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Scope of a UN treaty on business and human rights

Which companies should it apply to?

by Celia Sudhoff

The process towards a legally binding instrument on business and human rights (also known as the "UN Treaty") has now been underway for a decade. The initiative is based on the realisation that the activities of transnationally operating companies are not sufficiently regulated under human rights law. The transnational nature of these companies, their economic power and unilaterally formulated investment protection agreements often make it difficult to hold those responsible for human rights violations accountable and to provide victims with access to justice. There is a considerable regulatory gap, particularly with regard to transnationally operating companies.

Countries of the Global South initiated the process and maintained it through strong participation. In contrast, many countries of the Global North initially rejected the process and were slow to join the negotiations. Lines of conflict between North and South continue to exist in numerous areas. One aspect stands out in particular: the scope of the planned agreement, as set out in Article 3 of the current draft treaty. There is controversy not only among governments but also in international civil society over the question of which companies the UN treaty should apply to.

While some insist that the treaty should only concern transnational corporations (TNCs), others are convinced that it must include all companies – including national companies and state-owned corporations. The clear definition and delimitation of TNCs, or, as the wording of the original treaty resolution states, "all business enterprises that have a transnational character in their operational activities", is already difficult. How can it be ruled out that a transnationally operating company or a subsidiary falls outside the definition through reorganisation or a simple change of legal form? Depending on how the treaty is organised, there may be no need for a definition at all. The current practice of the United Nations (UN), the International Labour Organization (ILO) and the Organisation for Economic Co-operation and Development (OECD) often does not use a uniform definition of TNCs. The UN Guiding Principles on Business and Human Rights from 2011 do not even differentiate between transnational and national companies. Against the backdrop of the protracted debate, this briefing presents the individual arguments on both sides and identifies ways to find a compromise. Because without a solution to this issue, the negotiations on the UN treaty cannot lead to success.

The starting point of the controversy over a narrower or broader scope of application of the UN treaty is a footnote. Both state and non-state advocates of a narrow scope of application refer to UN Human Rights Council Resolution 26/9, adopted in 2014, which established the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG).[1] In a footnote, it states that the phrase "other business enterprises"

1 https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc

refers exclusively to companies with a transnational character and that "local businesses registered in terms of relevant domestic law" are explicitly excluded from the treaty resolution. Therefore, if a draft treaty were to refer to all companies without exception, it would inadmissibly exceed the mandate of Resolution 26/9.

Critics of the footnote consider it problematic because, after all, a transnationally operating company is, in the vast majority of cases, also registered in the country in which it operates – even if it is certainly not to be categorised as a local or medium-sized company. Those in favour of a broad scope of application often refer in their arguments to the UN Guiding Principles on Business and Human Rights, which were adopted in 2011 and are not binding under international law. On the very first page, the general principles state that the Guiding Principles apply "to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure".[2] In other international guidelines for companies, too, there is often no distinction between national and transnational companies; to date, there has been no standardised definition of transnational companies under international law. The treaty should therefore be based on the existing guidelines in order to ensure coherence in the international legal system.

Arguments in favour of a narrow scope of application

There are a number of states in the negotiations that insist that the treaty refers exclusively to TNCs and that the working group should strictly adhere to its 2014 mandate. These include African and Latin American states such as the co-initiator of the process, South Africa, Egypt, Ghana, Mozambique, Bolivia, Cuba and Venezuela, as well as economic and political heavyweights like China, India, Pakistan and Russia (see Table 1 in the Annex).

Pakistan has already made several statements on this topic, most recently in 2023.[3] In this statement, the country refers to the massive differences between TNCs and local companies. They differ not only in terms of their sheer size, but also with regard to their resources and influence. While small and medium-sized enterprises (SMEs) have been and are largely defenceless against the effects of the multiple global crises, TNCs have been able to benefit from them to an above-average extent. The logical conclusion is therefore that such different structures cannot be regulated by a single legal instrument.

In a 2021 statement[4], **India** points out that national companies are already regulated by national laws. India also expresses concerns regarding the country's development opportunities if local companies are also regulated by the treaty.

Ethiopia shared these concerns in a 2020 statement[5] and also warned against interference in national sovereignty with regard to the involvement of state-owned companies.

