

**IOE Statement on first Grouping (Preamble – art.3) LBI on BHR**

**8th Session OEIGWG**

24-28 October 2022, UN Palais, Room XX, 10:00–13:00 and 15:00-18 :00 CET

Thank you Chair, I am speaking on behalf of IOE and will focus my intervention on the Preamble and article 1, my colleague from USCIB will address article 2 and 3.

As a general remark, **the Preamble** as it stands now is not balanced and has lost its purpose to to define, **in general terms and concisely,** the reasons of concluding this treaty without entering into a listing or repetition exercise. Unfortunately, too vague, repetitive and subjective language still persists.

For example:

* **For PP1, PP3 and PP8.** We should stick to the original concise proposal. The proposal in PP3 to add the “WHO Framework Convention on Tobacco Control” should be omitted as falling entirely outside the scope of this treaty.
* The principles in points **PP9 bis, ter, quarter, quinquies** should be omitted in full as repetitive being included already in the UN Charter.
* **In PP11 and PP18**, the wording “**obligation**” should be replaced by “r**esponsibility**” to be in line with the UNGPs. Treaties are addressed to States, they do not create direct obligations for companies.

**PP11 remains by far the most concerning, distancing themselves further from the UNGPs:**

1. The focus on “transnational corporations” is not acceptable as the corporate responsibility to respect applies to all enterprises.
2. The responsibility to respect concerns internationally recognised human rights as laid down in UNGP 12 and **not all human rights.**
3. The wording “violations” should be replaced by “Adverse human rights impacts” in line with the UNGPs. As violation only applied to human rights impacts committed by States.
4. According to last year’s proposals the enterprises would have a responsibility to “**prevent or avoid human rights violations committed all along its global production chain directly or indirectly linked to their operations, product or services by their business relationship**”. This should be omitted or replaced by UNGP 13 and 22. This point would extend the scope of business obligations beyond what is possibly requested from companies in the UNGPs.

**PP11 bis and ter as well as proposals for PP13, PP13 bis and PP18 bis.** Call for extraterritorial jurisdiction and going against the principle of State’s sovereignty and should be omitted in full.

**For PP14bis.** States are signatories of treaties and bound by them, not companies. This point should be omitted in full.

**PP18 ter and quarter.** These new proposals are not acceptable and should be omitted in full as biased and depicting negatively transnational corporations.

**Turning now to Article 1**

Regarding the revised third draft, the use of “victim” should be replaced by **“rights holder” a**nd should not be extended to “**immediate family members or dependents of the direct victim**”.

The draft would continue to consider “**business relationships**” as “**any relationship**”, including “**business activities**” to include activities “**undertaken by electronic means**”, extending the scope of liability for companies to entities with whom they have no direct link.

The inclusion of a **new point 1.5 bis** to define “**other business enterprises**” would include TNCs only and should be **omitted.**

Let me now turn to the Chair’s new proposals:

On the definition of “**Human rights due diligence**”, we appreciated the Chair’s efforts but the draft should take **the text from the UNGPs 17 to 22 in full. In particular:**

* In point (b), it should be added “**in cases where the business enterprise causes or may cause as well as contributes or may contribute to an adverse impact**” to be in line with the sense of UNGP 19. The proposal is too vague and could be interpreted as an obligation of prevention and mitigation measures for a company’s entire supply chain.
* **Point (d) should be modified as to reflect UNGP 21** where the only requirement of formal reporting is for business enterprises whose operations or operating contexts pose risks of **severe human rights impacts**. The draft should not create an automatic reporting obligation for companies regardless of the context and potential gravity of human rights harms.
* Regarding the **definition of “remedy”** and “**effective remedy”,** it should specify that effective judicial mechanisms provided by States are at the core of ensuring access to remedy.

**Thank you.**