



General Assembly

Distr.: General
29 December 2021

Original: English

Human Rights Council

Forty-ninth session

28 February–1 April 2022

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report on the seventh session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*

Chair-Rapporteur: Emilio Rafael Izquierdo Miño

* The annex to the present report is circulated in the language of submission only.



I. Introduction

1. The open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights was established by the Human Rights Council in its resolution 26/9 of 26 June 2014 and mandated to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises with respect to human rights.

2. The working group's seventh session, which took place from 25 to 29 October 2021,¹ opened with a statement from the United Nations High Commissioner for Human Rights. She emphasized some important trends in the business and human rights space. First, she noted the increased transformation of the corporate responsibility to respect human rights, as enshrined in the Guiding Principles on Business and Human Rights, into legal duties. Mandatory human rights due diligence initiatives had been adopted in several States, and such initiatives were being considered in other States and by a regional organization. The High Commissioner welcomed such legislative developments as being part of a smart mix of measures States should adopt to foster business respect for human rights, and drew attention to her office's submission to the working group that year, which detailed different considerations that should go into mandatory human rights due diligence regimes.² Second, she noted the alarming trend regarding the rising threat to human rights posed by the triple planetary crisis: climate change, pollution and biodiversity loss. In addition to strengthening respect for and protection of human and environmental rights, there was an urgent need to ensure access to justice and remedy for victims of abuses. In the face of current challenges, including the global pandemic, actors in the private sector could make their best contributions by ensuring respect for human rights and for the planet in their own operations and business relationships. Lastly, the High Commissioner reiterated her view that the treaty process represented an opportunity to increase business respect for human rights, paving the way for more principled, responsible and accountable business operations. She urged everyone to engage constructively in the process.

II. Organization of the session

A. Election of the Chair-Rapporteur

3. The Permanent Representative of Ecuador, Emilio Rafael Izquierdo Miño, was elected Chair-Rapporteur by acclamation following his nomination, on behalf of the Group of Latin American and Caribbean States, by the delegation of Paraguay.

B. Attendance

4. The list of participants is contained in the annex to the present report.

C. Documentation

5. The working group had before it the following documents:

- (a) Human Rights Council resolution 26/9;
- (b) The provisional agenda of the working group;³

¹ The seventh session took place within a context of measures to combat the spread of coronavirus disease (COVID-19). Thus, participation in the working group's sessions was permitted in person, through a videoconferencing platform and through pre-recorded video statements (for general statements only). Additional information about the modalities of the session is available at www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session7/Pages/Session7.aspx. Webcasts of the meetings of the session in all United Nations official languages are available at <http://webtv.un.org/>.

² See www.ohchr.org/Documents/Issues/Business/igwg-7th-ohchr-submission.pdf.

³ [A/HRC/WG.16/7/1](http://www.ohchr.org/Documents/Issues/Business/igwg-7th-ohchr-submission.pdf).

(c) The Chair-Rapporteur's third revised draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises;

(d) The programme of work;

(e) Other documents, including a scenario note, provided by the Chair-Rapporteur, on modalities for organizing the seventh session and the process projected after the seventh session, all of which were made available to the working group on its website.⁴

D. Adoption of the agenda and programme of work

6. The Chair-Rapporteur presented the draft programme of work and invited comments. As there were no comments by States, the programme of work was adopted.

III. Opening statements

A. General statement and introductory remarks by the Chair-Rapporteur

7. In his opening statement, the Chair-Rapporteur thanked the High Commissioner for her opening statement and expressed his appreciation to States for the continued trust in his chairmanship. He was heartened to see so many participants despite the logistical difficulties due to the global pandemic. The Chair shared his sorrow over the recent passing of John Ruggie, whom he had considered to be an exceptional leader who had played a key role in furthering the business and human rights agenda. He expressed hope that the Working Group would carry on Mr. Ruggie's legacy. The Chair recalled the history of the working group, including its past sessions and previous drafts of the legally binding instrument. The third revised draft of the legally binding instrument built upon all discussions thus far, as well as the matrices developed in the intersessional period compiling concrete textual proposals and general comments.⁵ The instrument was meant to strengthen access to justice and remedy for those harmed in the context of business activities. The Chair highlighted several improvements to the latest draft to help obtain that goal, including in relation to issues involving gender, scope, human rights due diligence, and jurisdiction. He further emphasized that he was convinced that it was possible to improve victims' access to effective justice and remedy through binding standards that complemented the international precepts of voluntary adoption, such as the Guiding Principles on Business and Human Rights. Despite the positive progress made, important work remained, and to achieve progress, there should be broad participation during the session of the working group, including the active participation of civil society. The Chair shared plans to gather a group of friends of the Chair after the week's session to help make progress on the text in the intersessional period. He concluded by recalling some reasons motivating the working group. Despite commitments by States on business and human rights, abuses continued to occur, with people and communities often left without options for access to justice and effective remedy. Further, the coronavirus disease (COVID-19) pandemic had exacerbated problems, particularly for those facing situations of vulnerability. The Chair recalled that, in line with the Guiding Principles on Business and Human Rights, States should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights. In that regard, the approach, scope and content of the instrument was aimed at complementing non-binding standards. The Chair quoted a submission by a group of special rapporteurs, in which they noted that the time had come for States to act collectively to develop an effective international instrument to ensure that businesses took seriously their human rights responsibilities wherever they operated.⁶ The Chair called for the working group to urgently