Bolivia's statement from 2022[6] emphasises that one of the most important tasks of the working group is to close the gap in the international legal system. The lack of a legally binding instrument to regulate transnational corporations has enabled them to contribute to massive violations of the law worldwide without having to fear any consequences. The companies were only able to benefit from this impunity because of their multinational structures.

If the focus on TNCs is not maintained in the treaty text, according to **Honduras**' assessment at the 9th round of negotiations in 2023[7], the added value of the process could be lost.

Arguments in favour of a wide range of applications

The USA, the EU and business associations in particular criticise the fact that the exclusion of local companies would create different standards that would distort competition. This was one of the reasons why the USA and the EU did not participate in the process for years. In the meantime, however, there are also other global voices in favour of a rather broad and comprehensive interpretation of the treaty. In addition to Brazil, Chile, Panama and Peru, this group also includes the co-initiator of the process, Ecuador, which has also chaired the working group since 2014.

2 https://www.business-humanrights.org/de/big-issues/governing-business-human-rights/text-of-the-guiding-principles/
3 https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-compilation-general-statements.pdf (p. 15)
4 https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/wgtranscorp/session8/igwg-8th-compilation-general-statements.pdf (p. 9).
5 https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/igwg-6th-statement-compilation-annex.pdf (p. 11).
6 https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/wgtranscorp/session8/igwg-8th-compilation-general-statements.pdf (p. 3).
7 https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-compilation-general-statements.pdf (p. 10).

Apart from harmonising the text of the treaty with the UN Guiding Principles, **Brazil's** main focus in a 2019 statement[8] is on the effective protection of all people. Limiting the scope of application would create gaps that would ultimately result in ineffective implementation.

The **Ecuadorian** chair of the working group argues similarly in a note verbale from 2023[9] . He identifies four main reasons for the inclusion of both transnational and national companies:

- ethical: the nature of a company is irrelevant to victims;
- practical: wholly domestic companies can be responsible for serious human rights harms;
- effectiveness: major risks of TNCs structuring themselves in a way to avoid falling within the scope of the instrument;
- consistency – international standards on business and human rights apply to all business enterprises.

He also points out that the draft treaty would allow nation states to make gradations in implementation depending on size, sector, context or the severity of human rights violations. In his view, the footnote in Resolution 26/9 does not impose legal limits on the scope.

Although the **EU** is not officially participating in the negotiations with a corresponding mandate up until the tenth round of negotiations, it has repeatedly addressed the issue of scope in its statements for years. The EU and its 27 Member States have consistently called for a very broad, non-discriminatory scope of application for the treaty. In its 2020 statement[10], for example, the EU questioned why Article 3.1. still contained a special reference to transnational activities, even though all companies were already included in the Second Revised Draft from the same year. However, a closer look at the scope of application of the EU Corporate Sustainability Due Diligence Directive (CSDDD) raises the question of what objective the EU is pursuing with its vehement commitment to a broad scope of application. The current version of the CSDDD actually only covers a fraction of all companies operating in the EU (for the scope of the CSDDD and the German Supply Chain Act [LKSG], see Box 1).

Differentiated argumentation

Some countries are trying to bridge the gaps between the two camps in the negotiations by addressing the complex issue with differentiated statements. This includes, for example, **Mexico**'s statement during the ninth round of negotiations. On the one hand, it calls for the text to focus particularly on the transnational activities of companies, as those activities may pose difficulties for their effective regulation.[11] On the other hand, Mexico points out that transnational companies must always establish a national subsidiary for their local activities in accordance with local laws. In order to take this legal reality into account and to effectively protect all those affected, the treaty should therefore apply to all companies. At the same time, it should continue to be recognised that transnational business activities in particular have massive risks and impacts on the local human rights situation and should therefore be the focus of attention.

Palestine expressed similar views in a statement in 2019[12] . The treaty should have a clear focus in order to prosecute TNCs for their activities. States should be obliged by the treaty to establish "policies towards corporate accountability for violations and / or abuses resulting from business activity, particularly business activity of a transnational character". Palestine proposes to adapt the text so that it applies "to all business activities and business relationships, particularly but not limited to those of a transnational character". **Namibia** supported this text proposal. In many statements, the **USA** is in favour of a broad scope of application, but also points out the dangers of an overly broad scope of application[13]. At the same time, it is concerned that Article 3.2. could offer too many loopholes, for example by allowing states to exempt their state-owned companies from the rules.

