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REPORT

Shaping the EU's position on the UN binding instrument on business and human rights, in particular on access to remedy and the protection of victims (2023/2108(INI))

Committee on Foreign Affairs

Rapporteur: Heidi Hautala

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

Shaping the EU's position on the UN binding instrument on business and human rights, in particular on access to remedy and the protection of victims (2023/2108(INI))

The European Parliament,

- having regard to Articles 2, 3, 8, 21 and 23 of the Treaty on European Union (TEU),
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the UN Guiding Principles (UNGPs) on Business and Human Rights, adopted by UN Human Rights Council Resolution 17/4 of 16 June 2011,
- having regard to UN Human Rights Council Resolution 26/9 of 26 June 2014,
- having regard to the updated draft legally binding instrument circulated by the Chair-Rapporteur of the Open-Ended Intergovernmental Working Group (OEIGWG) on 31 July 2023 and to the revised third draft thereof resulting from the eighth session,
- having regard to the UN Convention against Corruption,
- having regard to UN General Assembly Resolution 76/300 of 28 July 2022 on the human right to a clean, healthy and sustainable environment,
- having regard to the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct,
- having regard to the resolution on Business and Human Rights in Africa of the African Commission on Human and Peoples' Rights of 7 March 2023,
- having regard to the opinion of the European Union Agency for Fundamental Rights (FRA) of 10 April 2017 entitled 'Improving access to remedy in the area of business and human rights at EU level'¹ and its report of 6 October 2020 entitled 'Business and Human Rights – Access to Remedy'²,
- having regard to the Council conclusions of 20 February 2023 on EU priorities in UN human rights fora in 2023,
- having regard to its resolution of 25 October 2016 on corporate liability for serious human rights abuses in third countries³,
- having regard to its resolution of 4 October 2018 on the EU's input to a UN Binding Instrument on transnational corporations and other business enterprises with

¹ European Union Agency for Fundamental Rights, '[Improving access to remedy in the area of business and human rights at the EU level](#)', 2017.

² European Union Agency for Fundamental Rights, '[Business And Human Rights – Access To Remedy](#)', 2020.

³ OJ C 215, 19.6.2018, p. 125.

transnational characteristics with respect to human rights⁴,

- having regard to its resolution of 18 January 2023 on human rights and democracy in the world and the European Union’s policy on the matter – annual report 2022⁵, and to its previous resolutions on earlier annual reports,
 - having regard to Rule 54 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Development,
 - having regard to the report of the Committee on Foreign Affairs (A9-0000/2023),
- A. whereas the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, as set out in Article 2 TEU; whereas its actions on the international scene must be guided by those principles and be consistent with the principle of policy coherence for development, as enshrined in Article 208 of the Lisbon Treaty;
- B. whereas the implementation of the 2030 Agenda for Sustainable Development and the ‘leave no one behind’ principle implies that economic development goes hand in hand with social justice, good governance and respect for human rights;
- C. whereas business enterprises are major players in economic globalisation, financial services and international trade, and are required to comply with all applicable laws and international treaties and to respect human rights; whereas business enterprises may cause, contribute or be directly linked to adverse impacts on human rights, such as modern slavery, human trafficking, forced labour, child labour and other forms of labour exploitation, land displacement, poverty wages and anti-union violations, as well as adverse impacts on the environment, including pollution, climate change, environmental degradation and biodiversity loss;
- D. whereas corporations may contribute to sustainable development through job creation and economic development, and therefore may have an important role to play in the promotion of human rights, environmental standards, as well as in the prevention of adverse impacts on human rights and the environment;
- E. whereas the rights of business enterprises and investors should be matched by binding and enforceable obligations in terms of compliance with human rights, labour and environmental law;
- F. whereas victims of corporate abuse often face multiple and overlapping obstacles to accessing remedies, including judicial remedies and guarantees of non-repetition; whereas these obstacles are even more severe for vulnerable or marginalised persons or groups; whereas impunity for human rights abuses committed by some business enterprises remains largely unaddressed in the absence of a robust and comprehensive regulatory framework and alignment at global and regional level;
- G. whereas abuses of workers’ rights by companies are on the rise worldwide according to

⁴ OJ C 11, 13.1.2020, p. 36.