⁴ See www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session7/Pages/Session7.aspx.

⁵ The matrices are available at www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session6/Pages/Session6.aspx.

⁶ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27672&LangID=E.

move forward, and to actively participate in the discussions to improve the latest draft of the instrument and thus achieve an international instrument of the widest acceptance.

B. General statements

8. Delegations and non-governmental organizations congratulated the Chair-Rapporteur on his election, thanked him for the third revised draft legally binding instrument, and thanked the High Commissioner and her office for the support for the session.

9. The participants at the session discussed the many reasons why it was important to be addressing the issue of transnational corporations and other business enterprises. Delegations and non-governmental organizations spoke of different types of abuse taking place in the context of business activities, particularly in relation to the environment and to violence against individuals, communities and human rights defenders. Additionally, the differential impacts faced by different groups, such as indigenous peoples, people of African descent, persons with disabilities, children, women, and lesbian, gay, bisexual, transgender and intersex persons, were highlighted. Several delegations noted how the COVID-19 pandemic exacerbated existing inequalities and disproportionately affected those in situations of vulnerability or marginalization. Further, some delegations and many non-governmental organizations noted the great economic power of many corporations, which sometimes exceeded that of States.

10. Many delegations reaffirmed their commitment to protect human rights in the context of business activities and shared domestic actions taken in that regard, for instance relating to legislation on mandatory human rights diligence and other issues, national action plans on business and human rights, and other efforts to implement the Guiding Principles on Business and Human Rights. A regional organization also shared different actions that were being taken at a regional level, including a forthcoming initiative on sustainable corporate governance.

11. Many delegations and non-governmental organizations noted that, despite such efforts being undertaken, an international legally binding instrument was necessary and timely. In their view, international binding standards on business and human rights could fill gaps in legal protection, boost international cooperation, build upon non-binding norms, and supplement and strengthen domestic legislation. An international legally binding instrument could also help establish a level playing field and legal certainty for businesses. Some delegations and many non-governmental organizations highlighted different groups that could benefit from increased legal protection, including women, indigenous peoples, children and human rights defenders. Further, many delegations and non-governmental organizations noted that such an instrument could help ensure access to justice and remedy for those affected in the context of business activities and help end corporate impunity.

12. It was stressed that the instrument should build upon and be aligned with relevant standards and work. Reference was made to the 2030 Agenda for Sustainable Development, the Sustainable Development Goals and International Labour Organization standards, among others. However, most discussion was focused on the Guiding Principles on Business and Human Rights, which many delegations indicated must be the basis for the discussions. Although the relevance of the Guiding Principles was not questioned, many non-governmental organizations stressed the importance of developing binding standards that went beyond the Guiding Principles.

13. Many delegations agreed that there was a need to develop an international legally binding instrument, and many reaffirmed their support for Human Rights Council resolution 26/9 and the working group. However, some other delegations voiced concerns about the process and questioned whether there was sufficient support for the third revised draft text. Those delegations stressed the importance of a consensual approach to the development of international standards, and the need for support from a critical mass of States across regions in order to ensure that the instrument would be effective. Some delegations called for wider and more active participation by States to ensure that diverse views could be taken into account during the discussions.

14. With regard to the third revised draft instrument itself, many delegations shared their appreciation for the Chair's efforts in elaborating the draft, noting the progress that had been made. Several delegations thanked the Chair for incorporating their recommendations from the previous session of the working group. Delegations and many non-governmental organizations favourably noted the enhanced protections of certain groups and the increased gender perspective adopted throughout the text.

15. Other delegations voiced concerns with the draft text, with some noting that the latest draft failed to incorporate important suggestions made at the sixth session. Many delegations considered that the draft would have significant implementation challenges. In their view, some parts of the text were too ambiguous and vague, whereas other parts were overly prescriptive. Some delegations considered that the text failed to take appropriate account of differences in legal systems.

