

## IOE Comments on Article 1 of the third revised draft treaty

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Dear Chair

I would like to make 5 points.

1) In the discussion on this article we have seen that Governments try to narrow down the scope of the treaty to transnational companies. As we have said before, this treaty needs to apply to all companies to be in line with the UN Guiding Principles. This is also what the human rights experts in their joint statement are asking for. Moreover, it would be against any notion of creating a level playing field, if the legally binding instrument would only apply to transnational companies.

2) On the definition of victim. “Victim” is a term used to describe a person who has suffered harm and been found to have so suffered by a court of law. Until then, they are a person alleging an abuse. The term “Victim” is not used in the UNGPs and should not be used here. The text needs to include the fact that until harm is proven it is an alleged harm and the better term to describe what is meant here would be to use the word “**plaintiff**” or “**complainant**”.

3) It was already said before, “**Business activities**” is a very vague definition. Of particular concern is the use of the term “undertaken by electronic means”. The vagueness of this is concerning. As well as being unclear, these words vastly expand the regulatory scope of the draft. For example, internet transactions may involve both known or unknown intermediaries such as banks or bank vendors that are beyond any degree of control by a company. This issue is compounded when considering smaller enterprises, which are using telephone technology for financial transactions. The phrase ““undertaken by electronic means” should be **omitted**.

4) On the definition of “**Business relationship**” we would like to reiterate that the definition of a business relationship as “any relationship between natural or legal persons to conduct business activities, ... or “any other structure or relationship” (...) including activities undertaken by electronic means” is unworkable, as it is indefinite, vague, and overly broad. This will have grave consequences later in the articles on liability. Instead, the text should use the definitions of the UN Guiding Principles or OECD Guidelines.

5) We support what the government representative of Panama said, that adverse human rights impacts can also come from non-commercial organisations. For a victim it does not matter whether the impact came from a private sector MNE, from a state owned-enterprise or from a non-commercial entity. The impact needs to be addressed.