⁵ OJ C 214, 16.6.2023, p. 77.

the International Trade Union Confederation Global Rights Index, which reported that 113 countries exclude workers from their right to establish or join a trade union, up from 106 in 2021 to 113; whereas 87 % of countries violated the right to strike and four in five countries blocked collective bargaining;

- H. whereas the UN Human Rights Council (UNHRC) adopted a resolution on 26 June 2014 establishing an open-ended intergovernmental working group (OEIGWG) to develop an international legally binding instrument (LBI) ‘to regulate, in international human rights law, the activities of transnational corporations and other business enterprises’;
- I. whereas the OEIGWG, which has been chaired by Ecuador since its inception, has, to date, held nine sessions and a number of regional and other consultations with stakeholders, including from civil society and the private sector; whereas, in July 2023, the Chair circulated an updated draft of the instrument ahead of the OEIGWG’s ninth session scheduled for 23-27 October 2023;
- J. whereas the EU has been working on ambitious legislation regarding corporate due diligence, among other kinds of legislation, which would serve as a basis for its negotiating mandate; whereas, in the absence of a negotiating mandate, the EU representative only participated in the OEIGWG’s sessions as an observer and only contributed general statements; whereas, further, the engagement of other large economies outside the EU in the discussions has been ambivalent over the years;
- K. whereas, subsequently, the position of EU Member States has gradually evolved, with several of them actively participating in the latest sessions of the OEIGWG; whereas France and Portugal have joined the ‘Friends of the Chair’ group, assisting the Chair in developing consensus proposals from regional blocks; whereas, among its priorities in human rights fora in 2023, the Council stated its commitment to ‘actively participate’ in the UN discussions on the LBI and expressed its readiness to work with the Chair of the OEIGWG and the Friends of the Chair ‘to explore ... a consensus-based instrument that can effectively enhance the protection of victims and create a global level playing field’;
- L. whereas Parliament has repeatedly expressed its support for the UN discussions on the LBI, including by adopting a number of resolutions calling for the EU and the Member States to engage constructively in the negotiations;
- M. whereas, in recent years, the EU has shown great ambition when it comes to business and human rights and has initiated a number of legislative initiatives aimed at regulating business activities on human rights and environmental and climate-related obligations, such as the Corporate Sustainability Due Diligence Directive, a proposal for a regulation on prohibiting products made with forced labour on the Union market, the Regulation on deforestation-free products, the Conflict Minerals Regulation and the Batteries Regulation;
- N. whereas a number of EU Member States, such as France, Germany and the Netherlands, have recently adopted or proposed mandatory due diligence legislation, while a number of other Member States are considering following suit; whereas it is important to ensure coherence between due diligence legislation at Member State or EU level and the UN LBI;

- O. whereas regulatory initiatives, including legislation, on business and human rights have been adopted, or are under discussion, in non-EU countries such as Australia, Brazil, Canada, Ghana, Japan, Mexico, New Zealand, Norway, South Africa, South Korea, Switzerland and the USA; whereas numerous other countries have developed a national action plan on business and human rights;
- P. whereas the draft LBI contains a regional integration organisation clause to accommodate the respective roles of the EU and its Member States;
- Q. whereas there is substantial and growing interest in, mobilisation around and expectations from the UN-level discussions on the LBI among affected communities, indigenous peoples, trade unions, members of civil society, scholars and experts globally;

General comments and the international framework on business and human rights

1. Stresses that the overall level of enjoyment of human rights worldwide is contingent, among other things, on the behaviour of corporations, given the current scale of globalisation and the internationalisation of business activities and value chains; emphasises, in this context, the importance for business enterprises to be able to rely on good public governance and a comprehensive and well-functioning legal system and framework in order to fulfil their human rights obligations;
2. Strongly supports the full implementation, within and outside the EU, of the international standards on responsible business conduct to complement and strengthen the implementation of the UNGPs; underlines the importance of the UNGPs and the OECD Guidelines and the broad support they enjoy; recalls that the UNGPs constitute the only global framework detailing corporate responsibility for preventing and addressing the risk of adverse impacts on human rights linked to business activity; stresses that any work done on the LBI should ensure full alignment with these standards;
3. Stresses that since corporate social responsibility is solely on a voluntary basis and is therefore not embodied in enforceable instruments, it risks creating market distortions and unfair competition for the enterprises that choose to comply with international standards or that are subject to national or regional obligations; recognises that although some progress has been achieved, human rights violations continue to occur; welcomes, therefore, efforts to create a level playing field and the pursuit of a globally supported commitment to responsible business conduct; welcomes, further, the current shift in terms of normative developments from soft-law initiatives towards binding standards;
4. Underlines the importance of closing the legal and regulatory loopholes which are being exploited by some business enterprises, including investors, at the cost of human rights and the environment;
5. Notes with concern that in many countries' judicial systems, numerous procedural, substantive and practical barriers persist regarding victims' access to justice, including difficulties in identifying the competent court, barriers related to jurisdictional standards, short statutory limitation periods, excessive evidentiary burdens, limited or unclear liability owing to complex corporate structures, access to legal representation and information, prohibitive costs of representation abroad, as well as other inequalities

between claimants and defendants; notes with concern, further, cases of victims facing intimidation or violence from the businesses involved in response to their seeking justice; emphasises that vulnerable or marginalised persons or groups, who may require additional attention in the context of stakeholder engagement activities, are facing heightened barriers to benefiting equitably from compensation payments or other forms of restitution;

