ANALYSIS

Daniel Fernando Uribe Terán
March 2026

The UN Treaty on Business and Human Rights: Regulating Corporate Power in the Era of Deregulation

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Contents

Foreword

The gap between economic power and democratic control has become impossible to ignore. Across regions, societies are experiencing the cumulative effects of overlapping crises, including climate disruption, rising inequality, geopolitical fragmentation and the erosion of trust in public institutions. In this context, the question of how to regulate corporate power in line with human rights and the public interest is no longer merely a technical debate among specialists. It has become a central issue for the future of democracy, social cohesion and sustainable development.

As a social democratic political foundation based in Geneva, we see it as our responsibility to contribute to this debate at the multilateral level, at which global rules are negotiated and the voices of states, civil society and affected communities can – and must – be heard. Geneva is not only a hub of international diplomacy; it is also a place where the promises and shortcomings of the international legal order become visible every day. The ongoing negotiations on a United Nations Legally Binding Instrument (LBI) on business and human rights therefore speak directly to our mission: to strengthen democratic governance, advance social justice and ensure that economic activity serves human dignity rather than undermining it.

The timing of this publication is not accidental. The 11th Session of the Open-ended Intergovernmental Working Group marked an important turning point, completing most technical preparations and shifting the process into its final, politically decisive phase. The road to the 12th Session will therefore be crucial for the future shape of the treaty. At the same time, we are witnessing a worrying trend of regulatory backsliding and legal uncertainty in several regions, including Europe, where hard-won advances in corporate accountability are increasingly being contested. The persistence of investor–state dispute settlement mechanisms and the resulting 'regulatory chill' further constrain the policy space of democratically elected governments. Against this backdrop, the LBI has evolved from a long-term aspiration into an urgent necessity for all those who seek to preserve the primacy of the public interest over narrow private gains.

From a social democratic perspective, the false dichotomy between economic growth and social justice must finally be overcome. Markets do not function in a vacuum; they require clear rules, effective enforcement and democratic oversight. A binding international framework for corporate accountability is not a burden on the economy, but a precondition for fair competition, legal certainty and sustainable, rights-based development. By helping to close the global 'remedy gap' and by clarifying liability, jurisdiction and access to justice, the LBI can contribute to restoring trust in both economic governance and the rule of law.

This publication is intended as a contribution to that effort. It aims to support policymakers, diplomats, trade unions and civil society actors who are working – often under difficult conditions – to move this process forward. In doing so, we reaffirm our conviction that multilateralism, when anchored in social justice and human rights, remains the most powerful tool for shaping globalisation in the interest of the many, not the few. The choices made in the coming months will have lasting consequences. This is why we believe that now is the time to engage, to clarify positions and to strengthen the political will for a robust and meaningful treaty.

Renate Tenbusch,
Director FES Geneva Office,
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List of acronyms

BAFA: Bundesamt für Wirtschaft und Ausfuhrkontrolle (German Federal Office for Economic Affairs and Export Control)

BITs: Bilateral investment treaties

BMAS: Bundesministerium für Arbeit und Soziales (German Federal Ministry of Labour and Social Affairs)

BMWK: Bundesministerium für Wirtschaft und Klimaschutz (German Federal Ministry for Economic Affairs and Climate Action)

CSDDD: Corporate Sustainability Due Diligence Directive (European Union)

CSR: Corporate social responsibility

ECtHR: European Court of Human Rights

EESC: European Economic and Social Committee

EU: European Union

FCTC: Framework Convention on Tobacco Control (World Health Organization)

G77: Group of 77 (Coalition of developing nations)

HRDD: Human rights due diligence

ICC: International Chamber of Commerce

IOE: International Organisation of Employers

ISDS: Investor–state dispute settlement

ITUC: International Trade Union Confederation

LBI: Legally binding instrument (UN Treaty on Business and Human Rights)

LkSG: Lieferkettensorgfaltspflichtengesetz (German Supply Chain Due Diligence Act)

NIEO: New International Economic Order

OEIGWG: Open-Ended Intergovernmental Working Group

OHCHR: Office of the High Commissioner for Human Rights

SMEs: Small and medium-sized enterprises

TNCs: Transnational corporations

UNGPs: United Nations Guiding Principles on Business and Human Rights

UNHRC: United Nations Human Rights Council

USCIB: United States Council for International Business

I. Introduction

The aim of the global governance framework carefully developed during the second half of the twentieth century was to balance the expansion of transnational activities with the safeguarding of human dignity and human rights.[1] However, it now faces a fundamental crisis. For nearly fifty years, the regulation of transnational corporations (TNCs) has been marked by a significant and persistent divide, namely a reliance on voluntary approaches, soft law and corporate social responsibility (CSR), as against a continuous demand for a binding international legal framework.[2] This divide has not only caused the development of standards to stagnate but has also led to 'justice paralysis', systematically denying access to justice to the victims of TNCs' human rights abuses.

While in the past this problem affected mainly developing countries, currently, there is a 'boomerang effect' in which corporate impunity is no longer limited to developing countries. Legal uncertainties and governance gaps are now increasingly threatening the sovereignty, legal stability and democratic principles of developed countries as well. Political opposition to regional laws, evident in efforts to weaken the European Union (EU) Corporate Sustainability Due Diligence Directive (CSDDD) through the 2025 'Omnibus' proposals and Germany's withdrawal from the Supply Chain Due Diligence Act (LkSG), indicates a concerning push towards deregulation. This movement, driven by claims to be 'facilitating competitiveness…and reducing administrative, regulatory and reporting burdens', risks triggering a worldwide regulatory race to the bottom, which could damage workers, communities and the environment.[3]

At the same time, key elements of international investment law contribute to undermining state sovereignty. The abusive use of investor–state dispute settlement (ISDS) mechanisms by TNCs to challenge legitimate climate change and other public-interest policies has transformed the discussion of this regime from one centred on investment protection to one that also takes in democratic viability.[4] The adoption of a United Nations Legally Binding Instrument on Business and Human Rights (LBI) negotiated under the auspices of the Human Rights Council since 2014[5] is no longer just an aspiration for developing countries; it has become an urgent necessity for all states seeking to preserve their sovereign power to regulate in the public interest.

This policy research paper argues that the current wave of deregulation does not signal the demise of the corporate accountability agenda, in particular that addressing the conduct of TNCs. On the contrary, it demonstrates that the fragility of current domestic and regional measures underscores the need for a robust multilateral treaty that establishes a stable, universal floor for corporate conduct, prevents harm to the most vulnerable, and restores the balance between corporate rights and human rights obligations.

Drawing on the outcomes of the historic 11th Session of the Open-Ended Intergovernmental Working Group (OEIGWG) held in Geneva in October 2025,[6] and integrating the emerging framework of the 'human rights economy', this analysis aims to provide a comprehensive strategic roadmap for the ongoing negotiation of the LBI. It considers the need for an alliance between the Global South, European states with progressive positions on human rights, civil society, and trade unions to secure the adoption of a treaty that prioritises human dignity over corporate profit and effectively ends the era of corporate impunity.

1 Daniel Uribe Terán, 'Keeping the Head Up: Lessons Learned from the International Debate on Business and Human Rights' (2018) 2(2) *Homa Publica* 110; available at: https://periodicos.ufjf.br/index.php/HOMA/article/view/30559 (accessed 16 December 2025).

