

DOCUMENT OF ANALYSIS AND PROPOSALS

PREAMBLE, ARTICLE 1, 2 AND 3

Inter-sessional period 2026 – OEIGWG on TNCs and human rights
Global Campaign to Reclaim People's Sovereignty, Dismantle Corporate Power and Stop Impunity
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Introduction

In advance of the inter-sessional period of 2026 and the informal consultations on the Preamble and Articles 1, 2, and 3 of the Updated Draft Treaty on TNCs and human rights, this paper provides a focused legal and political assessment of those provisions. It does so in light of the longstanding demands of social movements, trade unions, civil society organizations, and affected communities organized within the Global Campaign.

This contribution aims to inform ongoing negotiations by identifying critical gaps, regressions, and inconsistencies in the current draft, particularly where it departs from the mandate established by Human Rights Council Resolution 26/9. It advances concrete legal arguments and proposals to restore and strengthen the human rights integrity, normative clarity, and enforceability of the future legally binding instrument.

Building on amendments and proposals put forward by States—particularly from the Global South—and supported by the Global Campaign during the 2023 negotiations and subsequent processes, this paper calls for the reinstatement of key provisions and the adoption of targeted revisions. These are necessary to ensure that the Treaty effectively addresses the systemic impacts of transnational corporations and other business enterprises of a transnational character, closes gaps in accountability, and guarantees meaningful access to justice for affected individuals and communities.

Preamble (negotiated during the 9th session in October 2023)

The preamble is the part of a treaty that sets forth the principles and documents upon which the instrument will be interpreted. It is an essential section to clearly define the human rights character of the document, setting the right basis for its interpretation, as envisioned by Resolution 26/9.

However, here we realize that significant mentions of social, economic, cultural, and environmental rights have been removed (the main rights violated by TNCs), while problematic wording has been integrated; the result is that the text is deeply weakened.

Some comments and proposals on key issues that remained unsolved after the 9th session of October 2023 and that should be tackled in the future discussions and negotiations on the Preamble:

PP3: In this PP, references to important instruments such as the **Declaration on the Right to Development, the Declaration on the Rights of Peasants, the Declaration on the Rights of Indigenous Peoples, the Rio Declaration on Environment and Development, the Durban Declaration and Program of Action, relevant ILO instruments**, among others, should be kept. Mentioning specific international legal instruments has the advantage of establishing the framework

to be used for the implementation and interpretation of the Binding Treaty. Otherwise, the future instrument may leave the door open for interpretations that exclude some instruments that are considered rules of customary international law.

PP4bis: During the 8th session, Cuba made a proposal for a PP4bis that was not included in the Updated Draft, even though there were no objections from other states. This proposal should be recovered:

(PP4 bis) Stressing the right of every person to be entitled to a social and international order in which their rights and freedoms can be fully realized consistent with the purposes and principles of the United Nations as stated in the Universal Declaration of Human Rights;

PP6: At the suggestion of the United States during the 8th session, the reference to International Humanitarian Law and the rights to non-discrimination, participation, and inclusion has been removed from the PP6 of the Updated Draft, even though Palestine and Kenya requested its retention. Maintaining this reference, as proposed during the 9th session by Panama, Cuba, Malawi, Mexico, Chile, Panama and Colombia, is fundamental because these are essential rights for affected individuals and communities. International Humanitarian Law is *jus cogens*, and TNCs can play a role in strengthening and expanding occupations and apartheid regimes, as seen in Palestine.

PP9: During the 8th session, Palestine and Cuba proposed a PP9bis, PP9ter and PP9 quater, which included references to self-determination, the Covenant on Economic, Social and Cultural Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, were excluded from the Updated Draft. It is necessary to support these proposals for a more comprehensive and rights-focused approach.

(PP9 bis) Recalling the UN charter in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, (Palestine, Cuba)

(PP9 ter) Recalling also the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination, (Palestine, Cuba)

(PP9 quater) Reaffirming the principles of the Declaration on the Granting of Independence to Colonial Countries and Peoples, also known as the United Nations General Assembly Resolution 1514. (Palestine, Cuba)

PP7-19: During the 9th session in October 2023, various States from the Global South asked for compliance in the wording of PP7, 10, 11, 12, 15 and 19, regarding the scope of the treaty. The scope of the future instrument, as established in Resolution 26/9, shall be focused on TNCs and OBEs of a transnational character.

