The 10th session of the Expert Mechanism on the Right to Development

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Focused thematic discussion and interactive dialogue
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Business and the Right to Development

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Transcript of the statement by Mr. Jason Pegat-Toquet,
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Thank you, thank you the experts, greetings Ambassador and the colleagues in the panel, greetings to you all.

I have heard many things about business, so it is good that I'm here to bring our voice right and sometimes also to unpack what we heard so far. My first point is here to say that businesses and the right to development go together. There is no society, there is no development without businesses and obviously business without society is meaningless. The point here is to say that everything that is about development, economic development, social development business is on board and business positively contributes. If you are in the room today you all have a smartphone, well I guess that there is a brand behind it and so a business behind it, so this is the starting point.

Then, there is a mutual reinforcing role between development and businesses, one without the other cannot work. Businesses need consumers, they need us, they need us, they need you in this room also to be part of what they need to deliver on, which are products or services, they go hand in hand. We talk about responsible business conduct business human rights and this legally binding instrument; this is very much something that is key to businesses. The society has evolved since 2011 and the UN guiding principles on business human rights, there have been many changes in the corporate mindset to ensure that whatever responsible business, whatever credible business does it has responsible business conduct at is very hard and core.

On the treaty, as IOE, the international organization of employers I am representing, represents ~ 50 million companies worldwide, so we really talk about on behalf of business, we have important concerns currently. The current draft is for us not fit for purpose, it is far from being even implementable and it will create huge problems for member States that would ratify but also for companies to effectively implement it.

The first big problem is the fragmentation that it would create with the UN guiding principles. We heard from the Ambassador about the need to move from voluntary to binding measures. We do not agree with that perception, we think that function measures still do need focus because not every company is able to implement regulatory measures, knowing that there is an important point here also to stress that is this dichotomy that I have heard from other speakers here, this idea that they somehow the business the private sector and then there is the rest of the society. Again, we go together we go together businesses need to fulfill that purpose to serve society.

We need to avoid thinking about this as only multinational cooperation, it is an important point also to be reflected in the Binding treaty. As IOE, as representative of the global business community, we want a treaty that is applicable to all businesses, regardless of their size,

regardless of their location because this is the spirit of the human guiding principles and I was really pleased to hear from Bonny this idea of independent responsibility of all businesses, that was key in the UN guiding principles.

We should not expect only big multinational companies to be respecting everything, to be held accountable for anything that is happening in the supply chain. Every company has a responsibility, the question now is how you do it, because let's not forget that business is not an homogeneous group; you have small medium sized enterprises, most of them do account for the vast majority of economic activities and those small or medium sized enterprises do not have the capacity to actually implement what is in the UN guiding principles and human rights, for the very reason that they might not have resources to have maybe a human rights officer, a compliance officer or a sustainability officer in the company. Don't forget that and don't forget also the micro-entrepreneurs, when you buy your bread in a small bakery, do you imagine that this small bakery has the resources to afford to have something on human rights due diligence? We have strong doubts. So, it is important to bring some pragmatism also in this discussion.

The other problem with the current binding treaty on business from rights is the extraterritorial jurisdiction element that is bringing. This would actually go against the state sovereignty of many of the member States that are in the room now and this is a concern to us as business representative because for us as business enterprises, the most important is legal certainty and the moment that you start changing those long standing principles and international human rights law, this would create problems, this would create problem of certainty, of liability and to do business you need at least a clear legal framework that this treaty would definitely pose problem regarding that.

Our problem is also the investment and trade. With the current treaty this would negatively impact trade and investment, and when we go back to this topic of the right to development a key component of development is economic development. You don't want a treaty that would impact that because if you impact that, then this would impact countries, many of those in the room today and then it would go against the very objective of development, which is to get people out of poverty for example and give them a decent salary.

Finally, in the current draft treaty, there is criminal liability. This has never happened at any level in terms of international law in human rights treaties and this would create incentives for many big corporations to exit certain countries that do not have proper governance or good governance or rule of law in place. There are huge risks, we are conscious about that and we need to think about impact, that is what we bring as a message in the binding treaty negotiation, let's not forget the negative impact that it could create.

I will stop there because I really want to engage with the audience today. Our final point in this is about the strong need to have a pillar one. I have heard that from Nadia as well, there is nothing in international law without a robust state duty to protect human rights, that is clear, that is the precondition, that is the prerequisite. Unfortunately, as business representative we see that in many countries, there is not good governance, there is a lack of rule of law, there is corruption, and all that is impacting the right to development right and obviously also responsible business conduct. Companies should not be expected to replace states, states have their own sovereignty in international law and so there is a need to have what we call an enabling environment for sustainable enterprises, which would be conducive for corporations and businesses to push for having economic development and other types of developments such as social development.

So, overall, my plea here is to say let's try not to push for this dichotomy, let's not think about business on one side and then the rest of society on the other side. We go hand and hand; we need to push together to have sustainable development.

Thank you.