

Surprising advances

Report on the tenth session of the intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (“UN Treaty”)

by Celia Sudhoff

From December 16 to 20, 2024, 74 states came together at the United Nations (UN) Human Rights Council to negotiate an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises (also known as a “UN Treaty”). Since the adoption of Resolution 26/9 by the UN Human Rights Council in 2014, the intergovernmental working group mandated to draft such a treaty has already met ten times. The meeting was postponed from mid-October to December due to organizational problems in the run-up. However, the fear that the postponement would result in fewer states and civil society organizations participating in the negotiations has not been confirmed. Compared to the ninth round, very good progress was made in 2024. A total of eight articles were discussed.

Unusually late in the year, a total of 74 states met on December 16, 2024 to negotiate the UN treaty. The postponement of the negotiation week originally planned for October was partly due to the change of Ecuador’s ambassador in Geneva. Ecuador has been leading the negotiations in Geneva since 2014, which is why they could not be conducted properly during the change. Civil society in particular had protested against the new date, albeit unsuccessfully. These negative signs were offset by a whole series of successful consultations held in advance. In line with the resolutions of the ninth session, for example, possible methods for improving the progress of the negotiations were discussed both on site in Geneva and online on May 23, 2024. Various consultations in June also focused on a draft procedural decision to strengthen the Working Group’s capacities. On July 11, 2024, the UN Human Rights Council adopted decision 56/116, allowing the Working Group a maximum of ten additional days for consultations (subject to approval by the UN General Assembly)

from 2025 – with a term of three years¹. This will be accompanied by improved financial and personnel capacities for the Secretariat. In 2024, some of the legal experts selected in advance also took part for the first time. In total, one expert and one deputy were appointed for each of five regions in the world. Among others, the expert for the Asia-Pacific region, Kinda Mohamadieh, and the expert for Latin America and the Caribbean, Humberto Cantú, were present during the session. In the course of the substantive negotiations, they were repeatedly questioned by the states on specific legal aspects.

Monday began with an opening statement by UN Human Rights Commissioner Volker Türk², who addressed the working group in person for the first time. Türk expressed his support for the UN treaty process and described it as the next milestone after the UN Guiding Principles of 2011. He criticized the fact that, despite countless disasters, too many companies continued to align their business

1 See the decision of the UN Human Rights Council: “56/116 Enhancing the support capabilities of the open-ended intergovernmental working group”

2 The full speech can be read [here](#)

practices solely with the goal of maximizing profits and pointed out the close connection between violence, conflict and consumption, as could be seen, for example, in the extraction of raw materials in the DR Congo. Türk emphasized that companies also benefited from peace and stability and called on the working group to use the current momentum to strengthen access to justice for those affected and to hold companies more accountable. The treaty could create a level playing field in which human rights were actually placed above profits.

Damilola S. Olawuyi from the UN Working Group on Business and Human Rights added in his speech that it would be naive to expect all companies to act proactively and without a legally binding instrument.

In his opening statement, the new chair of the working group, Marcelo Vázquez Bermúdez, thanked the previous speakers and the participating states for their many years of support for the process. At the same time, he criticized in particular the lack of political will on the part of some states, which must be overcome in order to close existing gaps in international human rights protection. He recalled existing frameworks such as the UN Guiding Principles on Business and Human Rights, but emphasized the need for a legally binding instrument to more clearly define the obligations of states and the responsibilities of companies. Such an agreement would not only improve access to remedy, but also create legal certainty, promote fair competition and prevent negative impacts of business activities. Furthermore, the Chairman also highlighted progress at national and international level, in particular the adoption of decision 56/116, which gives the working group greater scope for action. He concluded by calling on the participating states to use the tenth session to improve the draft and reach a consensus. In return, Vázquez Bermúdez reaffirmed his personal commitment to transparency, inclusivity and independence in the further process.

Participation and opening statements

Despite the postponement, a total of 74 UN member states took part in the negotiations, only two states fewer than in 2023. Holy See and the State of Palestine also took part with their UN observer

status, as did the EU on behalf of its 27 Member States. The Gambia spoke on behalf of the African Union and its 55 Member States. However, a closer look at the participating states reveals that, compared to the previous year, significantly more European states took part in the negotiations and some Asian and African states were not present³.

