Makbule Sahan, 16 October, Plenary Panel

I come from the International Trade Union Confederation representing more than 207 million workers in 163 countries.

The international trade union movement adds its voice to those who have welcomed the publication of the zero draft, which is a critical step in our joint efforts to achieve a binding treaty.

The draft includes a number of crucial provisions, which we consider as a big step forward.

With respect to the articles we are discussing this morning, I would like to express that we consider article 6 on the statute of limitation and article 7 on applicable law generally as helpful. We have some comments regarding the clarity of the language used, which you can find in the joint position of the trade unions.

In the interest of time, I will focus my comments only on article 13 with respect to consistency with international law.

There are two key concerns, which I would like to draw attention on:

1. ***Trade and investment agreements***

Art.13 (7) stipulates that trade and investment agreements should be interpreted in way that is least restrictive on the ability to ensure respect for the binding treaty. This formulation far too narrow in order to explicitly recognize the primacy of human rights obligations over trade and investment agreements. What we are looking for in the binding treaty is realignment of disproportionate protection afforded to companies through legally enforceable rules and the soft law approaches when it to business and human rights.

Moreover, Art.13 (6) indicates that trade and investment agreements should not contain any provisions that conflict with the implementation of the binding treaty. This provision is too broad in order to be meaningful. It should be strengthened in order to indicate what measures should be adopted to avoid such conflicts.

In this respect, we propose to introduce a new sub-article in order to introduce the obligation to integrate a human rights clause in existing and future trade and investment agreements. This should include an obligation to renegotiate agreements, which are in contradiction with the treaty. This proposal is based on General Comment No.24 of the Committee on Social, Economic and Cultural Rights.

1. ***Provisions relating to national sovereignty and territorial integrity***

There is concern that article 13 (1) and (2) could potentially undermine other gains of the binding treaty. The provisions relating national sovereignty and territorial integrity should not be used as an excuse to decline jurisdiction on the ground of forum non-conveniens, which we have on and again highlighted as a serious barrier to access to justice. Moreover, there is a real risk that the ability of States Parties to effectively take preventive measures under article 9 will be hindered if this Article is interpreted broadly, for example. There are other, more helpful approaches, in order to address potential conflicts of proceedings in multiple jurisdictions for which there is already the basis under article 12 on international cooperation.