



**4th session of the Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights
(15-19 October 2018)**

**Article 1: Preamble
&
Article 14: Institutional Arrangements
&
Article 15: Final Provisions**

Thank you Chair,

The [IOE](#) does not support the Zero Draft Treaty or the Draft Optional Protocol and we strongly argue for preserving the approach outlined by the [UNGPs](#). Given the limited speaking time, I refer people to the [Joint Business Response](#).

The IOE would like to reiterate that despite our genuine concerns about this IGWG approach, we are committed to act responsibly and respect human rights. We are active in many discussions on this important topic and we take the responsibility to respect human rights very seriously. The IOE seeks a continuation of the principled, pragmatic and proven approach under the UN Guiding Principles to achieve real on-the-ground progress in protecting human rights.

Our concerns with the preamble

- As we have explained on a few occasions, it is not clear that direct international human rights obligations would apply only to State Parties and not to business in the Zero Draft Treaty. The language in the "preamble" adds to our concern about this. It contains an ambiguous sentence when it says that "all business enterprises... SHALL respect all human rights." Many jurisdictions have concluded that the word "shall" can mean "must" (as well as "will" or "may"). On top of this, while it is not certain that preambular paragraphs themselves are legally-binding¹, this preamble is listed under the very first Article in Section 1 implying that it would be fully part of the Treaty.
- It is also confusing that the "preamble" speaks of "all business enterprises" but the rest of the Zero Draft Treaty uses the term "business activities of a transnational character."

¹ International lawyers continue to debate this and Article 31(2) of the Vienna Convention on the Law of Treaties permits interpretation on this, where it says that: "the context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty."

- It is also illogical from both a practical and legal perspective when the preamble says that the Treaty would cover "all human rights."

Institutional Arrangements

- We find the Article on Institutional Arrangements confusing not least because of the sudden release – without forewarning – of the Draft Optional Protocol weeks after the Zero Draft Treaty. Both should be seen alongside each other and both raise big concerns, which are in our Joint Business Response.
- We are also concerned about the proposal for a Convention of State Parties – in such loose language – especially with the term that says it would consider "any further development needed."

Final provisions

- It is not clear when the Chair envisages that the Zero Draft Treaty and the Draft Optional Protocol would enter into force.

Thank you for your attention.