

IMPORTANT: The information contained here is only what civil society organisations heard states say during the IGWG sessions and therefore only serve as a guide. They in no way reflect an official record of the negotiations. The authors are not responsible for the accuracy of the content of the negotiations. For an official version of the negotiations please see the UNTV Webcast of the IGWG at:
<http://webtv.un.org/meetings-events/>

IGWG 3rd Session - Notes recorded by civil society organisations
involved in the [Treaty Alliance](#)

Opening Session	2
Subject 1: General Framework	6
Subject 2: Scope of Application	10
Subject 3: General Obligations	13
Subject 4: Preventive Measures	15
Subject 5: Legal Liability	17
Subject 6: Access to Justice	19
Subject 7: Jurisdiction	22
Subject 8: International Cooperation	25
Subject 9: Mechanisms for Implementation	27
Subject 10: General Provisions	29
Friday States Informal Meeting	29

As the notes are taken live during negotiations there are typos and misunderstandings. For any clarifications check the official record of the interventions at UNTV.

OPENING SESSION

State/Organization	Comments
Algeria	POW as presented by Chair is in line with mandate and resolution. including FN is not compliant with mandate. don't include it in POW. Supports the program of work. Binding instrument would have an important impact.
Australia	Disappointed that consensus on POW was not reached because so little time. thanks for including ability to speak on UNGPs. welcome inclusion of FN at IGWG2. support inclusion of FN as proposed by EU.
Azerbaijan	Welcomes tremendous efforts of the chair and supports the process of developing a binding instrument. We support the elements a encompassing and comprehensive. Puts emphasis on online and trans-border trade of companies.
Bolivia	support topics in POW. UNGPs have other fora to discuss but chair is flexible and included here too. EU can bring this up during scope discussion.
Brazil	<p>First intervention: Brazil supports POW. request EU to be flexible and accept. Brazil shares opinion of EU; would like treaty, or elements, to also encompass national companies. working group title already includes all companies "OBES".</p> <p>Second intervention: 26/9 FN 1 doesn't prejudge negotiation; it simply establishes the IGWG and scope of discussions, but when we get to scope discussion we have political space to argue for an instrument that is not limited to TNCs; Brazil is ready to engage in negotiation on basis of POW; if we include FN now we will be undoing what has been approved by HRC (26/9). at end of negotiation we may agree we need to change resolution.</p>
Chile	The Treaty should address the problems of jurisdiction, extraterritoriality and access to justice. The UNGP and the treaty are complementary. We thank civil society for active participation.
Cuba	<p>First intervention: Not sure where EU got idea that there was a commitment on EU proposal. We discussed at IGWG 2 and agreement reached. now it is time to focus on mandate of IGWG. we do not support including FN. we would like to go with current POW.</p> <p>Second intervention: civil society, HRDs, victims, can look at who is blocking who, they should look at vote on 26/9. that shows who the countries are. the HRC is the place to talk about changing the resolution. this is not the time. it isn't just one country. there were many. rules of procedure are clear. Cuba supports the process. The mandate has to be respected.</p>
Egypt	Egypt supports POW; chair has sufficiently consulted with others;

	the resolution is clear.
European Union	<p>appreciate work in almost impossible situation due to uncertainty in POW. common practice in UNHRC for chair to convene the meeting of coordinators several weeks before a session. in this case the chair convened the first meeting on the 18 of october. less than 3 working days before the start of session. despite this, coordinators of the groups worked hard to find compromise on draft POW, praise Ecuador for outcome. Then we were surprised to learn on Friday afternoon, at last hour, that chair decided against the compromised proposal. we would like to reiterate our appeal to chair to stick to agreed POW. we want it to include 2 elements. first a debate on the reflection of UNGPs and other intl, regional, national frameworks, and second to keep the footnote of POW of 2nd IGWG "26/9 does not limit discussions of IGWG w/c can include TNCs as well as all OBEs." first element of compromise was accepted; but footnote did not appear on draft POW. chair should ask if any objection to inserting footnote. this is an issue of substance with wide implications. EU believes discussion cannot be limited to TNCs. complex networks of TNCs operating at domestic level. states, natl HR institutions, etc have said that treaty should cover all enterprises. Third intervention: (in response to chair request how to go forward): we are not leading this process, we made a proposal that is supported by many; i'm surprised that i'm taking the floor once again; just for sake of transparency and those involved in discussions; first discussion started on weds and ended w/ compromise with everyone at meeting seemed to be in favor of compromised proposal but not all states were informed of this proposal; would have been prerogative of chair to circulate compromise to all so each state could form opinion on compromise; this isn't about EU demands, this is outcome of 4 hours of discussion; we wanted panel discussion on UNGPs; now we will discuss other frameworks, so that shows that EU is being flexible; FN was already a compromise and adopted in resolution; we never said we wanted to undo 26/9; we respect it; POW is modality of work to give us all comfort to come to room; we are not trying to delay; we are ready; so lets get started with discussion, let's get FN into the POW; if you put it in, this will allow us to start.. Fourth intervention: EU will not object to adopt POW. we could though, like we did two years ago. but how can we trust chair now? we would like position of all be reflected in report. Fifth intervention: pay tribute to civil society and HRDs. remind us all that more remains to be done to prevent abuses. intl community needs to respond in appropriate and effective manner. we hear growing concerns about this process. made the elements available only 3 weeks before session when originally said june 2017. also serious concerns about POW. this is not the only track. other UN tracks</p>

	<p>offer tangible approaches. as discussions about more legal issues begin, we have to remember we don't operate in a legal vacuum. quote UNGPs state duty to protect. full implementation of these HR would probably respond to concerns of civil society and HRDs. we need to properly implement existing obligations. we want smart mix of voluntary and regulatory measures. Ruggie quote "let there be no misunderstanding, this debate is not about legalization as such, nor as about declaratory vs mandatory measures, treaties are after all voluntary bc no state can be forced to adopt. . . debate instead is about carefully weighing extent to which different forms of legalization can result in practical results when it matters most, in daily lives of people around the world. not some idealized state of being.. . not only bad idea; profound deception. " chair has opted for all encompassing instrument, risking delay in progress. chair does not seem to be in a hurry; we are in a hurry. . to ensure we have means to provide access to remedy when abuses occur. take this opportunity to invite all CSOs to meeting at 9am in room XXII.</p>
France	<p>France supports the statements of the EU. HR violations cannot be tolerated. We have a good legislative basis. Welcome the European Council statement. UNGP should be the framework for developing action. Refers to the NAP and an inclusive process for its development, the OECD Guidelines, the ILO Tripartite Declaration and the Loi de Vigilance. UNGP should be taken into account in the Treaty process. We have to discuss about definitions and content of the elements. We need a realistic approach. Not only TNCs should be covered. We need a coherent answer of the international community to the problems.</p>
India	<p>traditional approach that only states are responsible has lost its merit; we need better understanding on: attempt to regulate TNC should accommodate emerging states; need to develop and strengthen measures at national level that can be used against TNCs; process should provide space to all countries needs to be accepted widely</p>
Iraq	<p>We support the efforts to reach a legally binding instruments. Voluntary instruments are no more adequate. We welcome that the EU puts emphasis on the UNGP which are still a young document an reflect the international consensus. Because of the lack of time, we cannot comment on the elements in detail.</p>
Mexico	<p>shares concerned expressed by EU. specifically that it only focuses on one type of business. should broaden scope without specifying transnational character. we want to add FN as proposed by EU. We are disposed to participate in the discussions. We welcome binding obligations with respect to due diligence, access to remedies and preventive measures. But we have reservations with regards to the limitation to acts with a transnational character. Questions the principles of the primacy of human rights. There should be no</p>

