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Human rights and transnational corporations: Europe drags its feet at the UN

March 8, 2019 by Christophe Gueugneau

According to a document consulted by Mediapart, the European Commission has decided to no longer participate in negotiations on a legally binding treaty for multinational corporations with respect to human and environmental rights. On Friday, in Geneva, the European Union used procedural concerns as an argument not to move forward.

The European Union is continuing its effort to undermine the UN negotiations on a legally binding treaty for transnational corporations with respect to human and environmental rights. In October 2017, during the 3rd session of negotiations, Europe tried to show that the working group was only entitled to three sessions and therefore no longer had the legitimacy to continue the process without a new UN resolution. In October 2018, at the 4th session, the EU dissociated itself from the conclusions, while continuing to challenge the mandate of the working group.

On Friday 8 March, in Geneva, the European Union, through Romania, used another angle of attack: the fact that the working group did not publish online an annex to the European position put forward last October. However, according to a Geneva lawyer, it often happens that not all the documents sent by the parties are put online. The Romanian representative spoke for a few minutes in total, devoting only the very last part of his speech to the Treaty itself....

In fact, the European Union has never been very forthcoming on this important subject of respect for human rights by multinational corporations. Last October, the EU was extremely discreet during the working sessions, and each of its positions - or non-positions - seemed to have only one objective: to stop the process (as we've been telling it here). A petition calling for more efforts from the EU at the UN has already collected more than 540,000 signatures.

This alternative treaty enjoys the enthusiastic support of a myriad of civil society groups: it aims to create, within the framework of the United Nations, a legally binding instrument to oblige transnational corporations to uphold some of the most fundamental human rights, wherever they and their subsidiaries are located (see the zero draft published online in July).

Such a treaty would simplify remedies in various cases. In a report published in 2018, Friends of the Earth recalled the catastrophic collapse of the Fundão dam on 5 November 2015 in Minas Gerais, Brazil, which resulted in the dumping of 45 million cubic metres of toxic mining waste into the Rio Doce River and its tributaries. The responsible company is Samarco Mineração S.A., a joint venture between two multinationals, the Brazilian Vale and the Anglo-Australian BHP. However, this status of joint venture makes it very difficult to pursue claims for compensation.

Another example is the support of the French bank Société Générale for a gas infrastructure project near the Mexican border in the United States. Damaging for the environment (due to numerous gas leaks in particular), the project also threatens local indigenous communities. The bank should logically withdraw from it in order to comply with the UN treaty if it is one day adopted.

The binding treaty process began at the United Nations in 2014, one year after the collapse of the Rana Plaza factory building in Bangladesh, which claimed more than 1,100 lives. Many of these victims worked in garment factories that supplied major Western clothing brands, including Mango, Benetton and Carrefour. But these companies, until now, have never had to face the courts.

And discussions at the UN are not about to move forward. The European Union is playing an unhealthy game in this respect. Last October, in addition to its procedural arguments, Europe also argued, in essence, that it was already doing a lot on the subject and that it was better to rely on the commitment of multinational corporations than on a binding treaty.

(Photo) Demonstration on 24 April 2014 in Savar (Bangladesh), one year after the Rana Plaza disaster. Families of victims are demanding accountability from Western textile companies. Reuters / Andrew Biraj

Behind the scenes, the European Commission's position is even worse. According to a document that Mediapart obtained, on 26 February, within the framework of the Political and Security Committee - an important body of the Council, which receives the European External Action Service and the Commission, a forum for discussion and decision-making - the Commission proposed nothing less than to put on hold the European Union's participation in the UN discussions.

In this document, the Commission gives two main reasons: that the red lines laid down by Europe have not been met, and that the process is not sufficiently supported by industrialised countries.

On the first point, the "red lines", the Commission considers in particular that it is a mistake for the scope to tackle transnational activities alone. On the second point, the Commission has particular concerns about the possibility that the text could undermine a level playing field for business.

The pause advocated by the Commission on 26 February was not explicitly mentioned on Friday in Geneva, but the timetable itself plays into this position. The new European Commission is not expected to be operational until September. It would then have to obtain a negotiating mandate from all European countries in less than a month. Nearly impossible to do.

The European Commission will thus go to the 5th session in October without a mandate and therefore without any possibility to actually negotiate the text.

However, some European countries are relatively advanced in the process, notably France, and some northern European countries (Germany, Belgium, Netherlands, Finland, Denmark in particular). These countries are all involved locally, to varying degrees, in legislative processes on the subject. Germany has, for example, recently announced a legal proposal.

France is one step ahead since its law came into force in March 2017, but plans to remain at that. According to a French contribution that Mediapart has obtained, which concerns Article 9 of the UN draft text on the duty of vigilance, the authorities fear that the Treaty, in its current wording, extends this obligation well beyond the 200 to 300 companies concerned by the French law. France thus wants a threshold to be set, below which the Treaty would not apply.

France also considers that a number of the measures recommended, such as impact assessments or the definition of internal policies and monitoring mechanisms, will be difficult to implement for reasons of constraints and costs. In particular for small and medium-sized companies.

Under the French law of 2017, companies with at least 5,000 employees in France (or more than 10,000 worldwide) are required to "identify risks and prevent serious violations" of a wide range of rights (health, environmental, social) that their activities or those of their subsidiaries could cause, in France and abroad. This is a real step forward, welcomed by NGOs.

It requires multinational companies to establish a compliance plan, publish it and implement it. However, this law creates an obligation of means and not of results. In addition, the burden of proof lies with the claimants: they are the ones who will have to justify any damage or fault on the part of the company.

On the issue of the monitoring plan, NGOs are also critical. A study published two weeks ago examined 80 vigilance plans. According to ActionAid France-Peuples Solidaires, Amis de la Terre France, Amnesty International France, CCFD-Terre Solidaire, the collective Éthique sur l'étiquette and Sherpa, who initiated this study, "most of them only very partially meet the requirements of the law, particularly in terms of identifying the risks of violations, their location and the measures implemented to prevent them". "Even more serious, some companies, such as Lactalis, Crédit Agricole, Zara or H&M have still not published a vigilance plan, despite the legal obligation imposed on them," they continue.

The associations conclude: "If the law is little or poorly applied, it is illusory to consider reducing environmental damage or human rights violations against workers and populations around the world." What is valid in France is all the more so at the global level, where the treaty is still far from being realised.