16. There was disagreement as to the appropriate scope of businesses to be covered under the instrument. Several delegations welcomed that the draft text applied to all business activities. However, other delegations considered the scope of businesses covered to be overly expansive, exceeding the mandate of Council resolution 26/9, or at least going against the spirit of the resolution. There was also disagreement expressed over the scope of issues to be addressed in the instrument. For instance, some delegations considered that references to the environment and environmental rights went beyond the mandate of the working group; many non-governmental organizations, on the other hand, argued how important it was to retain, and even strengthen, such provisions.

17. Despite such disagreements, many delegations committed to constructively participate in the working group's deliberations, and there were many calls for increased engagement by States and other relevant stakeholders in order to help develop the text moving forward.

IV. Negotiation of the third revised draft legally binding instrument

18. During the sessions allocated for the negotiation of the third revised draft instrument, discussions proceeded article by article as follows. The Chair presented a draft article and the changes introduced in the third revised draft. State delegations were then invited to present specific textual proposals on the various provisions of the article, as well as respond to any proposed text by expressing support or non-support or suggesting amendments.⁷ Specific textual proposals and amendments to such proposals were captured with proper attribution on the projected screen. Requests for clarifications and general comments were noted by the Chair, in particular for consideration after the session, including through the friends of the Chair. Following the discussion among States, time was given to specialized agencies and other international organizations, national human rights institutions and non-governmental organizations to share their textual proposals and comments on the article.

19. Given the session's focus on State-led negotiations, article by article, the present report does not attempt to reflect all of the views expressed during the session. Rather, the addendum compiling the textual proposals made during the session⁸ should be consulted for an overview of States' positions. Full recordings of the session's deliberations are available in all official United Nations languages.⁹ Further, general statements, as well as textual proposals and comments on articles made by non-State participants, delivered during the seventh session that were shared with the Secretariat are available on the web page dedicated to the working group's session.¹⁰

⁷ The seventh session took place under extraordinary measures and uncertain circumstances due to the COVID-19 pandemic, which disrupted the full participation of States and other relevant stakeholders in the discussions and negotiations of the instrument.

⁸ [A/HRC/49/65/Add.1](#).

⁹ See the webcasts available at <http://webtv.un.org/>.

¹⁰ See <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session7/Pages/Session7.aspx>.

V. Recommendations of the Chair-Rapporteur and conclusions of the working group

A. Recommendations of the Chair-Rapporteur

20. Following the discussions held during the seventh session, and acknowledging the comments and concrete textual suggestions on the third revised draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises expressed therein, the Chair-Rapporteur makes the following recommendations:

(a) That the Secretariat prepare, and post on the working group's website, as an annex to the present report, no later than the end of December 2021:

(i) A compilation of the general statements from States and other relevant stakeholders on the third revised draft legally binding instrument that were provided to the Secretariat and presented during the seventh session, reproduced in the language received;

(ii) A compilation of the comments and requests for clarification from States that were provided to the Secretariat by 12 November 2021 and presented during the seventh session, reproduced in the language received;

(iii) The text of the third revised draft legally binding instrument with the concrete textual proposals submitted by States during the seventh session;

(b) That the Chair-Rapporteur invite a group of ambassadors in Geneva to act as friends of the Chair, which shall reflect a balanced regional representation, to start consultations with a view to facilitating and advancing work on the draft legally binding instrument during the intersessional period, aiming at ensuring the broadest possible cross-regional support. Under the guidance of the Chair-Rapporteur, the friends of the Chair should convene and lead consultations among States on the draft legally binding instrument, taking into consideration the concrete textual suggestions, comments and requests for clarification made during the seventh session;

(c) That the Chair-Rapporteur update the draft legally binding instrument taking into consideration the compilation of the concrete textual proposals submitted by States during the seventh session and the outcomes of the consultations as reported by the friends of the Chair, and circulate it, including by publishing it on the working group's website, no later than the end of July 2022;

(d) That the Chair-Rapporteur note the concrete textual proposals submitted by civil society organizations, business organizations, trade unions, observers and other relevant stakeholders during the seventh session, for the appropriate consideration of the States in the work on the draft legally binding instrument after the session. Those stakeholders will be consulted by the friends of the Chair and invited to submit written inputs;

(e) That the Chair-Rapporteur prepare a programme of work for the eighth session;

(f) That the Chair-Rapporteur promote State-led direct substantive intergovernmental negotiations during the working group's eighth session, to be held in 2022, on the basis of the updated draft legally binding instrument.

