

Towards a binding international treaty on business and human rights

SUMMARY

With its extended value chains, economic globalisation has provided numerous opportunities, while also creating specific challenges, including in the area of human rights protection. The recent history of transnational corporations contains numerous examples of human rights abuses occurring as a result of their operations. Such corporations are known to have taken advantage of loose regulatory frameworks in developing countries, corruption, or lack of accountability resulting from legal rules shielding corporate interests.

This situation has created a pressing need to establish international norms regulating business operations in relation to human rights. So far, the preferred approach has been 'soft', consisting of the adoption of voluntary guidelines for businesses. Several sets of such norms exist at international level, the most notable being the UN Guiding Principles on Business and Human Rights. Nevertheless, while such voluntary commitments are clearly useful, they cannot entirely stop gross human rights violations (such as child labour, labour rights violations and land grabbing) committed by transnational corporations, their subsidiaries or suppliers. To address the shortcomings of the soft approach, an intergovernmental working group was established within the UN framework in June 2014, with the task of drafting a binding treaty on human rights and business.

After being reluctant at the outset, the EU has become involved in the negotiations, but has insisted that the future treaty's scope should include all businesses, not only transnational ones. The EU's position on this issue has been disregarded by the UN intergovernmental working group until now, which raises some questions about the fairness of the process. The European Parliament is a staunch supporter of this initiative and has encouraged the EU to take a positive and constructive approach.

This is an updated edition of a briefing published in July 2017: [PE 608.636](#).



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List of acronyms used

ILO	International Labour Organization
OBE	Other business enterprises
OECD	Organisation for Economic Co-operation and Development
OEWG	Open-ended intergovernmental working group
TNCs	Transnational corporations
UNGPs	United Nations Guiding Principles on business and Human Rights
UNHRC	UN Human Rights Council

Background

Human rights abuses committed by businesses have been a cause of serious public concern for decades. [Examples](#) of such abuses include: use of forced and child labour, lack of respect for labour rights, including the right to associate and form unions, poor safety and health conditions at work, land grabbing, including from indigenous communities, unlawful violence perpetrated by private security staff, pollution and destruction of the environment, including of water sources, to name but a few.

What makes such abuses particularly problematic is that access to justice and means of redress are often insufficient, due to multiple factors. Identifying the competent court the victims should address is particularly problematic when dealing with transnational corporations (TNCs). Another aggravating factor is the lack of codification of certain human rights abuses in penal codes. Many obstacles to access to justice persist, particularly when victims search for justice abroad, such as the high costs for representation or the complexity and length of proceedings. In developing countries, corruption among state officials can undermine legal proceedings. Victims and the defendants of their rights can face intimidation, violence and even murder, commissioned by the businesses involved, with the acquiescence of corrupt state authorities. Appropriate non-judicial remedies are also of crucial importance, but are often lacking. As recognised in a recent [opinion](#) issued by the EU Agency for Fundamental Rights, many obstacles also persist in EU's single market, where 'it is harder for victims to seek redress from companies based elsewhere or when rights violations happen abroad'. To remedy the situation, numerous international, regional and national-level initiatives have been launched, which have privileged a soft approach based on voluntary standards.

Five 'internationally recognised standards'

- 2011 [UN Guiding Principles on Business and Human Rights](#) (hereafter referred to as UNGPs): guidelines to prevent, address and remedy human rights violations committed in business operations.
- 2000 [UN Global Compact](#): the world's largest voluntary corporate sustainability initiative encouraging businesses to align their strategies and operations with universal human rights, labour, environment and anti-corruption principles, and take actions that advance societal goals.
- 1976 Organisation for Economic Co-operation and Development ([OECD Guidelines for Multinational Enterprises](#)) (last revised in 2011) are '[recommendations](#) addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The [OECD] Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.'
- Launched in 2010 by the [International Organization for Standardization](#), the [ISO 26000 Guidance Standard on Social Responsibility](#) provides [guidance](#) on how businesses and organisations can operate in a socially responsible way. This means acting in such an ethical and transparent way as would contribute to the health and welfare of society. As the standard provides guidance rather than requirements, it cannot be certified, unlike other ISO standards.
- The [International Labour Organization's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#): adopted in 1977 and last amended in March 2017, offers guidelines to multinational enterprises, governments and employers' and workers' organisations in areas such as employment, training, conditions of work and life, and industrial relations. This guidance is based mainly on principles laid down in international labour conventions and recommendations.

