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DRAFT 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

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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,
- 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,
- 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 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 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

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.

⁴ OJ C 11, 13.1.2020, p. 36.

⁵ OJ C 214, 16.6.2023, p. 77.

- 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 corporations 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 and the environment; whereas corporations may also have an important role to play in promoting human rights, environmental standards and corporate responsibility;
- B. whereas victims of corporate abuse face multiple and overlapping obstacles to accessing remedies; whereas impunity for human rights abuses by transnational corporations remains largely unaddressed in the absence of a robust and comprehensive regulatory framework and alignment at global and regional level;
- C. 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’;
- D. whereas the OEIGWG, which has been chaired by Ecuador since its inception, has, to date, held eight 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;
- E. whereas the position of the EU and the Member States has marginally evolved in relation to the work of the OEIGWG; 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;
- F. 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’;
- G. whereas Parliament has consistently supported 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;

- H. whereas, in recent years, the EU has initiated a number of legislative initiatives aimed at regulating business activities on human rights and environmental and climate-related obligations;
- I. whereas several EU Member States have recently adopted mandatory due diligence legislation, while a number of other Member States are considering following suit;
- J. whereas regulatory initiatives, including legislation, on business and human rights have been adopted, or are under discussion, in non-EU countries;

General comments and the international framework on business and human rights

1. Stresses that the overall level of enjoyment of human rights worldwide is inevitably contingent on the behaviour of corporations, given the current scale of globalisation and the internationalisation of business activities and value chains;
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;
3. Stresses that corporate social responsibility solely on a voluntary basis 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; welcomes, therefore, 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 transnational corporations and investors at the cost of human rights and the environment;
5. Notes, with concern, that many procedural, substantive and practical barriers persist regarding access to justice for victims, including difficulties in identifying the competent court, barriers related to jurisdictional standards, short statutory limitation periods, excessive evidentiary burdens, limited liability owing to the corporate veil, access to legal representation and information, as well as other inequalities between claimants and defendants;
6. Strongly supports 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;
7. 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, labour unions and the private sector; 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, economic and political realities affecting human rights and that draws on best practices implemented at domestic and regional level; encourages regional human rights and economic organisations to help facilitate this universal engagement;

EU and Member States' engagement with the UN process

8. Recalls that the EU has a Treaty-based commitment to promote human rights worldwide and UN multilateral solutions to common problems, which has yet to be reflected in its participation in the OEIGWG;
9. Acknowledges the OEIGWG as the only global and multilateral forum where mandatory rules on business and human rights are discussed and, therefore, considers it crucial for the EU to actively participate in this process;
10. Underscores that the latest normative developments at EU level on business and human rights have scarcely addressed 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 both normative tracks, which will operate at different levels;
11. 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, dismantling barriers to justice and effective remedy, 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 Europe, and that remains relevant in the face of constantly evolving business-related threats to human rights;
12. 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, therefore, the Commission to recommend that the Council 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, which is already at an advanced stage;
13. Calls on the Member States, in the meantime, to coordinate their positions ahead of the negotiations, so as to defend a strong, common and clear EU position; expects the European External Action Service and the Commission, in particular the EU Delegation to the UN in Geneva, to play a proactive and constructive role in this process;
14. Calls on the Commission, the European External Action Service and the Member States to engage proactively with all partner states and prioritise the topic in their dialogues with non-EU countries and regional organisations;

Elements for an EU position on the LBI

15. 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;
16. Believes that an LBI would be compatible with and complementary to the ongoing

normative developments at EU level, and thus would contribute to creating a more coherent global legal framework on business and human rights;

17. Supports a broad scope for the LBI, which aims to cover all business enterprises, including transnational business activities and state-owned enterprises; considers that allowing states parties the flexibility to differentiate, under their domestic legislation, how business enterprises discharge the prevention obligations under the LBI, would provide important leeway for national adaptation and would be consistent with the universal scope of the UNGPs;
18. 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;
19. Regrets the fact that several references to the environment and climate change 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;
20. Stresses that the LBI should provide for an ambitious, comprehensive, responsive and compulsory framework for the prevention of human rights abuses by corporations; notes, in this regard, that allowing states parties the flexibility to adapt their preventive frameworks to their own legal systems would be a key factor in securing broad adherence to the LBI;
21. 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 pay particular attention to their activities in relation to conflict-affected areas or territories under occupation or annexation, where the risk of gross human rights violations is heightened, including by adding references to international humanitarian law, international criminal law and customary international law in the scope of the LBI;
22. Believes that the obligation for companies to 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;
23. 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;
24. Stresses the importance for the EU and the Member States to ensure that the LBI includes the duty to protect 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;

25. Emphasises the need to ensure that states implement robust and effective, yet practical enforcement and compliance monitoring mechanisms; insists, furthermore, on the need for regular and in-depth reporting to be required from corporations and states parties;
26. 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 upholding the UNGPs;
27. 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;
28. 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;
29. Insists that the LBI should address the practical and procedural obstacles faced by victims of corporate abuse when seeking justice;
30. 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;

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31. 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.