

Open-ended Intergovernmental Working Group (IGWG) 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 (established by HRC resolution 26/9)

Consultation on a methodology to advance more effectively the process for the elaboration of the legally binding instrument, including on substantive issues to be prioritized

Introductory remarks from the Chair-Rapporteur of the IGWG

Thursday 23 May 2024, 10.00-13.00 in Palais des Nations, Room XXII (and virtual from 15.30)

At the outset, please receive my gratitude to all of you, for attending this intersessional consultation, which is a continuation of our joint efforts to fully implement the recommendations adopted at the end of the ninth session of the Open-ended Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights.

More specifically, the recommendation set out in paragraph 31.d) requested that *“the Chair-Rapporteur hold consultations during the intersessional period, with the support of the friends of the Chair, on a methodology to advance more effectively the process for the elaboration of the legally binding instrument, in line with the mandate established by the Human Rights Council in its resolution 26/9, and ensuring the broadest possible interregional support for the process.”*

Therefore, the objective of this consultation is to exchange ideas, comments and suggestions, on the possible key elements of a methodology that can help the Working Group to advance more effectively in fulfilling its mandate, which is the elaboration of the legally binding instrument in a reasonable period of time.

In that regard, I invite you to participate in today’s consultation, with a pragmatic and creative approach that is open to explore how to improve the methodology of the sessions of the working group and the intersessional periods, in a manner that allows us to continue and finalize the first reading of the text in a limited number of sessions, while increasing the possibilities to deepen our understanding of key substantive and operative components of the future instrument and find areas of convergence.

For that, we must recall that the background for this consultation stems from the discussions that took place at the end of the 9th session, based on a common recognition that *this process cannot continue at the pace at*

which the process has been developing so far. We must recognize that if the Working Group keeps moving at the same pace, we could continue repeating our positions for ever with no outcome of our debates and negotiations.

That is why, since I took the position as Chair-Rapporteur, I have proposed different tools that help us to build together, with a bottom-up approach, a series of pragmatic consensus on the most sensitive issues of the future legally binding instrument, with a view to achieve a concrete outcome after a reasonable period of time.

It is important to note that, in this consultation, we do not intend to discuss the program of work for the 10th session, nor the content or details of the draft decision to be presented to the 56th session of the Human Rights Council. That program of work will be discussed in the consultation scheduled on 3 September, as you can see in the updated version of the roadmap posted in the official website of the Working Group.

With regard to the draft procedural decision, that will be the focus of discussion in the consultations scheduled for 6 June, and 20 June.

Having said that, I recognize that some aspects of the future procedural decision may have implications for the mid and long-term methodology of the Working Group. However, such connection should not hinder our ability to explore possible improvements to speed up the process, because not all of them will automatically imply the request of more resources for the Working Group.

Also, in this consultation, it is not my intention to present a fixed proposal or set of proposals, but to put on the table, some of the ideas that I have for improving the process, and other that I have received from several of you, both during the 9th session and in the bilateral discussions with different delegates and other stakeholders. Some of these ideas, are also based on the lessons learned from other processes of the elaboration of different instruments under the Human Rights Council and other frameworks.

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Therefore, in order to open up our conversation today, and bearing in mind some of the most recurrent challenges faced by our Working Group during the last years, I would like to put on the table four ideas on improving the methodology for the Working Group:

1. First, to increase the number of formal sessions of the Working Group, as a way to accelerate the negotiations of the text of the instrument.
2. Second, to organize a series of intersessional informal thematic consultations, focused on clusters of substantive topics of the text, with the assistance of the Legal Experts, as a mean to deepen the understanding and discussion on those issues, in the light of the articles that are relevant to those topics, and with a view to facilitate the identification of possible areas of convergence.
3. Third, to coordinate activities, including in particular at regional level, with the Working Group on the UN Guiding Principles on Business and Human Rights and other relevant UN mandate holders, or entities with relevant independent expertise, with the objective of facilitating an increased participation of delegates from capitals as well as national relevant stakeholders.
4. Fourth, to identify methods of thematic co-facilitations, as a way to enhance the State-led ownership of the negotiation process.

(1) The first point (*to increase the number of formal sessions of the Working Group*), has been raised in a number of occasions in the past, and therefore I didn't want to leave it outside of today's discussion, specially taking into account the fact that the last session only allowed us to do the first reading of the Preamble and articles 1 to 3.

However, I do recognize that more time doesn't mean automatically more efficiency in the negotiation of an instrument, and also the challenges of the budgetary implications in the context of the current liquidity crisis of the UN, and the almost full calendar of the HR Council and other related meetings throughout the year.