B. Conclusions of the working group

21. At the final meeting of its seventh session, on 29 October 2021, the working group adopted the following conclusions, in accordance with its mandate established by the Human Rights Council in its resolution 26/9:

(a) The working group welcomed the opening message of the United Nations High Commissioner for Human Rights and thanked the representatives who took part in the negotiation of the third revised draft legally binding instrument;

(b) The working group took note of the concrete textual suggestions, comments and requests for clarification received from Governments, regional and political groups, intergovernmental organizations, national human rights institutions, civil society, business organizations, trade unions and all other relevant stakeholders on the third revised draft legally binding instrument;

(c) The working group acknowledged the negotiation focused on the content of the third revised draft legally binding instrument, as well as the participation and engagement of Governments, regional and political groups, intergovernmental organizations, national human rights institutions, civil society and all other relevant stakeholders;

(d) The working group took note with appreciation of the recommendations of the Chair-Rapporteur and looked forward to the consultations to be undertaken by the friends of the Chair, the updated draft legally binding instrument and the programme of work for its eighth session.

VI. Adoption of the report

22. At its 10th meeting, on 29 October 2021, after an exchange of views on the report and its content, the working group adopted *ad referendum* the draft report on its seventh session and decided to entrust the Chair-Rapporteur with its finalization and submission to the Human Rights Council for consideration at its forty-ninth session.

Annex

List of participants

States Members of the United Nations

Algeria, Argentina, Austria, Belgium, Bolivia (Plurinational State of), Brazil, Cameroon, Chile, China, Colombia, Cuba, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Finland, France, Germany, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Japan, Kenya, Liberia, Libya, Luxembourg, Malaysia, Malta, Mauritania, Mexico, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Qatar, Russian Federation, Saudi Arabia, Senegal, Serbia, Slovenia, South Africa, Sri Lanka, Sweden, Switzerland, Thailand, Togo, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of).

Non-member States represented by an observer

State of Palestine.

Intergovernmental organizations

European Union, Hague Conference on Private International Law, International Chamber of Commerce, International Labour Organization, South Centre.

National human rights institutions

Danish Institute for Human Rights, German Institute for Human Rights, National Consultative Commission on Human Rights (France), National Human Rights Council (Morocco), Office of the Public Defender (Ombudsman) (Georgia).

Non-governmental organizations in consultative status with the Economic and Social Council

ActionAid, Al-Haq, American Association of Jurists, Association for Women's Rights in Development, Associação Brasileira Interdisciplinar de AIDS, Association Un Monde Avenir, Associazione Comunità Papa Giovanni XXIII, Bischöfliches Hilfswerk Misereor, Cairo Institute for Human Rights Studies, Center for Constitutional Rights, Centre Europe-tiers monde, Centre for Health Science and Law, Centre for Human Rights, Child Rights Connect, CIDSE, Comité catholique contre la faim et pour le développement, Comité des observateurs des droits de l'homme, Commission africaine des promoteurs de la santé et des droits de l'homme, Conscience and Peace Tax International, Conselho Indigenista Missionário, Coordinadora Andina de Organizaciones Indígenas, Corporate Accountability International, Dreikönigsaktion – Hilfswerk der Katholischen Jungschar, Earthjustice, ESCR-Net – International Network for Economic, Social and Cultural Rights, Inc., European Center for Constitutional and Human Rights, FIAN International, Fondation des oeuvres pour la solidarité et le bien être social, Fondation ECPAT International, Fondation pour l'étude des relations internationales et du développement, Fondation pour un Centre pour le Développement Socio-Eco-Nomique, Franciscans International, Friedrich Ebert Foundation, Friends of the Earth International, Genève pour les droits de l'homme : formation internationale, Global Policy Forum, Indigenous Peoples' International Centre for Policy Research and Education, Institute for Policy Studies, International Association of Democratic Lawyers, International Commission of Jurists, International Federation for Human Rights Leagues, International Human Rights Association of American Minorities, International Human Rights Council, International Human Rights Observer Pakistan (IHRO), International

Indian Treaty Council, International Institute for Sustainable Development, International Lesbian and Gay Association, International Organization of Employers, International Relief Services, International Service for Human Rights, International Trade Union Confederation, International Transport Workers' Federation, Netherlands National Committee for IUCN, Organization for Defending Victims of Violence, Oxfam International, Rosa-Luxemburg-Stiftung – Gesellschaftsanalyse und Politische Bildung eV, Sikh Human Rights Group, Society for International Development, Swiss Catholic Lenten Fund, Third World Network, United States Council for International Business, Incorporated, Verein Südwind Entwicklungspolitik, Women in Europe for a Common Future, Women's International League for Peace and Freedom, Womankind Worldwide.