2 Ibid.

3 European Commission, 'Omnibus I' (26 February 2025); available at: https://commission.europa.eu/publications/omnibus-i_en (accessed 16 December 2025).

4 Daniel Uribe Terán, 'Advancing Responsible Foreign Investment through a Legally Binding Instrument on Transnational Corporations and Other Business Enterprises' (2025) South Centre Investment Policy Brief 27; available at: https://www.southcentre.int/investment-policy-brief-27-23-october-2025/ (accessed 16 December 2025).

5 OHCHR, 'Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights'; available at: https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc (accessed 1 January 2026).

6 OHCHR, 'Eleventh Session of the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights' (2025); available at: https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session11 (accessed 16 December 2025).

II. Historical evolution of the LBI: from Resolution 26/9 to the 11th Session of the OEIGWG on Business and Human Rights

It is essential to review the history of LBI negotiations in order to understand the dynamics of the 11th session of the OEIGWG, as the current draft text reflects a decade of debate between advocates of strict corporate accountability and the practical necessity of achieving universal ratification.

The LBI process started in June 2014 when the Human Rights Council adopted Resolution 26/9.[7] Sponsored by Ecuador and South Africa, this resolution created the OEIGWG, which was tasked with developing an international, legally binding instrument to regulate transnational corporations and other business enterprises under international human rights law. The vote was strongly divided, reflecting the geopolitical tensions of the time: 20 countries supported it, 14 opposed (including the United States and EU member states), and 13 abstained.[8]

This initial vote revealed the gulf that would characterise the LBI negotiations, with a Global South coalition calling for binding provisions to regulate corporate misconduct, and a Global North coalition defending the adequacy of the voluntary nature of the UN Guiding Principles on Business and Human Rights (UNGPs) adopted in 2011 to address human rights concerns in business activities. The Global North, in particular, expressed concerns about extraterritorial liability for TNCs and a preference for multi-stakeholder, voluntary approaches over binding treaties.[9] Meanwhile, in the Global South, Resolution 26/9 echoed debates from the 1970s about the New International Economic Order (NIEO), aiming to reaffirm state control over TNC activities.

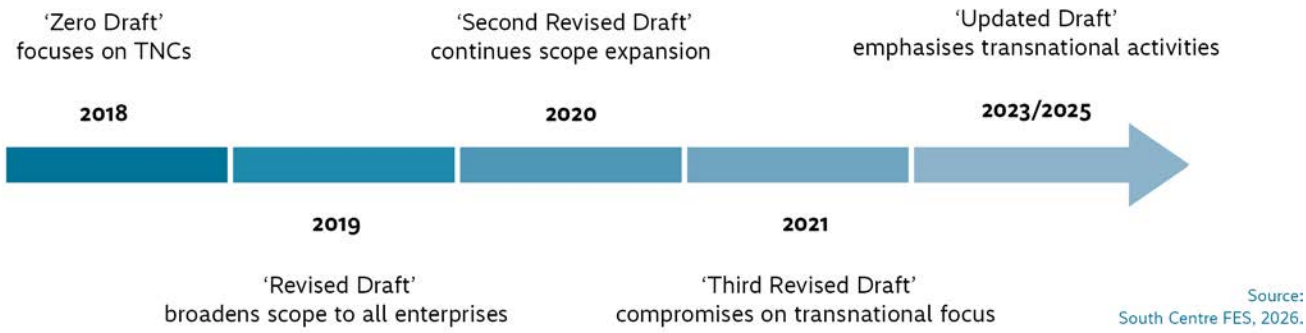
One key point of contention during the negotiating process has been the scope of the LBI (Article 3), which has been developed through multiple iterations (see Fig. 1: Evolution of the Treaty on Transnational Corporations):

The 'Zero Draft' (2018) addressed the jurisdictional gaps that multinationals use to avoid responsibility. It was premised on the fact that while national laws govern domestic companies, TNCs often operate in a legal vacuum, allowing them to transfer assets and liability across borders to avoid accountability.

The 'Revised Draft' (2019) and the 'Second Revised Draft' (2020) attempted to secure engagement from the EU and other developed countries. The chair-rapporteur broadened the scope to cover 'all business enterprises', regardless of their transnational character. This concession aimed to address the 'non-discrimination' argument advanced by some countries and other stakeholders in industrialised countries, who argued that focusing solely on TNCs would violate equal protection principles and disadvantage foreign investors. However, this expansion risked diluting the treaty's focus on the specific regulatory challenges posed by complex cross-border corporate structures and potentially overburdening small and medium-sized enterprises (SMEs).

Fig. 1

Evolution of the Treaty on Transnational Corporations



Source: South Centre FES, 2026.

7 UNHRC Res 26/9, 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights' (26 June 2014), UN Doc A/HRC/RES/26/9.

8 Ibid.

9 See: Ionel Zamfir, 'Towards a Binding Treaty on Business and Human Rights' (2022) European Parliamentary Research Service Briefing PE 729.435; available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729435/EPRS_BRI(2022)729435_EN.pdf (accessed 16 December 2025); and US Mission Geneva, 'The U.S. Government's Opposition to the Business and Human Rights Treaty Process' (26 October 2020); available at: https://geneva.usmission.gov/2020/10/26/the-u-s-governments-opposition-to-the-business-and-human-rights-treaty-process/ (accessed 16 December 2025).

The 'Third Revised Draft' (2021) to the 'Updated Draft' (2023/2025) aimed for a pragmatic compromise. The 'Third Revised Draft', while theoretically applicable to all business enterprises, put particular emphasis on business activities of a 'transnational character'. This formulation seeks to capture the complex supply chains of TNCs without imposing an undue burden on purely local SMEs, thus bridging the gap between the 'level playing field' argument of industrialised countries and the 'corporate accountability' imperative for developing countries. It recognises that while all businesses must respect human rights, the regulatory framework must account for the complexity and scale of transnational operations.

i. The 11th Session (October 2025): a qualitative leap

The 11th OEIGWG session of 20–24 October 2025 marked a transition from broad debates to focused textual negotiations. Led by chair-rapporteur Ambassador Marcelo Vázquez Bermúdez, the session employed intersessional thematic consultations to pre-negotiate groups of articles, especially on jurisdiction, liability and victims' rights. Unlike earlier sessions, which were hindered by procedural blockades, the 2025 session featured proactive discussions on the substance of the draft text.

This momentum was driven by a revitalised developing country participation and the 'Friends of the Chair' group that bridged regional gaps, including countries such as France and Portugal acting in their own national capacities, even though the EU did not have a formal negotiating mandate. Completion of the article-by-article review of the Updated Draft indicated that most technical preparations for the treaty were complete.

Now the discussion shifts from whether or not to have a treaty to how to formalise specific legal mechanisms, such as the 'failure to prevent' liability model. The 11th Session of the OEIGWG set the stage for a final effort to produce a text suitable for adoption. Although significant political challenges remain, particularly regarding the scope of the LBI, the inclusion of environmental rights or the primacy of human rights over trade and investment agreements, 2026 may bring about a qualitative leap in the negotiation of the LBI. Table 1 summarises the current status and the key proponents and opponents of critical provisions of the draft LBI.