(2) Regarding the second idea (and without prejudice of having or not more days of session of the Working Group), is related to the convening a series of intersessional informal thematic consultations, focused on specific key issues or topics, organized in thematic clusters.

Relevant past and current practice on the elaboration of international legally binding instruments in multilateral fora showcase that this tool is used, with many examples of success, in other negotiations of equal or more complex matters.

The selection of substantive topics and the organization of clusters for the informal consultations, could be planned well in advance, through a multi-year Roadmap that could be discussed and agreed at the end of the next formal session of the Working Group, of course with some flexibility in terms of the dates for the convening of those consultations.

The debate within those consultations could be stimulated by thematic non-papers produced by the Legal Experts, and circulated with sufficient time in advance, so that all participants in the consultations are able to engage actively with comments, proposals and counter-proposals, in the light of the articles that are relevant to those substantive topics.

Of course, given the informal nature of those consultations, there won't be any formal outcome at the end of each of them, but we could envisage for example that the Legal Experts could produce a revised version of their thematic non-papers, based on those discussions, with a view to identify possible areas of convergence.

Internally, one of the Legal Experts could serve as a rapporteur or specialist on a specific theme, which would involve preparing a specific topic and to present a preliminary paper to advance the debates, without prejudice that all experts are expected to discuss among them on all topics.

These consultations should be inclusive, and therefore they could include hybrid or virtual modalities to allow to ensure the participation of all relevant stakeholders. Additionally, if requested, we could also facilitate additional spaces for closed participation among States or among relevant stakeholders.

Finally, the Friends of the Chair could also have an important role in relation to these consultations, by organizing regional or cross-regional discussions, before or after each of them, according to their availability.

(3) Regarding the third idea, it is clear that more collaboration between our Working Group and the different mandate holders is only beneficial. Therefore, we think that a formal mandate adopted at the end of the next session or in the procedural decision, could facilitate the Chair-Rapporteur and the relevant mandate holders to engage more actively among them, in particular with the activities of the Working Group on the UN Guiding Principles on Business and Human Rights.

A more concrete idea in this regard is that a specific part of the resources requested for the future of that Working Group or in the procedural decision that will be presented in the next session of the Council, could be dedicated to reserve one day of the programme of work of the Regional Fora on Business and Human Rights, for regional discussions on the legally binding instrument.

Such regional spaces could enhance the participation of delegates from capitals of those regions, as well as relevant stakeholders that don't have the resources to come to the formal sessions in Geneva.

Additionally, and also based in previous practice of other Working Groups, we could invite other relevant UN mandate holders to participate in person in the debates of the formal session of our Working Group, specially those that have made concrete recommendations regarding the elaboration of the legally binding instrument.

Finally, that outreach could be extended to other relevant human rights entities, including for example the Global Alliance of National Human Rights Institutions, which has undertaken specific work on business and human rights.

(4) Fourth, another idea that we have seen in other processes is the appointment of facilitators among the most active States, that could voluntarily assume the task of undertaking bilateral and open consultations on specific articles or topics, specially with those other States that have made concrete proposals on those articles or topics, with the objective of finding possible areas of convergence.

In my view this is a tool that could be used later in the process, but I didn't want to leave this consultation without mentioning it, taking into account that this could also be connected in the future with the role of the Friends of the Chair.

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With this, and before opening the floor for your thoughts and comments, I would like you to keep in mind that all these ideas that I have presented are not mutually exclusive and of course they are not exhaustive of other suggestions or proposals that could be presented either for the procedural decision and/or as elements for the outcome of the next session of the Working Group.

Similarly, the idea or proposal on intersessional informal thematic consultations, is something that will imply a deeper discussion on the prioritisation of substantive issues and organization of clusters, but at this stage, I would like to hear your views on the convenience of the proposals in general terms, or maybe some initial ideas regarding the criteria for that possible prioritization, including for example to begin with the topics that face less divergence or those that are most urgent for the progress of the negotiations.

In any case, any prioritization and any progress resulting from it, will have to respect the principle that "nothing will be agreed until everything is agreed".

What is clear for my Presidency is that we should avoid completing a new reading of the text by simply accumulating proposals and restating well-known positions, which is something that this Working Group already did when it completed the readings of the previous versions.

Now, is the time to take this opportunity of the improvement of the methodology of the process, to insert a renewed energy to our work, by avoiding repetition of previously stated positions, and by using any possible tool to generate convergence and to translate them into concrete textual proposals.

Now, I would like to open the floor for any comments and questions, either regarding the 4 ideas or methods presented and explained here, including on the criteria for the possible prioritization of substantive topics, as well as any other ideas and proposals that you may have in relation to the improvement of the methodology of our process.

Thank you.