PP11: One of the most significant losses in this Updated Draft is the exclusion of PP11bis proposed by Palestine in the 8th session, which mentioned the primacy of human rights over free trade agreements and investment treaties. This is extremely important as it establishes a significant basis

for interpretation and effectiveness and recognize the higher hierarchy of human rights in International Law and in several domestic systems. A well-established primacy is one of the frontiers of a truly effective treaty. Brazil, Honduras and Colombia made a similar proposal during the 9th session. These two proposals should be combined and merged into a unified position:

(PP 11 bis) To affirm the importance of the pro persona principle and the principle of the primacy of the most favourable norm to the human person in the interpretation of any conflicting provision contained in international trade, investment, finance, taxation, environmental and climate change, development cooperation, and security agreements;
(Brazil, Honduras, Colombia)
(Not in position to support: Panama)

(PP 11 ter) To affirm the primacy of human rights obligations in relation to any conflicting provision contained in international trade, investment, finance, taxation, environmental and climate change, development cooperation and security agreements (Palestine)

The Updated Draft discarded the proposal of PP11ter made during the 8th session by Palestine, Egypt and South Africa, which mentioned the obligations of States regarding the Covenant on Economic, Social, and Cultural Rights and was removed without an explicit request from any country. This proposal should be recovered.

(PP11 ter) Emphasizing that States have an obligation to protect, respect and fulfil human rights in the context of all business activities under their jurisdiction both at home and abroad in accordance with the International Covenant on Economic Social and Cultural Rights; (Palestine, Egypt, South Africa)

PP12-16-19: Another significant legal issue is the change from the term "obligation" to "responsibility" in PP12, 16 and 19. One of the Global Campaign's main demands has been to establish clear obligations to TNCs, independent and distinct from those of States (see "[Arguments for establishing proper and direct obligations for transnational corporations in the UN Binding Treaty on TNC's and Human Rights](#)"). This is essential to create a global standard for the protection of human rights.

Changing the term "obligation" to "responsibility" creates a serious legal problem, since an obligation arises directly from the text provisions, whereas responsibility is a term used in private law that requires a decision (by the responsible entity, judicial or non-judicial) to be enforceable.

During the 9th session, Cuba, Egypt, Bolivia, South Africa, Malawi and Colombia proposed to revert to the term "obligations". This proposal should be incorporated and combined with the one made by Honduras and Cuba (which includes the term "violations", "indirect linkage", "financial and economic services" and proposes the deletion of the term "mitigation").

*PP12) Underlining that **transnational corporations and other** business enterprises, regardless of their size, sector, location, operational context, ownership and structure have the **obligation responsibility** to respect internationally recognized human rights, including by avoiding causing or contributing to human rights abuses **and violations** through their own activities and addressing such abuses **and violations** when they occur, as well as by preventing human rights abuses **and violations directly or indirectly mitigating human rights risks** linked to their operations, products or services **including financial and economic services** by their business relationships; (Honduras, Cuba)*

PP18: The amendment proposed during the 9th session by Cameroon and Ghana for PP18 and the proposal for a PP18bis (by Cameroon, Ghana and Colombia) are key, as they allow to set the scope of the challenges posed by TNCs and thus provide a good basis for the interpretation of the future Treaty. They should be fully recovered.

(PP18) ~~Noting~~ Stressing the growing economic might of some business entities, in particular transnational corporations, and their particular responsibility and impact on human, labour and environmental rights; (Cameroon, Ghana)

(PP18 bis) Recalling that transnational corporations and other business enterprises of transnational character have obligations derived from international human rights law and that these obligations are different, exist independently and in addition of the legal framework in force in the host and home States; (Cameroon, Ghana, Colombia)

Article 1: Definitions (negotiated during the 9th session in October 2023)

Article 1 establishes the definitions of the future treaty and is, therefore, crucial to ensure the comprehensiveness and effectiveness of the instrument.

