

17th session of the Human Rights Council

Item 3

Introduction of draft resolution L17: Human Rights and transnational corporations and other business enterprises

Mr. President,

I have the honour to introduce draft resolution L.17, entitled Human Rights and Transnational Corporations and Other Business Enterprises on behalf of a cross regional group of main sponsors, Argentina, India, Nigeria, the Russian Federation and my own country, Norway.

In 2008, when extending the mandate of the Special Representative of the Secretary General, the Human Rights Council tasked Professor John Ruggie with operationalizing the "Protect, Respect and Remedy" framework. At this milestone and at the conclusion of his mandate he has presented us with a set of Guiding Principles for the implementation of the UN Protect, Respect and Remedy framework. The Guiding Principles provide both states and business enterprises with concrete and practical guidance on how to increase protection from, and remedy, business-related human rights harm.

The draft resolution before us seeks to endorse the Guiding Principles. This will not, as Professor Ruggie says in his final report to the Human Rights Council, bring business and human rights challenges to an end, but it will mark the end of the beginning: by establishing a common global platform for action, on which cumulative progress can be built, step by step, without foreclosing any other promising long term developments.

When setting the course for the next phase of this important work, we need to remember the complex history of this issue in the UN human rights system, characterized by deep divisions among the various stakeholders. It is therefore the view of the main sponsors that we need to continue the fact based and incremental approach so successfully carved out by Professor Ruggie.

To consolidate the work and achievements to date, the resolution proposes to establish a Working Group for a period of three years on the issue of Human Rights and Transnational Corporations and Other Business Enterprises, consisting of five independent experts of balanced geographical representation. The area of business and human rights is still an emerging field and the magnitude of the task of carrying this initiative forward should not be underestimated. The core sponsors are convinced that a Working Group consisting of experts from all five regions will result in a much greater combined knowledge about the variety of circumstances and challenges in the

area of business and human rights and will be better placed to tailor measures when needed. It will also ensure broader ownership of the process in the years to come.

The resolution proposes to task the Working Group with the dissemination and implementation of the Guiding Principles. Other important elements included in the mandate are:

- to identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to assess and make recommendations thereon, and in that context to seek and receive information,

- to provide support for efforts to promote capacity building and to continue to explore options and make recommendations for enhancing access to effective remedies,

- to conduct country visit and to cooperate with all relevant actors

Moreover, to secure and build on the constructive involvement by all stakeholders, the resolution also seeks to establish an Annual Forum on Business and Human Rights under the guidance of the Working Group.

It is the view of the main sponsors that the success of the outgoing mandate holder results to a large extent from the inclusiveness of his approach and his ability to develop open communications with all stakeholders. We believe it is time to institutionalize this multi-stakeholder involvement and create a forum for dialog and cooperation to support and strengthen the Working Group.

Mr. President,

We have held four open informal consultations on the draft resolution, and also consulted delegations bilaterally. The version that has been circulated in the room is the result of extensive negotiations. On behalf of Argentina, India, Nigeria, the Russian Federation and my own country, Norway, I would like to thank all delegations for their constructive approach and willingness show flexibility and engage in fruitful discussions on this important issue. We have made an effort to take on board ~~the last~~ concerns. Thus the version submitted for action contains amendments to OP4, OP6e and OP15, whereas OP10 has been deleted. I will not read out the amendments.

Finally, I would like to extend a special thanks to the delegations from all regions that have co-sponsored the resolution. It is our strong hope that the resolution will be adopted by consensus.

It is my great pleasure to now invite my Nigerian colleague to continue the introduction.

**Human rights and transnational corporations
- HRC 17
UK General Comment**

Mr. President,

In addition to supporting the EU position on this resolution, the United Kingdom would like to take this opportunity to make a general comment and explain its own legal position. The UK has always been a strong supporter of John Ruggie's work, and fully endorses the conceptual framework set out in his Guiding Principles which gives excellent, comprehensive guidance on how to ensure that human rights are respected in the corporate context.

While we wholly embrace the Principles from a policy perspective, the UK is co-sponsoring this resolution subject to our understanding that the Principles do not all necessarily reflect the current state of international law. Our legal position is well-known, and was the subject of discussion with Professor Ruggie in the course of his drafting of the Guiding Principles.

In particular, while the UK agrees that certain treaty provisions may impose an express or implied duty on States to protect against non-State human rights abuses, it does not consider that there is a general State duty to protect under the core United Nations human rights treaties, nor that such a duty is generally agreed to exist as a matter of customary international law. Equally, while certain treaty obligations contain a "due diligence" standard, this is not a general provision. Finally we would like to recall here that, while we of course recognise that indigenous individuals are entitled to the full protection of their human rights and fundamental freedoms, the UK does not recognise the concept of collective human rights in international law, with the exception of the right to self-determination.

We wish to emphasise that our legal position does not alter the great importance which we attach to the Guiding Principles. Our co-sponsorship of this resolution is an indication of our strong commitment to ensuring their implementation, in spite of our concerns about the very high predicted cost of the follow-up mechanism. We welcome all that Professor Ruggie has achieved, and the steps which this Council has taken to ensure further progress in this area.

Thank you, Mr. President

Delegación del Ecuador
17ª Sesión del Consejo de Derechos Humanos
Resolución Derechos Humanos y Empresas Transnacionales
Ginebra, 16 junio 2011

El Ecuador no se opondrá al consenso en esta resolución por consideración a los cinco países co auspiciantes iniciales y sobre todo porque estamos convencidos que las Naciones Unidas deben seguir trabajando en la cuestión de establecer normas internacionales vinculantes destinadas a regular las actividades de las empresas transnacionales, aspecto que fue recalcado por nuestra delegación durante todo el proceso de consulta y negociación, aunque esta posición no ha sido acogida favorablemente en la redacción final.

Creemos que el proyecto de resolución deja de lado el tema fundamental que da origen a este mandato especial, que es la creación de un marco legal internacional vinculante para las transnacionales y los derechos humanos. Tampoco compartimos la visión "gradualista", que dilata injustificadamente el debate y el tratamiento de este primordial elemento, que es la piedra angular de toda la problemática.

La resolución en ciernes se enfoca exclusivamente en la diseminación de los Principios Rectores propuestos por el señor Ruggie, apartándose de la esencia de los principios de derechos humanos contenidos en el documento marco de las Naciones Unidas llamado "Protección, Respeto y Remedio", que les dio origen y del que son solo una herramienta de implementación.

Los Principios Rectores sobre negocios y derechos humanos, que se pretenden endosar con el presente proyecto de resolución, carecen de varios elementos fundamentales, entre los cuales enfatizamos dos esenciales. En primer lugar, la responsabilidad en la violación de los derechos humanos por parte de las empresas transnacionales, y segundo, la ausencia de un mecanismo de quejas, independiente de las empresas, al que puedan recurrir los afectados por los abusos cometidos por las transnacionales. En este sentido, queremos dejar bien en claro que esta obligación no debe recaer solamente en la voluntad o buena fe de las empresas, que serían juez y parte a la vez.

Los principios rectores no son ni aspiran ser normas obligatorias, son simplemente una guía, un punto de partida, como lo define el señor Ruggie y por lo tanto carecen de obligatoriedad. Por ello debemos seguir buscando una normativa internacional vinculante. Es al menos lo que debemos a las miles de víctimas de los abusos de las empresas transnacionales, que en mi país no han sido pocas, para quienes y para la protección de sus derechos el Ecuador seguirá trabajando incansablemente.

Muchas gracias.