Positions of civil society

International civil society organisations are in agreement that human rights must be prioritised over the interests of business. However, the joint commitment to the strongest possible UN treaty is overshadowed by the question of its scope. In the view of some non-governmental organisations,

8 https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session5/Annex_CompilationStatements_5th_session.pdf (p. 6).
9 https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg/session9/igwg-9th-guidelines-intersession-mar-2023.pdf
10 https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/igwg-6th-statement-compilation-annex.pdf (p. 43).
11 https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-compilation-state-statements.pdf (p. 17).
12 https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session5/Annex_CompilationStatements_5th_session.pdf (p. 33).
13 https://www.ohchr.org/sites/default/files/documents/issues/business/2022-09-13/igwg-7th-annex-comments-states.pdf (p. 7).

the treaty should include all companies in order to ensure the most comprehensive possible protection against human rights violations by companies. However, it is important to close the regulatory gaps with regard to the activities of transnationally operating companies in particular. Other NGOs consider the exclusion of local companies to be justified, as otherwise the effective focus of the treaty would not be possible. After all, these companies could easily be regulated nationally by the states.

On the part of German stakeholders, the German Institute for Human Rights (DIMR) and the Treaty Alliance Germany are generally in favour of a broad scope of application in their statements. In a statement by the DIMR on the third revised draft treaty, the inclusion of all companies is welcomed.[14] This is important both in terms of achieving a level playing field and from the perspective of rights holders. However, Article 3.2, which allows states to adapt legislation in accordance with the principle of proportionality, is also viewed favourably. The resulting flexibility potentially leads to greater acceptance among states. For the EU – which strictly rejected the focus on TNCs from the outset – these provisions finally enable it to enter the negotiation process.

The Global Campaign to Reclaim Peoples' Sovereignty, Dismantle Corporate Power, and Stop Impunity (GC) is usually a strong advocate of a narrow scope of application, including in its statement on the ninth round of negotiations in 2023.[15] It believes that the wording "all businesses" in Article 3.1 dilutes the definition and, above all, the purpose of the treaty. The GC is convinced that TNCs benefit the most from the existing legal loopholes and should therefore be regulated the most. Without a clear reference to TNCs, the treaty would be ineffective, as the same rules would then apply to companies with very different structures. Furthermore, due to their special position of power, TNCs cannot be equated with companies that are already under national supervision. The GC describe this approach as the proverbial "mixing apples and oranges". The GC also sees its argument strengthened by the fact that a majority of the countries that have been involved in the process for years – especially those that have mainly co-initiated the process – are in favour of a narrow scope of application. At this point, they also refer to the mandate of Resolution 26/9, arguing that a narrow scope of application is not only important for the effectiveness of the future treaty, but also for the democratic nature of the process.

However, in the course of the process, there are also statements from members of the Global Campaign that are in favour of a broader scope of application. One example is a joint statement by Friends of the Earth International and the Institute for Policy Studies in 2022.[16] It is recognised that the treaty has the unequivocal purpose of closing gaps in international law and regulating transnational corporations. At the same time, it is virtually impossible to capture TNCs and their complicated economic relationships in a single definition. It is positive that a definition of transnational activities is provided, but a legal definition of TNCs is missing. Limiting the treaty to these companies would harbour the risk that too many companies could escape the treaty. In view of the complicated relationships between parent companies and subsidiaries, contractors and suppliers in globalised supply chains, Friends of the Earth International and the Institute for Policy Studies therefore propose the following wording for Article 3.1:

"This (Legally Binding Instrument) shall apply to all business activities, including business activities of a transnational character, including the global value chains."

During the 9th session, a representative of the global trade union movement also commented favourably on the current draft text of Article 3.1.[17] The chosen wording makes it possible to reach all companies with the treaty. At the same time, the wording allows for a strong focus on cross-border activities. This "hybrid" approach prevents companies from evading their responsibilities, while international legal loopholes would be closed. The International Trade Union Confederation (ITUC) takes a similar view. The focus on the cross-border activities of all companies remains important, regardless of whether they are transnational or structured differently.[18]

14 https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme_4._Entwurf_UN_Abkommen.pdf (p. 12ff).

