

Geneva, May 5th, 2023

To the attention of  
Global Campaign to Reclaim People's Sovereignty, Dismantle Corporate Power and Stop Impunity  
The Treaty Alliance  
The Young Friends of the Treaty

Distinguish CSO representatives,

I refer to your letter dated April 24, 2023, regarding the process for the elaboration of a legally binding instrument on business and human rights.

At the outset, allow me to convey my appreciation for your active and constructive participation in the Working Group sessions and the process as a whole. The valuable inputs and suggestions from civil society organizations are recognized and considered.

Before the seventh session of the OEIGWG, and consistent with our aim to advance the process, we informed that during the inter-sessional period, we would intend to continue advancing textual work on the draft LBI, inviting a group of Permanent Representatives in Geneva to act as Friends of the Chair.

The Chair-Rapporteur further elaborated on the Friends of the Chair through the recommendations included in the reports of the seventh and eighth sessions, as a way to convene and facilitate consultations during the inter-sessional period on specific articles and provisions of the draft text.

In this process, civil society organizations have certainly had the opportunity to engage and contribute with their positions and comments, as has been the case in formal sessions.

Nevertheless, as set out in the Conclusions and Recommendations of the eighth session, paragraph 25(e), the inter-sessional consultations to be convened by the Friends of the Chair for each of the five regions are meant to take place amongst States only, as an intergovernmental process.

According to those Conclusions and Recommendations, paragraph 25(f), Non-State stakeholders participated in these discussions through the written inputs requested by the end of March. The Secretariat has shared a compilation of the written inputs received with the Friends of the Chair.



Regarding the Suggested Chair Proposals, the approach taken by the Chair to present them has been with a view to:

- streamlining the text;
- clarifying the linkages between different Articles, with more consistent use of terminology;
- transitioning towards more formal language typically used in other treaties and instruments on the matter;
- taking account of the views expressed by States on the wording and approach of different Articles over the course of the Working Group discussions to date; and,
- ensuring there is an appropriate level of flexibility for State implementation of the obligations in this LBI, given differences in legal systems, without undermining the instrument's ability to achieve its objectives.

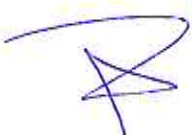
In relation to the queries raised on the process, it is a common practice that chairs make proposals for text to be considered alongside other drafts during negotiations of human rights instruments (e.g., E/CN.4/1998/102, para. 15 & Annex II, which relates to the negotiation on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict). Additionally, such proposals (even when shared as conference room papers) have also been annexed to working group session reports in other processes (e.g., E/CN.4/2002/78, paras. 9-12, 44 et seq., Annex I, which relates to the negotiation on the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment).

In line with the recommendation in paragraph 25(g), the Chair will use the outcomes of the inter-sessional consultations as reported by the Friends of the Chair, together with the concrete textual proposals and comments submitted by States during the eighth session, to update and consolidate in a single text the draft legally binding instrument, and circulate it by the end of July 2023.

Regarding the scope, from the second revised draft instrument onward, and as orally stated by the Chair-Rapporteur during the 7th and 8th sessions of the Working Group, we consider that the future treaty should apply to all companies and business activities, both transnational and national, while recognizing that States Parties may establish in their law differentiated obligations depending on companies' size, sector, operational context and the severity of potential impacts on human rights.

The reasons for this determination are ethical (the nature of a company is irrelevant to victims); practical (wholly domestic companies can be responsible for serious human rights harms); effectiveness of the instrument (there are major risks of transnational companies structuring themselves in a way to avoid falling within the scope of the instrument); and, consistency with international standards (international standards on business and human rights apply to all business enterprises, whether transnational or national).

As you are aware, processes involving the creation and advancement of Human Rights International Law usually take considerable time and effort, and polarization only prevents real advancement.





Besides, broad participation of all actors is needed, particularly from States is essential. Despite all efforts in that direction, we are still lacking a critical number of States to achieve further progress.

Therefore, the process depends on the political will of all parties involved and, especially, on a clear understanding of the dynamics of the negotiation, where extreme positions must be gradually moved to acceptable consensus, to build a fit-for-purpose and widely accepted instrument.

Finally, allow me to reiterate that the process for the elaboration of a legally binding instrument must reflect our shared goals and objectives, namely the protection and promotion of human rights in the context of business activities, the prevention of human rights abuses by companies, and the guarantee of access to justice and effective remedy for the victims.

I gladly accept the suggested meeting during the coming weeks for a meaningful dialogue with representatives of civil society organizations.

Yours respectfully,



Ambassador Cristian Espinosa,  
Permanent Representative of Ecuador to the United Nations in Geneva  
Chair-Rapporteur of the OEIGWG Resolution 26/9