Participating countries at the 10th session:

Albania, Algeria, Argentina, Armenia, Australia, Austria, Belgium, Benin, Bolivia (Plurinational State of), Brazil, Bulgaria, Cabo Verde, Cameroon, Canada, Chile, China, Colombia, Cuba, Czechia, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, Eritrea, Estonia, Ethiopia, Finland, France, Gambia, Germany, Ghana, Greece, Guatemala, Honduras, India, Indonesia, Iraq, Ireland, Italy, Japan, Kenya, Lebanon, Luxembourg, Malawi, Mexico, Morocco, Netherlands (Kingdom of the), Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Slovenia, Somalia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Türkiye, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Zambia. Britain and Northern Ireland, USA, Venezuela, Zambia

In their opening statements, many countries emphasized their commitment to the working group and reported on national progress in the implementation of national action plans (NAPs) based on the UN Guiding Principles or new, legally binding instruments.

In its statement, the EU highlighted three new European directives: 1. the Corporate Sustainability Due Diligence Directive (CSDDD), 2. the Critical Raw Materials Act and 3. the Forced Labour Act. These examples should make it clear that there is a fundamental consensus in the EU for mandatory regulations for companies and their supply chains. For the tenth round, the EU representative promised to engage constructively in the negotiations, building particularly on the CSDDD, and to promote an integrated approach to environmental protection.

³ Not present compared to 2023: Angola, Azerbaijan, Cabo Verde, Côte d'Ivoire, Iran, Israel, Jamaica, Madagascar, Malaysia, Mongolia, Mozambique, Namibia, Nepal, Nigeria, Qatar, Senegal, Sierra Leone, Trinidad and Tobago, Tunisia, Vietnam
New or returning in 2024: Armenia, Benin, Bulgaria, Eritrea, Estonia, Gambia, Greece, Guatemala, Morocco, Italy, Canada, Lebanon, Poland, Slovenia, Somalia, Zambia

Germany supported the EU in actively following and improving the process, including during the intergovernmental consultations. The delegate also referred to the German Supply Chain Due Diligence Act (LkSG), which has already been in force for two years. Together with the CSDDD, these regulations should be reflected in the future treaty, too. A pragmatic approach with proportionally appropriate reporting obligations should enable a broad consensus for the treaty. Unfortunately, once again, neither Germany nor the EU actively participated in the negotiations due to the lack of a negotiating mandate. This was also clearly criticized by the Treaty Alliance Germany in its opening statement. The negotiations of the individual articles impressively demonstrated how important official EU participation would have been.

The USA referred to its new NAP and at the same time criticized parts of the treaty text as being too unclear and prescriptive. They would like the treaty to be formulated closely aligned with the UN Guiding Principles and wished for the countries of the Global North to be more involved in the negotiations.

Colombia, for its part, welcomed the broad participation of organizations, trade unions and those affected and stressed that the rights of those affected must remain at the heart of the process. In order to put an end to corporate impunity, obstacles in legal systems should be removed, in particular, the *forum non conveniens* argument should no longer be allowed to be used by courts (see in particular Article 7). Affected parties should be heard at all stages and proceedings should be fair, especially for children.

Kenya supported the statement by Gambia and the African Group, which emphasized the primary responsibility of states to protect human rights. Kenya was also the first African country to draw up a NAP. The delegate called for the treaty to focus on transnational cases and promote the right to development. Some other states – including Pakistan, Russia and Egypt – criticized the overly broad scope of the treaty and called for an explicit limitation to transnational corporations (TNCs, see also the debate on Article 6).

Substantive negotiations (Art. 4–11)

After a lot of time had been spent last year talking about methodology and, therefore, only the preamble and the first three articles could be discussed, the tenth session proved to be much more focused. Already on Monday afternoon, the states were able to continue the negotiations on the individual articles, starting with Article 4 Rights of Victims. The updated draft (clean version) from July 2023⁴ was used as the basis. Each article was discussed in the following way: First, states were allowed to present their opinions and propose amendments to the text. The proposed amendments were recorded live in the room and can be accessed via the website of the tenth session⁵. Following the states, civil society organizations (CSOs) were able to submit their statements⁶. Accompanied by clear criticism from CSOs and some states (including Colombia and Palestine), representatives of business associations were once again allowed to actively participate in the negotiations this year. After all stakeholders had submitted their statements and proposed amendments to the respective article, the new Ecuadorian chair, M. Vásquez Bermúdez, called on the states to discuss this article again. This time, the paragraphs of the article were called individually, and states were able to come forward again, make comments or ask questions and signal their agreement or disagreement with existing proposals. This new dynamic encouraged states to enter into a real dialog. Queries or questions of understanding were also raised, and the expertise of legal experts was called upon for specific legal definitions.

