at achieving the broadest possible support for the draft, we

believe that there is a risk of losing much-needed detail to truly achieve accountability for corporate human rights abuse.

We note with concern that key provisions, including Articles 6 (Prevention), 7 (Access to Remedy), 8 (Legal Liability), and 9 (Jurisdiction), have been significantly diluted in the updated draft. In particular, Article 8, which in many ways lies at the heart of the LBI, now no longer resembles the liability regime envisioned in the last two revisions. Similarly, a number of preambular provisions and definitions have either been amended, streamlined or deleted.

Chairperson,

The LBI needs to be an instrument that effectively realigns the normative asymmetry between the legally enforceable rules that protect corporate interests through Investor-State Dispute Settlement (ISDS) provisions and arbitration tribunals, and the soft law approaches to corporate obligations to respect human rights.

Any deviation from this purpose will be a major setback in the fight against corporate impunity. Indeed, workers should not have to continue to pay the price for the excesses and failures of neo-liberal capitalism.

Chair,

We also deeply regret the deletion of almost all language related to the climate crisis and business obligations to prevent, mitigate and remedy environmental harm, including the non-controversial recognition of the established human right to a clean, healthy and sustainable environment. There is international consensus, as demonstrated most recently in the revised OECD Guidelines for Multinational Enterprises, on the need to recognise the key role of business in responding to global, regional and local environmental challenges, including the urgent threat of climate change. Workers around the world need a just transition to a sustainable economy, a right firmly embedded in international human rights and labour law.

Despite our significant concerns with the updated draft, the Global Unions will engage constructively at this session with a view to building consensus. Indeed, we acknowledge certain improvements to the text in the updated draft, most notably in relation to access to information, legal aid, and stakeholder consultation. We also commend the Chair for introducing clearer Treaty language and for sanitising the text by avoiding duplication in several places.

Finally, Chair, We urge *all* States to engage meaningfully in this process with a view to building consensus – but without compromising on the objectives we've set ourselves.

The convergence of crises: climate, cost of living, and conflict have once again shown serious deficiencies in corporate human rights due diligence processes this past year. Too many lead firms in global supply chains have denied workers' respect for human rights exposing the failed model of voluntary corporate social responsibility. Millions of workers in global supply chains are open to labour rights abuses from a deeply flawed model which allows companies to hide from their responsibilities.

As global polls regularly show, citizens of the world – across borders - support laws intended to hold companies accountable for harms to people and planet.

Almost a decade into this process, it is time to take advantage of this once in a generation opportunity to close a major gap in international human rights law and to end the impunity for corporate human rights abuses.

Thank you,

**16. Joint statement on behalf of Friends of The Earth International, Justica Ambiental in Mozambique and the Global Campaign to Dismantle Corporate Power**

Thank you Chair.

My name is Erika Mendes, and I speak on behalf of Justica Ambiental in Mozambique, Friends of the Earth International and the Global Campaign to Dismantle Corporate Power.

First and all, we call on all states to vote an immediate ceasefire to stop the genocide in Palestine. War crimes and crimes against humanity are unfolding as we speak. Not only Israel but all companies profiting from this colonial occupation and apartheid regime, and especially arms companies, must be held accountable for the violations they have been causing.

We would like to unite our voice with those who have expressed concern for the undemocratic and untransparent way that led us to the Updated Draft released by the Chair. We thus support the initial call from the Africa Group to negotiate based on the third revised draft, which was the only legitimate document of negotiations for this session.

Even though the Updated Draft might seem like progress, when we analyse the text in detail, we can see how the changes made set us back at least three years in the negotiations, by arbitrarily removing important proposals supported by several States, in particular African States and others from the global South, and by incorporating proposals that deviate from the clear mandate set by Resolution 26/9, many of which even lacked support from a significant number of States. These changes, mainly inspired by the Chairs informal proposals that disrupted the process last year, weaken the provisions of the Binding Treaty, thus benefitting TNCs and their host countries to the detriment of social movements, workers, peasants, and affected communities.