6. Stresses the importance of including parent-company-based extraterritorial regulation and access to justice for victims of transnational corporate human rights violations in the home state of transnational corporations (TNCs); highlights, in particular, the need to define clear obligations for TNCs in relation to eradicating child labour and forced labour from their supply chains and operations;
7. Reiterates its strong support for the work being carried out in the UN through the OEIGWG to develop the instrument; expresses its appreciation for the work of the successive Chairs from Ecuador in steering this complex endeavour and welcomes the supportive role of the 'Friends of the Chair' group;
8. Calls on the Chair of the OEIGWG and the UN member states to ensure that the negotiations are conducted in a transparent manner, with meaningful engagement with all stakeholders, including civil society, trade unions and workers' representatives and the private sector, with due attention paid to vulnerable stakeholders; insists, moreover, on the importance of ensuring active engagement from all regions, with a view to developing an effective instrument that reflects the global diversity of the legal, social and economic realities affecting human rights and that draws on best practices implemented at domestic and regional level; encourages regional human rights and economic organisations, as well as authorities, to help facilitate this universal engagement;

EU and Member States' engagement with the UN process

9. Recalls that the EU has a Treaty-based commitment to promote human rights worldwide and multilateral solutions within the UN to common problems, which has yet to be reflected in its participation in the OEIGWG with a negotiating mandate;
10. Acknowledges the OEIGWG as the only global and multilateral forum where mandatory rules on business and human rights are being discussed and, therefore, considers it crucial for the EU to actively engage in this process, alongside a critical mass of UN members, in order to reach a consensus-based outcome that can rely on broad support globally;
11. Underscores that the latest normative developments at EU level on business and human rights are important initial steps towards addressing access to justice and victims' rights, which lie at the centre of the LBI as a core human rights treaty; stresses, in this regard, the complementary nature, objectives and scope of, as well as the need for coherence between, both normative tracks, which will operate at different levels;
12. Believes that the EU should actively engage in the ongoing negotiations, in particular to further develop the draft LBI, while focusing on victims of business-related abuses across the value chain, dismantling barriers to justice and effective remedy, ensuring a level playing field and legal certainty for businesses, taking into account the particular

character of small and medium-sized enterprises (SMEs), and enhancing cooperation by drawing on international perspectives and best practices; considers that this engagement would ultimately contribute to securing better implementation and enforcement of human rights internationally, while equally contributing to an international level playing field and delivering a global instrument that is both widely supported and ratified among states across all regions, including but not limited to the European Union, and that remains relevant in the face of evolving threats to human rights;

13. Welcomes the Council's commitment that the EU will strengthen its engagement and actively participate in the OEIGWG; considers, however, that the only meaningful and tangible way to enact this stated commitment is by adopting an EU mandate for negotiations; urges the Council, therefore, to adopt an ambitious mandate for negotiations as soon as possible so that the EU is able to actively participate in the negotiations with a view to shaping the future LBI; stresses that the EU position must aim for strong provisions in terms of enforcement and monitoring mechanisms, as well as in relation to access to justice for those affected by violations;
14. Calls on the Member States, in the meantime, to engage in the process individually while coordinating their positions throughout the negotiations, so as to defend a strong, common and clear EU position, presenting in a constructive manner the legislative initiatives aimed at regulating business activities in relation to human rights and climate-related obligations, while showing appreciation for the progress made to date; expects the European External Action Service (EEAS) and the Commission, in particular the EU Delegation to the UN in Geneva, to play a proactive and constructive role in this process;
15. Calls on the Commission, the EEAS and the Member States to engage proactively with all partner states and include the topic in their dialogues with non-EU countries and regional organisations, in particular in the framework of the EU's structured human rights dialogues; encourages the EU to reach out, in particular, to key partners which are currently developing their own frameworks on business and human rights at national level, such as Brazil and Japan, and at regional level, such as the African Commission on Human and Peoples' Rights and the Inter-American Commission on Human Rights;