Table 1

Key provisions under negotiation (11th Session)

Provision	Current status/debate	Key proponents	Key opponents
Article 3 (Scope)	Broad (to all businesses) vs TNC-specific. Emerging consensus on the 'transnational character' of activities.	G77, African Group (TNC focus); EU, US (all businesses)	Corporate lobbies (oppose broad liability)
Article 7 (Remedy)	*Forum Necessitatis* is gaining support to prevent the denial of justice.[10]	Global South, civil society	Some Northern states (concerns over jurisdictional overreach)
Article 8 (Liability)	'Failure to Prevent' model vs strict liability. Reversal of the burden of proof debates.	Palestine, Mexico, civil society	Business groups (fear of 'unlimited liability')
Article 9 (Jurisdiction)	Parent company liability in home states.	African Group, progressive EU states	Corporate lobbies (defending corporate veil that separates parent companies from their subsidiaries)
Article 14 (Primacy)	Primacy of human rights over trade/investment treaties.	Colombia, Ecuador, civil society	Major capital exporting states
Article 16.6 (Capture)	Protection against undue influence (modelled on FCTC 5.3).	Global South, civil society	Business groups such as IOE, US-CIB, some Global North states

10 *Forum Necessitatis*: A rule that allows a court to accept a case it would not typically have the authority to hear, simply because the person seeking justice has no other viable options. It acts as a legal backup to ensure access to a fair trial when no other suitable court is available.

III. The deregulation trend: a domestic and regional governance crisis

Recent changes to the corporate accountability framework in developed countries highlight the fragility of unilateral and voluntary measures. Intense corporate lobbying and shifting political landscapes have consistently weakened the once-ambitious legislative proposal, challenging the notion that reliance on domestic law alone is sufficient to address transnational supply chain accountability. This trend is more than a temporary pause; it appears to represent a strategic withdrawal from a regulatory approach, exposing the shortcomings of managing global capital through fragmented national or regional regimes.

The most prominent example of this trend is the trajectory of the EU's Corporate Sustainability Due Diligence Directive (CSDDD).[11] Although the CSDDD was considered an innovative framework for harmonising corporate accountability across the European single market and possibly establish a global standard,[12] it has faced intense business and political opposition in recent years, leading to a considerably diluted final version.[13] Indeed, calls for 'simplification' and 'bureaucracy reduction' prompted the European Commission to table the 'omnibus' proposals in February 2025, which were subsequently amended to remove key provisions.[14]

The political agreement finalised in late 2025 on the Omnibus I simplification package introduced amendments that greatly narrowed the scope of the CSDDD. Facing strong opposition from centre-right and far-right groups in the European Parliament and the European Council, the compliance threshold was significantly raised. The final settlement caps the scope to companies with over 5,000 employees and €1.5 billion in turnover, a notable increase from the initial threshold of 1,000 employees and €450 million in turnover.[15] As a result, about 70 per cent of European companies are exempt from direct obligations under the Directive, including many medium-sized firms in high-risk sectors such as textiles, agriculture and extraction.[16]

Political pressure effectively removed or weakened civil liability provisions, eliminating the main legal avenue for victims to seek justice in European courts.[17] With a weakened civil liability regime, the Directive risks becoming a mere 'box ticking' exercise rather than promoting genuine accountability, while increasing litigation risks and management costs for companies.[18] The resulting watered-down Directive lacks the legal certainty needed for sustainable business operations and leaves a regulatory gap that individual member states are unlikely to address on their own. Additionally, rules mandating climate transition plans were removed or substantially weakened, undermining the crucial link between corporate due diligence and the objectives of the Paris Agreement.[19] This represents a major setback for the EU's Green Deal goals and highlights how short-term economic interests can compromise environmental governance.

i. Germany's retreat: the Bureaucracy Reduction Act IV

Germany has followed the same relaxed approach by abolishing the Supply Chain Due Diligence Act (LkSG), once a pioneering piece of legislation.[20] The Federal Ministry for

11 European Commission, 'Corporate Sustainability Due Diligence'; available at: https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en (accessed 16 December 2025).

12 Anu Bradford, *The Brussels Effect: How the European Union Rules the World*, Oxford University Press, 2020; available at: https://doi.org/10.1093/oso/9780190088583.001.0001 (accessed 16 December 2025).

13 Alban Grosdidier, 'CSDDD: A tale of corporations hijacking the EU's democratic process', *Euronews*, 5 March 2024; available at: https://www.euronews.com/my-europe/2024/03/05/csddd-a-tale-of-corporations-hijacking-the-eus-democratic-process (accessed 16 December 2025).

14 See: Business and Human Rights Resource Centre, 'EU: Companies speak out after Evian letter attempt to undermine CSDDD'; available at: https://www.business-human-rights.org/en/latest-news/evian-letter-outreach/ (accessed 16 December 2025); and Simone De La Feld, 'European Commission to focus on simplification in 2025', *Eunews*, 12 February 2025; available at: https://www.eunews.it/en/2025/02/12/european-commission-to-focus-on-simplification-in-2025/ (accessed 16 December 2025).

15 Walk Free, 'EU moves to weaken corporate sustainability rules could threaten progress on human rights' (14 November 2025); available at: https://www.walkfree.org/news/2025/eu-moves-to-weaken-corporate-sustainability-rules-could-threaten-progress-on-human-rights/ (accessed 16 December 2025).

16 Roselle Houston et al., 'EU Regulations update: CSRD and CSDDD close to the finish line', *ERM*, 11 December 2025; available at: https://www.erm.com/insights/eu-regulations-update-csrd-and-csddd-close-to-the-finish-line/ (accessed 16 December 2025).

17 European Coalition for Corporate Justice, 'Press Release: EU's deregulation agenda claims its first victim: Corporate Sustainability Due Diligence Directive gutted' (9 December 2025); available at: https://corporatejustice.org/news/press-release-eus-deregulation-agenda-claims-its-first-victim-corporate-sustainability-due-diligence-directive-gutted/ (accessed 16 December 2025).

18 Paul Healy et al., 'Towards a Balanced Omnibus Proposal: Simplifying the CSDDD and CSRD While Upholding Human Rights and Environmental Standards' (2025) Germanwatch Policy Brief; available at: https://www.germanwatch.org/sites/default/files/2025-10/Germanwatch_Towards%20a%20Balanced%20Omnibus%20Proposal_September%202025_0.pdf (accessed 16 December 2025).

19 Ibid.

20 Thomas Uhlig, 'Supply Chain Act: Reporting Obligation No Longer Applies, Sanctions Reduced', *KPMG Law*, 3 September 2025; available at: https://kpmg-law.de/en/supply-chain-act-reporting-obligation-no-longer-applies-sanctions-reduced/ (accessed 16 December 2025).

Economic Affairs and Energy (BMWK), in coordination with the Ministry of Labour (BMAS), instructed the Federal Office for Economic Affairs and Export Control (BAFA) to suspend the auditing of LkSG reports until 2026 and to discontinue administrative offence proceedings concerning fines.[21] This 'pause' suggests that human rights compliance is viewed as a dispensable 'bureaucratic burden' rather than as a fundamental legal duty, which indicates that in times of economic stagnation, human rights are the first casualty.

ii. The impact of deregulation: outsourcing risk and reducing legal certainty

This political trend highlights that fragmented national or regional approaches are strategically ineffective. The failure of local laws underscores the need for a multilateral framework. As developed countries can easily rescind their human rights commitments during economic downturns, a robust and universal accountability framework should strengthen domestic courts and regulations for victims of corporate abuse worldwide.