We agree with the Chair Rapporteur that this IGWG cannot review the scope of its mandate, and relatedly, the scope of the LBI. However, we firmly believe that the new clean draft indeed violates the letter and spirit of Resolution 26/9 with regard to the scope of the LBI, and is accordingly procedurally defective. As the representative from Cuba confirmed, “We are not here to renegotiate the mandate of the [IGWG], but to fulfil it.” The standard against which the draft provision on scope must be judged is not that in the third revised draft – as contended by the Chair-Rapporteur – but that contained in the Resolution which empowers this IGWG. We understand that the Chair has overreached his mandate and has deviated from the mandate of Resolution 26/9 on his “Guidelines for Intersessional Work”, by imposing a scope on all business enterprises, rather than being limited to only TNCs and their global value chains. Furthermore, the Chair has deliberately excluded from the Updated Draft all the proposals from States during the 7th and 8th session that called for a scope restricted to TNCs and OBEs with a transnational character, which highlights yet again the undemocratic nature of this draft.

The letter and spirit of Resolution 26/9 enjoins this IGWG to effectively close the current gaps in international Human Rights law relating to the unregulated activity of TNCs and OBEs which are transnational in their character. Importantly, we emphasise that this framing does not exclude from the scope of the LBI all state-owned entities, which would necessarily be included in the event that they have a transnational character.

We consider that the legally binding instrument seeks to close a regulatory gap in international law, consisting of the international regulatory asymmetry that currently exists. This asymmetry protects trade and investment through very strong international regulatory forms, while leaving the rights of victims and affected communities by corporate power in a vacuum of protection. A clear example of this asymmetry is in the Investor-State Dispute Settlement (ISDS), which not only affects human rights but also the sovereignty of States, which mainly affects States of the global south. Maintaining the scope also allows us to delimit other crucial aspects to have an effective legally binding instrument, such as direct obligations in international human rights law for transnational companies, or the adoption of measures to remove obstacles to access to justice for those who want to bring to justice transnational corporations for human rights violations.

We also note with concern that the updated draft removes several mentions of environmental rights, despite it being proposed by several States, including African states, and civil society organisations. We reiterate the need to bring back this important language, as these are often the primary rights violated by TNCs.

Finally, and on behalf of African civil society organisations who supported the convening of the Accra regional meeting on the LBI, namely the Center for Applied Legal Studies, Lawyers for Human Rights, and Justiça Ambiental, we acknowledge the importance of this meeting to advance on the process in the region and the efforts made by many States in this

direction, in particular Cameroon and Ghana. However, we would also like to echo the concerns of some African States and clarify, from our perspective, that the conclusions from the Accra meeting cannot qualify as a formal submission from the African Group, and this meeting did not qualify as an intersessional consultation of the region, as this would necessarily require adequate conditions for the full and equitable in-person participation of all the African Permanent Missions in Geneva.

Thank you.

## **17. Institute for Policy Studies**

My name is Leticia Oliveira, representative of the Movement of People Affected by Dams in Brazil, speaking as the Transnational Institute, on behalf of the Global Campaign to Reclaim Peoples Sovereignty, Dismantle Corporate Power and End Impunity, an international coalition of more than 250 affected communities, trade unions, social movements and civil society organizations. We are but a small delegation of over 70 people in this room, but we are the voice of more than 250 million people around the world organized to end corporate impunity.

And for it to happen, we need a strong and effective binding treaty which can only be achieved if negotiated in a democratic and transparent process, and if based on a text that reflects the last 8 years of negotiations.

We as Global Campaign understand that the Updated Draft presented by the Chair in July 2023 reflects neither of these conditions.

To address only the last most recent events, the presentation of “informal chair’s proposals” only a few weeks before the 8<sup>th</sup> session and with language completely alien to 7 years of negotiation caused a huge confusion in the room, with 2 texts on the table.

What is worse, these informal proposals are now almost integrally copy pasted into the Updated Draft that time and again reaffirms dispositions presented and supported by several states were “set aside after due consideration”. As we understand, Mr Chair, only the plenary of this working group has a mandate to duly decide what must be deleted and what should be kept.

Many times yesterday, Mr Chair, you mentioned we can negotiate over the clean version of the Updated Draft because every State-member is welcome to provide input to the new text. But this is precisely what has been done on the third revised draft, for two years. It is very discouraging to everyone in the room, and above all, to everyone we here represent, movements and States alike, to participate in a process that is not transparent. Yesterday, many state delegations, not by coincidence representing the territories where most corporate crimes occur, manifested concerns about the process and the content of the updated draft.

