

General Statement of the United States of America

The U.S. Government's Concerns with the Business and Human Rights Treaty Process and Interest in Exploring an Inclusive, Multistakeholder Approach

October 24, 2022

Thank you, Chair. To begin, we wish to thank the Government of Ecuador and the members of the business and human rights community for your tireless work to bring attention to the issues that this treaty seeks to address.

This year marks the second year that the United States is participating in these Working Group meetings. While our concerns with the draft text and process around its development remain, we affirm that we share the convictions of this Group that more must be done to build upon the UN Guiding Principles on Business and Human Rights (UNGPs), including in relation to critical areas such as climate change and increased support and protections for human rights defenders.

The UNGPs created a common understanding of the duties of governments and responsibilities of businesses through the three-pillar framework. They have led to over 50 States having developed or being in the process of developing National Action Plans, including our own, which we are currently updating, and many have adopted laws to strengthen accountability, including on due diligence and supply chain transparency. Meanwhile, businesses are increasingly integrating human rights considerations into their policies and practices. Governments and businesses have also made progress in strengthening access to remedy,

which is a key concern of the treaty process, for example, by developing operational-level grievance mechanisms and remediation processes.

Despite these achievements, serious issues remain. Just last month, international NGO Global Witness in its annual report recorded that in 2021 alone, 200 land and environmental defenders were killed; of these, a significant proportion were engaging on issues related to business activity. There is a need for a stronger international structure to protect individuals like these who do such important work and to hold those who harm them to account. We understand the motivation behind members of this Group to create a legally binding instrument that will address challenges such as these but continue to believe that a less prescriptive approach that obtains the buy-in of relevant governments and other key stakeholders is the better option. We want to work with the Group to identify a collaborative path forward to advance business and human rights.

We appreciate the Chair circulating new proposals to find constructive paths forward. As we are still studying them, we may not be in a position to engage on all aspects of the proposals in great depth. That said, we appreciate that they consider, more than prior drafts, the diversity of legal systems and appear to provide increased flexibility for implementation. This is a promising step in the right direction of developing a workable text. However, we note with concern that they remain prescriptive and retain elements such as overly broad jurisdictional provisions, unclear liability provisions, and potential criminalization of an ill-defined range of human rights abuses that will make it difficult for many States to sign on to or implement the treaty.

The United States has not been alone in our concerns regarding the draft treaty. Many stakeholders, including a considerable percentage of States that are home to the world's largest transnational corporations, have pursued only limited participation in these negotiations. Yet, we appreciate Ecuador's recent efforts to incorporate a broader range of viewpoints in the treaty process.

As underscored in a Joint Statement led by the United States and signed by 49 states in June 2021, "One key factor behind the wide acceptance of the UNGPs has been the multistakeholder dialogue that led to their development and that has characterized their implementation. The success of efforts to build upon them in the next decade will depend upon maintaining this approach." We are concerned that an important opportunity to advance business and human rights will be lost if the instrument produced by this Group does not follow such an approach.

For an instrument to gain the broad acceptance needed to be truly impactful, it must incorporate the viewpoints of a diverse group of States, including States that domicile significant numbers of transnational corporations, civil society, and businesses. For this reason, we continue to believe that a less prescriptive approach, more akin to a framework agreement, that builds upon the UNGPs and is developed in collaboration with, and ultimately reflect principles broadly supported by diverse stakeholders provides the best way forward. More prescriptive elements could be addressed through optional protocols to such an instrument.

We wish to reassure all parties present that we are here this week to engage constructively and to negotiate in good faith, with the shared aim of increasing corporate accountability and access to remedy for human

rights abuses. We look forward to negotiations this week and engaging across stakeholder groups to discuss a way forward on this effort, as an inclusive, multi-stakeholder approach is imperative to further advancing the UNGPs. Thank you.