

PERMANENT MISSION OF INDIA TO THE UN, GENEVA
HUMAN RIGHTS COUNCIL
20TH SESSION (18th June to 6 July 2012)

AGENDA ITEM 3: Interactive Dialogue with the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

(21 June 2012)

Statement by India

Madam President,

We thank the two Special Procedures for their report but would like to confine our remarks to the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises.

2. As a member of the Cross-regional Core Group that Sponsored the mandate on Business and Human Rights, India attaches importance to the mandate and is ready to actively engage with the Working Group as it carries out its complex and sensitive mandate, particularly in the context of rapidly evolving paradigms and concepts both in human rights and business fields. In this context are currently looking at the possibility of the visit of the working group to India

3. We complement the Working Group for its first report which succinctly provided background and context of its mandate highlighting some examples of existing initiatives already undertaken to disseminate and implement the Guiding Principles on Business and Human Rights. We appreciate the wide ranging discussions undertaken by the Working Group in the process of outlining the strategy that it will employ during its mandate, including specific work streams

4. While it is true that globalization has increased the scale and complexity of the issue of impact of transnational corporations on human rights, the issue precedes globalization. It is thus not necessarily a product of “governance gaps” created by globalization. What globalization has done is accelerate the shift in balance of global economic power and to that extent increase the ability of States especially in the developing world to bring more sustained international focus on this subject. The Working Group is one such useful focal point .At a time when there is a rising chorus for demand for greater corporate accountability and State control/regulation of business in the wake of the global financial crisis, there is an urgent need to examine the legal framework regulating transnational corporations since much of them predate globalization. For example, it would be useful for home States to look at the liability of a parent company based within their jurisdiction/territory for wrongs attributed to subsidiaries/suppliers even when they are distinct legal entities. Unless there are strong penalties for a parent company in the home State, some home States especially in the developing world, may be constrained from enforcing national laws against the subsidiary for fear of losing the investment.

5. The rapid rise in Business Mergers and Acquisitions across continents also pose huge challenges on governments to fulfill their duty to provide access to effective remedies and ensure accountability. In this context, would like to ask the Working Group it's thought on how to ensure accountability of a company that has committed human rights harm and subsequently acquired by a foreign firm situated in another country before the former company could be prosecuted according to the laws of the country in which that company was situated.

6. We share the view that the need to cultivate an environment conducive for the uptake of the Guiding Principles is one of the key strategies. The dissemination and implementation through building of a "business case" for States and enterprises is an interesting and constructive way as incentives rather than vendetta or penalties have proved to be more effective. The focus should be on good practices and lessons learnt rather than the Working Group pointing out abuses or becoming a catalyst or platform for naming and shaming of corporates or corporates-in-collaboration with States for business-related human rights violations.

Madam president,

7. Divergent views have been expressed during the exchanges between States and the Working Group. Some have called for international legal options in the field of human rights, while others have expressed concerns that implementation of the Guiding Principles as a standard and human rights due diligence may disadvantage developing country enterprises in international trade and investment as well as internal trade and small businesses particularly in the unorganized

sector. There are also concerns that corporates that do not implement the Guiding Principles, according to standards interpreted by some States, may find themselves disadvantaged in terms of differential treatment and may even lead to black-listing of such corporates. This could be particularly true for corporate of developing countries viz-a-viz some Western corporations which are bigger than host States, and as a result, influence their policies and actions. As there is no level- playing field, we would request the Working group to elaborate on how it intends to address these concerns particularly in the context of varying developments of countries and varying cultural contexts.

8. We look forward to further deliberations on this and views of the working group on the various issues above.

Thank you, Madam President.