	<p>hierarchy with exception of ius cogens. We also emphasize the efforts of companies and ask to include companies in discussions. The UNGP implementation and the treaty process are complimentary. The primary responsibility to protect human rights is with the States. The treaty should improve access to justice. Nothing in the treaty should oblige or allow states to exert extraterritorial jurisdiction. Treaty should cover all companies, not only TNCs. We will seek to get more clarification.</p>
Namibia	<p>on behalf of african group; this will help developing states with weak legal systems; most TNC violations occur through local subsidiaries; all OBEs should be regulated but focus on TNCs; home states of TNCs should play increasingly engaged role in ETOs as reflected in Maastricht Principles;</p>
Nicaragua	<p>EU proposal does not enjoy consensus. support chair. Support the draft elements and support the process. Philippines support the agenda and want to focus the discussions of the elements now. Have taken steps to implement the UNGP. It is important to make human rights due diligence a binding obligation. We supported the establishment of the IGWG. Everybody has to be included in the debate on the elements. We take a cautious attitude towards a binding instrument. UNGP have not yet been exhausted. We need to continue to implement UNGPs. But a legally binding instrument does not necessarily undermine the UNGP, but the Treaty must build on the UNGP. Expresses confidence in the Ecuadorian chair. We recognize benefits of TNCs and primary responsibility of States. But binding instrument is of paramount importance. Draft elements are a good basis for negotiations.</p>
Norway	<p>regret that there is not consensus on POW. Norway supports two proposals by EU. thanks for including discussion on UNGPs. but FN as proposed by EU is not accommodated. . Refers to the UNG. Stresses the States obligations. . Making responsibilities of companies binding may also undermine them. Is disappointed about the short time available to analyse the draft elements. For this Norway will not be able to comment on the details of the elements.</p>
Palestine	<p>Primary responsibility is with the States. They have to make sure the businesses respect human rights according to the UNGP. We believe that the binding instrument would be an important step. We propose to address also conflict situations.</p>
Philippines	<p>supports POW as proposed. meeting should focus on elements. we are at point to constructively engage. OBEs is covered in name of working group.</p>
Russia	<p>don't have consent for POW, so we propose to continue discussions on draft POW.</p>
South Africa	<p>the proposal that EU is making is unacceptable. it belongs in national negotiating position, when we get to substance of negotiations EU can make this proposal. Second intervention:</p>

	original FN said OBEs does not apply to local business. now others are saying lets add a new FN to change mandate of IGWG. SA is pleased that this is unfolding in full view of civil society so that it is understood that concessions were made. it should be clear whose responsibility it is that we have not been able to proceed. Third intervention: there are people ready to get to work. how is it that countries with resources are not ready? if we add FN we're saying that HRC resolutions have no integrity and can be amended ex post facto. General comments: mandate of IGWG cannot be so generalized that pain of poor is trivialized; cannot rely on voluntary principles;
Switzerland	Puts emphasis on the UNGPs and refers to its. The elements only superficially reflect the UNGPs.
Tunisia	Supports treaty - complementary to ACHPR
Uruguay	Expresses support for the chair and calls for constructive contributions. Welcomes the program of work. All voices have to be heard, including CSOs and companies.
Venezuela	do not support EU proposal; mandate is clear. support chair.
International Organisation of Employers	We actively endorsed and distributed the UNGPs. We actively participated in the second session. We oppose the elements, direct obligations of companies, legal liability
International Chamber of Commerce	We have endorsed the UNGP and assist businesses to respect human rights. Together with BIAC we do not support the treaty nor the elements as they are a step backwards. UNPG are a huge success story. They apply to all companies and are pragmatic. The elements appear to go against the international consensus and blur and confuse obligations and responsibilities. The majority of companies would not be covered. Options for mechanism only refer to TNCs. We ask you to take into account the realities of businesses. They are part of the solutions. We support Multi-stakeholder Dialogues. We do not support the elements and take attention away from UNGPs. The elements do not give us confidence that the IGWG will bring improvements.

SUBJECT 1: GENERAL FRAMEWORK

State/Organization	Comments
Bolivia	Principles are a good basis, particularly in Preamble, the enumeration of rights. Especially the impacts of TNCs to human rights. Privatization of TNCs have led to violations of human rights, e.g., water; Primacy of human rights over investment agreements and trade agreements we believe as fundamental; We propose to include procedures to TNCs to avoid accountability; we agree on section of Purpose
Brazil	Welcome the reference to rights to development and mentioning ESCR and CPR; welcome the proposal to re-affirm the UNGPs.

	<p>These should be an inspiration for our efforts here; We look forward to discussion to review and draft the treaty; Praise the reference to international cooperation and technical assistance...constructive approach is a good way to move forward to enhance these two elements; Call attention to language when referencing recognition to special victims – yes to victim-oriented, but we should not include language that fails to recognize the empowerment of people instead of considering them as victims from the start - we should consider from the start that IPs, women, girls and all vulnerable groups. We prefer to have language that we welcome their “full participation and contribution as actively we can”...anything that they can propose to help build this document. Reflect as more positive position from them, not only as victims</p>
Cuba	<p>Echo previous speakers; This document is useful but we need to reduce the preamble and focus strictly on what we want to do. NO need to list all the documents and conventions; Need to account to reduce some elements of the purpose and objectives to have something more concise; We have not yet fully reflected the objectives</p>
Ecuador	<p>Document reflects the need to continue to protect HR in the context of business entities and TNCs...towards better protection of HR has driven all the work here; The UNGPs are complementary to the draft. The UNGP was a good step forward, but needs the next step which is this legally-binding treaty; Reflect the spirit of the document and ensure that it is made clear. The universality, interdependence and inter-relatedness of human rights; Primacy of HR over investment and trade treaties; Fundamental issues: i) direct obligations of business, ii) ETOs and iii) mechanisms for effective remedy. We ask suggest explicit wording in the document that we may meet the purpose of the document; Strengthen the document on: e.g. ESCR comments on state obligations on the rights of children impacted by business, the role of international entities (IFIs) in connection with human rights, and these must be clarified in the documents; mention specific provisions on “freedoms”; We think this draft will allow further progress work on this document</p>
Egypt	<p>Preliminary remarks: Preamble should be in general nature, and not list documents; Giving equal treatment for women to all people (section 1.2 bullet 9 and 10); Use of abuses and violations need to understand the difference between the two terms</p>
European Union	<p>Indicated yesterday that we are ready for a meaningful discussion, despite the fact that we didn’t; have enough time to review the draft document; Reserve opposition to the whole document, but we will engage...but this should not be viewed as taking a position on elements in the draft; Chair: Times up but we will re-set the time Under General Framework and 1.1 of Preamble – request clarification; Is there a reason for various instruments to be</p>