Article 4 Rights of Victims

Russia called for a complete revision of the fourth article: Article 4 would replace the state obligation to protect human rights with a purely corporate obligation to respect human rights. This is contrary to the basic idea of the UN Guiding Principles. Russia's demand was also supported by two business organizations, the International Organization of Employers (IOE) and the US Council for International Businesses (USCIB). Other countries did not share this concern.

Panama, the UK and the USA called for the addition “internationally recognized” to be deleted from Article 4.1, as they feared that the addition

4 For the origin of the “[Updated draft \(clean version\)](#)” and the criticism of it, see also [Seitz \(2023\)](#)

5 The states' change requests can be [found here](#)

6 A list of participating organizations can be found on pages 10 and 11 of the Chair's report on the 10th round of negotiations ([Chair-Rapporteur of the OEIGWG \(2024a\)](#)). Other organizations were part of the delegation of these listed organizations with ECOSOC consultative status at the UN

could create a separate human rights regime for companies and that the deletion could protect a wider range of human rights.

In 4.2 (b), Saudi Arabia called for the rights to freedom of expression and assembly to be replaced by freedoms that are consistent with the laws and values of the signatory state and maintain social order and stability. The proposal was opposed by Mexico, France and South Africa, among others. This open attack on fundamental human rights is just one of many examples where a negotiating mandate from the EU would have been necessary to decisively counteract the weakening of the treaty.

While the USA and UK wanted to delete Article 4.2 and its protection provisions altogether, a larger group of countries⁷ supported the call to increase protection for particularly vulnerable groups in Article 4.2 (c). In addition to the existing gender perspective, this paragraph should be expanded to include age- and disability-sensitive wording.

A fundamental discussion with a potential impact on many other articles of the treaty arose with regard to the definition of “victim”. Many noted in their statements that the term could be defined too narrowly and only take into account persons who have already suffered harm. One alternative suggested was to replace the term with “rightsholders”. However, this term could also lead to companies being given a protected status. This risk was generally confirmed by the legal experts. On the other hand, there was broad agreement on the term “victim” being supplemented by the addition of “affected persons and communities” throughout the text. A total of ten countries, including Brazil, South Africa, Mexico, Algeria, Ghana and Palestine, spoke out in favour of this during the week of negotiations. Many civil society organizations also supported this addition.

A further fundamental amendment was introduced by Palestine to add “and violations” to references to “human rights abuses”. This was also introduced or supported at various points by Brazil, Mexico, Colombia, Egypt and Honduras. In this context, Palestine also called for the concepts of these two terms to be clarified, as “human rights abuses” refers to the harmful consequences of business activ-

ities and “human rights violations” to violations of the state’s duty to protect. It remained unclear where in the text one or both terms should be used.

Article 5 Protection of victims

This article continued the attempts to massively weaken protection against persecution, especially for human rights defenders. Indonesia and Russia, for example, wanted to delete Article 5.2 in its entirety. The United Kingdom and the United States wanted to delete collective rights in the same article by replacing “groups and organizations” with “individuals”. Ghana and various CSOs opposed this. Ghana also put forward the proposal to make measures gender-equitable overall. This was supported by numerous countries⁸. Morocco and Cape Verde introduced an addition to 5.3 to support the development of national capacities for human rights protection.

Article 6 Prevention

In Article 6, it became clear how important the discussion on the scope of the treaty is, even outside the scope of Article 3. Some states, including Indonesia, Russia, China and Pakistan, reiterated their demand that the text be adapted throughout so that the treaty covers only transnational corporations. They argued that an extension of the treaty to all companies would contradict the mandate of Resolution 26/9. On the other hand, there is a risk that limiting the scope to TNCs will lead to companies avoiding the treaty, for example by restructuring⁹.

A further discussion on Article 6 arose when Brazil proposed explicitly naming the financial sector in Article 6.2 (c). When asked by Panama, Brazil justified this change by stating that the financial sector can have a significant impact on human rights, partly resulting from the granting of loans to all other sectors, and should be named separately as an overarching authority. Panama then supported this addition and in turn added the arms sector as a second explicitly named sector given its decisive involvement in human rights violations worldwide¹⁰.

Some states also tried to reverse previous weakening in the treaty text in Article 6. Panama, sup-

⁷ These supplements were supported by Algeria, Bolivia, Brazil, Colombia, Egypt, Indonesia, Mexico, Palestine, Panama and South Africa, albeit with different wording.

