

**OEWG ON A LEGALLY BINDING INSTRUMENT ON TNCs AND OBE AND HUMAN RIGHTS**

**6TH SESSION, 2020**

**ICJ Oral intervention on Article 9, 10 and 11**

28 October, 2020

Mr Chairperson-Rapporteur,

Article 9, on adjudicative jurisdiction, continues to be essentially focused on civil jurisdiction, leaving criminal proceedings outside its purview. The ICJ considers that this provision needs to also address the issue of jurisdiction in criminal cases, to ensure effective accountability of business and to be consistent with the provision on crimes under international law which are seemingly foreseen in Article 8 (9) and the statute of limitations to the same crimes addressed in article 10. The ICJ suggests the introduction of a new Article 9 (3) provision regarding jurisdiction with respect to criminal claims, including the provision for universal jurisdiction for certain crimes under international law.

The inclusion of article 7 (5) ruling out the jurisdictional doctrine of *forum non conveniens* and the emphasis on the obligatory character of jurisdiction makes parallel civil proceedings in different jurisdictions more likely. But the Revised draft does not address this issue in a consistent fashion.

For example, Article 12(9) (b) on Mutual Legal assistance and recognition of foreign judgements, is the only place that addresses the issue of parallel judgements, refusing recognition to one judgement when it is “irreconcilable with an earlier judgment…with regard to the same cause of action and the same parties” given by a court in the State in which recognition is sought. It would be important that the treaty addresses this situation by including a rule on *litis pendens* (when a suit is pending in another jurisdiction) as a possible basis for courts to refuse jurisdiction.

On statute of limitations, in Article 10, the ICJ considers that some changes are in order, including in relation to the special position of certain groups such as children, who should not be deprived of access to justice and reparation because of the particular impediments due to their age and/or dependent status.