15 https://www.cetim.ch/wp-content/uploads/Frontiers-of-an-Effective-Binding-Treaty-2023.pdf

16 https://www.ohchr.org/sites/default/files/documents/issues/business/2022-09-13/igwg-7th-comments-non-state-stakeholders.pdf (p. 22ff).

17 https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-compilation-non-state-statements.pdf (p. 27).

18 https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/wgtranscorp/session8/igwg-8th-compilation-non-state-statements.pdf (p. 64).

Various lawyers are also in favour of the broadest possible scope of application. In a 2022 statement, the International Commission of Jurists points out that most companies are registered nationally and fall under national legislation. Excluding them could significantly limit the effectiveness of the treaty.

Box 1: Scope of the German Supply Chain Act (Lieferkettensorgfaltspflichtengesetz, LKSG) and the EU Corporate Sustainability Due Diligence Directive (CSDDD)

The EU has long justified its reservations about the UN treaty process by arguing, among other things, that its scope of application is too narrow. In its statements, the EU also regularly questions the explicit focus on TNCs. For this reason, it is definitely relevant to take a look at the scope of the German LKSG and the EU CSDDD.

German Supply Chain Act

In the currently valid version of the LKSG (as of November 2024), paragraph 1 states that the law applies to all companies in all sectors if they

1. have their principal place of business or administrative headquarters or a branch office in Germany and
2. employ at least 1,000 employees [19]

EU Corporate Sustainability Due Diligence Directive

The CSDDD was adopted on the 24th May 2024. The Member States have until 2026 to transpose the directive into national law. From 2027, it will then apply to all companies in the EU that

1. have more than 1,000 employees and
2. have an annual turnover of more than 450 million euros or
3. earn more than 22.5 million euros annually from licence fees [20]

According to an estimate by the European Coalition for Corporate Justice (ECCJ), these thresholds would cover fewer than 5,500 companies, which is less than 0.05 per cent of all companies in the EU. An all-encompassing scope, as demanded by the EU at international level in the treaty process, would definitely look different.

However, it is positive that Article 1.2 of the CSDDD contains a clause that prohibits states from lowering the level of protection if national laws with better provisions have already come into force. In other words, the CSDDD must not be used as justification for Germany to include a previously non-existent minimum turnover in the LKSG.

Ways towards a compromise

Opinions on whether the UN treaty should apply only to transnational corporations or to all companies are often characterised by political and ideological interests and sometimes ignore the complex legal and practical implications. The prevailing dynamics in the negotiations have led to the question of the scope becoming a politicised issue with which actors can influence or even hinder the progress of the entire process. Some states and interest groups are deliberately using the issue to cast doubts about the feasibility of the treaty and undermine the process.

Kinda Mohamadieh from the Third World Network proposes an alternative approach to the topic. In a contribution during the webinar "The most debated provisions in the negotiations? Treaty scope and its legal implications" on the 3rd October 2024, organised by the Business & Human Rights Resource Centre[21], she proposes defining the scope of application less according to the corporate structure (whether national or transnational), but rather based on where and how the damage occurs and which legal standards apply to liability. This approach would change the focus on the structure of companies and place the actual impact and responsibility along the supply chain at the centre.

In order to find an effective compromise, she therefore argues in favour of extending the focus to other articles of the treaty text. This is simply because the

19 http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl121s2959.pdf
20 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401760
21 https://youtu.be/uxxxNDntGp4

question of scope and the definitions do not stand alone, but must always be seen in the context of the entire treaty and in particular the operational articles. It may also be helpful to mentally return to the original purpose of the treaty, which was to effectively protect people from the harmful effects of economic activities.

On the one hand, Kinda Mohamadieh confirms that the demand for a focus on TNCs is justified, as they have enormous power and can structurally evade their responsibilities. On the other hand, not too much time and energy should be invested in the precise definition of TNCs. An attempt at a precise definition was already made in the 1980s, but without success, as the structure of these corporations was and still is too complex for an exact definition.

Greater value lies in the clear elaboration of the definitions of "business activities" (Art. 1.4) and "business activities of transnational character" (Art. 1.5). Further clarification of these articles could be useful, for example by making a distinction between general activities and the economic and commercial activities, with a particular focus on the latter. Articles 1.5 (a) and 1.5 (b) are particularly important in order to do justice to the transnational nature of the activity. Kinda Mohamadieh advises against a closed list of elements for 1.5 (b), and proposes formulating a more indicative, open-ended list.