⁸ Bolivia, Brazil, Cameroon, Colombia, Mexico and Panama.

⁹ More on the discussion of the scope of the UN Treaty, see [Sudhoff \(2024\)](#).

¹⁰ Honduras joined the addition of the financial sector, and Palestine supported Panama in the addition of the arms industry.

ported by Mexico, Colombia and Ghana, for example, campaigned to re-establish environmental protection provisions in the text. With Art. 6.4 *bis*, Palestine introduced an addition for increased prevention and due diligence obligations, particularly in crisis/war zones and occupied territories. In Art. 6.6 *quinquies*, Ghana reintroduced an article originally drafted by Cameroon, in which states are called upon to implement the treaty transparently and to protect state processes from undue influence by commercial interests. States should not be prevented from implementing this treaty by companies and transnational corporations.

Russia, meanwhile, continued its attacks on universal human rights by calling for the deletion of Art. 6.4 (e), the protection of human rights defenders, journalists and trade unionists. The proposal received no support, but only France explicitly opposed it.

Article 7 Access to Remedy

In Article 7, the term and definition of “state agencies” in particular was critically scrutinized. Some states¹¹ would like to replace the term with “judicial and non-judicial mechanisms”. Others¹² saw the risk of limiting access to justice in this formulation and would therefore prefer to replace it with “state authorities”.

Throughout the entire week of negotiations, Ghana was a pioneer in the attempt to anchor gender sensitive additions in the text. This was also the case in Art. 7.3 (b), supported by Colombia, Mexico, Panama and the UK.

Palestine introduced two further important amendments aimed at strengthening access to justice. With 7.2 (d) *bis*, they are intended to abolish the legal doctrine of *forum non conveniens* within the scope of the UN Treaty and ensure that courts cannot simply decline jurisdiction in cases of business-related human rights violations by referring to another allegedly more appropriate court in another state. For Art. 7.4, Palestine proposed a new formulation that requires states to ensure that court fees do not constitute an unfair and unreasonable burden for victims and are not an obstacle to initiating proceedings.

Article 8 Legal Liability

The article on liability regulations was criticized in various places. The United Kingdom, for example, described the entire article as too unspecific. The USA suggested adding a new clause to 8.1, according to which liability rules should only ever be in line with existing national systems. This was criticized by some CSOs, as such references to national systems could limit the effectiveness of Article 8 and possibly also restrict access to justice. The Global Policy Forum Europe, together with Bread for the World, FIAN Germany, Misereor and WECF Germany, also called for the abolition of such national qualifiers.

The proposals from Palestine (supported by Ghana and South Africa) were particularly well received by civil society. With Art. 8.6 *bis*, those responsible for human rights violations can be held liable both jointly and separately. Art. 8.6 *quinquies* in turn ensures that compliance with due diligence obligations does not automatically exempt from civil liability.

Article 9 Jurisdiction

Many organizations and some states, including Palestine, Ghana, Egypt and South Africa, are in favour of strengthening or reformulating Art. 9.4 in such a way that access to court proceedings is not made more difficult by the application of *forum non conveniens*, comparable to the aforementioned proposal by Palestine on Art. 7.2 (d) *bis*. The IOE warned that this would lead to so-called “forum shopping”. The United Kingdom also expressed concern about overlapping court proceedings and the associated costs. Ghana then suggested that the contracting states should create a database of the proceedings already taking place on their territory.

Article 10 Statute of limitations and Article 11 Applicable Law

On the afternoon of the fourth and last official day of the hearing, Articles 10 and 11 were discussed relatively quickly. The term “most serious crimes” in Article 10.1 was criticized in particular, as it is not defined in international law. Panama and South Africa therefore proposed deleting the term and speaking only generally of “crimes under international law” in order to avoid ambiguity. Ghana proposed two important amendments as

¹¹ Cameroon, Morocco, UK and USA

¹² Brazil, Colombia and South Africa

well: in Art. 10.1, there should also be no statute of limitations in cases where the damage can only be determined after a long period of time and again added gender-sensitive wording to Art. 10.2 when defining the statute of limitations.

Russia, IOE and the USCIB called for the deletion of Article 11 in its entirety. They are particularly concerned about forum shopping by claimants and the application of foreign law by domestic courts. This demand should not be granted in view of the best possible effectiveness of the treaty.

