



COMMISSION NATIONALE
CONSULTATIVE
DES DROITS DE L'HOMME

RÉPUBLIQUE FRANÇAISE

STATEMENT

Draft Treaty on Business and Human Rights: Statement calling for stronger involvement of France and the European Union in the negotiation process (D - 2024 - 6)

Plenary Assembly of 21 November 2024 - Adopted unanimously

1. Ten years ago, the Human Rights Council entrusted an intergovernmental working group with the mandate to “*elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.*”¹ Since then, nine negotiation sessions have been held and various draft treaties² have been discussed³. As the 10th negotiation session approaches, to be held in Geneva from 16 to 20 December 2024⁴, the French National Consultative Commission on Human Rights (CNC DH) wishes to reiterate the importance it attaches to the adoption of a treaty to regulate corporate activities concerning human rights at the global level, and to call, once again, for stronger involvement of France and the European Union (EU) in the negotiation process.

2. The CNC DH, which closely follows the negotiation process, has had the opportunity on several occasions to highlight its evolution⁵. Initial resistance to the process initiated by the intergovernmental working group has gradually eased, fostering the emergence of a consensus on the need to fill the gaps in positive law, including the weaknesses noted in the implementation of the United Nations Guiding Principles on Business and Human Rights⁶, through the adoption of a legally binding instrument at the international level⁷. The relevance and necessity of adopting such an instrument are no longer seriously contested. However, major differences of opinion over the substance of the treaty remain, which can only be overcome through substantial and constructive involvement from a large number of states, within the framework of a negotiation process that includes all relevant stakeholders⁸.

3. The CNC DH notes that a significant step has been taken with the adoption, by the Human Rights Council, of Decision 56/116⁹. This decision strengthens the capabilities of the intergovernmental working group by authorizing it, in addition to the annual negotiation sessions, to convene ten full-day intersessional thematic consultations, starting in 2025 and for a period of three years¹⁰. These consultations will allow for the examination of groups of articles in the draft treaty, with the support – details of which are yet to be clarified – of legal experts selected for this purpose by the Chair-Rapporteur of the working group¹¹, in accordance with the recommendation made during the 9th session¹². The aim of these additional thematic consultations, for which the Chair-Rapporteur will present a summary report, is to facilitate the work during the sessions¹³, in order to advance the negotiations in a more concrete and effective manner. This decision, which is the result of an inclusive and transparent process of informal consultations facilitated by the Permanent Mission of Ecuador, reflects the Chair-Rapporteur’s commitment to “*take constructive initiatives to achieve tangible progress*” on the aim of elaborating the draft treaty and to decisively moving the process forward¹⁴. While this procedural decision does not resolve the divergences, its adoption by consensus illustrates the support of many states for the process¹⁵ and their willingness to give new momentum to the work of the working group. France, which co-sponsored the decision, welcomed the fact that all the Friends of the Chair had done the same and emphasized that this showed a “*strong signal of the trans-regional dynamic currently supporting this process*”.¹⁶

4. The CNCDH urges France and the European Union to seize this opportunity to contribute to creating a genuine dynamic in favor of adopting a robust and ambitious treaty, capable of filling the gaps in positive law and strengthening the respect for and protection of human rights in the context of business activities. It welcomes the reaffirmation by France of its belief in the relevance of developing “*real international norms to better ensure the respect of human rights and relevant freedoms by all businesses operating internationally.*”¹⁷ Similarly, Belgium, on behalf of the European Union and its Member States, stated that this procedural decision gives “*new impetus to the work of the working group, [which] should allow for the emergence of an instrument that is legally sound and implementable in line with the United Nations Guiding Principles and which can gather broad cross-regional support.*”¹⁸ This echoes the European Union Council’s commitments to “*enhanc[e] the protection of victims and creating a global level playing field*”¹⁹ and the support of the European Parliament for the adoption of such a treaty²⁰.

5. However, just a few weeks before the next session of the intergovernmental working group, the European Union still lacks a negotiation mandate that would allow it to engage substantively. This paradoxical position, which was already difficult to understand²¹, is even less understandable now that the European Union adopted, last June, the first regional instrument imposing a cross-cutting and cross-sectoral due diligence on business corporations regarding human rights and the environment²². There is no longer any reason for the European Union to maintain a passive stance²³. On the contrary, it should act on its ambition for a responsible and sustainable approach to global value chains²⁴ and its commitment to promoting human rights worldwide²⁵.

