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Note Verbale No. 319

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit its' response to communication AL GBR 5/2023, further to the letter dated 14 March 2023 from the Working Group on the issue of human rights and transnational corporations and other business enterprises.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 1 November 2023

Special Procedures Branch
Office of the High Commissioner for Human Rights



UK Mission
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United Kingdom of Great Britain and Northern Ireland

Response to Special Procedure communication AL GBR 5/2023 of 14 March 2023 from the Working Group on the issue of human rights and transnational corporations and other business enterprises.

Thank you for your letter of 14 March 2023 to the Foreign Secretary regarding information you have received claiming that the inability of the UK to join the Lugano Convention 2007 could have a negative impact on the right to effective judicial remedy of victims of UK business-related human rights abuses committed outside the UK.

The United Kingdom applied to join the Lugano Convention in April 2020. The UK meets all criteria for accession; we continue to work with Contracting Parties to secure agreement for the UK to accede to the Convention.

As matters currently stand, the domestic jurisdiction rules of each of the UK's three legal jurisdictions (England and Wales, Scotland and Northern Ireland) will apply. The courts of each jurisdiction apply the common law doctrine known as *forum non conveniens* (FNC), in similar ways. Taking England and Wales as an example, where a business is based in England and Wales and a claimant commences proceedings in the English court but the court's jurisdiction is challenged, the court will apply the doctrine of FNC to determine whether there is a clearly more appropriate forum and, if so, whether the interests of justice mean that the case should be heard in that other forum. The judge, acting independently, will take into account factors such as which forum has the most real and substantial connection to the case and whether the interests of justice lie in favour of the court retaining jurisdiction e.g., because a claimant may not be able to obtain justice in the foreign jurisdiction or may be deprived of a legitimate advantage. While this does not automatically mean that the case will be heard in England and Wales, there are clearly circumstances in which the courts will decide it should be. Cases initiated in Scotland or in Northern Ireland would be subject to similar considerations.

In view of this, the UK is confident that it is fully compliant with its human rights obligations.

You asked the extent to which various Hague Conventions might be relevant and assist in this matter.

The Hague Convention 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations and the later Hague Convention 2007 on the International

Recovery of Child Support and Other Forms of Family Maintenance apply only in maintenance cases and in any event do not contain jurisdiction rules.

The Hague Convention 2005 on Choice of Court Agreements (the 2005 Convention) applies when a dispute relates to a matter arising from a contract. It is limited to 'exclusive' choice of court clauses i.e. clauses designating the courts of one Contracting State to the exclusion of the jurisdiction of any other courts. In other words, disputes in relation to contracts containing such clauses will be heard in the jurisdiction chosen by the parties, and the judgments will be enforceable in other states party to the agreement.

The Hague Convention 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the 2019 Convention) is not yet in force, although it will enter into force for the EU and Ukraine this September. The UK is currently considering whether to accede to the 2019 Convention, which relates only to recognition and enforcement of judgments and does not contain direct jurisdiction rules. It may be that convention would not be of direct assistance in the cases about which you are concerned