Results and outlook

The tenth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights was perceived as very positive by the majority of stakeholders, including civil society. The negotiation of the individual articles went faster than expected, and the new dynamic in the discussions was surprisingly productive. The week therefore ended with much praise for the effective approach by the new Chairman. The final report was adopted very quickly and without further criticism. In their concluding statements, many states reaffirmed their commitment to the process and acknowledged the valuable contributions of civil society. The International Treaty Alliance emphasized the urgency of the treaty and the need to ensure the primacy of human rights in the international system.

In terms of content, some progressive provisions of the text that had been lost when the updated draft (clean version) was presented in July 2023 were reinstated. These include, as outlined in the second section, references to the right to a clean environment, the strengthening of Article 6 and a ban on the *forum non conveniens* rule. It remains to be seen to what extent these progressive amendments will be able to prevail over the limitations of the text proposed in particular by Russia, Saudi Arabia, the USA and the UK. It is not yet clear whether a new draft treaty will be presented before the eleventh session.

Why this process ended comparatively positively in 2024 despite global deregulation efforts and increasingly authoritarian governments in many countries cannot be answered conclusively without a deeper analysis. In contrast to the previous ninth

round of negotiations, the discussions were much more focused. In October 2023, a lot of time was spent discussing the technical details of the negotiation week. In the end, only the preamble and the first three articles were discussed¹³. One possible reason for the rapid progress of the negotiations in 2024 is the broad participation in the intergovernmental consultations in the run-up to the meeting. The interactive exchange between the annual meetings will presumably be further strengthened by the additional capacities approved in decision 56/116 of the UN Human Rights Council and by the thematic consultations planned for 2025. The close cooperation of the “Friends of the Chair” group, which includes Portugal, Chile, France and Indonesia, also contributed to the success of the week of negotiations.

Another decisive contribution was the commitment of the new Chairman Vázquez Bermúdez and his team. Constructive dialog was promoted through the implementation of an adapted negotiation methodology. States took up and supported the demands of civil society at several points. The chairman of the working group is said to have had a largely free hand in shaping the negotiations this year, as the Ecuadorian government in Quito was busy with preparations for the national elections. Depending on the formation of the government after the elections on February 9, 2025, Ecuador could once again have a greater influence on the course of the negotiations. The full impact of elections in Germany, the formation of the EU Commission, the balance of power in the new EU Parliament and Donald Trump’s second term in office in the USA will also only be revealed in 2025 and the subsequent years.

The legal experts present also played a positive role: the chair moderated the states’ legal questions, the experts were given time to prepare their answers and gave their assessments in a joint statement. Nevertheless, there are some reservations within civil society regarding the role and possible conflicts of interest of the experts. The Chair took ample time to address these and other concerns on the evening of the third day of negotiations. Concerns were expressed about the roadmap for 2025¹⁴ and the future role of the experts. Among other things, it was pointed out to the Chair that there were well-founded indications of a conflict of interest, particularly with regard to the two experts for Latin America and the Caribbean. Humber-

¹³ Further details on the course of the 9th meeting can be found in [Seitz\(2023c\)](#)

¹⁴ The current version of the roadmap can be downloaded [here](#)

to Cantú, for example, is the founder and CEO of “RBC Strategy”, a consulting firm that advises companies on the implementation of international standards in practice. In order to counter such conflicts of interest and at the same time protect the process from excessive influence, parts of the international Treaty Alliance called for a code of conduct and the disclosure of the individual backgrounds and perspectives of all experts. In addition, the experts should be given the opportunity to not only speak with one voice, but to present different occurring opinions.

Civil society was also able to raise critical points with regard to the roadmap and methodology for 2025. The methodological adaptation proposals for the planned intergovernmental consultations in 2025 were adopted by the Chair in many places. The broad and, where possible, hybrid accessibility of the meetings remains a key concern. Civil society also emphasized that the consultations must not produce any new reports or text amendments and that official negotiations on the text should continue to take place exclusively during the working group’s official sessions. Vázquez Bermúdez made it clear that the non-papers announced in preparation for the consultations would be written by him alone and without the support of the experts. He bears sole responsibility for their content; they are not intended to have any legal significance, but merely serve as “food for thought” for the consultations.

It is to be hoped that the increased momentum, results-oriented methodology and expanded capacities can help make 2025 a decisive year for the treaty process – including a long overdue EU negotiating mandate. According to the current roadmap, the eleventh round of negotiations will then take place again in October, from 20 to 24 October 2025.

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