The EU has shown commitment to the international business and human rights governance regime and has undertaken various actions¹ under the main instruments mentioned above. Of all these, the EU has been [most engaged](#) with the UNGPs. It has supported their development and considers them the overarching instrument in the field. The EU is, together with many of its Member States, at the forefront of the UNGPs' implementation, for example with regard to establishing the required national action plans.

Increased recognition for the relationship between human rights and business

The issue of human rights and business started receiving increased public attention in the 2000s. Consequently, an explicit reference to human rights was introduced in the OECD and ILO standards mentioned above. The adoption of the UNGPs in 2011 marked a decisive step forward. Today, these principles enjoy quasi-universal recognition, being unanimously endorsed by the UN Human Rights Council (UNHRC). They impose commitments on both states and businesses and put special emphasis on remedies for human rights abuses committed by corporations. Nevertheless, according to a 2017 [study](#) for the European Parliament, although much progress has been achieved in implementing the UNGPs (for example, the OECD Guidelines have been aligned to the UNGPs and new tools have been developed), human rights abuses by corporations persist. According to critics, this is possibly due to the absence of a central mechanism to ensure their implementation, and to their non-binding character.

A binding international treaty could prevent such issues. A first attempt towards such a treaty was the [Draft UN Norms](#) on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights. However, this, failed in the UN Commission on Human Rights in 2004. It contained obligations for TNCs to respect and protect the whole array of internationally recognised human rights and to provide remedy in case of violations.

The need for a binding international instrument: a complex debate

Timeline of events relating to the binding treaty initiative	
June 2011	The UNGPs were adopted unanimously by the UNHRC
September 2013	Ecuador called for a new binding treaty to be negotiated
June 2014	Ecuador's resolution on a binding treaty was adopted in the UNHRC with thin support A parallel resolution tabled by Norway reaffirming the importance of the UNGPs and calling for an examination of the benefits and limitations of a binding treaty was unanimously adopted
October 2015	First session of the open-ended intergovernmental working group (OEIGWG) tasked with drafting the new treaty
October 2016	OEIGWG's second session
October 2017	The Chair of the OEIGWG published a guiding document entitled 'Elements' for the draft binding treaty
October 2017	Third OEIGWG session

March 2018	The UNHRC endorsed the 'Elements' and authorises the OEIGWG to continue its work
June 2018	First draft of the treaty expected to be released
October 2018	Fourth OEIGWG session planned to take place

When, in September 2013, Ecuador proposed the creation of an open-ended intergovernmental working group to negotiate a treaty instrument in the UN framework, its initiative received strong support from civil society organisations. However, support from among the UNHRC members was moderate. Ecuador's [resolution \(A/HRC/26/L22\)](#), tabled at the 26th UNHRC Session on 26 June 2014 and co-sponsored by Bolivia, Cuba, South Africa and Venezuela, was adopted with only 20 votes in favour, 14 against and 13 abstentions. It was [rejected](#) by the industrialised members, including the EU Member States sitting on the UNHRC, while most Latin American members abstained.

The mandate provided by the resolution is to 'elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises' (paragraph 1). The resolution does not define TNCs; it only explains in a footnote what is meant by 'other business enterprises' (OBEs): this concept 'denotes all business enterprises that have a transnational character in their operational activities, and does not apply to local businesses registered in terms of relevant domestic law'.

Again at the 26th UNHRC session, a [second resolution](#) (A/HRC/26/L.1) on the same subject, drafted by Norway and supported by 22 other countries from all regions, was tabled in what was a unique situation. It requested that the [UN Working Group on Business and Human Rights](#) (established in 2011 by UNHRC [resolution 17/4](#)) to prepare a report considering, among other things, the benefits and limitations of a legally binding instrument. It furthermore requested the High Commissioner for Human Rights to initiate a consultative process with stakeholders exploring 'the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses'. The resolution was adopted by consensus.

The open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights ([OEIGWG](#)), established under the above-mentioned resolution A/HRC/26/9, held its first session in October 2015 and a second one in October 2016. These sessions 'were dedicated to conducting constructive deliberations on the content, scope, nature and form of the future international instrument', in accordance with the UNHRC mandate. On 19 October, the OEIGWG Chair published the '[Elements for the draft legally binding instrument](#)', which were then debated in the third OEIGWG session in October 2017.