	<p>presented in equal footing, some are legally-binding, and others are not; Why is the draft not referring to the need for global ratification of ILO conventions; In the listing of declarations, the text does not include the 2008 declaration on a fair globalization, why was this missing?; Provision on “state parties equality, sovereignty, territoriality” we have 2 questions – i) if we refer UNGP 2 and commentary , states are not prohibited from exercising jurisdiction on violations of human rights...whether this provision (1.1 and 1.2) this is being contested? And ii) are we risking these provisions undermine the important progress on other areas such as responsibility to; Under 1.2 we seek clarity on “primacy responsibility of state to prevent” – obligation of the state under UNGP; A hierarchy of international obligations is proposed, and this has not been previously agreed...how would we address the challenges reported by international law report; Provision on duty of state to prepare HR impact assessment – this is already a practice on the EU, and we are happy to elaborate if need be; Purpose 1.3 – these are compatible with UNGPs, and is there any major different between the draft and UNGP?; Is there possible contradiction between 1.1 and the provision that “obligations do not end at their border”; The purpose is unclear bec. The focus seems to be on the trans-national nature of the actor, and not on the transnational nature of the crime. What is intended with these sets of elements? Is it domestic violation of TNCs established domestically? Or those how have moved abroad? Or violations of companies committed abroad?; Elements do not clearly specify – is there a legal violation where each violation can only be addressed at the international level and not at the domestic level. These are already covered in exiting international instruments. Or are covered by international instruments, but can’t be achieved; We insist that there are clear principles of subsidiarity, proportionality and necessity and those should be respected. On Objective 1.4 – Please elaborate on the primacy of human rights over trade/investment agreements as we raised earlier; Was there any legal analysis re relationship of elements and other legal instruments. To which extent there is an assumption that there is inconsistency between these draft and the trade and investment agreements</p>
<p>Indonesia</p>	<p>Preamble – the documents are too broad, we should focus on referring to docs that refer to UNGPs, right to development; Too much reference can open prolonged discussion; Principles affirmed must be stipulated that are agreeable to most if not all states; Some principles need further discussions; Purpose/Objective: some principles are over-lapping</p>
<p>Mexico</p>	<p>We note our reservations yesterday, and our preliminary question is - How would we establish the “primacy of HR” and reconcile this with the report on the fragmentation of international law?</p>

Russia	Principle Sec. 1.2 Principle # 11 is necessary step for states to prepare preliminary assessment to human rights – this is a guideline of action and not a principle. We find it unacceptable to put this in 1.2; Hierarchy of human rights is not acceptable; Special regime for vulnerable groups is unbalanced and could be interpreted as positive discrimination. These groups have special needs, and states need to provide differentiated approaches but special protection is the wrong approach; We question the “responsibility of state to private acts” – however, only in certain circumstances perhaps. This is an exception to the rule; Principle 1 states as such do not bear responsibility of human rights of TNCs. That needs to be proven. Having such a specific norm or commentary in our view is wrong; Sec. 1.3 – criminal responsibility for entities. IN the Russian legal system, there is no possibility for bringing legal entities to be brought to ??? there as to be a fault. Individuals are responsible for the acts, not the entities. The company may have other responsibilities (fines or license revocation). The perpetrator of the offense need to be punished – that’s the state responsibility. This section is unacceptable bec. It is against the Russian legal system
Singapore	Important to build inclusive approach. We need more discussion is required; A different format for discussion might be needed to unpack all details for the element; We are still consolidating our position on this, and we reserve our right to present future position...these are preliminary views; Primacy of HR obligations – this is new to our delegation. We are not aware of any precedent where this exists. It would be useful to have legal clarity on this? Does this imply that we need to re-negotiate existing treaties? Or can we set-aside existing provisions on treaties to address this principle?; We acknowledge this is a legitimate concern but needs more clarity
South Africa	Preamble section need not be lengthy, other elements can be addressed in other section; key is to recognize globalization and its impact to countries are precipitated by TNC nature of corps and OBEs. key issues on objectives/principles: are: 1. States agree that general rules of law are applicable to all entities 2. International law/ETO must be strictly enforced 3. Internal law imposes duties on cooperation 4. Criminal liability of states inc. grave abuses of humanitarian law 5. Competence local juridical bodies 6. Body to provide effective remedy and combat impunity 7. Civil, criminal and administrative liability of TNCs 8. TNCs must contribute to te means of implementation of the rights to development and ESCR with the view of ending poverty Chair must produce a draft treaty for substantial negotiations
Uruguay	Written document is important for us. Complementarity of UNGPs and this draft. We need to address the legal vacuum; HR needs primacy on trade agreement; In 1.4 “re-affirm primacy of HR over

	trade/investment agreements”...Uruguay legislation protects HR, and this is progressive and rich in terms of HR; Law on criminal liability of corporation is there, but this is not enough. There are cases of TNCs questioning our legislation, including trying to avoid the law t be put into practice; For small states, this has implications to national budget...so a binding instrument is of great importance to allow us to sit down and directly talk about this issue and built on this draft document
Venezuela	We appreciate active CSO participation in this process; It is essential to have constructive participation of all participants; Good to clarify the role of globalization impacting communities, and large companies taking over the market, noting the need for a binding treaty; Noted the South Center points – access to resources, international cooperation; Our delegation believe it is important to uphold the consideration in the General Framework – HR must be upheld beyond borders; Primacy of HR over investment agreements must be a priority in the document, as well as the right to development

SUBJECT 2: SCOPE OF APPLICATION

State/Organization	Comments
Azerbaijan	Supports the advancement of a binding treaty. Needs to be wide and precise. Important attention to in conflict and post conflict situation in relation with property and natural resources. Some TNC and OBE are using conflict situations to exploit natural resources. Relevance of electronic trade. Many of e-commerce providers are international and sometimes virtual; it poses a challenge for regulation: ETNC.
Bolivia	- states have to ensure that private parties do not violate HR -> horizontal effect of violations - protected rights, the scope should not be only int recognised rights but also nationally recognised rights -> jurisdictional complementarity. Ex: right to basic services. - Should address national companies also -> so they cannot avoid jurisdiction - include the activities references to business using new technologies
Brazil	Welcomes the comprehensive approach to the right to be protected in accordance to the elements for the treaty. We support the comments made from Bolivia; there should be a connection with nationally recognized rights. There should not be limitation in the nature of the corporations; national companies should be included as well. International companies have some special features that will need special mechanisms. Asks for more information on the enforcement process. Clarifying position: we are of the view that no violation by any type of company should be tolerated or condoned, no matter the type of

	company. That's why defend a broader scope of the instrument we are talking about.
Ecuador	The instrument should focus mainly on international corporations. Attention to effective remedy. It is not discrimination to differentiate local and international corporations; such difference is recognized in many EU countries. Interesting examples: ECU: criminal liability of corporations, existence of Superintendence of abuse of economic power, which regulates and establishes good practices guidelines. Structure and complex supply chain of international corporations are a challenge for states. We want to stress the word "activities" which could be changed to "corporate activities", which would include mergers, acquisitions, PR, sales, etc. Link to the Anti-corruption convention for the definition of the international nature.
European Union	- Scope: should not be limited to the TNCs - Language: TN character regardless of size, ownership etc. -> would like the chair person to elaborate : to understand whether this provision does exclude the domestic enterprises ? Ex: Would that encompass national oil companies engaged in a joint venture with multinational enterprises ? What would be the basis for such a distinction ? More generally, how the text would guarantee non discrimination regarding the application between foreign / national companies ? Proposed obligation with regards to HR ? If the arg is that domestic companies are regulated by domestic law -> then that also apply for transnational corporations ! Then, regarding provisions on 2.2 acts subjects to the application, we have a few remarks + questions. In line with our opening remarks, we see the risk of limiting the scope of the language -> wants reassurances to guarantee that any further legal instrument would cover all enterprises in non discriminatory way. Q: what is meant by indirect control ? Finally, to which extent the TN character of the proposed obligations -> isn't there confusion between the TN character of the HR violations + activities. Lack of definition raises questions: acts committed by any business entities including local enterprises -> Q: whether the ultimate corporate parent would be held liable irrespective of whether it contributed to the harm ? Clarity needed -> obligations would apply to national hold enterprises ? Finally, whether the draft elements are clear enough when it comes to address corporations which are mixed (when the nationality is not defined for example) ?
India	Reminds the resolution of creation of the WG. Do not apply to local businesses; it is a responsibility of the states.
Indonesia	The negotiations must focus on elements to face the gap at the international arena. Domestic businesses is regulating by national law and enforcement mechanisms. The treaty should take into account characteristics of developing countries. The central issue to be addressed is the objective of the treaty: lack of access to effective remedy to affected communities by regulating the TNCs.

