

WEDNESDAY 16 OCTOBER

ARTICLES 7,8,9

NGO WITH ECOSOC STATUS REGISTERING AND DELIVERING THE STATEMENT: SUSAN POWER, AL-HAQ LAW IN THE SERVICE OF MAN

Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights

Fifth session (14-18 October 2019)

Thanks Mr. Chairman, I speak on behalf of Al-Haq, FIDH, SOMO, and Trócaire

We welcome the measures taken in the Revised Draft Treaty to prevent human rights violations or abuses in occupied or conflict-affected areas and in doing so we recommend that the treaty is more succinctly aligned with provisions of international humanitarian law, including the Hague Regulations of 1907, the Four Geneva Conventions of 1949, and the Additional Protocols of 1977.

In relation to Article 9 and Article 5(3)(b), we recommend the consideration of Articles 7, 8, and 47 of the Fourth Geneva Convention (1949) which prohibit the occupied population and their political representatives from concluding agreements resulting in the renunciation of rights guaranteed under the Convention. There are strict protections afforded to public immovable property in occupied territory, under Article 55 of the Hague Regulations, with obligations to safeguard the properties capital, accompanied by the Article 43 principle that resources be administered for the benefit of the occupied population, thus highlighting the necessity for replacing the requirement for “consultations” in Article 5.3 with “consent”.

We strongly welcome the inclusion of “liability of legal persons” in Article 6, as a necessary step to ensure corporate accountability. The presence of an enumerated list of offences in Article 6(7) will facilitate ease of incorporation into domestic law, the retention of which, is particularly important for the principles of legality and specificity, particularly for the purposes of criminal prosecutions, but the list should not be exhaustive. Article 6(7) should draw from existing provisions already codified in international criminal, humanitarian and human rights law. However, Article 7 should explicitly state whether it provides for, or recommends, universal jurisdiction over these crimes (also relevant for Article 9). Here, it would be useful to include reference to the grave breaches provisions common to the Four Geneva Conventions, so that legal persons who have commissioned, or are complicit in, the commission of war crimes, can be held to account.

The treaty should provide for *forum necessitatis*, especially for cases relating to corporate abuse in conflict-affected settings and situations of occupation where access to remedy and justice are often deliberately hindered and denied.