1.1: In the definition of "victim" (1.1), even though it is maintained that groups of individuals can be victims, the mention of suffering collective human rights abuses was removed. This removal reflects the erroneous idea that human rights are individual rights rather than collective rights. It is consistent with the elimination of relevant legal provisions in the preamble that aimed to recognize "collectives" as subjects of law, such as peasant communities and indigenous peoples. **The notion of "affected individuals and/or communities" should be inserted, as previously proposed by the Global Campaign, by Cameroon/Palestine in the 7th session, by Brazil in the 9th session and as advocated by various Global South countries in 2024 and 2025.**

1.2: Paragraph 1.2 proposes a new definition of the concept of "adverse human rights impact". This term represents the passive dimension of the affected person. There are several problems with this definition: it aligns with the logics of common law and private law that are meant to consider a harm or impact on a contract and not a human rights violation. It deviates from what is established in international human rights law in which any impact or restriction on a right constitutes a violation. **This definition should be removed, as proposed by Mexico, China, Chile, Ecuador, Colombia and Honduras in the 9th session.**

1.3: The definition of "abuse" is described as an action resulting in an impact, representing an active dimension. This should be characterized as a violation. As explained by the Global Campaign, the term "abuse" creates a false hierarchy between States that violate human rights and TNCs that may cause human rights abuses, implying that TNCs cannot commit violations and therefore have no obligation to respect human rights (see the arguments in "[Frontiers of an Effective Treaty](#)"). According to the prevailing theories on Human Rights in International Law, a violation is characterized as such if there is an offense to human dignity and not by who caused it, be it a State, a person or a TNC.

Another problematic point is the omission of references to indirect impacts and the rights to a healthy and sustainable environment, that were included by South Africa and Mexico, and by

Cameroon and Panama, respectively.. **The proposal to replace “abuse” with “violation” made by Cameroon, Malawi and Colombia in the 9th session should be incorporated, or at least Palestine's proposal made at the 8th session, which proposes to add "violation" after “abuse”.** This terminology should be standardized throughout the articles of the future treaty.

1.4 and 1.5: The definitions of "Business activities" (1.4) and "Business activities of a transnational character" (1.5) in the Updated Draft remained the same.

The proposed definition of “business activities” in Article 1.4 of the Updated Draft Treaty defines the **objective scope** (the activity). The Global Campaign has supported the inclusion of the amendment proposed by more than 60 Global South States, as it allows the scope to remain focused on TNCs. However, this wording should define **“business activities of a transnational character.”**

In this sense, the current definition of “business activities of transnational character” in Article 1.5 should be deleted. Indeed, in order to maintain a scope focused on TNCs and other OBEs of transnational character, the Binding Treaty should not distinguish between business activities of a transnational character and business activities that may not be of a transnational character, as this would broaden the scope.

We therefore advocate for the inclusion of the amendment presented by more than 60 countries in the 9th session, which would safeguard a scope aligned with Resolution 26/9 :

1.4 “Business activities **of transnational character** means any economic or other activity, including but not limited to the manufacturing, production, transportation, distribution, commercialization, marketing and retailing of goods and services, undertaken by **transnational corporations and other business enterprises of transnational character (a natural or legal person), which can be private, public or mix, including State-owned enterprises,** financial institutions and investment funds or, ~~transnational corporations, other business enterprises,~~ joint ventures, ~~and any other business relationship undertaken by a natural or legal person.~~ This includes activities undertaken by electronic means. (Côte d'Ivoire (on behalf of African Group), Ghana, South Africa, Egypt, Colombia, Cameroon, Malawi, Bolivia, Honduras)

1.6: The definition of "Business Relationship" includes a reference to the "value chain," which is positive and should be retained. **However, in order to consolidate this provision, the best option would be the proposal from Palestine in the 8th session, which removes the reference to national legal systems and better describes better that business relationships are not necessarily contractual.** This amendment should be modified to also include financial capital that finances TNCs.