6. France, which has played a pioneering role in the area of duty of vigilance²⁶ and aims to take a leading role in promoting fair and regulated globalisation, supports the merits of this international process²⁷. Its involvement, alongside Portugal, within the group of Friends of the Chair, and its efforts to mobilise its European partners on the issue, reflect its commitment in this regard. The CNCDH welcomes France’s goal of “*improving and strengthening existing norms*”, particularly the United Nations and OECD Guidelines²⁸, and “*at the very least, not weakening them, while bringing together as many States as possible.*”²⁹ The CNCDH will closely monitor that this objective is effectively defended during the negotiation process, as France’s actions on corporate responsibility concerning human rights have

sometimes been ambiguous, even contradictory³⁰. The CNCDH encourages France to step up its efforts to ensure that the European Union is promptly given a clear and ambitious mandate to negotiate on behalf of its Member States in the upcoming sessions. This is essential for the credibility of its actions in building a responsible and sustainable economic system³¹, as well as for the competitiveness of European businesses, in support of human rights and environmental protection.

7. The development of a treaty on this matter is necessary both for the protection and respect of human rights within global value chains and for a truly fairer and more sustainable global economy, where business enterprises are not incentivized to exploit regulatory weaknesses to the detriment of enterprises striving to be more virtuous in this regard, as well as in defense of the universal values proclaimed more than 75 years ago³². The adoption of binding international standards, complementing the United Nations Guiding Principles, is indeed likely to strengthen the prevention of human rights violations committed in the context of business activities, remove significant barriers to access to justice and effective remedies for rights holders, and promote legal certainty and a level-playing field at global level.

8. To achieve these objectives, the CNCDH reiterates the recommendations it made regarding the updated draft treaty published in July 2023³³, which will be negotiated during the upcoming session of the intergovernmental working group³⁴. It recalls that the updated draft introduces improvements in the terminology used and strengthens certain provisions, but also contains significant setbacks. It is crucial to maintain a broad scope to cover all human rights violations³⁵ committed in the context of business activities; to improve the definition of the due diligence obligation and liability to promote legal certainty and accountability; and to safeguard and strengthen the protection of rights holders and access to remedies in order to avoid denials of justice³⁶. The CNCDH again recommends that France use its influence to participate in the collective mobilisation needed to consolidate the improvements made to the draft treaty, to address the remaining weaknesses, to oppose any further setbacks, and to contribute to the adoption of a treaty likely to promote responsible business conduct. This is an opportunity to leverage the consensus for adopting the procedural decision of the Human Rights Council and the agreement reached within the European Union on the corporate sustainability due diligence directive, to advance this process and ensure broad inter-regional support for an instrument that responds

to the urgent need to ensure human rights- and environment-respecting value chains.

Annex 1 : Lists of participants in an informal meeting organised by the CNCDH with a view to the next round of negotiations on the draft treaty

Ministerial representatives:

Amélie Chenin, Editor, Sub-Directorate for Human Rights and Humanitarian Affairs, Directorate for the United Nations, International Organisations, Human Rights and the Francophonie, Ministry of Europe and Foreign Affairs

François Gave, Special Representative for Corporate Social Responsibility and the Social Dimension of Globalisation, Directorate-General for Globalisation, Ministry of Europe and Foreign Affairs

Gabrielle Genser, CSR, Social Regulation of Globalization and Investment Protection Editor, Sub-Directorate for Sanctions, Economic Standards and the Fight against Corruption, Ministry of Europe and Foreign Affairs

CNCDH representatives:

Alice Bulteau, Program Assistant, Business, Human Rights and Environment Office, FIDH

Cassandre Deloupy, trainee jurist, General Secretariat, CNCDH

Kathia Martin-Chenut, Director of Research at the CNRS, Rapporteur for the CNCDH's "Business and Human Rights" working group

Pauline Moreau-Avila, Confederal Assistant, International - Europe Sector, Force ouvrière,

Anaïs Schill, legal advisor, General Secretariat, CNCDH

Pascale Thumerelle, ATD-Quart Monde

Representatives of civil society organisations and researchers (non-CNCDH members):