Impunity for corporate abuses at transnational level

While it would be clearly unfair to accuse all TNCs of committing systematic human rights abuses, it is no less true that the recent history of human rights abuses committed by or resulting from the activities of such corporations contains a number of cases of shockingly irresponsible corporate behaviour. Moreover, victims of such abuses have oftentimes faced huge obstacles both in accessing justice and in obtaining redress.

This is mainly due to the complexities of the rules applicable to TNCs: they can easily use the most favourable jurisdiction to fend off responsibility and to shift it instead to their subsidiaries and suppliers. In a 2014 [publication](#) on corporate abuses and remedies, Amnesty International examines the negative implications for human rights protection of the doctrine of 'separate legal personality' (the 'corporate veil'): 'each separately incorporated member of a corporate group is considered to be a distinct legal entity that holds and manages its own separate liabilities. [...] This doctrine implies that the liabilities of one member of a corporate group will not automatically be imputed to another, merely because there is an equity relationship between them'. This makes it quasi-impossible to sue

parent companies either in the countries where their subsidiaries operate or in their home countries. Moreover, victims who look for redress in foreign courts also face huge [obstacles](#). When criminal liability is at stake, those who have the ultimate responsibility for corporate abuses can find protection in their home state's jurisdiction or in [investment protection treaties](#).

There is thus a profound asymmetry between TNCs' rights and obligations. While they enjoy substantial rights secured through trade and investment agreements, their human rights obligations are less clear and more difficult to enforce. Given the power of TNCs in today's globalised world, the expectation that domestic law would be sufficient to impose human rights-related obligations and to hold TNCs accountable for abuses is simply unrealistic. The long supply chains make it extremely difficult to establish responsibility and hold accountable those in the highest position of command in such chains. States hosting powerful TNCs often lack the capacity to act against them or do not take action over fear of losing foreign investment. Nor do TNCs' home states take action, to avoid placing them at a competitive disadvantage.

Limits of the soft law/hard law approaches

[Dissatisfaction](#) with the slow and ineffective implementation of the UNGPs – though they were much acclaimed at the time of their adoption – has driven the initiative to draft a binding international treaty. The limits and shortcomings of the UNGPs have been widely [recognised](#) by both governments and civil society organisations. Their non-binding character has been portrayed as a particular weakness. Their defenders have responded to this criticism by pointing out that, as they have only been around for a few years, more time is needed to assess their impact.

Furthermore, with respect to the binding treaty, many experts in the field point to the huge complexity of the business and human rights subject. This was initially used as an argument for preferring the soft-law approach of the UNGPs to a binding treaty. UN rapporteur John Ruggie, who drafted the UNGPs, expressed [strong reservations](#) about such a treaty. The subject area it would have to cover would be too vast, since it 'includes all human rights, all rights holders, all business – large and small, transnational and national'. The inherent risk with such a complex treaty is that negotiations would last many years, without leading to a conclusive outcome endorsed by all. The EU, through the [statement](#) delivered by its Delegation to the UN at the third OEIGWG session, has also expressed serious reservations about an all-encompassing treaty, marking its preference instead for more precise and specific international legal instruments based on existing norms.

A related criticism is that the treaty would be of little practical significance given its overly general character, and it could be used by states to obscure their incapacity to uphold human rights by pointing the finger at transnational companies. Actually, many of the countries that have actively promoted the treaty have very poor human rights and labour rights records, which raises serious questions about their commitment to the cause of human rights. The EU has also expressed [concerns](#) that a new treaty will not be of much help to victims of human rights violations caused by the incapacity or unwillingness of certain states to uphold their existing human rights obligations.