In order to maintain the focus of the treaty on transnational activities, another important piece of the puzzle is the careful formulation of the operational sections of the treaty text. These include, in particular, prevention and due diligence obligations, clarification of the applicable jurisdiction, liability provisions and, in cross-border cases, international cooperation.

When discussing operational Articles 4 ("Rights of Victims"), 5 ("Protection of Victims") and 7 ("Access to Remedy"), the corporate structure only plays a subordinate role. The exact structure of the company is irrelevant for the victim. The decisive factor is that the rights of the persons affected do not change according to the structure of the company which caused the damage.

The provisions in Article 8 on legal liability are also important in this context. Article 8.6 calls on the contracting states to ensure that, in principle, all legal and natural persons who engage in business activities on the territory of the contracting state are held liable. Therefore, if the special features of transnational economic activities are to be focused and regulated by the treaty, these cross-border cases in particular must be covered by the text. This is one of the aspects that can add value to the treaty: setting the highest possible standards in cross-border cases or in cases involving more than one company and/or in which the corporate entities exercise a certain degree of control over the other. The current liability provisions for all natural and legal persons in Article 8.6. are formulated much more broadly than in the UN Guiding Principles or the CSDDD.

Kinda Mohamadieh emphasises how important it is to keep an eye on the development of this article. She points out that Article 8.6 has already been watered down over the years. This becomes apparent by a comparison of the wording in the current "Third updated Draft (clean version)" from July 2023 with the original third draft from summer 2021. In the 2021 text, the regulations are elaborated more clearly.

Third Revised Draft 2021	Third Updated Draft 2023
8.6. States Parties shall ensure that their domestic law provides for the liability of legal and/ or natural persons conducting business activities, including those of transnational character, for their failure to prevent another legal or natural person with whom they have had a business relationship, from causing or contributing to human rights abuses, when the former controls, manages or supervises such person or the relevant activity that caused or contributed to the human rights abuse or should have foreseen risks of human rights abuses in the conduct of their business activities, including those of transnational character, or in their business relationships, but failed to take adequate measures to prevent the abuse.	8.6. Each State Party shall ensure that legal and natural persons held liable in accordance with this Article shall be subject to effective, proportionate, and dissuasive penalties or other sanctions.

Sources: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf and https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf

On the issue of due diligence and prevention (both in Article 6), the draft texts are based on the UN Guiding Principles by recognising that all companies can have a potential impact on the human rights situation. However, and Article 3.2 already clearly states this, states are allowed to make justified gradations in terms of size, etc. in order to protect SMEs in particular from a disproportionate burden. However, the scope and level of detail of the due diligence obligations must not differ depending on whether the company concerned is based or operates nationally or internationally. A massive disadvantage for smaller companies or even negative effects on the development of a national economy, as feared by India, should be ruled out by the flexibility in the national implementation of the treaty.

As the treaty will be transposed into national law by the contracting states, the concerns expressed by Ethiopia about interference in internal affairs should also be unfounded. During the negotiation process, a decision was made against the idea of international legislation, and the focus was limited to integrating the treaty into national legal systems. Such an approach respects the sovereignty of states and ensures that the treaty can be adapted to existing national systems. The treaty functions de facto as a framework agreement that obliges the signatory states to develop and strengthen national regulations on liability and human rights due diligence obligations.

Conclusion and outlook

It is undisputed that clarifying the scope is crucial for the success and effectiveness of the UN treaty. It is therefore not surprising that this issue has played an important role in the negotiations for years. In view of the controversies, however, it is worth taking a step back and refocusing on the main objective of the UN treaty process. If the treaty is to fulfil its function as an effective and legally binding instrument to protect human rights in transnational economic activities, the focus should be less on the perpetrators and more on the rights holders that should be protected. To date, those affected by human rights violations have rarely or never been able to assert their rights in court due to a lack of international cooperation and complicated economic relationships. In order to maintain the focus on this gap in the international legal system and at the same time protect all people – regardless of the actor who caused the damage – the entire treaty must be taken into account. The human rights of those affected do not change depending on who caused the harm. So instead of investing a lot of time and energy in the precise definition of TNCs, it would be more worthwhile to have a comprehensive and strong definition of "business activities of a transnational character" in Article 1.5 of the draft treaty. It is also worth paying greater attention to a strong elaboration of the operational articles in the text, as the scope of application cannot be considered in isolation from the other articles. Strong protection of victims and comprehensive provisions on liability issues should therefore be focused on in Articles 4 to 8. Furthermore, genuine international co-operation between the contracting states in cross-border cases is crucial for the practical success of the treaty. If these conditions are met, a comprehensive instrument without loopholes can be created.

