



International Organisation of Employers
Organisation Internationale des Employeurs
Organización Internacional de Empleadores
The Global Voice of Business

Check against delivery!

4th session of the Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights

(15-19 October 2018)

General Statement

Thank you Chair,

I am speaking on behalf of the International Organisation of Employers ([IOE](#)), the largest private sector network in the world. We have 153 member organisations from 143 countries and our membership represents more than 50 million companies that directly employ hundreds of millions of workers.

The IOE attaches great importance to business and human rights and is actively engaged in promoting and disseminating the UN Guiding Principles on Business and Human Rights ([UNGPs](#)), as well as other relevant Government-backed instruments, among our members and networks. We help companies of all sizes to meet their responsibility to respect human rights in line with the UNGPs and to make a positive contribution to the Sustainable Development Goals ([SDGs](#)). Respecting and advancing human rights is a priority and the IOE strongly argues for preserving the approach outlined by the UNGPs.

The IOE would like to draw peoples' attention to the following two documents:

1. A [joint business response](#) on the Zero Draft Treaty and Draft Optional Protocol - released by the IOE, Business at OECD, Business Europe and the International Chamber of Commerce; and
2. An "additional analysis" that the IOE.

Both documents are at the back of the room and posted online on the IOE's website and the website of the Business and Human Rights Resource Centre.

Ladies and gentlemen,

The Zero Draft Treaty and the Draft Optional Protocol raise issues of major concern to the IOE and the broader international and regional business community. Both draft texts do not provide a sound basis for a possible future standard on business and human rights.

In our joint business response, we raise three overarching concerns about the [Zero Draft Treaty](#), as well as number of concerns with its specific Articles and provisions. We also provide our preliminary analysis of the [Draft Optional Protocol](#) and we reiterate our concerns with IGWG process.

It is important to underscore from the outset that our many genuine concerns in no way diminish

the business community's firm commitment to respect human rights across the world. It is our strong conviction that we must preserve the approach outlined by the UNGPs and build on its successes. We are actively implementing the UNGPs and we advocate strongly for the continuation of this principled, pragmatic and proven approach to achieve real on-the-ground progress in protecting human rights.

Chair

The Zero Draft Treaty is not compatible with the UNGPs and other Government-backed standards. Its narrow scope, coercive and punitive approach and many confusing provisions jeopardise the crucial consensus achieved by the UNGPs and threaten its many achievements.

For example:

- The text takes a narrower scope to the UNGPs by focusing on activities of transnational corporations and excluding national companies completely and SOEs for the most part from its ambit. Thus, the Treaty would not accomplish its aim - to protect people and increase access to remedy - because its scope does not cover the vast majority of people affected by business activities.
- It disregards the accepted notion that a company can either be involved in a human rights harm through its own activities (cause and contribution) or through its business relationships (in situations of direct linkage) and that they should not be held liable for involvement in the latter; and
- It does not follow the UNGPs' four-step approach on human rights due diligence.

In addition, by seeking enhanced liability on global business and vastly expanding the application of extra-territorial jurisdiction, the Zero Draft Treaty also does not encourage States to address human rights challenges in their own jurisdictions.

Furthermore, if ratified - the Zero Draft Treaty will harm countries' investment, development and efforts to realise the Sustainable Development Goals (SDGs). The draft Treaty disregards the reality of complex global supply chains and the huge positives derived from trade and foreign direct investment. It ignores the established fact that a company's ability to influence the supply chain depends to a large degree on the number of suppliers it has, the structure and complexity of the supply chain, and crucially the company's market position. What's more, its punitive approach and inconsistent legal provisions risk disincentivising foreign direct investment and would ultimately encourage companies to "cut and run" instead of "staying and improving" to help address a country's complex and endemic issues and achieve the SDGs.

Ladies and gentlemen,

The IOE appreciates having the opportunity to speak during this fourth session of the IGWG, as well as participate in informal consultations in the spring. However, unlike with the development of the UNGPs and its many implementation efforts and initiatives, there has been no meaningful discussion with business on any of the substantive proposals in the Zero Draft Treaty. There has also not been any real recognition of business' many concerns raised firstly with the 2017 "elements" paper that guided the 3rd session last October and secondly in the Chair's drafting of the Zero Draft Treaty and Draft Optional Protocol.

We regret that the IGWG has proceeded with developing a draft Treaty without an explicit

mandate from the Human Rights Council after the third session to do so. Also, we regret that more attention was not given to clarifying and addressing the many questions and problems from last year's "elements" paper, many of which appear in the two draft texts we have today. It is deeply concerning that the practical pragmatism established by the UNGPs is being eroded and the debate on business and human rights is sliding backwards to the politically-charged era of the 1990s.

Regarding the Programme of Work, we find the order in which we are discussing the Articles in the Zero Draft Treaty this week confusing. It would surely have made better sense to start with and give more time on the "scope" and "definitions" - especially because they are central to the many concerns about this proposed instrument.

Finally, we request that *our positions* are properly reflected in the report of the fourth session and clearly identified as coming from business and that it is not just a general summary as in previous reports.

Thank you very much for your attention.