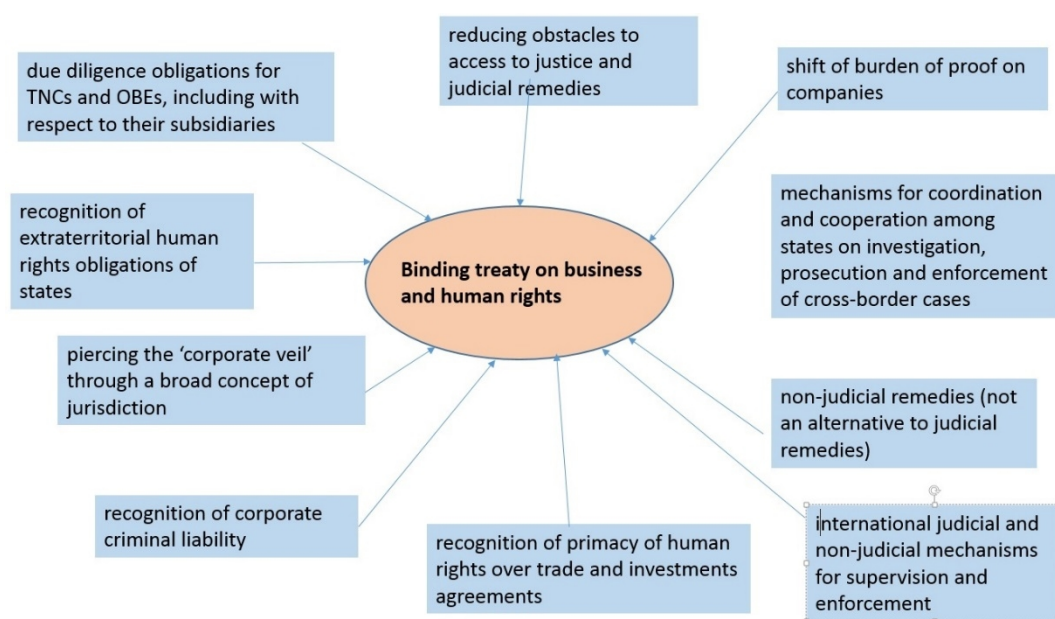
According to the defenders of the UNGPs, the pursuit of a binding treaty would also risk weakening their implementation by driving public attention and resources away, and by implicitly acknowledging their limitations. However, this [concern](#) has not materialised, as there has been a lot of progress in implementing the principles, including national action plans and legislative attempts to regulate due diligence.

A more balanced [view](#) acknowledges that the UNGPs and the proposed treaty both have advantages and disadvantages of their own. Therefore, the best strategy may be to continue with several initiatives in order to 'enhance victims' access to remedies and to teach corporations how to pursue effective due diligence in order to prevent potential human rights abuses'. While initially the two camps – those supporting and those rejecting a binding treaty – were highly polarised,² the [division](#) between them has diminished. Today, there are more people who believe that the two initiatives could complement each other well, rather than compete with each other.

The proposed business and human rights treaty – key content and controversial issues

A major challenge for the drafters of the treaty is to select from among the huge range of issues those that are the most relevant and capable of securing the necessary final consensus. During its 2015 and 2016 sessions, the OEIGWG debated a broad range of issues. Taking into account the published 'Elements for the treaty', as well as the positions expressed by civil society and other stakeholders, several issues have emerged as elements for possible inclusion in the treaty.

Figure 1 – Potential elements of the future treaty



Source: EPRS, 2018.

Among the most debated issues are:

- The obligation for companies to demonstrate due diligence: According to the option highlighted in the 'Elements', the states parties shall adopt legislative and other measures to make due diligence³ mandatory for TNCs and OBEs, including with respect to their subsidiaries;
- Strengthening legal liability: According to the 'Elements', states parties shall regulate the legal liability of TNCs and OBEs from an administrative, civil and penal point of view with respect to violations of human rights resulting from their activities. In particular, all states should recognise the criminal liability of companies;
- A broad concept of jurisdiction is required, allowing victims to have access to justice either in the country where the violation occurred or in the country where the parent company has its seat;
- Provision of effective remedies has to be guaranteed: The right to effective remedies is central to human rights law and to the UNGPs; nevertheless, victims of corporate abuses have difficulty getting access to remedies. The treaty is expected to impose an obligation on states to guarantee access to justice and effective remedies;
- Establishing remedial mechanisms at international level: The 'Elements' propose an International Court on Transnational Corporations and Human Rights and special chambers of existing international and regional courts. The 'Elements' also put forward the proposal for a non-judicial mechanism, namely an international committee composed of experts, which would examine progress made by states parties, issue reports and receive communications;

- Improving judicial cooperation among states parties is another objective. The 'Elements' provide for the facilitation of mutual legal assistance and for the recognition of relevant court decisions.

