

**Check against delivery!**

**Sixth session of the Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights**

**Item 4: Article 12 – Mutual Legal Assistance and International Judicial Cooperation; Article 13 – International Cooperation; Article 14 – Consistency with International Law Principles and Instruments**

* Thank you, Mr. Chairman-Rapporteur.
* As we have observed this week, many States raised concerns regarding the infringements on national sovereignty and their strong objections to elements in the revised second draft that risk their sovereignty.
* In presenting our observations on Article 12 on Mutual Legal Assistance and International Judicial Cooperation, we must reiterate the concerns we raised yesterday on adjudicative jurisdiction because those same concerns, especially with Articles 7 and 9 – and their connection to Article 12.
* As we noted yesterday, the proposed scope of adjudicative jurisdiction in this revised second draft still reflects a concept of extraterritorial jurisdiction so vast that businesses are faced with grave uncertainties as to where they may be taken to court, and States face uncertainties as to volume of claims that they will be obligated to adjudicate.
* We also noted that the vastness of the draft’s jurisdictional scope is even further strained when considering the breadth of the “business activities” to be regulated, which as it should be recalled, include electronic transactions per the disputed Article 1 definitions already discussed.
* We also noted that the explicit rejection in the revised second draft of *forum non conveniens* results in legal uncertainty and is in conflict with principles of international law as well as various national laws which is a procedural mainstay in many jurisdictions designed to prevent forum shopping,
* As a result, the provisions of Article 9, together with Articles 7 **and 12**, may regularly give rise to situations in which a rights holder is a citizen of one country, an alleged harm occurs in another State, a charge is brought in a third, and several other additional countries who may not signatories to the proposed treaty, are nevertheless required to provide supporting documentation, conduct interviews or interrogations, issue subpoenas, etc. or enforce judgements issued by other countries.
* This is impractical and threatens State sovereignty.
* Article 13 sets forth expectations for State Parties regarding international cooperation, and Article 13.1 says State Parties “shall cooperate in good faith to enable the implementation of their obligations” under this proposed instrument.
* Good faith, however, is not defined anywhere in the draft, nor does the draft clarify who will be responsible for determining whether a State Party to this proposed legally binding instrument is operating in good faith or not. Given the many concerns raised by States yesterday on the issue of State sovereignty, this is important to clarify.
* Who and how a State Party’s good faith implementation of the proposed is determined is all the more important because, as we noted with concern yesterday, the second revised draft in its current form does not indicate what if any redress is available to rights holders whose governments are unable or unwilling to create adequate legal and judicial mechanisms to regulate business activity and provide remedy.
* Regarding Article 14, we join with the States today who have raised strong concerns and objections regarding the draft’s inclusion in Article 14.5 of bilateral or multilateral trade and investment agreements in this proposed instrument, and support the call by those States for those references to be removed. Especially given the many existing ambiguities and problems with this revised second draft that have already been raised this week – beginning for example with the lack of agreement on basics like the core definitions in Article 1 – we support the States who oppose any reference to already negotiated and adopted bilateral and multilateral trade and investment agreements by sovereign states to this second revised draft.
* Finally, and importantly, we would like to again clearly underscore that despite the many concerns of the business community with the second revised draft, it in no way diminishes its unwavering commitment to the UN Guiding Principles on Business and Human Rights and the corporate responsibly and respect human rights throughout its activities and business relationships.
* As we have emphasized at this 6th meeting, and in every previous meeting of this open-ended working group, we believe that a much more effective and sustainable approach for our shared goal of advancing the meaningful realization of human rights around the world would be to especially focus our efforts on increasing State capacity, so that a rights holder in a country may bring a suit in the country where a harm occurred and have faith in their ability to obtain a fair and speedy trial and access to remedy.
* Thank you.