Elements for an EU position on the LBI

16. Welcomes the updated draft LBI, published in July 2023, and considers that it offers a solid and promising basis for advancing negotiations, while also recognising the need for improvement and alignment with the UNGPs, the OECD Guidelines and other current international standards;
17. Believes that the EU should strive for an LBI that is compatible with and complementary to the ongoing normative developments at EU level, and thus contributes to creating a more coherent global legal framework on business and human rights;
18. Supports a broad scope for the LBI that would ensure that responsibility applies throughout the global value chains; considers that allowing states parties the flexibility to differentiate, under their domestic legislation, how business enterprises, particularly SMEs, discharge the prevention obligations under the LBI, commensurate with their size, sector, ownership, operational context and the severity of impacts on human rights,

would provide important leeway for national adaptation and would be consistent with the universal scope of the UNGPs; highlights that in many regions of the world, micro-, small and medium-sized enterprises (MSMEs) are often the driving force of local economies; underlines that MSMEs account for 90 % of businesses, 60 to 70 % of employment and 50 % of gross domestic product worldwide; reiterates the importance of ensuring that obligations and requirements in the instrument are commensurate and proportionate to the size, resources and leverage of companies, and calls for the EU to provide safeguards for MSMEs in the negotiations concerning the instrument;

19. Believes that business activities should be understood in line with the UNGPs;
20. Insists that a broad scope of international instruments, including but not limited to the Universal Declaration of Human Rights, all core international human rights treaties and fundamental International Labour Organization conventions, should be covered under the LBI, in line with the universality and indivisibility of human rights;
21. Regrets the fact that several references to the environment and climate change, including with regard to liability, were removed from the scope of the LBI in the latest draft; considers that the EU and the Member States should strive for the environmental and climate impact of business activities to be included within the scope of the LBI, in line with EU legislation, policies and ambition in this area, and therefore reflect the growing realisation of the impact of business activities in relation to climate change and environmental degradation, which in turn impact on human rights;
22. Stresses that the LBI should provide for an ambitious, comprehensive, responsive and compulsory framework for the prevention of human rights abuses by corporations, in particular by establishing the obligation for states parties to adopt appropriate and effective legislative, regulatory and other measures to prevent corporate abuse and to ensure the practice of environmental due diligence and respect of human rights by all business enterprises; notes, in this regard, that allowing states parties the flexibility to adapt their preventive frameworks to their own legal systems, while preserving the primacy of human rights, would be a key factor in securing broad adherence to the LBI;
23. Calls for the EU and the Member States to ensure, in line with the provisions under the UNGPs, that the LBI prevention framework obliges corporate actors to conduct enhanced due diligence when operating in areas where the risk of gross human rights violations is heightened, such as conflict-affected areas or territories under occupation or annexation, including by adding references to international humanitarian law, international criminal law and customary international law in the scope of the LBI; believes that the LBI should also address aspects related to corporate activities in disaster-affected areas or in relation to climate-vulnerable communities, which are becoming ever more relevant in the context of the climate crisis;
24. Believes that the obligation for companies to adopt a risk-based approach and undertake regular human rights impact assessments prior to and throughout operations, and to take into account the needs of those at heightened risk, constitute particularly important elements for the LBI prevention framework, including by integrating a gender perspective, but also by taking into account issues concerning groups at risk of vulnerability or marginalisation, such as indigenous and traditional communities, minorities and human rights and environmental defenders;

25. Calls for the LBI to provide a central role to affected stakeholders, in particular through the obligation to promote the active and meaningful participation of relevant stakeholders, including trade unions, non-governmental organisations, indigenous peoples and community-based organisations, as well as the private sector, in the implementation of legislation, policies and other measures, with special attention to access to justice and remedies;
26. Calls for the LBI to provide a definition of active and meaningful participation of relevant stakeholders, including through interactive engagement carried out in good faith, on an ongoing basis, with proper follow-through, involving the identification and removal of potential barriers to engagement, and ensuring the safe participation of stakeholders without fear of reprisal;
27. Stresses the importance for the EU and the Member States to ensure that the LBI includes the duty to protect the rights and the safety of human rights defenders, defenders of the environment, journalists, workers and indigenous peoples and other marginalised groups, and to mainstream consideration for these groups throughout the instrument; insists, in particular, on the importance of enshrining the principle of the free, prior and informed consent of indigenous peoples;
28. Calls for the EU and the Member States to support the inclusion in the LBI of the fight against corruption along the lines of the UN Convention against Corruption, recognising that corruption facilitates, perpetuates and institutionalises human rights violations;
29. Is concerned about the risks of forum-shopping and its impact on a level playing field, also in the context of the EU; urges for EU-level instruments to mitigate these risks, including a monitoring mechanism; emphasises, therefore, the need to ensure that countries implement robust and effective, yet practical and proportional, enforcement and compliance monitoring mechanisms; insists, furthermore, on the requirement for states parties to carry out regular and in-depth reporting; notes the potential role, in this regard, of the processes adopted to develop national action plans on business and human rights; notes that the EU mandate should ensure that requirements are designed in such a way that they can be aligned with current EU legislation in this area;
30. Expects the EU and the Member States to promote robust provisions on access to justice, including access to state-based judicial remedy, within the LBI, in line with their commitment to protecting victims, fighting impunity and upholding the UNGPs;
31. Highlights the need for the LBI provisions on the rights of victims and rights-holders to spell out the means of ensuring the right to fair, adequate, prompt, non-discriminatory, appropriate and gender-sensitive access to justice, individual or collective reparations and effective remedy regarding human rights abuses caused or contributed to by companies; notes that this should include the right to collective redress, access to legal aid, to be heard in all stages of proceedings, information held by business enterprises as defined within the jurisdictions concerned, and protection from reprisals and re-victimisation; considers that mechanisms to alleviate the evidentiary burden on victims should be provided for in the draft to facilitate the victim's right to access remedy; considers also that states parties should allow for the adoption of interim or precautionary measures in urgent cases;
32. Insists that the LBI should include the duty for states parties to develop a