Mexico	The object should not be limited to transnational companies: should include state-owned companies and companies with no impact abroad. That is the spirit of the UN principles. Subjects wise, the treaty should limit its nature to the establishment of state obligations. It should not apply to international organizations: obligations to such entities should be created within its own governing bodies. There could be a principle of complementarity among different legal frameworks in the international arena. For individuals, it is complicated to extend it. It would only apply to international crimes.
Namibia	Right to development should be included. Extra-territorial aspect of HR obligations should be recognized. Should include affiliate and controlled companies. Regional and economic integration organizations should be included. Focus should be on the geographical reach of the activities. Economic sanctions can be considered (examples from OECD or UNCTAD).
Palestine	The issue of conflict affected areas should be addressed in the draft document. Consequences of corporate complicity to war crimes should be addressed.
Russia	Section 2: we do not need a def. of TNCs + other OBEs. When we look at declarative act like GPs, then we could base on the generally accepted understanding. - ILO - 2.1 this is too broadly formulated -> we see all the int recognised HR are covered. 12 of the UNGPs. However, on 2.1, all HR treaties + other instruments -> this is broad references that raises many questions -> attempt to expand the list of int recognised HR ! -> superfluous to refer to environment + corruption -> those issues are dealt with other int instruments. 2.2 + 2.3 : expands the scope of physical persons. This is outside of the scope of the mandate of the group -> TNC activities + ind are not comparable in their impact -> it is counterproductive to have them in the same doc. -> we must exclude natural persons. 2.3: we should have regional eco integration included. -They cannot take on obligations -> not all provisions are relevant to them. /// Article 26 of the Corruption Convention has a reference to the legal principles of State Party: how to apply the treaty obligations is a matter of each State Party.
South Africa	Rights to be covered: all the internationally recognized human freedoms, including right to development. Preemptory human rights norms should apply. TNCs and OBEs with transnational character are different from local businesses. Local business are not immune to HR violations; should be included in the preambulatory norms. The treaty should fill the gap for transnational actors. It should not negate the obligations of international finance institutions.
Venezuela	Such a treaty is of key importance. Should focus on TNCs. Supports the mandate of the WG. Should include all types of international activities.

International Organisation of Employers	What do activities with a transnational impact means in the practice from a legal perspective? What would be the scope of transnational character? What about regional organizations? It would be almost impossible for any activity with a transnational character. Including controlling companies goes against the UNGPBHR. There should be a clear focus on actual human rights (not like environment, labor or corruption).
--	--

SUBJECT 3: GENERAL OBLIGATIONS

State/Organization	Comments
Bolivia	In favour of obligations as framed in the elements document. Key importance for States to take measures to prevent and investigate violation within the supply chain. Cooperation should be included within the obligation section, in particular with regards to affiliate and controlling companies relationship. - The obligation to respect HR is for all, including TNCs. There is a growing understanding to bring balance to the benefits that companies take from international legal frameworks. - Companies should respect local developments model, human rights, domestic legislation and disclose information.
Brazil	Glad to see the difference responsibility for States and other parties like TNCs. Need for stronger access to justice and greater remedy. - States are the ones that should do a due diligence. Skeptical about the effectiveness of imposing direct obligations on TNCs in the absence of national mechanisms - Stresses the importance of cooperation. - Concerned about the limited capacity of some States to implement a treaty like this one - Requests more information and clarification in disclosure obligation before registering TNCs.
China	China has promoted CSR and it is devoted to protecting labor rights. China created a network for Global Compact. China is ready to share its experience from preventing businesses from violating human rights. National businesses violations of human rights will be punished. There is no legal obstacle in this regard. There is a relief fund if victims do not obtain effective remedy. China established social risks management system for overseas investments. Oversea business respect honesty, environment and have an active part in community building. They contribute to the development of rules for social responsibility. The draft elements are worth of study but China needs more time to analyze it. Not able to make detailed comments on the elements this time. We hope that parties will have an exchange of opinions on the elements trying to find broad consensus.
European Union	- There is language on the primary responsibility of States and general obligations of TNCs and OBEs. Is this mean to depart from the UNGPBHR? - There is language on the negative impact from transnational operations. Is this meant to limit the scope of

	<p>application? - To which extent the treaty would contain obligations to the State around all recognized HR. How can we guarantee that States will not transfer obligations that they do not enforce for themselves or their agents. - Several obligations in the elements already exist and are recorded in the UNGPBHR. Would not be enough an effective implementation of the existing obligations? - What mechanisms are foreseeable for the failure to implement UNGP? - What is the effect of mechanisms expected to have? - Provisions of disclosure: ready to share the experience of EU with regards to non-financial information. The EU guidelines has a criteria of size (500 employees). Not related to its transnational or domestic nature. - Obligation of enterprises: request clarification as to how HR obligations would work in the practice. - There is a challenge on how to make private companies responsible for HR obligations.</p>
Palestine	<p>Opportunity to enhance elements for due diligence in conflict areas. Enhanced due diligence mandates to refrain from investing in certain areas. Requires consultation with CSO and HR organizations. Where business operation are ongoing, there should be a provision to hold the activities and to assure access to remedies.</p>
Russia	<p>Many of the provisions are too general. There is a lot of overlap in the provisions. In first paragraph of 3.1 is superfluous. In paragraph 4 there is a mandate to adapt legislation and there is no need to put that. In many countries the instrument itself may comply with that. What would be the connection with existing procurement normative, including within WTO. HR obligation should be part of State-companies contracts? The obligation to do HR impact assessment is beyond the scope of the instrument. To whom does companies need to report? For what purposes? There is not enough clarification. It is not possible to give a detailed analysis. Companies are not subjected to international law. Agrees with SG of the international employee organization. In 3.3 does not seem to be correctly worded. Is it talking about States or International Organization?</p>
Singapore	<p>Imposing direct obligation to private actors is unprecedented. International law or political context has evolve to respond to that challenge? - On 3.3 on international organization, need to reserve its position until there is more clarity. Would not been in favor of imposing restrictions on existing bodies with different memberships and /or mandates.</p>
Venezuela	<p>agreement must call on TNCs to respect HR wherever they are; lack of jurisdiction is a challenge to holding companies accountable; some companies destabilize governments; so we support this instrument establishing obligations on TNCs that destabilize governments; this agreement is key to overcoming gaps; with regard to IOs, the duty is on state parties; IOs that promote economic adjustments have an impact on entire population, we need to look at</p>

	this in greater detail
IOE	International law focuses on states and not private entities. Cites Ruggies saying that equalizing companies to States may undermine their accountability to their own citizens. Companies should not replace governments. Customary international law, which is less defined, does not impose obligations to companies. Advancing human rights needs better domestic institutional and frameworks. Strongly opposes the imposition of direct obligations on states. IOE supports UNGPs "should respect" HR. This is an entirely appropriate and practical approach. The UNGPs are having a big impact - bringing attention and action to this issue. There was a bit of a misunderstanding. We recognized internationally recognized HR, including the 8 core conventions; yesterday we were asking whether scope of treaty would be broadened to include unspecified instruments re labor, environment, etc. EIAs are beyond scope of this initiative.