In Brazil, we, affected people, are suffering with frequent dam failures, year after year, without adequate restoration efforts, and a troubling lack of accountability for the transnational corporations responsible for these disasters. A strong Binding Treaty that guarantees obligations for the TNCs and an adequate access to justice for affected communities is urgent to change these realities in which we live, not only in one country. We need a treaty that puts victims and communities affected by TNC violations at the core of reparation processes, but many good provisions present in the 3rd revised draft, like the exclusion of forum non conveniens, were simply deleted.

We understand the Chair should facilitate the course of negotiations, maintaining impartiality and relying on a comprehensive understanding of delegations’ proposals and manifestations. This new text reveals the Chair has significantly overreached his mandate, leaning more towards judgment than facilitation.

Thank you, Mr. Chair.

## 18. IAIO-NARDO

Merci, Monsieur le Président de l'Assemblée générale, ce fut un honneur d'y assister. Je suis de l'IAIO-NARDO, Une organisation académique internationale qui se concentre sur l'innovation dans l'aviation civile, et nous sommes très intéressés par la recherche universitaire sur les droits de l'homme dans les entreprises multinationales de l'aviation, et j'aimerais donc partager quelques exemples et résultats de recherche sur ce sujet.

Comme nous le savons tous, la majorité des entreprises de l'aviation civile ont des bases d'opérations multinationales ou des routes aériennes internationales, en particulier celles qui font partie des trois alliances de l'aviation : Star Alliance, SkyTeam et Oneworld. Les problèmes de droits de l'homme de ces entreprises affectent directement ou indirectement la sécurité opérationnelle et l'expérience du service aux passagers. À l'heure actuelle, les questions relatives aux droits de l'homme en Chine, en Amérique du Nord, dans l'Union européenne et dans les entreprises d'aviation appartenant aux trois alliances aéronautiques se sont stabilisées et se sont développées régulièrement, mais les questions relatives aux droits de l'homme des entreprises multinationales d'aviation dans certaines régions doivent rester un sujet de préoccupation rationnel.

Dans notre étude de cas, un échantillon d'universitaires de la région Asie-Pacifique, nous avons trouvé que China Eastern Airlines Group est le meilleur cas à partager et à citer dans la région, avec un certain degré de leadership universitaire et de modèle de rôle.

China Eastern Airlines exploite de nombreuses routes aériennes internationales et des bureaux à l'étranger. Cette entreprise compte 2891 employés issus de minorités ethniques et 873 employés étrangers, dont 36,75 % de femmes. Le syndicat du groupe se concentre sur l'écoute des besoins des employés, l'optimisation continue du système de bien-être des employés, la formulation du "Programme pilote de planification du travail de China Eastern Airlines pour améliorer la qualité de vie des employés (2022-2024)", et la précision de l'aide aux employés en difficulté.

La compagnie protège les droits et les intérêts fondamentaux des employés, élimine le travail des enfants et le travail forcé, et améliore continuellement le système de rente de l'entreprise. Dans le même temps, la diversité et l'égalité de la main-d'œuvre de l'entreprise et l'environnement de travail inclusif sont les avantages concurrentiels du développement durable de l'entreprise. Dans les détails de la prise en charge de ses employés, la compagnie a également lancé l'East Air Cafe qui fournira aux employés et aux passagers de première classe les mêmes services de restauration et de boissons, en particulier l'utilisation de MU-NOODLES et de MU-TEA, récompensés au niveau international, qui sont appréciés par les employés et les passagers, et souvent ces subtiles innovations de service pour les employés apporteront un merveilleux effet de résolution des problèmes. Il s'agit d'une mission à long terme d'une entreprise aéronautique multinationale responsable qui mérite d'être gérée et promue en permanence. merci de votre attention.

## 19. Centre Europe – Tiers Monde (CETIM)

Monsieur le Président,

Le CETIM est engagé de manière constructive dans les négociations au sein de ce Groupe de travail depuis ses débuts. Avec la Campagne mondiale<sup>3</sup>, nous relayons depuis huit ans les revendications des mouvements sociaux et communautés affectées par les STN et présentons de nombreuses propositions afin d'améliorer le contenu du projet de traité en négociation.