1.5. “**Business relationship**” refers to any relationship between natural or legal persons, including State and non-State entities, to conduct business activities, including those activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint venture, beneficial proprietorship, ~~or any other structure or relationship as provided under the domestic law of the State,~~ entities in the value and supply chain, any non-State or State entity linked to a business operation, product, or service even if the relationship is not contractual, as well as ~~including~~ activities undertaken by electronic means. (Palestine) **Add sentence “The business relationship shall include financial entities as investors, shareholders, banks and pension funds that finance the activities of TNCs”.**

1.8 and 1.10: Two new definitions are added in 1.8 and 1.10: "Human Rights Due Diligence" and "Relevant State agencies."

This definition of "Human Rights Due Diligence" is weak, as it does not mention value chains and does not present due diligence as an obligation for TNCs. It uses the problematic term "adverse impacts," as previously explained. This definition is much more limited than those established in several due diligence internal laws. It is weaker even from the one provided in the Guiding Principles. Additionally, by including due diligence in the definitions of article 1, the new draft removes it from one of the prevention measures and promotes it as the primary focus of the text. While it can be a useful tool (if well-defined as clear obligation for TNCs), the treaty should address other mechanisms of prevention, liability, and jurisdiction that due diligence mechanisms do not cover.

The Updated Draft adds the definition of "Relevant State agencies" replacing, throughout the text, the terms "courts and non-judicial mechanisms". This substitution is problematic because in cases of human rights violations the remedy can be pursued administratively, without a legal recourse, thus undermining the access to justice for affected communities. **Therefore, these substitutions should be rejected and this definition removed from the draft, as proposed by Panama, Honduras, Colombia and Mexico at the 9th session.**

Article 2 - Statement of Purpose (negotiated during the 9th session in October 2023)

The statement of purpose in the Updated Draft still falls outside the scope of Resolution 26/9. As clearly stated in the Resolution, it is necessary to make the regulation of the activities of TNCs, within the framework of the provisions of the Binding Treaty, the main purpose of this process.

2.1a: The proposal made by Egypt, Colombia and Iran at the 9th session goes in that direction and should be incorporated in the future treaty:

2.1.a bis To regulate the activities of transnational corporations and other business enterprises of transnational character within the framework of international human rights law; (Egypt, Colombia, Iran)

The amendments made by several States aiming at ensuring compliance between the paragraphs of article 2 and the scope established by Resolution 26/9 should be incorporated in the future text.

2.1e: The amendment made by Egypt and Brazil at the 9th session, aiming at deleting the term “mitigation” when referring to human rights violations must be incorporated. On the one hand, due to the nature of the crime, human rights violations should not be mitigated, but always prevented and fully repaired. Risks, on the other hand, can and should be mitigated in some circumstances.

Article 3 – Scope (negotiated during the 9th session in October 2023)

The scope of the Updated Draft Treaty remained broad, focusing on "all business enterprises". What is required is a complete change of this wording, in order to recover and respect the scope of Resolution 26/9. The whole text of the future treaty should be harmonized in order to comply with the scope focusing on TNCs and other business enterprises of transnational character, unequivocally established by Resolution 26/9.

3.1: The proposal made at the 9th session by Russia, Ghana, Iran, Malawi, China, South Africa and Algeria in this article 3 aims at re-establishing the correct original scope, in alignment with the proposal made by a large group of countries in article 1.4 here above.

3.1: This (Legally Binding Instrument) shall apply to transnational corporations and other business enterprises ~~all business activities, including business activities~~ of a transnational character; (Russia, Ghana, Iran, Malawi, China, South Africa and Algeria)

It is important to note that the amendment made at the same session by Cuba, Chile, Bolivia and Algeria is pretty much the same of the latter. The two amendments should therefore be combined.

3.1: This (Legally Binding Instrument) shall apply to all business activities, ~~including business activities~~ of a transnational character and other business activities. (Cuba, Chile, Bolivia, Algeria)

These amendments are fully aligned with the one made, always at the 9th session, by Ghana, South Africa and Egypt, which in addition mentions and integrates the key issue of value chains. This should be therefore the amendment on which to converge:

*3.1: This (Legally Binding Instrument) shall apply to **transnational corporations and other business enterprises of a transnational character including across their value chains all business activities, including business activities** of a transnational character; (Ghana, South Africa, Egypt)*

In the Updated Draft, even the mentions of ILO conventions and international usage and custom have been removed, which is detrimental because much of human rights protection is based on custom, a recognized source of International Law.