The consequences of the trend towards deregulation are not limited to the EU. They create a ripple effect through the global economy, disproportionately affecting rights-holders and suppliers in developing countries. As capital-exporting countries reduce their mandatory due diligence, they effectively outsource the risk of human rights abuses to countries least able to manage them. The weakening of the CSDDD and LkSG can perpetuate a model of globalisation built on the exploitation of weak regulatory environments and the externalisation of social and environmental costs.

This regulatory retreat exacerbates the 'power asymmetry' between TNCs and their suppliers in developing countries. Without binding legal obligations to engage in responsible purchasing practices and to share the costs of compliance, lead firms in developed countries can shift the burden of due diligence to their suppliers through unfair contracts or by threatening to 'cut and run' from high-risk markets.[22] This 'cut and run' approach creates trade distortions and global economic instability, as suppliers are forced to compromise on labour and environmental standards to remain competitive, or face the sudden withdrawal of investment or termination of contracts if they attempt to assert their rights. It creates a perverse incentive structure in which buyers and suppliers are penalised for transparency and 'rewarded' for concealing abuses.

For workers and communities around the world, the lack of a robust international liability framework risks rendering remedies illusory. Reliance on domestic courts in host states, which may be underresourced, subject to political capture or lack the technical capacity to handle complex transnational litigation, is insufficient to address harms caused by transnational corporate structures. The current trend towards deregulation means that the 'remedy deficit' cannot be addressed through a patchwork of national laws. It requires a cohesive global international instrument that mandates parent company liability and ensures that victims can seek redress in the home states of TNCs, bridging the jurisdictional divide that currently allows impunity to flourish.[23]

This deregulation trend also leads to a 'boomerang effect' that undermines legal certainty for companies. The absence of clear jurisdiction and the fragmentation of legal standards hinder corporations' ability to hold extraterritorial abuses accountable, creating a complex operational environment in which ethical conduct is at a disadvantage. This lack of a 'level playing field' should be a key reason for businesses to support the LBI. Without universal standards, the rule of law may be compromised, business reputations could suffer, and responsible companies may face increased pressure, having to compete with 'slackers' that enjoy lower standards in the same jurisdiction.

iii. The human rights economy: a counter-narrative to deregulation

As the legal framework of the LBI evolves, the concept of a 'human rights economy' proposed by the Office of the High Commissioner for Human Rights (OHCHR) can serve as a vital bridge for providing an economic rationale for the LBI, countering the notion that human rights regulation is detrimental to business interests.

The 'human rights economy' contends that economies are not ends in themselves but means to protect human dignity. It highlights the link between rights and rejects the false hierarchy that prioritises civil and political rights over economic, social and cultural rights. It recognises that fiscal policy, taxation and trade should focus on decreasing inequality, fighting discrimination and ensuring the right to a clean, healthy and sustainable environment.[24]

In the context of the 2025 deregulation trend, the 'human rights economy' offers the economic rationale for the LBI. Opponents of the treaty, particularly corporate lobbies, argue that binding regulations impede economic

21 Reuschlaw Legal Consultants, 'Germany's Relaxation of the Supply Chain Due Diligence Obligations' (24 November 2025); available at: https://www.reuschlaw.de/wp-content/uploads/2025/11/onepager-germanys-relaxation-of-the-supply-chain-due-diligence-obligations.pdf (accessed 16 December 2025).

22 Fair Trade Advocacy Office and others, 'Responsible Disengagement: Preventing "Cut and Run" through the EU Corporate Sustainability Due Diligence Directive' (24 September 2025); available at: https://media.business-humanrights.org/media/documents/Disengagement_paper_-_Omnibus_CSDDD_FINAL-Sept.25.pdf (accessed 16 December 2025).

23 Daniel Uribe Terán, 'The Core Elements of a Legally Binding Instrument: Highlights of the Revised Draft of the Legally Binding Instrument on Business and Human Rights', South Centre Policy Brief 68, 2019; Rosita Aies et al., 'Towards a Binding International Treaty on Business and Human Rights', European Parliament Research Service, 2018, PE 620.229.

24 OHCHR, 'Human rights economy – Seeding change for an economy that enhances human rights'; available at: https://www.ohchr.org/en/sdgs/human-rights-economy-seeding-change-economy-enhances-human-rights (accessed 16 December 2025).

growth and competitiveness, potentially leading to capital flight.[25] The 'human rights economy' framework offers a counter-narrative to this argument, demonstrating that profit maximisation that does not take account of potential harms to communities is not only economically inefficient but also detrimental to business interests.[26]
Deregulation reduces essential legal safeguards, creating accountability gaps that leave vulnerable communities without resources and weaken market integrity. The LBI therefore is not a burden on the economy but a necessary tool for strengthening response mechanisms and ensuring sustainable, rights-based growth. Therefore, human rights protections are not in conflict with economic activities; rather, the economy *cannot* function sustainably without the legal certainty and accountability they provide.

25 Bruna Singh et al., 'Corporations in the UN Business and Human Rights Treaty Negotiations' (2025) CHREN Human Rights Clinic Report; available at: https://media.business-humanrights.org/media/documents/Corporations_in_the_UN_BHR_Treaty_Negotiations_Final_Report_CHREN_April_2025.pdf (accessed 16 December 2025).

26 Trisha Andrea Cruz, 'Lessons from the Failures of Voluntary Due Diligence: Continuing the Case for Stronger Mandatory Frameworks' (2025) SSRN Research Paper No 5497658; available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5497658 (accessed 16 December 2025).

IV. Legal fragmentation and the case for an LBI

The existing legal framework governing corporate conduct is highly fragmented and uncertain, mainly because of the lack of clear avenues for effective access to justice for communities harmed by business-related human rights abuses and environmental damage. These challenges are a structural flaw in the global legal system, in which victims' rights in host countries are often marginalised by jurisdictional and corporate obstacles posed by multinational companies. The system's inability to provide prompt and adequate redress fosters impunity, pushing victims into a complex, costly and often legally uncertain cross-border litigation process.

A report commissioned by the European Parliament highlights the extent of this problem, finding that most transnational claims for victims of corporate human rights abuses in third countries rarely succeed.[27] This low success rate underscores existing barriers such as restrictive standing rules, stringent evidentiary requirements and costly litigation, which prevent legitimate grievances from being adequately addressed.

The denial of justice leads to another 'boomerang effect', as domestic courts in which TNCs operate become ineffective. Given TNCs' capacity to escape responsibility, victims face a difficult choice, for example, whether to redirect their claims to the TNC's home country.[28] This often creates complex jurisdictional conflicts, as courts in TNCs' home countries often remand cases to the jurisdictions where justice was initially denied, trapping plaintiffs in a legal limbo, increasing costs for all parties, and worsening the already vulnerable situation of affected communities.[29]

i. The systemic failure of accountability and fragmentation of law

The systemic failure of accountability and the fragmentation of law can be illustrated by the *Terra dei Fuochi* (Land of Fires) crisis in Italy. For decades, the Campania region was plagued by the illegal dumping and burning of hazardous waste. The environmental impact was catastrophic, contaminating soil, groundwater and the food chain, and it exposed the local population to severe health risks, including cancer.[30] Despite authorities' awareness of the situation as early as the late 1980s, the State's response was marked by inertia and a lack of coordination. It was not until January 2025 that the European Court of Human Rights (ECtHR) delivered a landmark judgment in *Cannavacciuolo and Others v Italy*, holding that the Italian State had violated Articles 2 (right to life) and 8 (right to respect for private and family life) of the ECtHR, recognising the 'fragmented' nature of the emergency response and highlighting how the remedy deficit is perpetuated by state inaction and the prolonged delay in acknowledging environmental violence.[31]

Another example is provided by the *Lafarge* case in France. In September 2020, the company was accused of discharging a mixture of cement particles, treatment liquids and plastic microfibers directly into the river Seine from its plant in the Bercy district of Paris.[32] While Lafarge characterised the incident as an 'exceptional accident', the legal response to such an environmental infraction has often been criticised as insufficient, as such cases are usually dismissed without further action because of the difficulties involved in proving criminal intent or identifying specific individual liability within complex corporate structures. The administrative closure of cases such as this satisfies the public interest regarding environmental protection with only minor fines or settlement agreements, rather than with criminal accountability.