An important issue on which the planned treaty could bring clarity is the recognition of the extra-territorial obligations of states with respect to human rights and business. The UNGPs state that, 'At present, states are not generally required under international human rights law to regulate the extra-territorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a jurisdictional basis.' On the other hand, international law contains the principle that a state should not allow the use of its territory and its jurisdiction to cause damage in the territory or jurisdiction of another state. Some human rights treaty bodies recommend that states take steps to prevent abuse abroad by businesses within their jurisdiction. The 'Elements' provide that the future treaty should 'reaffirm that State Parties' obligations regarding the protection of human rights do not stop at their territorial borders'.

So far, the most controversial point of the debate has been whether the envisaged treaty should be limited to TNCs and OBEs involved in transnational operations, or should also cover local companies. The EU has insisted that it should cover all business enterprises, and from the beginning has made this approach into a pre-condition of its participation in the drafting process. The EU argues that the treaty would otherwise be incoherent, as many human rights violations are committed by purely local companies. Also the treaty would put transnational companies at a competitive disadvantage in relation to their local competitors, which could commit certain human rights violations with impunity. Contrary to the EU's position, the 'Elements' clearly limit the scope of the treaty to 'TNCs and OBEs involved in transnational operations. During the debates in the third session, the EU's position did not find much support among other states.

Some analysts believe that there are substantial reasons for drafting a treaty only applicable to TNCs and other business enterprises with transnational operations, as provided for in the mandate, and not to local companies. They argue that the treaty is expected to fill a gap in the international rules on determining the liability of parent or controlling companies beyond the jurisdiction of the state where the violations occurred. At present, TNCs benefit the most from this governance gap. According to a [South Centre](#) policy advisor, limiting the scope of the proposed treaty to TNCs and business enterprises with transnational activities would not be discriminatory towards these in relation to domestic companies, but would put them on the same footing. TNCs are often able to avoid responsibility because of their transnational structure.

A further issue up for debate concerns the human rights covered. The international human rights regime includes numerous rights – such as certain social and economic rights – some of which are more difficult to enforce in a court of law. The 'Elements' propose a broad approach covering all internationally recognised human rights, as reflected in all human rights treaties, as well as in international conventions on labour rights, environment and corruption. According to [critics](#), this could push the treaty to such a level of abstraction that would make it practically ineffective.

A further point of controversy refers to the responsibility for fulfilling the obligations defined under the treaty. The 'Elements' propose that they include, in addition to states and international organisations with an economic remit, TNCs and OBEs, as well as natural persons. According to [critics](#) of this approach, this move to hold corporations directly liable under international law for their human rights abuses would be unprecedented. It would contravene the traditional approach of international law to holding states accountable for human rights abuses committed by corporations in their territory.⁴ This was most likely also the [reason](#) the previous attempt in the UN to establish binding norms on business and human rights failed (see page 3). Furthermore, states could use the treaty to shun their responsibility for protecting human rights. Asking businesses to implement elaborate human rights policies could also pose enormous practical difficulties, given the complicated, partly unpredictable and sometimes contradictory implications economic activities can have on human rights. International law does not provide any guidance on trade-offs

between different human rights. According to [Danny Bradlow](#), professor in international law, 'it would be imprudent to establish binding rules on how businesses should manage human rights issues before we fully understand how to draft such rules without causing unintended consequences... It [human rights law] has not yet worked out how to deal with human rights situations that require making trade-offs, setting priorities, and managing risk. These are standard in business'.

Binding legal initiatives at EU and Member State level

EU level

Existing legal initiatives could serve a path-finding role in the drafting of the treaty, as already recognised in the preparatory OEIGWG debates. At global level, there are several [examples](#) of such initiatives, with the EU and a few of its Member States being among the frontrunners in the area.