SUBJECT 4: PREVENTIVE MEASURES

State/Organization	Comments
Bolivia	Very important to have a preventive system, including a vigilance plan to prevent HR violations, including with regard to the environment. Important to have periodic evaluations and risk identification measures which are transparent, early warning systems. The State should play a role e.g. through inspection agents. Supports CSO suggestions to have mechanisms nationally and internationally to avoid undue influence of companies. Provision on tobacco control interesting model to follow.
Brazil	Subject 4: From victims' viewpoints, essential that States ensure that companies in territory or jurisdiction exercise due diligence. Language in section 4 needs to be more precise, need flexibility and clarity on obligation of States on consultation. Need for a balanced approach for effectiveness and credibility of instrument, need to take into account State capacity.
Ecuador	Welcomes section on prevention. Environmental and loss of life: Chevron case is an example of lack of prevention. Prevention is a fundamental pillar in the field of HR. Constitution in Ecuador recognizes right of nature and protection from violations. Welcomes inclusion of example of legislation of France. FR example shows that there is no loss of competitiveness associated with these measures. Especially if the measures binds all States: creates a level playing field. No country should question the inclusion of this topic in the instrument. Reparations cannot always cover all violations. Important to have a gender approach. in this section.
European Union	The objective of prevention is shared. Reserves position on this chapter as on all others. 2 questions: 1) refers to existing obligations

	(need to catch up on this to complete with webcast). On requirements for companies and all actors within the supply chain: would that also include small national businesses?
France	France presents their law adopted in march 2017 which includes (under others) the following: responsibility of parent company to do vigilance plan, applies also supplies and subsidiaries outside of territory. Vigilance plan includes mapping or risks, hierarchisation, actions to reduce risk, and early warning systems. Requires businesses to have a plan to follow-up. Makes business responsible if there are gaps in vigilance plan. Courts can impose sanctions if prevention insufficient regardless of where the infraction took place. France recommends to have these aspects in the treaty.
Iran	the duty to protect lies with the state, similarly the state must protect against HR abuses within their territory/jurisdiction by TNCs and OBEs. States must ensure these obligations regarding all companies. States should take all necessary measures, which should apply to all TNCs and OBEs in their territory/jurisdiction.
Mexico	Include environmental issues - it helps towards achieving SDGs. Complete with webcast.
Namibia	Want to have due diligence procedures in order to protect population and environment. Want to put mechanisms for prevention. Support obligation to TNC and OBEs to have to make a vigilance plan.
Palestine	Welcomes issue of imbalance in power between States and corporations: corporate capture. Should discuss how preventive measures can counter undue influence of private sector. Concerning to see how companies interfere in States foreign affairs policies that often feed conflict.
Russia	under section 3, the State already has the responsibility to regulate and details in section 4 are unnecessary. Not convinced by approach of 2nd paragraph in section 4 that should include all the supply chain. On what legal basis would the State ensure the observance of its requirements in territories under its jurisdiction? Wouldn't that create a new basis of extraterritorial jurisdiction? Consultation process with all relevant stakeholders: what is it, what is the purpose? States should implement themselves their international obligations. The mention to universally recognized HR standards is important. Prefer not to include preventive measures in document. They should be in a commentary of recommendations for implementation, not in the text of the treaty.
South Africa	The operationalization of preventive measures central. Welcomes chapter, could be renamed States obligations including preventive measures. Wants legally binding preventive measures with vigilance plan. Key issues also include general obligations of international cooperation and legal mutual assistance. These standards must be set by the State, not by companies. They must be uniform and universal so that all companies are assessed under the same benchmarks.

	Voluntary initiatives hardly adhered to. Effective consultation with affected communities important. Development of NAPs: while currently working on a legally binding instrument, would make perfect sense for States to make NAPs.
Venezuela	welcomes section 4. In national legislation, have FPIC for communities with an active participation. Accountability by TNCs on prevention is essential.
IOE	Due diligence is the best way to prevent harm. The GPs are instrumental to make this practical and transformative. Due diligence under UNGPs is already a fundamental component of duty to respect. Many companies are doing this and reporting on it. The DE create confusion on a clear existing obligation. GP17 already explains how a company can do HR due diligence and how companies can cause harm. Requiring companies to do HRIA on their activities risks making this a general compliance obligation instead of critical assessments by companies. The DE should not run counter the GPs, which encourage companies to use their leverage to mitigate harm. Scope of legally binding due diligence creates confusion, not helpful. While GPs require mix of measures regulatory and voluntary measures, they also explicitly say that businesses owned by States have a higher due diligence obligation. States should not set higher standards for private businesses but also should also lead by examples by putting these obligations on SOEs.

SUBJECT 5: LEGAL LIABILITY

State/Organization	Comments
Bolivia	agree with proposals in DE. Share with C. Lopez that there's a legislative global trend towards criminal liability for companies. Bolivia supports this process. DE allow for flexibility. Important to have deterrent provisions to ensure accountability.
Brazil	have measures against impunity and rights for victims. Praise comprehensive approach in the elements. Brazilian law provides for legal liability of enterprises involved in wrongful acts including for legal persons. Wide legal liability is essential.
China	no concrete proposals on text yet. Liability should be decided at national level. Hard for States to control behaviour of companies. Reservation on this section.
Ecuador	Section will be innovative. CSR is insufficient to fill in legal gaps. Liability for companies would ensure access to remedy. Domestic level: in Ecuador, have liability of legal persons and natural persons. Private persons (agents, legal mandated persons, etc.) can also be held responsible by action or omission for violations. This regulation has allowed Ecuador to improve protection of HR. Issues that could be clarified: liability for HR violations in cases of

	<p>complicity, throughout the supply chain, measures to promote decent work.</p>
European Union	<p>2 questions: (i) internationally applicable HR instruments, why applicable? (ii) what does “complicit”, “participating in and benefiting from HR abuses”? Would it mean that a small company selling a product linked to conflict minerals be covered? State complicit in a company abuse: does this cover SOE, would the complicity be automatic for any harm that the company commits?</p>
Holy See	<p>asymmetry in international system with rights of companies and obligations under voluntary guidelines. Ability of international companies to escape territorial jurisdiction and national legislations. Can take advantage of regulatory arbitrage and choose jurisdiction best for profits. When HR violated, exclusion of the vulnerable comes about. Need for stronger laws to ensure accountability. Protection of HR understood in the realm of public law including in administrative, criminal law. No easy solution to address multifaceted challenges and to provide remedies. Legal liability for companies in domestic law usually includes penalties under civil, administrative and criminal law. Corporate liability usually a mix of civil and criminal law. Private law also needs to be change to address these challenges. Criminal liability of companies must not exclude personal liability of directors or managers.</p>
Russia	<p>concept of criminal liability for companies not used in Russian legal system, would be an obstacle for access to the treaty. Criminal liability of TNCs unacceptable. Guided by the view that international obligations regarding HR should be borne by States. For TNCs and OBEs, prefer to talk about abuses than violations. Section 5 needs to be carefully analysed: cannot be used for several types of liability for the same acts. 4, 8th, 10th paragraphs not tangible: allow for possibility of multiple penalties for same crime. No account taken for differences between criminal/administrative liability and civil liability on the other hand. Using the same terms of each field is incorrect and possibly impracticable. 5th and 6th paragraphs. 2nd and 3rd paragraphs: repeat the first paragraph. Obligations of States to keep companies liable need to be clarified: need to use internationally recognized HR or HR recognized in their jurisdiction. Need to clarify ETO. Privileges and immunities for TNCs and OBEs supposedly working with governments: challenge legal appropriateness of this, terminology needs to be more precise. Paragraph 10: government procurement dealt with by the WTO, needs to be taken into account. This could be used for unfair competition. Serious refinement needed on 11th and 12th paragraphs for responsibility of States for acts of individuals. Don’t take into account the practical ways companies operate under control by the States. Last paragraph goes beyond scope of the document. Concept of decent work: considered in the ILO, goes beyond the dimension</p>

	of HR and this document.
South Africa	types of liabilities should be further elaborated on. TNCs and OBEs operate under various formations with direct or indirect relationship. All entities at every stage of value chain should be covered. DE must also state the importance of State's cooperation between home/host/third States to ensure accountability. These should be developed in the draft text to be presented by the Chair at the next session.
Venezuela	future text should explore the possibility to classify the different types of liability. Should cover natural persons when making decisions that result in HR violations. They should also be subject to liability. Want inclusion of liability when TNCs benefit from HR violations committed by other companies.
IOE	Respecting and advancing HR is a priority for business community. Continue to support and encourage implementation of the GPs by business and other relevant frameworks. Assessment of the DE is that it seeks to make TNCs liable for all acts of other companies. Some stakeholders affirm that global trade is different. In vast majority of cases, violations are not caused by cross-border violations. Present in domestic economies. Requires the support of all stakeholders but no non-state actors can or should replace the role of the State. State has the responsibility to regulate companies regardless of whether they enter into international trade or national trade. Global supply chains are complex, constantly changing in response to global factors. Buyers do not control entire supply chains. SMEs often have limited leverage over suppliers. Large MNEs can also have lower leverage when supplier has monopoly, or bigger. All should have their rights protected. Should avoid creating a two-tiered compliance system where some have greater protection and others less. Concerned that restrictive and punitive approach would harm countries seeking economic growth, discourage companies and dampen investment flows in developing economies.