The *Lafarge* case highlights a broader issue of remedial gaps, particularly given the company's involvement in the Syrian conflict. The company faces charges of (allegedly) financing terrorism and aiding crimes against humanity by paying armed groups, including ISIS, to keep its Syrian factory operational during the civil war.[33] Despite the seri-

27 Axel Marx and others, 'Access to legal remedies for victims of corporate human rights abuses in third countries', European Parliament, 2019, Study PE 603.475; available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU(2019)603475_EN.pdf (accessed 18 December 2025).

28 Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*, Cornell University Press, 1998; available at: https://systways.academy/wp-content/uploads/2021/10/GGHR_paper_Keck-Sikkink_Activists-Beyond-Borders.pdf (accessed 18 December 2025).

29 See: *Okpabi and Others v Royal Dutch Shell Plc and Another* [2021] UKSC 3, [2021] 1 WLR 1294.

30 Elena Giordano, 'European court slams Italy over mafia toxic waste dumping' *Politico*, 30 January 2025; available at: https://www.politico.eu/article/european-court-slams-italy-over-mafia-toxic-waste-dumping-land-fires/ (accessed 18 December 2025).

31 *Cannavacciuolo and Others v Italy* (App no 51567/14) (ECtHR, 30 January 2025).

32 Stéphane Mandard, 'Le cimentier Lafarge soupçonné de rejets sauvages dans la Seine à Paris', *Le Monde*, Paris, 1 September 2020; available at: https://www.lemonde.fr/planete/article/2020/09/01/le-cimentier-lafarge-soupconne-de-rejets-sauvages-dans-la-seine-a-paris_6050623_3244.html (accessed 18 December 2025).

33 Anna Kiefer, Cannelle Lavite and Claire Tixeire, 'Lafarge on Trial: Cementing Accountability', *Opinio Juris*, 27 October 2025; available at: https://opiniojuris.org/2025/10/27/lafarge-on-trial-cementing-accountability/ (accessed 18 December 2025).

ousness of these allegations, which concern activities from 2011 to 2014, legal proceedings have been hindered by procedural delays and jurisdictional disputes. The trial has been postponed for a decade, demonstrating that even in advanced legal systems, responses to corporate involvement in human rights abuses are often slow and stalled by systemic obstacles that impede timely justice.

ii. Regulatory chill: how ISDS undermines essential public policy

While countries seek to regulate corporate behaviour domestically, they are also constrained by international investment law, particularly the investor–state dispute settlement (ISDS) system. ISDS provisions in bilateral investment treaties (BITs) and free trade agreements allow foreign investors to sue host countries in private arbitration for regulatory actions that they claim affect their investors' rights or 'legitimate expectations'.[34] This creates a dual threat: on one hand, ISDS depletes public resources through high legal costs and compensation, and, on the other, it causes a regulatory chill that discourages governments from implementing necessary public-interest policies, especially amidst the climate crisis.[35]

The financial burden of ISDS is enormous and disproportionately affects developing countries. Research shows that the average legal and tribunal costs for a country sued in an ISDS case exceed USD 5 million, regardless of the outcome.[36] In more complex disputes, these costs can escalate dramatically; for example, the Turkish government incurred nearly USD 36 million in legal fees in *Libananco Holdings Co Limited v Turkey*.[37] Such costs drain limited public funds from vital services such as health care, education and infrastructure, effectively penalising developing nations for participating in the global investment system.[38] Moreover, compensation awards can reach into the billions, often based on 'future lost profits' rather than on actual investments.[39]

More damaging than the financial risks of ISDS is the widespread phenomenon of 'regulatory chill', which refers to the paralysing political apprehension that prevents governments from implementing ambitious public welfare, climate and environmental policies. The Intergovernmental Panel on Climate Change (IPCC) has officially emphasised that investment agreements constrain governments' freedom to act, which as a consequence may delay or even abandon vital climate policies.[40] Some developed countries have also admitted that the threat of ISDS compelled them to design climate action policies specifically to minimise the risk of litigation, thereby diminishing their effectiveness.[41]

iii. Sovereign erosion and limitations on human rights and environmental protection

The existing international investment framework, especially ISDS, has put in place a parallel legal system that consistently erodes state sovereignty, hampers climate initiatives and threatens human rights. Evidence indicates that, without an LBI prioritising human rights, decades of investment policies grounded in outdated investment agreements will continue to constrain, rather than enable, developed and developing countries' sovereign right to regulate, as they face financial and legal pressures from private tribunals.[42]

Sovereignty erosion is evident when ad hoc arbitration tribunals prioritise investor profits over the public good. Many tribunal awards show a systemic bias that places corporate rights above the sovereign's authority to regulate in the interests of environmental and human rights, underscoring the need for an LBI. *Rockhopper Exploration v Italy*,[43] is a key example of how the Energy Charter Treaty constrained democratic environmental governance. Following public efforts to safeguard marine environments, Italy banned offshore drilling, prompting a lawsuit by the British oil company. In August 2022, a tribunal awarded Rockhopper more than €190 million based on the potential value of an unexploited oil field. Although this decision was later annulled,[44] it highlights how the State's right to adopt and reform legislation can be unduly constrained by ISDS, exposing states to significant financial risks when enacting climate laws.

The 'chilling effect', on the other hand, extends to crucial resources, as shown by *Eco Oro Minerals Corp v Co-*

34 Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press, 2022, Chapter 14.

35 Uribe Terán (2025), n. 4.

36 Lise Johnson et al., 'Costs and Benefits of Investment Treaties: Practical Considerations for States', Columbia Center on Sustainable Investment, 2018; https://ccsi.columbia.edu/sites/ccsi.columbia.edu/files/content/docs/publications/07-Columbia-IIA-investor-policy-briefing-ENG-mr.pdf (accessed 16 December 2025).

37 Ibid. and *Libananco Holdings Co Limited v Republic of Turkey*, ICSID Case No ARB/06/8, Award (2 September 2011).

38 Uribe Terán (2025), n. 4.

39 UNCTAD, 'Compensation and Damages in Investor-State Dispute Settlement Proceedings' (September 2024), IIA Issues Note 1; https://unctad.org/system/files/official-document/diaepcbinf2024d3_en.pdf (accessed 16 December 2025).

40 Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press, 2022; and David R Boyd, 'Paying Polluters: The Catastrophic Consequences of Investor-State Dispute Settlement for Climate and Environment Action and Human Rights' (2023) UN Doc A/78/168.