Clara Alibert, Economic Actors Advocacy Officer, CCFD-Terre Solidaire

Lucie Chatelain, Advocacy and Litigation Manager, Civil Liability of Parent Companies, Sherpa

Aurore Dorget, Campaign and Litigation Officer - Regulation of multinationals, Friends of the Earth

Catherine Kessedjian, Professor Emeritus, Université Panthéon-Assas Paris II

Anna Kiefer, Litigation and Advocacy Officer, Armed Conflicts and International Crimes, Sherpa

Marie Le Guyader, trainee, CCFD-Terre Solidaire

Juliette Renaud, Senior Campaigner for the Regulation of Multinationals, Friends of the Earth.

1. Human Rights Council, Resolution 26/9 of 26 June 2014, *Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights*, A/HRC/RES/26/9, §1.
2. The draft legally binding instrument, the exact form of which (pact, convention, treaty, etc.) will be determined during the negotiations, is commonly referred to as ‘treaty’.
3. [Information regarding the sessions of the intergovernmental working group and the various published versions of the draft treaty are available on its website.](#)
4. Initially scheduled for October 2023, the 10th negotiation session was postponed by the Chair of the working group (see the [letter from the Permanent Mission of Ecuador to the United Nations dated 19 September 2024](#)). This late postponement has been criticized for its impact, particularly in terms of financial and logistical consequences, on the ability of many stakeholders to participate in the session in Geneva, especially for low-budget civil society organizations (CSOs) and marginalised individuals and communities (see the [open letter from civil society organizations published on 24 September 2024](#), on the Global Policy Forum’s website).
5. CNCDH, [Opinion on the updated draft Business and Human Rights Treaty](#), Plenary Assembly of 19 October 2023, JORF No 0248 of 25 October 2023, text No 83; CNCDH, [Projet de traité entreprises et droits de l’Homme : déclaration pour une implication substantielle de la France et de l’UE dans les négociations](#), 28 October 2021, JORF No 0260 of 7 November 2021, text No 67; CNCDH, [Follow-up Opinion on the draft legally binding instrument on transnational corporations and other business enterprises and human rights](#), Plenary Assembly of 15 October 2020, JORF No 0260 of 25 October 2020, text No 64; CNCDH, [Opinion on the draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises](#), Plenary Assembly of 15 October 2019, JORF No 0244 of 19 October 2019, text No 86; CNCDH, [Déclaration sur l’adoption d’un instrument international contraignant sur les entreprises et les droits de l’Homme](#), Plenary Assembly of 5 October 2018, JORF No 0238 of 14 October 2018, text No 100.
6. Human Rights Council, [Resolution 17/4 of 16 June 2011, Human rights and transnational corporations and other business enterprises](#), A/HRC/RES/17/4.; [Human Rights Council, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights at 10: taking stock of the first decade](#), 22 April 2021, A/HRC/47/39.
7. For more details, see: CNCDH, [Opinion on the updated draft Business and Human Rights Treaty](#), 19 October 2023, *op. cit.*
8. In this regard, the CNCDH once again regrets the absence of a translation of the updated draft treaty into the six official languages of the United Nations, which would facilitate the participation of a greater number of stakeholders.
9. [Human Rights Council, Decision 56/116 of 11 July 2024, Enhancing the support capabilities of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, established by Human Rights Council resolution 26/9](#), A/HRC/DEC/56/116.
10. *Ibid.*, §1. The decision also emphasizes the strengthening of support capabilities in the area of business and human rights within the Office of the United Nations High Commissioner for Human Rights for the work on the draft treaty, particularly by providing the additional human, technical, and financial assistance necessary to support intersessional consultations (§3). The High Commissioner is also requested to submit a report on progress made in the implementation of this decision, with a view to its possible renewal.
11. The [list of legal experts](#) selected in July 2024.
12. [Human Rights Council, Report on the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights](#), A/HRC/55/59, 26 December 2023, [§§28, 30, 31 c\) and e\)](#).
13. *Ibid.*, §2.
14. See the [oral statement by Belgium](#), on behalf of the EU Member States of the Human Rights Council and the EU as a whole, during the 35th meeting of the 56th session of the Human Rights Council, on 11 July 2024.
15. Draft decision prepared by Ecuador, with the support of Belgium, Chile, France, Luxembourg, and Portugal, to which were added 9 additional co-sponsors.
16. See the oral statement by France during the aforementioned 35th meeting of the 56th session of the Human Rights Council. France also states that this decision submitted to the Council “*fully meets [its] expectations that this process should be constructive and transparent, but also ambitious, pragmatic, open and based on diverse and high-quality expertise*”.
17. *Ibid.*
18. Oral statement by Belgium on the behalf of the EU, *op. cit.*
19. See [Council Conclusions on EU Priorities in UN Human Rights Fora in 2024, 22 January 2024](#), according to which the EU will “*strengthen its engagement in the UN fora reflecting legislative and other developments in the EU, especially related to corporate sustainability due diligence, as a basis for engagement in UN negotiations on a consensus-based legally binding instrument on business and human rights, with a view to enhancing the protection of victims and creating a global level playing field.*” (§37).
20. See in particular [the European Parliament resolution of 18 January 2024 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\(INI\)\)](#).
21. Given the many EU norms that already exist in this area, the support of a majority of its Member States for an EU mandate to negotiate on their behalf, and the fact that many of its concerns have been taken on board by the Chair (CNCDH, [Opinion on the updated draft Business and Human Rights Treaty \(...\)](#), 19 October 2023, *op. cit.*).
22. [Directive \(EU\) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence \(CSDDD\)](#). See the statement by the European Network of National Human Rights Institutions (ENNHRI) that the adoption of the Corporate Sustainability Due Diligence Directive represents a decisive opportunity for a substantial EU engagement in the treaty negotiations ([ENNHRI Statement on the EU’s involvement in the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, in the light of the adopted Corporate Sustainability Due Diligence Directive, November 2024](#)).
23. As emphasized by the CNCDH in its previous opinions, the EU’s position has nevertheless evolved and, since the last few sessions, has been marked by more substantial declarations, without however committing itself to the negotiations, for lack of a mandate. This is all the more regrettable given that the involvement of Member States is limited by the division of competences with the EU, many provisions of the draft treaty having been identified as falling within the exclusive competence of the latter.
24. See, for example, paragraph 31 of the preamble of the CSDDD, according to which “[i]t is essential to establish a Union framework for a responsible and sustainable approach to global value chains”.
25. See in particular Article 21§1 of the Treaty on European Union.
26. Law No 2017-399 of 27 March 2017 *on the duty of vigilance of parent companies and instructing undertakings* (JORF No 0074 of 28 March 2017, text No 1).
27. See the note from the General Secretariat of the Government (SGG) on the follow-up to the CNCDH’s opinion of 19 October 2023 on the updated draft Treaty on Business and