comprehensive and adequate system of legal liability that is responsive to the needs of victims, as regards remedy, and commensurate to the gravity of the abuse, while avoiding facilitating abusive claims; insists, further, that the LBI should establish conditions in which the liability of companies can be duly established for harm they are responsible for;

33. Insists that the LBI should address the practical and procedural obstacles faced by victims of corporate abuse when seeking justice, inter alia by addressing the challenges faced by courts in claiming jurisdiction in a variety of situations, and ensuring that statutes of limitations are adequate and not unduly restrictive; insists on the importance of paying due attention to vulnerable or marginalised persons or groups in this context;
34. Welcomes the proposal for the establishment of an international fund for victims under the LBI that would provide legal and financial aid to victims seeking access to remedies;
35. Insists that the LBI should confer sufficient powers on the Conference of Parties to establish mechanisms for monitoring the implementation of the LBI and make recommendations for possible further steps; considers that the committee established under the LBI should be empowered to receive and consider communications and complaints from individuals, communities or their representatives concerning human rights abuses by business enterprises covered by the LBI which are contrary to the provisions of the LBI, and concerning violations by a state party of any of the rights laid down in the LBI;
36. Calls on the Commission to step up its financial and technical support to national authorities in non-EU countries concerning business and human rights, in particular through (i) the adoption and implementation of national action plans under the UNGPs, (ii) the development of non-judicial mechanisms, such as ombudsman offices or national contact points, (iii) legislative initiatives aiming to protect whistle-blowers and to regulate business activities in relation to human rights and environment-related obligations, and (iv) the promotion and the provision of accessible and efficient remedies for victims; encourages the Commission to increase its support for civil society organisations in these areas;

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37. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the President of the UN Human Rights Council and the Chair of the Open-Ended Intergovernmental Working Group.

EXPLANATORY STATEMENT

Business enterprises are major players in economic globalisation, financial services and international trade, and are required to comply with all applicable laws and international treaties and to respect human rights. They may cause, contribute or be directly linked to adverse impacts on human rights and on the environment. However, corporations may also have an important role to play in promoting human rights, democracy and good governance, environmental standards and corporate responsibility.

Victims of corporate abuse face multiple and overlapping obstacles to accessing remedies. Impunity for human rights abuse by transnational corporations remains largely unaddressed in the absence of a robust and comprehensive regulatory framework and alignment at global and regional level.

In recent years, the EU has initiated a number of legislative initiatives aiming to regulate business activities in relation to human rights and environmental and climate-related obligations, notably through the proposal of an EU Corporate Sustainability Due Diligence Directive, the Regulation banning products made with Forced Labour, as well as numerous sectoral initiatives including the Regulation on Deforestation Free Products, the Conflict Minerals Regulation and the Critical Raw Material Acts.

Several EU Member States have recently adopted due diligence legislation of a mandatory nature such as France, Germany and the Netherlands, while a number of other Member States are considering to follow suit.

Outside the EU, regulatory initiatives, including legislation, on business and human rights have been adopted, or are under discussion such as Australia, Brazil, USA, Japan, Norway, New Zealand, Canada, Mexico, South Africa, Ghana and Switzerland and numerous other countries have developed a National Action Plan on Business and Human Rights.

At the level of the United Nations, the UN Human Rights Council (UNHRC) adopted a resolution on 26 June 2014 establishing an open-ended intergovernmental working group (OEIGWG) to elaborate an international legally binding instrument (LBI) “to regulate, in international human rights law, the activities of transnational corporations and other business enterprises”.