41 See: Richard Orange, 'The Danish Climate Minister Closing Down the Oil Industry for Good', *The Guardian*, 5 December 2020; https://www.theguardian.com/world/2020/dec/05/the-danish-climate-minister-closing-down-the-oil-industry-for-good (accessed 16 December 2025); Reuters, 'EU Commission tells Spain not to pay up in long-running renewable subsidies case', *bilaterals.org*, 24 March 2025; https://www.isds.bilaterals.org/?eu-commission-tells-spain-not-to&lang=en (accessed 16 December 2025).

42 See, for example: David R Boyd, *Paying Polluters: The Catastrophic Consequences of Investor-State Dispute Settlement for Climate and Environment Action and Human Rights*, UN General Assembly, 2023, A/78/168.

43 *Rockhopper Exploration Plc et al v Republic of Italy*, ICSID Case No ARB/17/14, Final Award (23 August 2022)

44 *Rockhopper Exploration Plc et al v Republic of Italy*, ICSID Case No ARB/17/14, Decision on Annulment (2 June 2025).

lombia.[45] This case revealed the conflict between investment protection and the human right to water. The Colombian government banned mining in the Santurbán Páramo wetland to comply with a decision by the Constitutional Court of Colombia, the country's highest court. Although no damages were awarded in 2024,[46] the tribunal found Colombia liable for violating the 'Fair and Equitable Treatment' standard, setting a risky precedent that treating water as a protected resource may constitute a breach of the treaty. The ISDS mechanism also enables corporations to challenge domestic legal systems and Indigenous rights, as seen in *Glencore v Colombia*.[47] In this case, the Constitutional Court ordered the protection of the Wayúu community's water rights. Glencore filed an ISDS claim for USD 489 million, forcing the government into a difficult choice between complying with its own court's decision or avoiding a large payout.

Likewise, *Bear Creek v Peru*[48] is one of the few cases in which an ad hoc arbitration tribunal has assessed a mining corporation's 'social license to operate'. While the tribunal ultimately found that Peru had breached its obligations under the applicable bilateral investment treaty, the significance of the decision lies in the substantial reduction in the amount of damages awarded. The investor, Bear Creek Mining Corporation, had demanded approximately USD 522 million, based on the supposed future value of its operations. However, the tribunal awarded approximately USD 18.2 million, covering expenses incurred, and found that the project had become practically unfeasible as a consequence of intense social unrest and opposition from the local Aymara indigenous communities, thereby transforming the 'social license' from a matter of corporate social responsibility into a hard economic factor in the calculation of legal damages.

In cases such as *Gabriel Resources v Romania*[49] and *Lone Pine v Canada*,[50] tribunals have dismissed investors' claims, recognising that States have the right to enact non-discriminatory regulations and pursue public welfare objectives. This trend in success rates for environmental and human rights ISDS cases indicates that States are increasingly relying on international standards to defend their policy measures. Nonetheless, ISDS has also increased legal uncertainty for all parties involved, as evidenced by *Antin Infrastructure Services v Spain*.[51] Although Spain was ordered to pay €101 million for its energy reforms, the European Commission determined that such a payment was illegal under EU law, indicating how ISDS could undermine the rule of law by prioritising corporate profits over democratic institutions.

iv. The LBI as a correction mechanism

The recurrence of the cases summarised above confirms that voluntary guidelines are inadequate to safeguard the State's right to regulate. The LBI could thus explicitly incorporate provisions recognising that investment treaty protections should be considered in line with obligations under international human rights and environmental law. In addition, the LBI could impose mandatory human rights due diligence (HRDD) obligations on TNCs and prioritise human rights over trade and investment agreements.

States could also consider that regulatory measures in the areas of public health, environmental protection and human rights do not constitute expropriation or a breach of fair and equitable treatment, drawing on existing precedents.[52] This could limit the use of ISDS to circumvent domestic court rulings on human rights. Similarly, the decision in *Bear Creek* reflects a gradual shift towards aligning international investment law more closely with the standards that could be included in the LBI.

The LBI therefore offers a strategic opportunity to resolve a major policy inconsistency. By prioritising human rights obligations over trade and investment agreements, the treaty can remove the 'dual threat' posed by ISDS. The proposed Article 14 could specify that, in cases of conflict between the LBI and trade or investment agreements, human rights obligations should be considered and, where applicable, prevail.[53]

This provision could be used by States to defend the policy space to comply with their human rights obligations and to provide a legal basis to counter ISDS claims that challenge legitimate public-interest regulations, in line with efforts by developing countries and civil society to bring about a shift in the international legal framework to ensure that human rights are no longer subordinate to commercial interests.

45 *Eco Oro Minerals Corp v Republic of Colombia*, ICSID Case No ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum (9 September 2021).

46 *Eco Oro Minerals Corp v Republic of Colombia*, ICSID Case No ARB/16/41, Award on Damages (15 July 2024).

47 *Glencore International A.G. v Republic of Colombia*, ICSID Case No ARB/21/30, Request for Arbitration (2021).

48 *Bear Creek Mining Corporation v Republic of Peru*, ICSID Case No ARB/14/21, Award (30 November 2017).

49 *Gabriel Resources Ltd and Gabriel Resources (Jersey) v Romania*, ICSID Case No ARB/15/31, Award (8 March 2024).

50 *Lone Pine Resources Inc v Government of Canada*, ICSID Case No UNCT/15/2, Final Award (21 November 2022).

51 *Infrastructure Services Luxembourg Sàrl and Energia Termosolar BV v Kingdom of Spain* (Award) ICSID Case No ARB/13/31 (15 June 2018).

52 *Protocol on Investment to the Agreement Establishing the African Continental Free Trade Area* (adopted 19 February 2023); available at: https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/8533/download (accessed 17 December 2025).

53 Uribe Terán (2025), n. 4.

V. Defining a meaningful LBI: core provisions and key actors

Negotiations on an LBI for business and human rights entered a critical phase following the 11th session of OEIGWG in October 2025.[54] The diplomatic environment has shifted from reiterating broad positions to addressing key and substantive aspects of corporate responsibility. To achieve a practical and useful LBI, the EU should strategically realign itself to join up with the emerging progressive stance of developing countries, trade unions and civil society. This will not only confer democratic legitimacy on the LBI but also enable it to serve as a bridge between simple compliance models and a framework that effectively connects international law to the realities faced by affected communities.

i. Defining a meaningful solution through structural legal reforms

The LBI is not limited to human rights due diligence procedures but also relates to efforts to change the legal relationship between TNCs and victims of human rights abuses. The 11th Session of the OEIGWG emphasised that an effective instrument must shift from the voluntary corporate responsibility outlined in the UN Guiding Principles to a binding obligation for corporations. There is a need to develop these avenues by discussing joint and several liability standards, thus piercing the corporate veil and holding parent companies accountable for their subsidiaries' actions. Without these provisions, the complex structure of TNCs will continue to obstruct justice, as evidenced by debates over Article 12 on mutual legal assistance and asset tracing.[55]

Because courts generally treat corporations as separate legal entities, victims often cannot get access to the assets of the parent company. Therefore, the LBI should move away from treating TNCs as individual entities as a last resort and instead establish a clearer, more predictable standard. For example, there should be recognition that a parent company is responsible for harm caused by its subsidiaries in the event that it fails to provide sufficient funds to cover due diligence requirements and possesses superior knowledge of the 'risks' of subsidiary operations.[56] Similarly, parent companies could be held accountable for supporting security forces that attack protesters.[57]

Likewise, a meaningful solution is required to directly tackle the significant information gap between TNCs and local plaintiffs. This involves shifting the burden of proof in certain cases, requiring corporations to prove their compliance with human rights standards rather than imposing the burden of proof on resource-limited victims. In contrast to some positions expressed at the OEIGWG, State courts have already engaged in such practices, recognising that if plaintiffs demonstrate a high likelihood that pollutants from a facility caused harm, the causal link shall be presumed unless the company provides evidence to rebut it.[58] The application of the 'precautionary principle' to stop a mining project until the company has demonstrated there is no risk of contamination, thereby shifting the burden of proof away from the community,[59] provides another example of a welcome approach.

