

Written contribution on the third revised draft of the legally binding instrument:

to the seventh session of the “open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights”, 25-29. October 2021, Room XX, Palais des Nations

Verein Sudwind Entwicklungspolitik (Südwind Austria), Laudongasse 40, A-1080 Vienna, Austria

represented by

Ms. Bettina Rosenberger, bettina.rosenberger@nesove.at

Mr. Stefan Grasgruber-Kerl, stefan.grasgruber-kerl@suedwind.at ,
+4369910040079

among others

By e-mail to igwg-tncs@ohchr.org and ohchr-igwg-tncs@un.org.

Sudwind and the other members of the Treaty Alliance Austria, a coalition of over 15 Austrian NGOs and trade unions, together with a European Youth Delegation highly welcome the “Third revised Draft” and the process of consultations and negotiations that led to it. With regard to the amendments, we are pleased that the draft has gained in clarity and therefore we believe the draft provides a good basis for constructive discussion in this important seventh session.

We are asking both the EU and its Member States to take up leadership to develop common positions and engage constructively in this seventh session. Especially against the background that Austria is a member of the UN Human Rights Council, Austria should take up its responsibility and constructively engage in this and upcoming sessions of the intergovernmental Working Group. We are calling on the EU to implement its announcement, as formulated in the Council Conclusions on EU Priorities in UN Human Rights Fora in 2021, which were approved by the Council at its 3785th meeting held on 22 February 2021 „the EU will provide appropriate support to the work of the UN Working Group on Business and Human Rights, in its efforts to develop a renewed roadmap for the next decade of business and human rights. The EU will also participate actively in the UN discussions on a legally binding instrument on business and human rights with the aim to promote an instrument that can effectively

enhance the protection of victims of business-related human rights violations and abuses and create a more global level playing field.“

The outbreak of the corona pandemic severely disrupted global supply chains and had a significant impact on the global labor market. In the wake of the crisis, millions of people who were previously employed in production were dismissed. Corporations cancelled orders and refused to pay for products already manufactured, making it impossible for employers of supplier companies to pay their workers. Child labour, forced labour and the persecution of trade unionists and human rights defender still occur systematically in global supply chains in 2021. The latest Global Witness report shows that 227 people were murdered in the previous year because they were engaged in environmental activism. So it was again the most dangerous year on record for people defending their rights, their lands and protecting the environment. This clearly underlines the urgent need for a Binding Treaty. Last year the Treaty Alliance Austria launched the campaign "Human rights need laws. So that supply chains do not hurt". In this campaign we call for support for the UN Binding Treaty and binding rules for corporations also at EU and national level in Austria.

There are many positive developments in the “Third Revised Draft” that should serve as a good basis for constructive EU engagement.

- Especially the inclusion of relevant ILO conventions instead of singling out only ILO Convention 190 is an important improvement in §3 of the preamble.
- We also welcome the inclusion of ILO Declaration on Fundamental Principles and Rights at Work in § 14
- and especially welcome the inclusion of the right to a safe, clean and healthy environment as well of climate change in key provisions of the 3rd draft, which puts the draft in line with the latest resolution of the right to a safe, clean, healthy and sustainable environment adopted by the Human Rights Council in October 2021.

However, we also would like to draw attention to our recommendations for improvements from civil society and trade unions engaged in the Austrian Treaty Alliance:

- Article 1.1 should consider the circumstance, that persons have suffered harm, because of supporting victims. Therefore it should use a broader definition of victim, such a formulation already existed in Article 1.1 of the “Second Revised Draft”.
 - Definition from 2nd Draft: “and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”
- Article 5.2 should explicitly mention the protection of human rights defenders and should clearly define prevention measures.
- Article 6 and 8 should explicitly mention that corporations are liable if they fail to comply with their environmental due diligence obligations.
- Article 7.5: the burden of proof should be clearly defined as an obligation, therefore the word “allowing” should be deleted.
- Article 8 should also include administrative sanctions if corporations fail to comply with their due diligence obligations (also if there is no harm).
- Article 14.5 should clearly define that trade agreements and investment agreements should contain human rights exception clauses. Specific measures are also needed to ensure that human rights are not undermined by trade and investment agreements

We call on all states and especially the EU to formulate constructive proposals for further elaboration at the seventh session. We believe that a focus on substantive issues is necessary to move the negotiations on the text for the treaty forward. This debate is necessary to face the challenges of globalization and to stop human rights abuses by corporations, until the “mandate to elaborate an international legally binding instrument” established by UN Human Rights Council Resolution 26/9 is fulfilled and such an instrument is in force.