The Working Group has to date held eight sessions and a number of regional and other consultations with stakeholders. In July 2023, the Chair circulated an updated draft of the instrument ahead of the ninth session of the working group planned on 23-27 October 2023.

The position of the EU and Member States has evolved in relation to the work of the OEIGWG. Initially, all EU Member States who were then members of the UNHRC voted against the resolution launching the LBI negotiation process and, in the absence of a negotiating mandate, the EU representative only participated in the sessions of the OEIGWG as an observer and has only contributed general statements.

Subsequently, however, the position of EU Member States gradually evolved, with several of them participating actively in the latest sessions of the OEIGWG. France and Portugal have joined the “Friends of the Chair” group. Moreover, among its priorities in human rights fora in 2023, the Council of the EU stated its commitment to “actively participate” in the UN discussions on the LBI and expressed its readiness to work with the Chair of the OEIGWG and the Friends of the Chair “to explore (...) a consensus-based instrument that can effectively enhance the protection of victims and create a global level playing field”.

There is substantial and growing interest in, mobilisation around and expectations from the UN-level discussions on the LBI among affected communities, indigenous peoples, trade unions, members of civil society, scholars and experts globally.

Parliament has consistently supported the UN discussions on the LBI, including in a number of resolutions. As the LBI negotiations gather momentum, it was deemed important to highlight the current Parliament position, in view of the latest developments, both at the EU and UN levels, and reiterate the need for the EU to adopt an ambitious mandate for negotiations in order to participate decisively in the discussions.

**ANNEX: ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

Pursuant to Article 8 of Annex I to the Rules of Procedure, the rapporteur declares that she has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

Entity and/or person
Senior Legal Advisor, European Center for Constitutional and Human Rights (ECCHR)
Corporate Regulation Officer, CIDSE
Chief Adviser & Senior Researcher, the Danish Institute for Human Rights
Policy Officer, EEAS
Legal & Policy Officer, DG JUST, European Commission
Advisor, International Organisation of Employers
Counsellor, Permanent Representation of Portugal to the EU

The list above is drawn up under the exclusive responsibility of the rapporteur.

25.10.2023

OPINION OF THE COMMITTEE ON DEVELOPMENT

for the Committee on Foreign Affairs

on shaping the EU's position on the UN binding instrument on business and human rights, in particular on access to remedy and the protection of victims (2023/2108(INI))

Rapporteur for opinion: Miguel Urbán Crespo

SUGGESTIONS

The Committee on Development calls on the Committee on Foreign Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, as set out in Article 2 of the Treaty on European Union; whereas its actions on the international scene must be guided by those principles and be consistent with the principle of Policy Coherence for Development, as enshrined in Article 208 of the Lisbon Treaty;
- B. whereas the implementation of the 2030 Agenda for Sustainable Development and the 'Leave No One Behind' principle implies that economic development goes hand in hand with social justice, good governance and respect for human rights;
- C. whereas victims of corporate abuse face multiple obstacles to accessing remedies; whereas transnational corporations' impunity for human rights abuse remains largely unaddressed in the absence of a robust and comprehensive regulatory framework at global level;
- D. whereas the victims of these human rights violations are predominantly poor and vulnerable people;
 1. Regrets that the UN Guiding Principles on Business and Human Rights (UNGPs) are not embodied in enforceable instruments; recalls that the poor implementation of the UNGPs, as well as of other internationally recognised standards such as the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises, has been largely attributed to their non-binding character;
 2. Notes with concern that there is asymmetry between the rights and obligations of transnational corporations (TNCs), particularly in investment protection treaties, where investors are granted broad rights that are not necessarily matched by binding and enforceable obligations in terms of compliance with human rights, labour and environmental law;
 3. Underlines the urgent need to approve binding and enforceable international norms to

regulate the activities of TNCs and their global value chains; stresses that a large proportion of human, labour and environmental rights violations are committed by a number of TNCs based in the Global North, but operating in developing countries;

