

Article 2: Statement of Purpose

Mr Chairperson,

The statement of purposes of the treaty in article 2 has been slightly amended, including with new language in 2.1(b) that one purpose is to “clarify and ensure respect and fulfilment of the human rights obligations of business enterprises.” This is something new.

Consistent with language in the Preamble, this new purpose refers to “obligations” rather than “responsibilities” of business enterprises. “responsibilities” is the term normally applied to business enterprises. Also, there is no visible section or provision in the draft treaty that develops this purpose and, and therefore, no clear impact of this change of terms. If this treaty goes in the direction of recognising obligations of business, some changes are necessary. For instance, a provision that restates, in the main body of the treaty, the language of current PP11 could be added just before article 6 (prevention):

In this same paragraph, while ensuring fulfilment makes sense, it is not clear at all how the proposed treaty can “ensure respect” of business obligations. It probably means “to ensure the respect of human rights obligations by business enterprises”. An alternative would be to replace “respect and fulfilment” with the word “implementation”.

The ICJ disagrees with the proposals to refer only to transnational enterprises.

The ICJ reiterates its remark that both subparagraphs 1(d) and 1(e) are missing a crucial element of redress, namely reparation. They need to be improved by reference to “effective access to justice remedy and reparation”. This is to ensure that “remedy” is directed toward a reparative outcome and is not just a procedural device.

The ICJ also supports the reference to “gender-responsive, child-sensitive and victim-centred” justice, in 2.d