

ICJ's Intervention in General Debate on 15 Oct. 2018

General Comments

Mr Chairman-Rapporteur,

The International Commission of Jurists congratulates you on your election as chairman of this Intergovernmental Working Group. This is the fourth annual session of this Working Group that is to elaborate a crucially important Convention in the area of human rights and business enterprises. States and other stakeholders congregated in this room, we are now at a critical juncture of this process that will lead us to start the negotiations on the content and scope of this Convention. This comes after two years of open discussions about the possible format, scope and content of the legally binding instrument, followed by discussions on a set of “elements” of such a treaty. The present session opens up with a “zero draft” and Optional Protocol before us, and with the expectation that at last real negotiations will take place and we will make progress in defining an international legal framework for State and business activity and their impacts on human rights. The ICJ is committed to contribute to these substantive negotiations.

The ICJ has examined a “zero draft” and a draft Optional Protocol, which you have circulated in July and early September of this year. The draft zero gives a strong basis for progress in the definition of the contours of the obligations to be contained in the proposed Convention. The ICJ considers that the draft contains a series of elements that address the most important and pressing issues in relation to business impacts on human rights and business accountability. We welcome the draft’s focus on rights of victims of business abuse to justice, effective remedy and reparation, which is the area where there is the most urgent need of action and international rules to guide the action of States and the conduct of businesses. This focus also guarantees its compatibility with the UN Guiding Principles on Business and Human Rights and other international and regional frameworks.

The ICJ considers nonetheless that the draft’s proposed articles on jurisdiction, human rights due diligence, legal liability of enterprises and international arrangements, among others, need more clarity to ensure they are fit for purpose. We hope the debates to be held during these days will shed light on ways to improve the “zero draft” and build broad support on its content.

Finally, the ICJ is encouraged to see an ever-growing presence and support by civil society organizations active in human rights and related fields. To this usual support we also note the clear support towards a Convention from international and regional federations of trade unions, as well as growing and explicit support from National Human Rights Institutions. The ICJ however deeply regrets the continued abstention from the debates by a group of States, a few of which has sought to delay progress based on procedural arguments. In our view, and after four years of preliminary debates, the absence of internal positions or agreements among these groups of States cannot be a valid justification for its lack of commitment.

We wish you and all participants a fruitful week of debates and negotiations.

Thank you, Mr Chairman