4. Recalls that abuses of workers' rights by companies are on the rise worldwide and that according to the International Trade Union Confederation Rights Index, 113 countries deprive workers of their right to establish or join a trade union, up from 106 in 2021, 87 % of countries violated the right to strike and four in five countries blocked collective bargaining;
5. Recalls that people in developing countries, especially indigenous and traditional communities, smallholders and other small-scale food producers, women, human rights defenders, workers, minorities and other vulnerable groups, are disproportionately affected by the human, labour and environmental rights violations committed by TNCs; notes that these violations are further aggravated by corruption and often go unpunished, as in the emblematic cases of Mariana and Brumadinho (Brazil), Rana Plaza (Bangladesh), Marikana (South Africa) and Chevron-Texaco (Ecuador), among many others; calls to promote transparency by requiring TNCs to disclose relevant information about their operations, their impact on human rights and measures taken to address them, and to ensure access to justice, with a special focus on the social dimension and minorities and other vulnerable groups, and an effective remedy for victims of human rights violations and abuses;
6. Highlights that in many regions of the world, micro, small and medium enterprises (MSMEs) are often the driving force of local economies; underlines that MSMEs account for 90 % of businesses, 60 to 70 % of employment and 50 % of gross domestic product worldwide; reiterates the importance of ensuring an adequate level playing field and urges the Commission to provide safeguards and exemptions for MSMEs in negotiations concerning the instrument;
7. Calls on the Council to adopt an ambitious mandate for the Commission to fully engage in the negotiations on the UN legally binding instrument on TNCs and human rights (LBI), in accordance with the objectives stipulated by UN Human Rights Council Resolution 26/9 of 14 July 2014, which mandates those negotiations; highlights that the negotiations, as well as the EU mandate, should ensure cooperation with established and potential partners in the areas of business and human rights and meaningful engagement with stakeholders impacted by the treaty, including international organisations, trade unions and other workers' representatives and civil society organisations; stresses, furthermore, the need to adopt a gender-sensitive approach throughout the process, as human rights violations are not gender neutral and should not be treated as such; highlights the need to strengthen the EU's diplomacy and reputation as a credible partner and a human and environmental rights defender; stresses that to fulfil this purpose, the EU position must be based on the primacy of human rights and include strong enforcing and monitoring mechanisms (including reporting requirements and periodic reviews to ensure compliance), access to justice for those affected by human rights violations, and joint and several liability provisions for TNCs and their value chains that are different and independent from those of states; calls on the Commission to fully engage in future negotiations on the UN binding treaty on business and human rights and to ensure that it has a broad substantive scope covering all internationally

recognised human rights, including fundamental workers' and trade union rights, as defined by relevant international labour standards and based on all relevant UN conventions; notes that the Member States should otherwise engage in the process individually;

8. Stresses the importance that the scope of the LBI under negotiation covers all TNCs and other business enterprises of a transnational character, as established by Resolution 26/9, as well as their activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint venture and beneficial proprietorship; is concerned, however, that there are still many governance gaps that persist at international level and calls for multilateral engagement to continue in order to send a consistent signal to current and potential cooperation partners;
9. Stresses the importance of including parent-company-based extraterritorial regulation and access to justice for victims of transnational corporate human rights violations in the home state of transnational corporations; highlights, in particular, the need to define clear obligations for TNCs in relation to eradicating child labour and forced labour from their supply chains and operations;
10. Underlines that this kind of LBI, intended to effectively protect victims and guarantee access to justice, must include, among other things, free, prior and informed consent for activities developed in indigenous territories, meaningful consultation with and the participation of affected individuals and communities in decision-making processes related to TNCs' activities that may affect their lives and livelihoods, the right to say no, the reversal of the burden of proof, mechanisms to assure extraterritorial jurisdiction, such as the jurisdiction of necessity (*forum necessitatis*), and a ban on rejecting jurisdiction (*forum non conveniens*), international cooperation obligations to enforce foreign judgments, the right to information and the right to full reparation; stresses that the right to full reparation refers both to the process of providing remedy to victims, their families or affected communities for negative human, labour or environmental rights violations suffered and the substantive outcomes that can counteract, or make good, the negative impact of violations; highlights that reparation must be adequate, effective, prompt and should be proportional to the gravity of the violations and the harm suffered, and should in all cases be adapted to the specific context and condition of the rights holder;
11. Believes that the agreement, by establishing human rights, environmental and climate-related due diligence obligations globally, strengthens the global effectiveness of the upcoming EU corporate sustainability due diligence directive (CSDDD) and creates similarly high standards worldwide; underlines, in that respect, that the CSDDD proposal should have a more comprehensive and inclusive approach; is convinced, moreover, that the UN treaty could create important provisions for improving the legal protection of people affected, thereby strengthening the EU directive;
12. Stresses the importance of the role of human rights defenders, groups, organisations and trade union activists and the importance of explicitly including in the treaty the recognition of the right to defend human, environmental and workers' rights by explicitly referencing the rights of defenders to be protected and to be free from intimidation and reprisals;