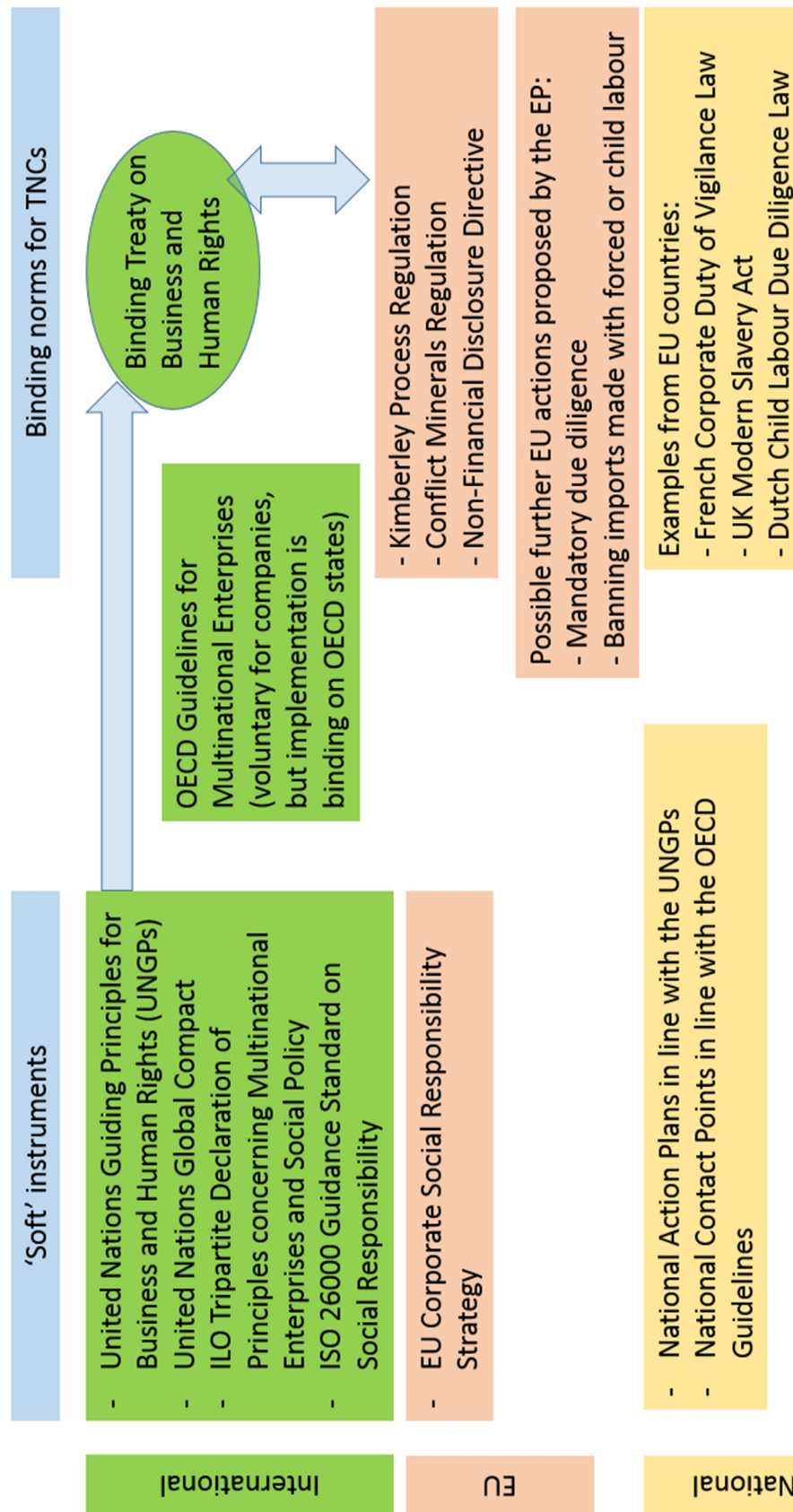
The EU's Non-financial Reporting Directive ([Directive 2014/95/EU](#)),⁵ which entered into force in 2014 and whose transposition deadline was 6 December 2016, provides obligations for companies operating abroad to disclose their compliance inter alia with human rights norms. The directive incorporates the concept of due diligence in EU legislation (Article 19a (b)), and human rights are among the issues to be covered under the due diligence reporting obligations it sets. Around [6 000](#) large companies listed on EU markets or operating in the banking and insurance sectors will be expected to publish their first reports (for the financial year 2017) in 2018. As the application of this directive is in an incipient phase, assessing its impact on the extent to which businesses respect human rights will take some time. Another legislative initiative imposing due diligence obligations on EU companies is the recently adopted [Conflict Minerals Regulation](#), which will take full effect on 1 January 2021. Importers of four minerals (tin, tantalum, tungsten and gold) into the EU will be obliged to check the likelihood that the raw materials could be financing conflict or could have been extracted using forced labour.

EU Member State level

In March 2017, France adopted a [law on the duty of vigilance](#) of parent and subcontracting companies, imposing on large French companies the requirement to assess and prevent the negative impacts of their activities and of those of their subsidiaries, suppliers and subcontractors on the environment and on human rights. Businesses' failure to comply with this legal obligation entails payment of a compensation. [Civil society organisations](#) hope this law could serve as a model for EU-wide legislation, in line with the precedent set by the French law on non-financial reporting, which preceded the above-mentioned EU directive on the subject.

