

Panel II – Scope Tuesday 10-13:00

Thank you Madam Chair.

I am speaking on behalf of SOMO, CIDSE, Brot für die Welt, IBFAN, IBFAN-GIFA and Global Policy Forum, who together with Friends of the Earth Europe made a joint submission to this intergovernmental working group. Our organizations are also members of the Treaty Alliance, and are among the nearly 400 organizations from around the world who have signed the Treaty Alliance joint statement.

With regard to the scope of the businesses the treaty would cover – the footnote discussion – we have identified a **hybrid option** that we would like to share with you. Before explaining this hybrid option, I would like to thank Dr. Surya Deva for advising us and developing this idea. In short, the hybrid option entails that, conceptually, the treaty would NOT exclude any specific type of business, but, in its substance, it would focus on developing provisions for transnational **operations**, thereby addressing the current challenges to hold transnational corporations to account.

Let me briefly explain this idea. First of all, it is important to stress that the very reason to start negotiating the treaty is to address governance gaps related to transnational business operations and problematic home-host state dynamics that come with it, and that the bulk of the human rights impacts we seek to address occur in relation to such transnational operations.

Nevertheless, the footnote poses a number of challenges. First of all, it lacks conceptual clarity, for all companies – even TNCs – are registered under domestic law of some country. A second and more problematic aspect is that any attempt to define TNCs is likely to prove futile, because an entity could be considered “transnational” in view of multiple alternative variables, such as shareholding, operations, business relations, location of offices, nationality of shareholders and directors.

Our organisations fear that any attempt to limit the treaty’s scope by providing a definition of targeted corporations - thereby excluding a subset of companies - will inevitably result in lawyers advising enterprises how to bypass the given

definitional contours, and would thus provide loopholes in the protection against business related human rights abuse. Therefore, the proposed international instrument in our view should not exclude any business category.

That having said, the treaty's main objective and focus needs to be on provisions for transnational operations of business, such as the obligation of states to regulate the extraterritorial activities of business, and to provide mutual assistance between states in investigating violations and in enforcing judgements. It is these types of provisions we are looking for in the treaty, which clearly go beyond the domestic level.

To conclude: in our view this hybrid option could effectively avoid double standards and loopholes to escape the foreseen treaty regulation, while at the same time it would put the energy where most of the pain is: at the level of transnational operations and TNCs. We hope this idea will constructively contribute to the debate.

Thank you Madam Chair.