13. Recalls that the promotion of decent work objectives, such as sustainable business conduct, social dialogue, freedom of association, collective bargaining and social protection, is imperative for the eradication of human rights violations;
14. Recalls that due diligence is a key component of the UNGPs' second pillar regarding corporate responsibility and respect for human rights; stresses that effective due diligence practices can also help strengthen access to remedy; notes that the implementation of due diligence procedures should not automatically exempt TNCs from their liability.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	24.10.2023
Result of final vote	+: 10 -: 8 0: 0
Members present for the final vote	Barry Andrews, Dominique Bilde, Catherine Chabaud, Antoni Comín i Oliveres, Mónica Silvana González, Pierrette Herzberger-Fofana, György Hölvényi, Rasa Juknevičienė, Beata Kempa, Karsten Lucke, Eleni Stavrou, Tomas Tobé, Miguel Urbán Crespo
Substitutes present for the final vote	Ilan De Basso, Marlene Mortler, Caroline Roose, Carlos Zorrinho
Substitutes under Rule 209(7) present for the final vote	Karolin Braunsberger-Reinhold

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

10	+
NI	Antoni Comín i Oliveres
Renew	Barry Andrews, Catherine Chabaud
S&D	Ilan De Basso, Mónica Silvana González, Karsten Lucke, Carlos Zorrinho
The Left	Miguel Urbán Crespo
Verts/ALE	Pierrette Herzberger-Fofana, Caroline Roose

8	-
ECR	Beata Kempa
ID	Dominique Bilde
PPE	Karolin Braunsberger-Reinhold, György Hölvényi, Rasa Juknevičienė, Marlene Mortler, Eleni Stavrou, Tomas Tobé

0	0
-	-

Key to symbols:

+ : in favour

- : against

0 : abstention

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	28.11.2023
Result of final vote	+: 46 -: 3 0: 7
Members present for the final vote	Alexander Alexandrov Yordanov, Maria Arena, Petras Auštrevičius, Traian Băsescu, Fabio Massimo Castaldo, Włodzimierz Cimoszewicz, Anna Fotyga, Michael Gahler, Kinga Gál, Sunčana Glavak, Raphaël Glucksmann, Klemen Grošelj, Bernard Guetta, Márton Gyöngyösi, Sandra Kalniete, Andrius Kubilius, Jean-Lin Lacapelle, David Lega, Pedro Marques, David McAllister, Sven Mikser, Francisco José Millán Mon, Alessandra Moretti, Matjaž Nemec, Thijs Reuten, Nacho Sánchez Amor, Isabel Santos, Mounir Satouri, Andreas Schieder, Jordi Solé, Tineke Strik, Dominik Tarczyński, Hermann Tertsch, Viola von Cramon-Taubadel, Thomas Waitz, Witold Jan Waszykowski, Charlie Weimers, Isabel Wiseler-Lima, Salima Yenbou, Tomáš Zdechovský, Bernhard Zimniok, Željana Zovko
Substitutes present for the final vote	Jakop G. Dalunde, Christophe Grudler, Anja Haga, Andrey Kovatchev, Georgios Kyrtos, María Soraya Rodríguez Ramos, Mick Wallace, Elena Yoncheva, Milan Zver
Substitutes under Rule 209(7) present for the final vote	Vladimír Bilčík, Clare Daly, Mónica Silvana González, Kostas Papadakis, Miguel Urbán Crespo

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

46	+
ECR	Anna Fotyga, Dominik Tarczyński, Witold Jan Waszczykowski
NI	Fabio Massimo Castaldo, Márton Gyöngyösi
PPE	Alexander Alexandrov Yordanov, Traian Băsescu, Vladimír Bilčík, Michael Gahler, Sunčana Glavak, Anja Haga, Sandra Kalniete, Andrey Kovatchev, Andrius Kubilius, David McAllister, Francisco José Millán Mon, Isabel Wiseler-Lima, Tomáš Zdechovský, Željana Zovko, Milan Zver
Renew	Petras Auštrevičius, Klemen Grošelj, Christophe Grudler, Bernard Guetta, Georgios Kyrtos, María Soraya Rodríguez Ramos, Salima Yenbou
S&D	Maria Arena, Włodzimierz Cimoszewicz, Raphaël Glucksmann, Mónica Silvana González, Pedro Marques, Sven Mikser, Alessandra Moretti, Matjaž Nemeč, Thijs Reuten, Nacho Sánchez Amor, Isabel Santos, Andreas Schieder, Elena Yoncheva
Verts/ALE	Jakop G. Dalunde, Mounir Satouri, Jordi Solé, Tineke Strik, Viola von Cramon-Taubadel, Thomas Waitz

3	-
ECR	Hermann Tertsch, Charlie Weimers
ID	Bernhard Zimniok

7	0
ID	Jean-Lin Lacapelle
NI	Kinga Gál, Kostas Papadakis
PPE	David Lega
The Left	Clare Daly, Miguel Urbán Crespo, Mick Wallace

Key to symbols:

+ : in favour

- : against

0 : abstention