SUBJECT 6: ACCESS TO JUSTICE, EFFECTIVE REMEDY AND GUARANTEES OF NON-COMPETITION

State/Organization	Comments
Bolivia	Acceso a la justicia - desigualdades estructurales, hay que eliminarlas. no se puede pensar que las victimas tengan las mismas armas que las empresas transnacionales: Desigualdad de armas. Eliminar barreras procesales. (<i>Translation: access to justice - structural inequalities, we must eliminate them. We can't think that the victims have the same weapons as the transnational corporations: Inequality of arms. Eliminate procedural barriers.</i>)
Brazil	we recognize well established language in international law; need to guarantee life security of victims and reference to HR defenders and

	<p>whistle blowers are important starting points for the discussion. Suggestions for improvements: bullet 2, groups generally labelled as vulnerable - disempowering language unintentionally adopted here. we encourage an empowering language instead. different wording proposed. bullet 4. non judicial mechanisms not considered as a substitute. In some case it could be a detrimental for victims’ rights and interests. Non-judicial solutions may be sometimes in the interest of victims and provide for a faster solution. We suggest to analyse more carefully, which conditions should establish acceptable and fair non-judicial mechanisms.</p> <p>bullet 5. Brasil interpreted that the legally binding Instrument would entail more obligations of means (in line with due diligence) and not necessarily obligation of results. it’s more the obligation to provide for these means.</p>
Ecuador	<p>Complementariedad de sección 5 y 6. hay q eliminar las barreras al acceso a la justicia. Se necesitan procedimientos claros y instituciones que aseguren acceso efectivo a la justicia. En Ecuador se aplica a todos los ciudadanos que se encuentran en el territorio ecuatoriano sin ninguna distinción. Obstáculos son numerosos y bien conocidos: como dijo el CESCR Committee - dificultad acceso informaciones, carencia de mecanismo acción colectiva, falta de medios económicos, falta mecanismos de cooperación jurídica internacional; utilización del forum non conveniens, etc. Todas las cuestiones están abordadas en el documento y responden a las necesidades de las victimas. Gracias por haber incluido todos estos elementos tan necesarios. <i>(Translation: Complementarity of sections 5 and 6. We must eliminate barriers to access to justice. Clear procedures and institutions are needed to ensure effective access to justice. In Ecuador it applies to all citizens who are in Ecuadorian territory without any distinction. Obstacles are numerous and well known: as the CESCR Committee said - difficulty accessing information, lack of mechanism collective action, lack of economic means, lack of international legal cooperation mechanisms; use of forum non conveniens, etc. All issues are addressed in the document and respond to the needs of the victims. Thank you for having included all these much needed items.)</i></p>
EU	<p>we acknowledge the overall objective of improving access to remedy: we share this objective. Existing provisions in the EU: Brussels 1 regulation, Rome 1 and 2 regulations. Work is in progress. We agree on the assessment in the chapeau of Section 6. we believe this is also the assessment that led the work on this of the High Commissioner on HR. How can we build on from that? Clear language on HR defenders - we welcome this language, we are fully aware of their important role; in particular in dealing with</p>

	<p>cases of abuses connected to the activities of Business Enterprises and prevention; many of the provisions are stated in the obligations of States section.</p> <p>Question: how is it envisaged that the section will go beyond restating the States' obligations so to help ensure real action when it comes to protection of HR?</p>
France	<p>Question: how is it envisaged that the section will go beyond restating the States' obligations so to help ensure real action when it comes to protection of HR?</p>
Russia	<p>Section 6 creates special privileged conditions for protection of rights - the proposal to establish a special system of protection undermines the judicial system ; it is discrimination. This section implies the establishment of a hierarchy of victims, putting the victims in different categories. On the contrary, there is a general will of fighting fragmentation of HR protection system.</p>
Rwanda	<p>The Section 6 system should be for everyone. Section 6 should be deleted by the document.</p>
Venezuela	<p>Necesidad de que las victims tengan acceso a la justicia mediante recursos idóneos. La falta de jurisdicción es una excusa. Nuestra posición es que el instrumento venga a colmar este vacío legal. Tutela judicial efectiva para las victimas. Urgente necesidad ampare el derecho a un recurso efectivo a tribunales competentes. Base legal solida - gratuidad de acceso a la justicia para las victimas, acceso a recursos rápidos y efectivos. (<i>Translation: The need for victims to have access to justice through appropriate resources. Lack of jurisdiction is an excuse. Our position is that the instrument will fill this legal void. Effective judicial protection for the victims. Urgent need to protect the right to an effective recourse to competent courts. Solid legal basis - free access to justice for victims, access to fast and effective resources.</i>)</p>
IOE	<p>How to improve access to justice and remedies: greatest barrier are the weak rule of law in certain countries, lack of enforcement of existing laws, corruption, ...how may the WG will incentive States to enforce their systems fairly and effectively?</p>
International Association of Employers	<p>Reversing the burden of proof - burden of proof lies with the accused party instead of the accusing party. This proposal is not acceptable. It goes against the fundamental notion of fairness.</p>
International Chamber of Commerce	<p>We notice with concern that this Treat tries also to discard existing fundamental international law norms, including forum non conveniens. how does the Instrument count giving a solution to the cases where forum non convenient may be applicable?</p>

SUBJECT 7: JURISDICTION

State/Organization	Comments
--------------------	----------

Azerbaijan	<p>Draw attention to application of the legally binding doc to e-retailers, electronic BE operating online. Important for defining jurisdiction. This dimension is missing from the document. What jurisdiction will be applied to these, when victims seek remedy?</p> <p>- Glad to hear that there are companies that want a stable environment; yet many TNCs and OBEs continue using conflict situations to exploit the properties of people expelled forcefully from their native lands, and natural resources without prior consent. These people are deprived from benefiting from business activities conducted on their native lands. The issue of conflict situation should be considered in the document. TNCs and OBEs violating HR in such cases must not go unpunished.</p>
Bolivia	<p>Subject 7: the main point of the BT is to prevent impunity of TNCs. The Elements in the doc are extremely relevant. Measures to permit courts considering petitions regardless of sphere (translation unclear) to avoid national judges dropping issues on jurisdiction. Location of the TNC as established by Committee on the rights of the child and also CESR we believe it's important to clarify that states do have obligation to promote and respect HR in terms of TNC operations when the companies have center of activity and registered or domiciled in that state.</p> <p>Should be organized in the doc as procedural rules. Monitoring mechanism will be key here.</p>
Brazil	<p>Jurisdiction is critical to fight violations in context of corporate activities and ensuring access to justice to victims. Elements document proposes four sources of jurisdiction - based on the victim even if it's unclear if it's national or residence etc. 2) forum where harm caused 3) where company incorporated 4) where the TNC or OBE has substantial presence, a concept that deserves great clarification. Brazil discusses this on national level. Broad consultations with stakeholders are due; will present comments due time. Also proposals in national legislations.</p> <p>NGOs commented regarding Brazil in section 6 - Brazilian government opened to dialogue with SC. Encourage constructive participation in all UN bodies, contributions welcome. Acknowledge that significant impact of project (??) on women (??) committed to guarantee that those affected by investment projects receive proper redress. Authorities work to hold accountable those responsible.</p>
Ecuador	<p>delegation agrees with text in the section; important for the instrument to have clear approach to jurisdiction.</p> <p>not premature but urgent.</p> <p>important to develop further this section; clearly one of the main pillars for impunity is in the barriers to justice with violations committed by TNCs.</p> <p>- vital given mobility of capital to strengthen jurisdiction. Increasing number of state courts had to deal with claims against TNCs</p>

