

UN Human Rights Council

26th session – Item 3

Resolution L.22 – EU EoV

"Elaboration of an international legally binding instrument on Transnational Corporations and Other Business Enterprises with respect to human rights"

EU Explanation of Vote

I have the honour to speak on behalf of the EU Member States that are members of the Human Rights Council. This Explanation of Vote has been agreed by the European Union as a whole.

The EU regrets that Ecuador and South Africa decided to proceed with action on the text; therefore closing the door to negotiations with the core group (Argentina, Ghana, Norway and Russia) for compromise on one resolution, which was the preferred option of many in this Council.

Since the consensus in 2011 on the UN Guiding Principles, much has been done for their implementation and dissemination. The UN Working Group, the annual Forum and OHCHR have played a significant role to this end. The EU has made substantial progress, at various levels, including at legislative level. I would like to recall some significant steps:

- guidance to three sectors (oil and gas, ICT, employment and recruitment) developed by the European Commission and increasingly used globally by companies and civil society;
- further development of the legal framework: European Parliament and Council agreement in April 2014 on the Commission's proposal for a directive on non-financial disclosure; revision in January 2014 on the EU Directive on public procurement. And further policy development are in the making – I would like to draw for instance your attention to the Foreign Affairs Council Conclusions of this Monday (23 June) on the EU's approach to "responsible sourcing of mineral" with of view of "Breaking the links between conflict and minerals extraction"
- on access to remedies, the EU has already solid provisions, for example the Brussels I Regulation (as revised by Regulation N° 1215/2012) which mandates the national courts of EU Member States, as far as companies domiciled in the European Union are concerned, to accept jurisdiction in civil liability cases filed against defendants domiciled in the forum state or before EU courts of the place where harmful event occurred. The EU is also working to contribute to the

consultation process recently launched by OHCHR on "corporate liability for gross human rights abuses", reflected in the separate resolution L.1.

The clear direction of work at the EU level is also translated by all the measures taken by the EU Member States individually. The elaboration of National Action Plans, in consultation with civil society and businesses, has proved a thorough exercise to translate the UN Guiding Principles into concrete commitment and actions across ministries. Like the UN Working Group, the EU believes that National Action Plans are an effective tool to achieve progress, including at the regulatory and legal level. The UK, the Netherlands, Denmark and Italy have published National Action Plans and many other EUMS are elaborating theirs. The EU hopes that national action plans will be developed globally.

The European Union has come to this session with the view of supporting a solid resolution by the cross regional core group (Argentina, Ghana, Norway, Russia) so that this Council would give a new impetus for further progress by all, States and companies, to prevent and remedy abuses.

The UN Guiding Principles recall existing obligations of States. It is for States to ensure that their legislation complies with existing international legally binding instruments, and to enforce their legislation. We all know that the UN Guiding Principles do not exclude further legal developments at the international level, But no international mechanism will be able to replace robust domestic legislation and mechanisms, as well as genuine processes involving all stakeholders.

Human rights defenders and civil society actors working in this sensitive area of work need particular attention and protection. The EU came to this session with concrete and solid language proposals urging States to ensure that civil society and human rights defenders working for the implementation of the UN Guiding Principles are not subjected to harassment, persecution and retaliation.

The strong mobilization of civil society organizations has confirmed that there is much frustration. We heard repeatedly that what has been done is not enough to prevent abuses and to enable access to remedy when abuses occur. Disturbing testimonies of victims and human rights defenders remind us that all, States and companies, need to double efforts to implement the Guiding Principles. They should also remind all of us that we need to act collectively, in a responsible manner, to ensure effective progress.

In this context, the EU praises the core group for its efforts to accommodate the views of all, States and civil society, including positions of Ecuador and South Africa in favour of a legally binding instrument.

We however deeply regret that the resolution presented by Ecuador and South Africa unnecessarily polarized the debate as if there could be two camps, in favour or against progress on prevention of and remedy to business-related human rights abuses.

We are further concerned that this resolution focuses de facto on transnational corporations, while it is a fact that many abuses are committed by enterprises at the domestic level – this resolution undermines a fundamental element of the UN Guiding Principles that all businesses should respect human rights. We are also puzzled that Ecuador and South Africa insisted on the establishment of an Open-Ended Intergovernmental Working Group as if this were the only way to progress and discuss, and disregarded more appropriate and effective options, including use of appropriate existing UN fora. On the effectiveness of an Open-Ended Intergovernmental Working Group, any observer of the "Open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies", chaired by South Africa, would question what has been achieved since its establishment with a divisive resolution at the 15th session of this Council in 2010.

Against this background, the EU has decided to oppose the establishment of the Open-Ended Intergovernmental Working Group as proposed in this resolution. The EU Member States Members of the Council will vote "no" and invites all to oppose it.

We are at a critical juncture. If this resolution is adopted, it will divide the Council not only on the vote, but in the years to come. If the Open-Ended Intergovernmental Working Group is established, the EU and its Member States will not participate for the abovementioned reasons.

Instead, the EU and its Member States will continue to concentrate on the genuine and effective means to prevent and remedy abuses. This is a commitment to further develop our policies and legislation. This is a commitment to engage in the existing processes in the UN as set out in the resolution by the core group, and any other meaningful avenue which could be decided upon at a later stage. This is a commitment to continue working with States across regions to effectively implement the UN Guiding Principles. This is a commitment to continue our work for the protection of human rights defenders and civil society actors facing risks for their involvement in this sensitive area of work. This is a commitment to continue to encourage European companies to implement the Guiding Principles wherever they operate.

