



INTERNATIONAL CORPORATE
ACCOUNTABILITY ROUNDTABLE



Oral statement by ICAR and SOMO, Article 15 on Final Provisions

The International Corporate Accountability Roundtable (ICAR) and the Center for Research on Multinational Corporations (SOMO) strongly support the inclusion of a provision to protect against undue influence by commercial and other vested interests in the Treaty, such as Article 15.3 in the zero draft. Undue corporate influence undermines states' capacity to legislate, adjudicate, and regulate to protect the public interest, it impairs states' capacity to meet their obligations to respect, protect, and fulfill human rights, and ultimately erodes citizens' trust in their governments. Undue corporate influence manifests at the national, intergovernmental, and international level, including in international trade and investment regimes.

For example, international trade and investment dispute settlement mechanisms, such as the World Trade Organization dispute settlement mechanism and investor-state dispute settlement (ISDS) systems established through international investment agreements, have significant influence on States' ability to legislate and regulate in the public's interest. The fear of being sued in private arbitration for millions and sometimes billions of dollars, prevents states from legislating or enforcing laws that would further human rights or environmental protections. Yet the processes by which these dispute settlement mechanisms have been developed, the rules they have created, and the decisions made are opaque and often strongly influenced by powerful corporate interests to the detriment of working people, the environment, democratic governance, and human rights. The expansion of investor-state arbitration provisions in investment treaties, for example, is a direct result of corporate lobbying. Arbitration law firms actively promote investment treaties as they are often invited into treaty negotiations as external advisors, and sometimes encourage the filing of ISDS cases against governments or use the threat of a lawsuit to weaken or prevent legislation. ISDS arbitrators often come from, or are tightly linked with, the private sector. It is therefore not surprising that ISDS tribunals very rarely rule in favor of States' right to regulate in the public interest, and that they have a chilling effect on government action to legislate or enforce existing laws.

Protecting legislative and policy-making spaces from business and other vested interests is therefore essential to protect states' capacity to realize human rights. The treaty offers a key opportunity to address this phenomenon, as has been done through other existing international instruments. Article 5.3 of the Framework Convention on Tobacco Control (FCTC) contains a provision requiring states to prevent the tobacco industry from unduly influencing their health policies. The FCTC has been ratified and successfully implemented by over 160 countries and has contributed to allowing these states to adequately protect their citizens' right to health.

In the context of trade, article 15.3, read in conjunction with article 13.6, would provide protection for states to exercise their sovereign right to negotiate trade and investment agreements free from undue corporate influence. Therefore, the treaty must contain a provision seeking to protect legislative and policy-making spaces from undue corporate influence. Article 15.3 should be included in article 9, since it is essentially a preventive measure. Moreover, to be truly effective, the language *'in accordance with national law'* should be removed from the provision. The text could also include concrete measures to protect from undue corporate influence, such as prohibition of revolving doors, measures to increase transparency, and prevent conflicts of interest.

Finally, we echo civil society's strong condemnation of the attempt by the International Organisation of Employers (IoE)'s to threaten commercial retaliation against states supporting this Treaty process. This is a blatant example of the need for a provision to protect states' policy making spaces, such as this treaty process, from corporate capture.

Thank you, Mr. Chair.