Inspired by the French move, eight EU national parliaments have expressed their support for a [green card initiative](#), namely the parliaments of Estonia, Lithuania, Slovakia and Portugal, the UK House of Lords, the Dutch House of Representatives, the Italian Senate, and the French National Assembly. The initiative calls for a duty of care towards individuals and communities whose human rights and local environment have been affected by the activities of EU-based companies. Nevertheless, the European Commission's [response](#) has been that it has 'no plans to adopt further legislation at this stage, but is carefully monitoring, in close collaboration with the main stakeholders, how the situation is evolving in the Member States and in the international bodies involved in the corporate social responsibility process'.

In February 2017, the lower chamber of the Dutch Parliament adopted a Child Labour Due Diligence [Law](#) for companies. If the Senate also approves it, the law will be effective as of 2020 and will oblige companies to determine not only whether there is a 'reasonable suspicion' that their first supplier is free from child labour but also – where possible – whether child labour occurs further down the production chain.

Figure 2 – The proposed treaty in the current business and human rights-governance system

Source: EPRS, 2017

Stakeholders' positions

A broad [alliance](#) of civil society organisations (the Treaty Alliance) has been built in order to support the treaty negotiation process, with the objectives to '(1) enhance the protection of affected individuals and communities against violations related to the operation of TNCs and OBEs, and (2) provide them with access to effective remedies, in particular through judicial mechanisms'. According to the alliance, the treaty must stipulate the primacy of human rights law over corporate rights.

On the other hand, the International Organisation of Employers has [expressed](#) its opposition to a binding treaty, pointing out that it would undermine the UNGPs. In a [statement](#) delivered at the second OEIGWG session, it stated that the problem is not the governance gap at the international level, but the lack of capacity at the national level to effectively implement and enforce laws. Inappropriate working conditions and negative impacts on the environment are due to 'a high prevalence of informality, ineffective governmental inspection, a lack of governance frameworks, high levels of corruption, and ineffective judiciary systems' at national level. Global supply chains most often have a positive impact on local working conditions by setting higher standards.

However, other business organisations have come out in favour of the binding treaty, albeit with some caveats. Accordingly, the World Business Council for Sustainable Development (WBCSD) and a number of partners (the International Organisation of Employers; the International Chamber of Commerce; and the Business and Industry Advisory Committee to the OECD), submitted a [joint advocacy paper](#) for the second OEIGWG session. The paper highlighted their main recommendations that the jurisdictional scope of the treaty must include all business enterprises; the UN treaty process should build on the UN 'protect-respect-remedy' framework defined in the UNGPs and respect the established division of roles between states and companies; and that access to remedy must be local to be effective.

The [International Commission of Jurists](#), an organisation composed of 60 eminent judges and lawyers from all regions of the world, has laid out its [Proposals for Elements of a Legally Binding Instrument on Transnational Corporations and Other Business Enterprises](#). Access to remedy and justice is an essential part of its vision. While considering that the mandate and scope of the treaty should not be limited to TNCs, the organisation argues that a [one-size-fits-all approach](#) is not the best approach, either.

In Europe, various stakeholders such as [academics](#), [politicians](#), [global justice campaigners](#) and [NGOs](#) have come out in favour of the treaty.

Support for the treaty has also been building at national level. For example, in France, civil society organisations, together with a significant number of [parliamentarians](#), have urged their government to support the UN process.

European Union position

After dropping its initial reluctance, the EU has been constructively involved in the UN process for drafting the treaty, being represented by its Delegation to the UN in Geneva. The EU has observer status in the UN Human Rights Council, the body which oversees the drafting process. The positions defended by the EU Delegation in the UN framework are agreed beforehand among all Member States.

The EU has set two main requirements for a legally binding international treaty: 1) ensuring that the scope of the discussion is not limited to TNCs (see page 7), and 2) the treaty should be firmly rooted in the UNGPs, making sure that their implementation is not undermined. The EU insists that the UNGPs have allowed for tangible progress on better protecting human rights in relation with business activities and they provide an efficient framework, which needs to be implemented.