Nous constatons avec consternation qu'aucune de nos propositions fondamentales n'ont été prises en compte dans le projet de traité révisé présenté à cette session. Pire, ce document non seulement ne respecte pas le mandat du Groupe de travail tel que formulé dans la

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<sup>3</sup> La Campagne mondiale pour revendiquer la souveraineté des peuples, démanteler le pouvoir des sociétés transnationales et mettre fin à leur impunité, un réseau international dont le CETIM fait partie et qui regroupe plus de 200 membres, représentants de victimes, de communautés affectées et des mouvements sociaux du monde entier.

résolution 26/9 mais de plus il veut introduire de nouveaux termes inappropriés tels que « Adverse human rights impact » ou « Human rights abuse » dans le jargon de droits humains. Les STN seraient-elles au-dessus des lois et des droits humains ?

A l'évidence, la présidence n'a pas la compétence de modifier le mandat de ce Groupe de travail lorsqu'elle veut élargir la portée du projet de traité à n'importe quel type d'entreprise alors qu'elle devrait se focaliser uniquement sur les STN. Monsieur le Président, hier vous avez dit que, je vous cite : « Nous ne sommes pas en train de réviser le champ d'application de la résolution ». Mais dans les faits, c'est ce que vous avez fait notamment dans le document que vous avez soumis à la présente session. De plus, dans vos lignes directrices pour la période inter-sessionnelle, vous affirmez que, je cite « Les États doivent accepter que cet instrument s'applique à toutes les entreprises ». Ceci ne revient-il pas modifier la résolution 26/9 du Conseil des droits de l'homme ?

Monsieur le Président,

Tel que formulé, le document présenté n'aura aucun impact sur l'impunité ni des STN ni sur celle de leur chaîne de valeur. Il ne contribuera pas non plus à la restauration de la souveraineté populaire et étatique, mise à mal par la puissance de ces entités, ni l'accès à la justice pour les victimes.

Un projet de traité qui ignore les revendications des peuples, des communautés affectées et des mouvements sociaux n'a et n'aura aucune légitimité. C'est pourquoi, le Groupe de travail doit stopper la dérive démocratique à laquelle nous assistons afin de rétablir la confiance des peuples et citoyens dans les institutions politiques.

## **20. Joint statement on behalf of the International Federation for Human Rights (FIDH) and Justiça Global**

Thank you Mister Chair,

I deliver this joint statement on behalf of the International Federation for Human Rights (FIDH) and Justiça Global.

Since the launch of this working group 9 years ago, global approaches to business and human rights have considerably changed. In Latin America, Africa, Asia and Europe, a number of states and regional organisations now agree on the need to advance towards the adoption of binding instruments to strengthen corporate accountability. This process constitutes a crucial opportunity to go beyond unilateral norm-building and develop a global set of mandatory rules grounded in multilateral discussions.

Nevertheless, the success of this working group relies on two key conditions: producing a treaty that effectively protects rights-holders, and guaranteeing a truly participatory and transparent process to ensure an ambitious text is finally adopted and widely ratified.

First, while the structure of the Updated Draft is generally streamlined and some positive elements have been added, we regret that several articles are less protective of rights-holders than in previous versions. Key articles seeking to facilitate access to justice – notably 8 and 9 – have been significantly weakened. We also deplore the restriction of the material scope of the instrument, with the elimination of references to specific human rights, labour rights instruments and customary international law in article 3, but also the deletion of multiple references to business impacts on the environment and climate and to conflict-affected areas throughout the text.

Second, we echo the concerns on the relative opacity around the production of this draft and certain choices made in the context of this process, an opacity that was only reinforced by the exclusion of civil society from most regional consultations. We welcome the compromise found to screen the track changes version of the Updated draft during the article per article discussion. But we also urge states to use this week to negotiate in good faith with the aim of moving this process forward. More generally, we encourage states to reflect on methodological improvements for this working group and accelerate the adoption of a meaningful LBI, guaranteeing transparency, inclusiveness and clarity.

We will of course constructively engage in the course of the week and provide detailed comments and inputs.

Thank you.