



**4th session of the Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights
(15-19 October 2018)**

**Article 3: Scope
&
Article 4: Definitions**

Thank you Chair,

The IOE does not support the Zero Draft Treaty or the Draft Optional Protocol and we strongly argue for preserving the approach outlined by the UNGPs. Given the limited speaking time, I refer people to the [Joint Business Response](#).

Chair

We consider these Articles extremely problematic because they guide all the subsequent Articles in the Zero Draft Treaty. We also think that the 4th session should have discussed the proposed "scope" and "definition" earlier on this week – to follow the order of the Articles in the Zero Draft Treaty.

Our points mirror those made from the very outset of this IGWG process and, especially, in relation to the 2017 "elements paper."

Article 3: Scope and Article 4: Definitions

- It is not clear that direct international human rights obligations would apply only to State Parties, and not business. The use of the term "violations" (instead of "abuses" as the UNGPs refer to) - especially when considered alongside other provisions - could imply that companies have a direct legal international human rights obligation under this Treaty.
- Limiting the scope to "business activities of a transnational character" (which has no accepted definition) excludes domestic companies. A further narrowing of the scope to profit-driven activities ignores the impact of SOEs. As such, the Treaty will not serve most victims and there appears to be no incentive for States to lead by example.
- There are major concerns about how the Treaty's scope could be implemented and enforced in a principled and practical way. It would be extremely difficult, if not impossible, to assess the vast array of activities that have a "transnational character" and reasonably determine liability for a harm that involves a cross-border transaction.

From an operational perspective, given the failure to understand the three distinct ways that a business can be involved in a harm, if companies were to be held liable for a violation of all human rights in the context of an "activity of a transnational character" they would need the corresponding capabilities to meet such a huge responsibility.

- The terms "all human rights" and "all international human rights" have no legal basis and it is not clear what human rights would be covered by the Treaty or which standards would be used to define a human rights violation.
- Focusing obligations on "natural or legal persons" is far reaching and it creates tremendous legal uncertainty and risk.
- It is not clear how the inclusion of "environmental rights" would apply to the Treaty; what the term "omissions" means; and the definitions of the terms "victims" and "harm" are unclear, too broad and they do not reflect common civil law traditions.

A question:

- We would like to better understand how exactly the Articles on "scope" and "definition" reflect the Conclusions of the 2016 International Labour Conference of Global Supply Chains? In our view, the two texts are not aligned. The ILC Conclusions carefully reflect the approach of the UNGPs, which the Zero Draft Treaty does not.

A response to something raised by a panelist:

- I'm afraid we strongly dispute the point made by one of the panelists that there are two broad areas of agreement concerning this instrument. In particular, the second point made about the need to address harms connected from activities of a transnational character.

Thank you for your attention.