At the third session in October 2017, the EU expressed serious concerns about the way the process had been conducted. More specifically, the 'Elements of the Treaty' were published much later than initially scheduled and the programme of work for the discussions was made available only very shortly before the meeting, hampering stakeholders in preparing their positions, raising serious questions about the validity of the outcome. The EU expressed its regret that the scope of the negotiation has not been widened to cover all companies. The 'Elements' were endorsed by the March 2018 UN Human Rights Council, without taking into account the EU's position. The EU has not expressed an official position on this development. Its participation in the process will most likely continue based on the same requirements (see above).

European Parliament's position

The Parliament is a staunch supporter of the binding treaty initiative. It has expressed its full support for the UN-level preparatory work to this effect and has argued against any obstructive actions.⁶ The Parliament has called on the EU to show its full commitment to such an instrument and to actively engage in the debates.⁷ It has also emphasised the need to build the principle of accountability into the planned treaty, which could be achieved by including a grievance mechanism in it.⁸

The Parliament has also recognised the insufficiency of voluntary action. For example, in its recent legislative initiative report, [EU flagship initiative on the garment sector](#), the Parliament expressed concern that the existing voluntary initiatives aimed at achieving sustainability of the garment sector's global supply chain have not been effective enough in addressing human rights- and labour rights-related issues in the sector.

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Business & Human Rights Resource Centre, [Binding Treaty](#), a vast collection of resources on the treaty initiative.

Ruggie, John, [Get real or we'll get nothing: Reflections on the First Session of the Intergovernmental Working Group on a Business and Human Rights Treaty](#), 22 July 2015.

ENDNOTES

¹ For an overview of EU actions in the area, see the following studies: [The EU's engagement with the main Business and Human Rights instruments](#) (Stephanie Bijlmakers, Mary Footer, Nicolas Hachez, Frame Project, November 2015), and [Implementation of the UN Guiding Principles on Business and Human Rights](#) (Beata Faracik, European Parliament Study, February 2017, especially pp. 38-40).

² It is not [unusual](#) that at the outset of negotiations on new international treaties, parties would adopt more hard-line positions, but would soften them up later.

³ While the UNGPs do not define this concept clearly, the UN High Commissioner for Human Rights (UNHCHR) [defines](#) it as follows: 'In the context of the Guiding Principles, human rights due diligence comprises an ongoing management process that a reasonable and prudent enterprise needs to undertake, in light of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect human rights.' A [proposal](#) by civil society envisages inclusion into the treaty of a provision 'that all human rights due diligence should be conducted according to, at minimum, the international standards of the [UN] Guiding Principles'.

⁴ On the issue of state versus companies' obligations, see [Direct Corporate Obligations](#) by David Bilchitz and Carlos López.

⁵ Under the directive, certain large companies are required to disclose in their management report information on their policies, main risks and outcomes relating to environmental matters, social and employee aspects, respect for human rights, anticorruption and bribery issues, and diversity in their board of directors. Companies may rely on international, European or national guidelines (such as the [UN Global Compact](#), the [OECD Guidelines for Multinational Enterprises](#) and [ISO 26000](#)). See the European Commission's [webpage](#) on the matter.

⁶ See European Parliament [resolution of 14 December 2016](#) on the Annual report on human rights and democracy in the world and the European Union's policy on the matter 2015; European Parliament [resolution of 25 October 2016](#) on Corporate liability for serious human rights abuses in third countries; European Parliament [resolution of 21 January 2016](#) on the EU's priorities for the UNHRC sessions in 2016.

⁷ See European Parliament [resolution of 17 December 2015](#) on the Annual report on human rights and democracy in the world 2014 and the European Union's policy on the matter; [resolution of 12 March 2015](#) on the EU's priorities for the UN Human Rights Council in 2015; and [resolution of 12 March 2015](#) on the Annual report on human rights and democracy in the world 2013 and the European Union's policy on the matter.

⁸ In its [resolution of 14 February 2017](#) on the revision of the European Consensus on Development, the Parliament asked the EU to support the adoption of a legally binding international instrument to hold companies accountable for their human rights violations. In its [resolution of 14 April 2016](#) on the Private sector and development, the Parliament asked the EU to support such an instrument since it would provide effective remedies for victims in cases where domestic jurisdiction is unable to prosecute companies effectively. The inclusion of a grievance mechanism in such a binding instrument is also called for in Parliament's [resolution of 19 May 2015](#) on Financing for development.

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