	<p>committed in another country, thus jurisdiction of states doesn't stop in their border; 2017 Zambia class action presented in London, appeal court confirmed that British court has jurisdiction when claim is against company in their territory. March 2, 2015 ruling reaffirming under EU a case by another country is more appropriate, interesting to hear from the EU to expand on the jurisprudence, article 4 or regulations BRussell1.</p> <p>Background cases - Maastricht principles on extraterritorial duties, ESCR, mentioned by delegations in the room, considering other General Comments on the existence of extraterritorial specific obligations considering TNCs, and it's important to look at GC24 which should be included in preamble of the document.</p> <ul style="list-style-type: none"> - Also according to the convention on elimination of Discrimination against women (CEDAW), states should be responsible for violations of hr regardless of territory - Optional protocol on child pornography and Council of Europe on falsification of medical materials that can cause threat to human health - all these documents are needed for the instrument.
EU	<p>very important topic; our preliminary view is that provisions are sketched out, unclear how provisions would work in practice, if chairmanship could shed light on this.</p> <ul style="list-style-type: none"> - provision regarding supply chains, asking to elaborate how to reconcile it with strict limitation outlined in point 1.1 - EU has clear provisions re jurisdiction. RAM 1 and 2 regulation, we are aware of current state limitations but have clear provisions. - reservation on the section as a whole, and the rest of the document. - invite SC and HRDs to a private meeting with the EU and all member states Friday at 9 am room XXII, to provide coffee tea croissants; invite other states and stakeholders too. but coffee tea and croissants for CS and HRDs only. extending invitation to chairman and all stakeholders.
Ghana	<p>Jurisdiction barriers must be addressed; an instrument should aim at filling existing gaps in IL to ensure violations by TNCs and OBEs are protected, to avoid ambiguity in regards to jurisdiction; important to clarify where the jurisdiction of the home state ends and the TNC jurisdiction begins.</p> <ul style="list-style-type: none"> - State should ensure corporate abuses don't remain unpunished; suggesting language to the elements paper.
Mexico	<p>dialogue is the best way forward; reiterate will constructively participate.</p> <p>Jurisdiction is one of the most relevant points; in IHL states have jurisdiction to exercise in extraterritorial basis; this is reflected in various conventions like on CESR.</p> <p>Jurisdiction one element in the commentary of UNGP and relevant for supply chain. States need to adopt measures for due diligence for business under their jurisdiction. Extraterritorial application is</p>

	<p>viewed as exceptional recourse and need to be fully justified. However Elements suggest that a legally binding instrument would expend this focus; asking for experts opinion on extending extraterritorial jurisdiction and its implication for traditional legal systems based on territorial jurisdiction.</p>
Namibia	<p>welcome inclusion of effective administration of justice, considering historical circumstances of each state.</p> <p>Current state of IHL gives little options for victims. There is a series of regulatory gaps, some have to do with international scope of operation and national scope of jurisdiction.</p> <p>Jurisdiction has to do with forum of dispute. national parties.</p> <p>Substantial differences between jurisdictions - should be clarified.</p> <p>The principle of separation, nonconvenience, serve TNCs to avoid being held liable in domicile, and thus double standards applied esp. in developing countries. Need for jurisdiction rules; given complexities TNCs operation, jurisdictional doctrines today make them untouchable.</p>
Russia	<p>repeating premature argument.</p> <p>Section 7 is too broad. In the 3 elements in the section, the states are given jurisdiction over violations on a while ray of criteria. Some of those might be described as traditional. Incorporation of the company and place its main activities, others blur and dilute traditional criteria. Extending jurisdictional competence over supply chain - this is difficult to comment in substance as it is not clarified how it will be resolved in a conflict of national jurisdiction.</p> <p>- Risks to sovereignty of states and the principle of sovereign equality. Individual states make use of extraterritorial legislation for unfair competition and for pressure on national business put by developing countries to promote interests of their own companies.</p> <p>Jurisdictional provisions should not create basis for willful interpretation of jurisdiction, under the pretext of fighting for human rights.</p> <p>In view of specific comments by NGOs, stress that in these doc (base of our position - no introduction of universal jurisdiction considering prosecution and violations of HR by TNCs and OBEs. With parallel to terrorism, it would be inappropriate.</p> <p>Essential to clarify in the doc its approach to jurisdiction for assessment of other parts.</p>
Singapore	<p>Subject 7: section also addresses issues 2 and 5 like liability and how it'll be determined.</p> <p>Some elements here suggest departure from how liability is attributed, for example violations by branches subsidiaries controlled by corporations. attempt to allocate responsibility to entitled legally separate. It is unclear how the rule for attributing legal liability would be developed. Would it be direct or indirect control or both, how would it be defined?</p>

South Africa	<p>access to justice and remedies - judicial or non judicial processes, treaty must address different mechanisms .principles of IL must be enforced and duty on states to cooperate. Victims have numerous barriers to justice, and burden of proof makes the poor unable to access justice. In the developing world as opposed to the developed. TNCs and OBEs - enforceability of suppinaes etc., and so the treaty must ensure procedures of accessing justice in particular national and international level.</p> <p>Growing civil liability cases against TNCs - private victims of corporate abuse to TNCs in their home states. Critical area to be addressed by the treaty. It would go a long way to ensure TNCs don't escape liability based on jurisdiction grounds.</p> <p>The application of norm on nonconvinience cannot come at expense of social justice and due process. Acknowledgement of economic reality of TNCs in the overseas operations of subsidiary speaks to gaps in international corporate accountability. Until the time of such instrument SA has national guidelines aligned with development agenda of Africa.</p>
Venezuela	<p>TNCs often make undue use of extrajudicial limitations to shed responsibilities for violations of human rights. This encourages climate of impunity which leaves victims without defense. Better clarity in the future doc and its extraterritorial nature would allow victims to have access to justice. It would remove inequality de facto between TNCs and victims. Support for the mandate of this WG to fill an important gap in international law in this respect.</p>

SUBJECT 8: INTERNATIONAL COOPERATION

State/Organization	Comments
Bolivia	<p>the DE are good basis to enable internL coop, especially the first point (prevent, investig, punish, redress HRV/A). Good to go into details in specific standards and processes. Procedures, for evidence and witnesses for example.</p>
Brazil	<p>Welcomes inclusion of this section: essential part of a future instrument. Judicial coop is essential to ensure effectiveness of standards and norms. Agree with Mr Gleckman: pre-agreed procedures facilitate handling the case. Will present more comments in due time. Brazil wants more reference to technical assistance in a broader way. May foster a better global environment for the enjoyment of HR</p>
China	<p>States bear main responsibilities in protection of HR, both in prevention and providing redress and remedies. Solutions must be found on the basis of national laws. Chine support internL cooperation. All countries must ensure that their TNCs respect HR. Importance of financial assistance to developing countries to do so as well. China takes not that this issue is closely related to</p>

