



2023/2108(INI)

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

PA_NonLeg

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

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

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Key to symbols:

+ : in favour

- : against

0 : abstention