It is essential to ensure that the LBI does not become a 'safe harbour' in which human rights due diligence is invoked merely as a defence to avoid liability. Instead, due diligence should be seen as an ongoing, effective duty to prevent harm, not simply a box-ticking exercise that offers immunity. This approach would acknowledge that corporate harm, such as environmental damage or displacement of people, often affects individuals collectively and communities rather than only individual victims.

ii. The political dynamics towards an LBI

The driving force behind an ambitious LBI has been progressively shaped by statements and positions from various developing countries on key provisions. For example, during the 11th Session of the OEIGWG, the State of Pales-

54 UNHRC, 'Report on the eleventh session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights' (24 October 2025) UN Doc A/HRC/61/XX.

55 Stolen Asset Recovery Initiative, 'Mutual Legal Assistance' (*Stolen Asset Recovery Initiative*); available at: https://star.worldbank.org/mutual-legal-assistance (accessed 18 December 2025).

56 *Chandler v Cape plc* [2012] EWCA Civ 525.

57 FIDH, 'US Courts' (*Corporate Accountability for Human Rights Abuses*, June 2021); available at: https://corporateaccountability.fidh.org/the-guide/judicial-mechanisms/extraterritorial-civil-liability-of-multinational-corporations-for-human-rights-violations/the-accountability-of-parent-companies-for-acts-committed-abroad-piercing-the-corporate-veil/us-courts/ (accessed 18 December 2025).

58 Kim and Chang, 'Supreme Court Eases Plaintiff's Burden to Prove Causation for Environmental Damage' (19 July 2024); available at: https://www.kimchang.com/en/insights/detail.kc?sch_section=4&idx=29892 (accessed 18 December 2025).

59 Carolijn Terwindt, 'The Burden of Proof: Evidence in Environmental Litigation' (2013) *Evidence & Influence*; available at: https://www.ecchr.eu/fileadmin/user_upload/The_burden_of_proof_Evidence_in_environmental_litigation_Evidence___Influence_Micromagazine.pdf (accessed 18 December 2025).

tine, Colombia, Brazil, Mexico and Ghana successfully opposed efforts to water down certain provisions of the LBI. Mexico, for instance, led the reintroduction of Article 14.5 bis, which affirms the primacy of human rights obligations over trade and investment agreements, a move strongly supported by legal analysts and civil society.[60]

This government-backed momentum is closely linked to the role of the global trade union movement, which includes, for example, the International Trade Union Confederation (ITUC), IndustriALL Global Union and UNI Global Union. They insist that the treaty should encompass all recognised human rights, especially essential worker rights such as freedom of association.[61] Supporting this effort is a broad network of civil society groups that provide grassroots evidence and legal expertise, playing a crucial role as a counterweight to other organisations representing business interests, which continue to push for trade secret protections and to weaken the definition of 'victims'.

iii. Strengthening the democratic connective tissue of the European Union

With regard to the EU, its engagement with developing countries towards a progressive and efficient LBI should be regarded as a requirement of effective and democratic governance. In the current geopolitical situation, defined by rapid green and digital transitions, civil society and trade unions serve as the 'democratic connective tissue' between the regulatory machinery of Brussels and European citizens.[62]

The need to strengthen multilateralism is also part of this process, as any policy designed in isolation is fragile and increases not only legal, but also social fragmentation. Therefore, engagement with the LBI negotiation process, which is co-created with social partners, not only promotes resilience but also fosters cohesion toward common goals, particularly democratic governance and the protection of human rights. This is particularly crucial as the EU faces the fallout of the 2025 'Omnibus' simplification package, which could dismantle vital protections for workers and the environment under the banner of 'cutting red tape'.[63]

The European Economic and Social Committee (EESC) highlights that engaging with civil society is essential for fostering trust and ensuring ownership of new policies.[64] To move forward, the EU should institutionalise civil dialogue by championing an inter-institutional agreement that grants it the same structured status as social dialogue for the LBI. This would ensure that relevant organisations are involved in the early agenda-setting phase of foreign policy mandates rather than merely during final consultations.

Achieving successful adoption of the LBI will require the EU to go beyond mere rhetoric and to integrate civil society into its policymaking framework. Institutionalising civil dialogue could help the EU to counteract the deregulatory threats from the 2025 'Omnibus' package and make sure that foreign policy directives are influenced by democratic input right from the start, rather than added later. This change is more than just procedural; it is fundamental to creating a credible and effective strategy to adopt an LBI that genuinely safeguards workers and the environment, thereby strengthening the EU's contribution to a sustainable and inclusive multilateralism.

iv. Corporate capture vs the business case for a treaty

A key issue during the LBI negotiations has been the concept of 'corporate capture'. Organisations such as the International Organisation of Employers (IOE), the US Council for International Business (USCIB) and the International Chamber of Commerce (ICC) were present and lobbied to dilute the LBI text.[65] Business organisations have long argued that a strong treaty could lead to 'cut and run' situation', with companies withdrawing from developing markets to avoid liability risks rather than staying and improving local conditions, thereby harming the very economies the treaty aims to support.[66]

Civil society and likeminded states have countered this narrative by pointing out that the current voluntary system already encourages a race to the bottom, and that the 'cut and run' threat is a coercive tactic designed to preserve the status quo of impunity.[67]

This interaction has increased the need to include safeguards in the LBI concerning its future implementation. Modelled on Article 5.3 of the Framework Convention on

60 CIDSE, 'UN Binding Treaty 11th Session Conclusions', *CIDSE*, 27 October 2025; available at: https://www.cidse.org/2025/10/27/un-binding-treaty-11th-session-conclusions/ (accessed 18 December 2025).

61 International Trade Union Confederation, 'Global unions reaffirm support for a binding UN Treaty on Business and Human Rights' (30 October 2025); available at: https://www.ituc-csi.org/global-unions-reaffirm-support-for-a-binding-UN-Treaty-on-Business-and-Human-Rights (accessed 18 December 2025).

62 European Economic and Social Committee, 'Civil dialogue: new EESC study published' (17 July 2025); available at: https://www.eesc.europa.eu/en/news-media/news/civil-dialogue-new-eesc-study-published (accessed 18 December 2025).

63 Walk Free (2025), n. 14.

64 European Economic and Social Committee, 'Civil dialogue: new EESC study published' (17 July 2025); available at: https://www.eesc.europa.eu/en/news-media/news/civil-dialogue-new-eesc-study-published (accessed 18 December 2025).

65 Business & Human Rights Resource Centre, 'Day 5: Friday 24 October' (24 October 2025); available at: https://www.business-humanrights.org/en/latest-news/day-5-friday-24-october/ (accessed 18 December 2025).