	<p>jurisdiction and judicial assistance. Hopes that a distinction will be made between criminal, civil and administrative liabilities. On criminal responsibilities, the UN convention against organized crimes could be mentioned: return of illicit assets, remove political obstacles, refuse to provide safe heavens to criminals and their assets. On civil and admin liabilities, series of questions of compensation: procedures must be established on timeline, delivery of court documents, jurisdictions, arbitration and judicial assistance. Supports the effort of the internL community in taking full account of the situation of each countries, and ensuring application on UNGPs</p>
Ecuador	<p>Agree with satisfaction expressed about the inclusion of this section. Effectiveness of shared jurisdiction is very linked to mutual cooperation, which is necessary to protect HR, access remedies, etc. Recall the GC blocking access to access redress: obstacles to access evidence, to access witnesses, high costs of litigations, approving foreign actors involved, difficulties in accessing witnesses,... => series of almost unsurmountable obstacle to access justice for victims. The pb is the actual enforcement of decision also, and controlling the mobility of corporations and of their assets across States. Satisfaction that this theme is included.</p>
EU	<p>InterL cooperation has often been advocated for by EU: cross border investig, technical assistance, etc. We have a clear objective: at first sight, interesting provisions in this chapter. In our view, there's already much being done with Accountability and Remedy OHCHR project. There are a number of constraints highlighted by A and R project: ex, the lack of resources of prosecutors offices for BHR cases. Could you explain how the provisions under this chapter would allow for implementation and pragmatic steps forwards regarding those constraints? What lessons have been learn from implementation of UN convention on InternL Cooperation?</p>
Namibia	<p>Lack on intern coop will cripple intern business, no states can afford this: mutual dependence. Anticipated instrumt: clear level of cooperation stated depending on matters. Many interL instruments have clauses on internL coop. Untoc/Uncac do so. The world is a global village: if no necessity to cross border for business, there wouldn't be needs for a BT.</p>
Philippines	<p>This section is an integral part of the legally binding instrument. Essential in term of effectivity and ability to implement. Host/home States alone cannot do it. All concerned parties should be able to work together to address HRA of TNCs and OBEs. Instrument would enable States to prevent, investigate, punish and redress. Hopeful that it would allow access to remedies. It could further focus on mutual legal assistance: procedures, access to evidence, witnesses, etc. Victims must not be denied justice because of procedure issues, it must preserve due process of law.</p>

Russia	some sections are redundant with the second part of the DE. Singling out a special regime for this sphere wouldn't be a good idea. A lot of those points are simply procedural and do not necessitate a treaty. Unclear how you want to ensure reciprocity of measure envisaged. Reciprocity is a key elements in mutual assistance in civil and criminal issues and also in recog ^o of foreign judgements. However, the principle isn't mentioned in DE.
Singapore	we need clarity on whether the cooperation would be for civil, criminal or other matters, and the implications for each field would not be the same. Recognition of foreign judgments: recognize the objective of allowing access to justice, but preliminary concerns about overlapping with the Hague Conference and other processes elsewhere.

SUBJECT 9: MECHANISMS FOR PROMOTION

State/Organization	Comments
Brazil	Welcomes the idea of follow up mechanism. Favors the establishment of a committee to monitor and implement obligations of the Treaty, sharing of best practices and fostering internL cooperation. But skeptical about establishing new jurisdiction without national FW. Same for InternL Court and even to specialized chambers. We fear it could highjack the all treaty process with issues of practicability, etc. Be cautious
Ecuador	On of the fundamental issue. The establishment of mechanisms are a major pol challenge but it stimulates us to work further. Necessary to have agreement to have an internL Court, as supported by victims. Competence for judges to hand out ruling. Specialised chambers should be set up. All of us know about the barriers in having an international HR courts. We're not saying it's simple, but regional HR courts are a great step forward, we believe it's the right direction. It's not as innovative as it seems: 1947, Australia put this proposition forward. Same for Fr. during discussions of the Rome Statute. Committees are important too, they would not substitute for other initiatives: the Committee should have competence t investigate and monitor obligations of TNCs, receive periodic reports, etc. Collective and individual access should be ensured to the Committee. Those should be considered in further sessions in face of our responsibilities
EU	First, EU would like to understand whether the proposal for InternL Court derives from past discussion during the elaboration of the Rome Statute? Are the elements an appeal to broaden the jurisdiction of the ICC? Wants to understand how the Chair proposes progress on this topic given the resistance during the discussions of the Rome Statue.
Mexico	Discussion is in a very preliminary phase. However, recognize

	positively the reference to non-judicial mechanisms such as NHRIs. How could these mechanisms be strengthened for a better implementation of the instrument?
Namibia	support the section. It's worthwhile that existing mechanisms provide lessons to be considered, and peer review should be considered. However, need more time to consult stakeholders at national level on International Court. We eagerly await for a draft text on which to constructively engage at the next session. Please release the text at least 6 months in advance for us to engage with all national stakeholders.
Russia	Short statement: existing internL bodies and mechanisms are sufficient in HR to discuss BHR issues. If they need adjustments, that could be discussed. In view of this, we don't think necessary to establish new bodies, including judicial, in BHR. We believe unadvisable to have discussions on this. In conclusion, no need to go in detail: each State decides what institutions will guarantee the respect on its obligation. Delete the section.
Singapore	Agrees that its implementation is a most important feature, but for the sake of completeness, under B2, we want to add a peer-review mechanism added to a committee.
South Africa	Supportive of development of NAPs to domesticate de treaty, allowing own distinct national paths. NationL judicial systems should be reinforced to handle such cases, national HR institutions are key. There must be a clear guide on TNCs/OBE. The issue of reporting on HR should be core element of accountability. Last year, SA said that victims must be at the center and the idea of a committee is thus welcome.
IOE	Subject 9: Most concerned about the suggested options, in particular judicial mechanisms that would not address all companies but TNCs alone. Echo the Eu that taking judicial and non-judicial as a whole, it would be a PB that companies would face courts and States would only face treaty bodies. +2000 companies are committed to respect, promote and implement our code of conduct in their supply chains. Full protection to victims is included. We train enablers, who train relevant personnel, we set up the necessary mechanisms to remedy issues, we organize enabling environment and monitor progress. We work against corruption on the ground. As many have said, more complex structures at supernational level would be too long, costly and complex to set up. Reinforcing existing mechanisms is better. "Legally binding" at international level is a tricky notion: the UNGPs talk of a smart mix of policies and measures. We believe that the international community should focus on the UNGPs and NAPs to find solutions against shortcomings.

SUBJECT 10: GENERAL PROVISIONS

State/Organization	Comments
IOE	we thank you for the opportunity to participate in this session and to respond publicly. We refer all participants to our fuller statement on IGWG website; we request more clarity on next steps: in particular on the process and substance of legally binding instrument; document is only clear in requiring these first 3 sessions; we request more discussion with the chairperson and his team before next session; we want to ensure that our comments in this session will be reflected in the session report

FRIDAY INFORMAL NEGOTIATIONS, RM XXIII – *INCOMPLETE NOTES*

State/Organization	Comments
China	we should continue discussion on this issue, doc is very important; asking for more time for domestic consultations on these elements
EU	respect prerogative of chairperson; want the report to be comfortable for all the states; want to avoid ending on a note of disagreement; propose that language should be positively framed for chair to continue consultation; clarity as to what chair could do (when and how)
Russia	support work of WG but see that there is no clear understanding of how to bring about doc; therefore compromise to hold consultation with states on future of wg ; chair could help clarify
Switzerland	not opposed to continuation of process; but recommended finding a consensus to move forward; agrees that there is open-ended conclusion, refers to the participation and not length of the mandate; asking for resolution; recommend continuation of consultation to find conclusion
United States	We strongly support GP and will continue to do so; here only for procedural purpose; draft conclusion does not go with original mandate; strongly oppose paras. A and C of conclusions; also oppose these being included in recommendation of chair rapporteur; it is clear that working group ends after this session