Human Rights of 5 March 2024.

28. OECD, Guidelines for Multinational Enterprises on Responsible Business Conduct, adopted in 1976 and lastly amended by the OECD Council Decision of 8 June 2023, OECD/LEGAL/0307.

29. Note from the SGG of 5 March 2024, *op. cit.*

30. See the [CNCDH Report, Business and Human Rights. Protect, Respect and Remedy, La Documentation française, 2023](#), which gives a few examples and stresses the need for a coherent French strategy on business and human rights, both internally and externally.

31. See in particular [the programme for the French Presidency of the Council of the European Union, « Recovery, Strength and a Sense of Belonging », 1st January – 30 June 2022](#).

32. Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly on 10 December 1948.

33. CNCDH, *Opinion on the updated draft Business and Human Rights Treaty*, 19 October 2023, *op. cit.*

34. See the [provisional agenda](#) for the 10th session of the intergovernmental working group.

35. Including the right to a clean, healthy and sustainable environment. The CNCDH, which regrets the deletion of the express reference to this right in the updated draft treaty, welcomes France's intervention, at the 9th session, to reintroduce this reference in the draft treaty ([Human Rights Council, Text of the updated draft legally binding instrument with the textual proposals submitted by States during the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, 13 February 2024, A/HRC/55/59/Add.1](#)).

36. CNCDH, *Opinion on the updated draft Business and Human Rights Treaty*, 19 October 2023, *op. cit.* The CNCDH notes that the Government, in the aforementioned note from the SGG dated 5 March 2024 in response to this opinion, states that it has taken due note of several of the recommendations made therein and intends to study them with its European partners.



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