

Annex I

IGWG TNCs/OBEs: Guidelines for intersessional work ahead of 9th session *23 March 2023*

As covered in the [note verbale of 2 March 2023](#) providing an update of the process, the Chair-Rapporteur has "requested that the friends of the Chair convene and lead intersessional consultations among States to advance work on the draft legally binding instrument, within their respective regional groups.... [T]wo such consultations per region [should take place] between April and mid-June 2023, with the first consultation focusing on Articles 1-7 and the second consultation focusing on Articles 8-14." The Chair would like to thank the friends of the Chair for their willingness to help move this process forward and lead these intersessional consultations. To assist in this regard, this document provides guidelines for the consultations.

Objectives and modalities of the consultations

Objectives: In line with the recommendation in paragraph 25(g) of the 8th session report, the Chair will use the outcomes of the intersessional consultations as reported by the friends of the Chair, together with the concrete textual proposals and comments submitted by States during the eighth session, to update and consolidate in a single text the draft legally binding instrument ahead of the 9th session. A key objective of the consultations is to try to find common ground on the substance of the instrument to help the Chair with this update.

Sessions: Between April and mid-June 2023, the friends of the Chair should have two consultations per region as follows

- **Session 1:** focusing on Articles 1-7 (on the basis of the [third revised draft](#) as well as the [Suggested Chair Proposals](#) on Articles 6-7)
- **Session 2:** focusing on Articles 8-14 (on the basis of the [third revised draft](#) as well as the [Suggested Chair Proposals](#) on Articles 8-13)

Such consultations should take into account:

- (1) the work of the working group to date (in particular, all concrete textual suggestions made during the seventh and eighth sessions); and
- (2) written inputs by stakeholders (as regards substantive improvements to Articles 1-14 of the third revised draft legally binding instrument and the Suggested Chair Proposals).

Participants: In line with the recommendations from the IGWG's 8th session report, these consultations are meant to take place amongst States only without observers.¹ States are encouraged to consult lawyers and technical specialists, including from capital.

- Non-State stakeholders will feed into these discussions through the written inputs requested by the end of March,² hence the deadline before the consultations are to take place. During the week of 3 April, the Secretariat will share a compilation of written inputs received with the friends of the Chair.

Questions to report back on

For each of the articles under discussion, it is suggested that the following questions be addressed in the consultations:

- (1) Does this article cover the right issues?**
 - a. How can the text be streamlined while maintaining the objectives of the article?** (i.e., is there anything that can or should be removed?)
 - b. What is missing in the article?**
- (2) Is this article drafted with sufficient clarity and flexibility to be implementable within your State?**
 - a. If not, how can the text be improved?**

For each of those articles for which there are suggested Chair proposals (Articles 6-13), the Chair would also like the following question to be addressed:

- (3) How can the text of the 3rd revised draft and that of the suggested Chair proposals best be merged to ensure a streamlined, effective text that maintains the objectives of the article?**

Clarifying the scope of companies to be covered by the LBI

From the second revised draft instrument onward, and as orally stated by the Chair-Rapporteur during the 7th and 8th sessions of the IGWG, the Chair considers that the future treaty should apply to all companies and business activities, both transnational and national, while recognizing that States Parties may establish in their law differentiated obligations depending on companies' size, sector, and operational context and the severity of potential impacts on human rights. There are many reasons for this determination, including:

¹ See [A/HRC/52/41](#), para. 25(e).

² See [A/HRC/52/41](#), para. 25(f); [note verbale of 2 March 2023](#).

- **ethical:** the nature of a company is irrelevant to victims;
- **practical:** wholly domestic companies can be responsible for serious human rights harms;
- **effectiveness of instrument:** there are major risks of transnational companies structuring themselves in a way to avoid falling within the scope of the instrument;
- **consistency with international standards:** international standards on business and human rights apply to all business enterprises, whether transnational or national

This position is consistent with the mandate provided for in resolution 26/9, in particular because a footnote in a preambular paragraph does not impose legal limits on the scope of the IGWG's work.

For this process to move forward, States should accept that the instrument will apply to all companies and business activities, and provide textual proposals on this basis.