66 See: International Organisation of Employers (IOE), Business at OECD (BIAC) and BusinessEurope, 'Joint Business Position on the 4th Revised Draft of the Legally Binding Instrument on Business and Human Rights' (October 2023); available at: https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=159667&token=3367327b0e87536b865ccdcbcb0091dd27f34e49 (accessed 18 December 2025).

67 Marta Ribera Carbó et al., 'The Elephant in the Room: Ending Corporate Capture in the LBI Negotiations', *ESCR-Net*, 24 April 2025; available at: https://www.escr-net.org/news/2025/the-elephant-in-the-room-ending-corporate-capture-in-the-lbi-negotiations/ (accessed 18 December 2025).

Tobacco Control (FCTC),[68] which explicitly protects public health policies from commercial vested interests, proponents argue that a similar provision (specifically Article 16.6) is necessary to ensure that these rules are not written by the very entities they are meant to regulate.

Nevertheless, debates over Article 16.6 were intense, with business groups characterising it as 'subjective' and 'anti-business', while civil society organisations, such as the Global Campaign to Dismantle Corporate Power, highlighted its significance for democratic integrity. The FCTC precedent demonstrates that safeguarding policy space from vested interests is not only achievable but essential for effective treaty enforcement.

In addition, although some associations have opposed the LBI, a growing coalition of investors and responsible corporations argue that a binding treaty is not a burden, but a necessity for long-term market stability. The primary argument is the creation of a 'level playing field', as voluntary standards disadvantage companies that invest in ethical compliance, which are undercut by competitors who cut costs by ignoring human rights.[69] The LBI can prevent 'free riders' from profiting from abuse and ensure that responsible business conduct is a baseline requirement rather than a competitive disadvantage.[70]

Furthermore, as already mentioned, the proliferation of divergent national laws and regional instruments, such as the French Duty of Vigilance Law, the German Supply Chain Act and the EU's CSDDD, potentially creates a fragmented regulatory landscape, in which compliance requirements increase, along with administrative costs and legal uncertainty. Consequently, many businesses view the LBI as a tool for legal harmonisation, providing a single, cohesive global standard that simplifies compliance and offers the legal certainty necessary for long-term investment planning.[71]

Finally, investors have recognised that human rights abuses lead to operational disruptions, reputational damage and financial loss. As such, coalitions representing trillions in assets under management have publicly supported the treaty, arguing that a robust legal framework is essential to identify and mitigate systemic risks in global portfolios.[72]

68 *WHO Framework Convention on Tobacco Control* (adopted 21 May 2003, entered into force 27 February 2005) 2302 UNTS 166.

69 Ethical Trading Initiative, 'ETI Position on the UN Legally Binding Instrument on Business and Human Rights' (October 2021); available at: https://www.ethicaltrade.org (accessed 18 December 2025).

70 Principles for Responsible Investment (PRI), 'The Investor Case for a UN Treaty on Business and Human Rights' (PRI Association 2022); available at: https://www.unpri.org (accessed 18 December 2025).

71 Business & Human Rights Resource Centre, 'List of Large Businesses and Associations Supporting Mandatory Due Diligence' (2024); available at: https://www.business-humanrights.org (accessed 18 December 2025).

72 Investor Alliance for Human Rights, 'Investor Statement in Support of a Binding Treaty on Business and Human Rights' (2023); available at: https://investorsforhumanrights.org (accessed 18 December 2025).

VI. Strategic recommendations and outlook for 2026

The challenges facing the current global corporate accountability framework present a unique opportunity to deliver an LBI that conceptualises the most essential aspects of access to justice for victims of human rights violations arising from business conduct. The LBI is no longer merely a call from developing countries and civil society, but represents a crucial step toward affirming the rule of law in the global economy. The LBI goes beyond due diligence and is aimed at establishing clear liability for parent companies and ensuring access to remedies for victims. It offers a path to close the governance gaps that have allowed impunity to flourish and reframes the debate from 'regulation vs growth' to 'growth and remedy'.

In 2026, political actors face a crucial decision. They must choose between a fragmented international regime in which corporate influence supersedes national sovereignty, or a rules-based international system that pursues the common good. The 11th Session laid down the technical groundwork, and the interim period is crucial for finalising the LBI's enforcement mechanisms, particularly regarding liability, jurisdiction and remedies before the 12th Session of the OEIGWG in October 2026.

To achieve a meaningful outcome, developing countries should strengthen their role as the primary engine of this treaty process and consolidate gains, in particular by adopting common positions. The African Group, for example, could leverage the 'Friends of the Chair' mechanism to push for the inclusion of environmental rights and the protection of human rights defenders as non-negotiable elements.

Countries with advanced national action plans and legislation on businesses and human rights could demonstrate that their proactive domestic regulation denies the claim that developing countries lack the capacity to enforce binding rules. Relevant national laws may provide concrete examples to move forward in the drafting of the LBI. Nevertheless, the efforts to regulate corporate conduct would be futile if ISDS continues to threaten decision-making in the public interest. States should utilise the momentum of the LBI negotiations to review existing investment treaties containing ISDS clauses and to develop new reform mechanisms to safeguard the right to regulate, which is essential for economic sovereignty and sustainable development.

For developed countries, active engagement in the LBI process has become crucial to prevent regulatory fragmentation and increasing legal uncertainty, especially as regional standards weaken. To bridge the widening governance gap, key EU member states, such as Belgium, France, Ireland, Portugal and Spain, should actively engage in the European Council to secure a negotiating mandate for the Commission. The EU's participation would also support its commitments to the protection of human rights and democratic governance.

Finally, perpetuation of the current gap in international law, especially liability for not preventing human rights violations, would not only jeopardise the full enjoyment of human rights but also exacerbate the social impacts of the poly-crisis the world is currently experiencing. All states, developed and developing, will directly benefit from a legally binding instrument that serves as an effective bridge, balancing business interests and accountability by allowing a defence based on the implementation of adequate standards and procedures. Cooperation on jurisdiction would be essential to ensuring that remedies are available in home states for extraterritorial violations, closing the current 'remedy deficit' that shields TNCs.

About the author

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The UN Treaty on Business and Human Rights: Regulating Corporate Power in the Era of Deregulation

For nearly fifty years, the global governance of transnational corporations has been stalled by a divide between voluntary standards and binding legal frameworks, resulting in a 'justice paralysis' for victims. Today, this crisis is no longer limited to the Global South; it manifests as a 'boomerang effect,' in which corporate impunity and the weakening of regional laws, such as the EU's Corporate Sustainability Due Diligence Directive (CSDDD) and Germany's Supply Chain Due Diligence Act (LkSG), threaten the sovereignty and democratic stability also of developed nations. The proliferation of Investor-State Dispute Settlement (ISDS) mechanisms contributes to this 'regulatory chill,' allowing private tribunals to prioritise corporate profits over vital climate and public-interest policies.

Against this backdrop of deregulation, the United Nations Legally Binding Instrument (LBI) has transitioned from an aspiration to an urgent necessity for states seeking to preserve their power to regulate in the public interest. Drawing on the momentum of the 11th Session of the Human Rights Council's open-ended intergovernmental working group (OEIGWG) in 2025, this paper argues that a robust treaty is essential to establish a universal floor for corporate conduct, pierce the corporate veil, and restore the balance between corporate rights and human dignity. By integrating the 'Human Rights Economy' framework, the analysis demonstrates that binding accountability is not an economic burden but a prerequisite for market stability and sustainable, rights-based growth.

Further information on this topic can be found here:
↗ **geneva.fes.de**

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