At the same time, states need not worry about interference in internal affairs and the loss of control over their own legal system, as the treaty must be transposed into the respective national legislation once it has been adopted. Fears that domestic SMEs would be unduly burdened by the treaty are also unfounded. This is because Article 3.2 of the current draft treaty expressly provides for the possibility of making gradations in the due diligence obligations, but only in relation to size, sector, context or severity of human rights violations, and not with regard to the question of whether the company is registered locally or abroad.

Further information

Website of the UN Working Group on the UN Treaty:
https://www.ohchr.org/en/hrbodies/hrc/wgtranscorp/pages/igwgontnc.aspx

Website of the Business & Human Rights Resource Centre on the UN Binding Treaty:
https://www.business-humanrights.org/en/big-issues/governing-business-human-rights/un-binding-treaty/

Webinar series of the Business & Human Rights Resource Centre, Webinar 3: "The most debated provisions in the negotiations? Treaty scope and its legal implications":
https://youtu.be/uxxxNDntGp4

Website of the Global Policy Forum Europe on the Treaty (German):
https://www.globalpolicy.org/de/un-treaty

Information on the Treaty Alliance Germany (German):
https://www.cora-netz.de/themen/un-treaty/

Website of the international Treaty Alliance:
https://www.treatymovement.com/

Website of the German Institute for Human Rights (DIMR) on the UN Treaty (German):
https://www.institut-fuer-menschenrechte.de/themen/wirtschaft-und-menschenrechte/un-treaty-prozess

On LkSG and CSDDD:

Robert Grabosch (2024): The EU Supply Chain Directive – Global protection for people and the environment. Berlin: FES
https://library.fes.de/pdf-files/international/21306.pdf

Initiative Lieferkettengesetz (2024): Was liefert das EU-Lieferkettengesetz? – Kurzbewertung der EU-Lieferkettenrichtlinie (CSDDD). Berlin.
https://lieferkettengesetz.de/wp-content/uploads/2024/05/Initiative-LIeferkettengesetz_Kurzanalyse-CSDDD-3.pdf

Appendix

Table 1
Positions of countries in the treaty negotiations

Narrow field of application	Differentiated statements	Wide range of applications
Egypt	Mexico	Brazil
Algeria	Namibia	Chile
Argentina	Palestine	Ecuador
Ethiopia		EU
Azerbaijan		Panama
Bolivia		Peru
Burkina Faso		Switzerland
China		Spain
Ghana		United Kingdom
Honduras		United States of America
India		
Indonesia		
Iran		
Colombia		
Cuba		
Malawi		
Mozambique		
Pakistan		
Philippines		
Russia		
South Africa		
Venezuela		

Source: "Compilation of general statements from States and non-State stakeholders" during previous meetings of the OEIGWG.

Table 2:
Overview of arguments in favour of a narrow or broad scope of application of the UN treaty

Narrow range of applications	Differentiated statements	Wide range of applications
The same rules cannot apply to very differently structured companies	In Article 3.2, the treaty allows for the possibility of making gradations for SMEs in national implementation	Achieving a level playing field worldwide
The treaty must take particular account of the special position of power and the violations of rights by TNCs	Broad definition of activities and companies, but focus on transnational character	The type of company is irrelevant for the victims
Local companies are already covered by national laws	Focus on transnational activities - regardless of the actor	Complex structures and local registration of TNCs
Concerns about negative effects on the right to development	Best possible effectiveness due to broad scope of application, but focus on the regulatory gap for TNCs	Companies could evade the scope through restructuring and other possible loopholes
Concerns about interference from other states	Focusing on the activities and operational aspects of commercial activities	Definition of TNCs problematic
The treaty is there to close the existing legal gap for TNCs within the international framework		Avoid jurisdiction shopping
Focusing increases the effectiveness of the treaty		

Source: Own compilation

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