Forum: General Assembly: 3 LEGAL

Issue: Closing legal loopholes that enable multinational corporations to evade accountability for human rights violations

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Introduction

The development of global capitalism has given multinational corporations (MNCs) unprecedented mobility, influence, and economic power, often exceeding the regulatory capacity of nation-states. International investment and transnational trade have driven development and innovation, while creating significant normative gaps in the implementation of human rights obligations. The development of something has created legal gaps that disadvantage customers. By operating in jurisdictions with conflicting legal frameworks, multinational corporations have often exploited these inconsistencies to avoid accountability for actions that would otherwise constitute serious violations of international human rights standards. The asymmetry between the global reach of corporate actors and the territorial boundaries of state regulation has thus created a complex accountability gap in which corporate immunity persists despite significant harms to individuals and communities. In the absence of a legal framework, corporations use legal manipulation.

This legal gap is exacerbated by the strategic use of judicial arbitration, fake corporations, and opaque supply chains that collectively blur the lines of responsibility and hinder effective redress mechanisms. The increasing use of internet shopping, especially in the last few years, also contributes to this system. Numerous reports by human rights organizations and civil society organizations (to be cited later in the bibliography) have documented examples of forced labor, land grabbing, environmental degradation, and suppression of workers' rights in connection with corporate practices, especially in the Global South. However, existing international legal instruments, such as the UN Guiding Principles on Business and Human Rights, are non-binding, rely on voluntary compliance, and offer minimal deterrence or sanctions. Failure to impose binding obligations on corporations not only undermines the universality of human rights, but also erodes public trust in international legal institutions and demonstrates that the system supports capitalism.

Accordingly, closing the legal gaps that allow multinational corporations to evade accountability requires a multidimensional approach rooted in both normative and institutional reform. This includes developing legally binding international instruments, strengthening claims of extraterritorial jurisdiction by home states, and harmonizing domestic legislation to prevent regulatory arbitrage. Moreover, political will is required to challenge entrenched corporate interests and amplify the voices of affected communities within global governance frameworks. In addressing this agenda, the committee should address the complex interplay between state sovereignty, institutional autonomy, and the universality of human rights, and move toward a transnational accountability regime in which no actor, regardless of party economic status, is above the law. The people must be legally legitimized as more than a commodity.

Key Terms and Definitions

Multinational Corporation(MNC): A multinational corporation (MNC) is a company that has business operations in at least one country other than its home country and generates revenue beyond its borders.

Legal Loophole: This is a small mistake which allows people to do something that would otherwise be illegal. Many companies require you to sign liability waivers before engaging in a dangerous activity. For example, if you choose to bungee jump, you will be required to sign a waiver stating that you will not sue them in the event of a serious injury.

Jurisdictional Arbitrage: Jurisdictional arbitrage involves taking advantage of the differences between legal, tax, or regulatory systems in different jurisdictions to benefit from more favourable conditions.

Corporate Impunity: The situation where companies escape legal liability or meaningful consequences for actions that cause harm, often through legal immunity, weak enforcement or judicial complexity.

Regulatory Arbitrage: Regulatory arbitrage is a corporate practice of utilizing more favorable laws in one jurisdiction to circumvent less favorable regulation elsewhere.

Background Information

The contemporary global economic system provides both unprecedented reach for multinational corporations and significant challenges to hold them accountable. Today, multinational corporations operate transnationally, with complex institutional structures and supply chains spanning multiple countries. This transnational footprint creates structural imbalances in governance that far outstrip the primarily national scope of legal enforcement. In many cases, jurisdictional gaps and unequal enforcement allow companies involved in human rights abuses to avoid consequences.

A. Imbalances in governance

At the heart of the accountability problem is the mismatch between the global operations of companies and the territorially bounded nature of law. The problem comes closer to being resolved when we can bring the boundaries of operations and the law together. Multinationals may choose to invest in jurisdictions with weaker regulatory oversight or to organize their corporate groups so that a small number of legally responsible entities have a small presence. Developing countries, often constrained by limited resources and eager to attract foreign investment, may fail to strictly monitor corporate behavior. This power imbalance means that multinationals can sometimes effectively dictate terms, influencing labor laws, environmental regulations, or tax policies to their advantage (a phenomenon often referred to as "regulatory capture" or "government capture"). In extreme cases, companies have used trade and investment agreements to deter or challenge government action. For example, some companies have used investor-state dispute settlement (ISDS) mechanisms to sue states over allegedly profit-sapping regulations that could deter governments from enacting stronger human rights or environmental protections. The result is a structural gradient in which "local legislative and judicial systems in most countries too often sacrifice the public interest to serve the narrow interests of corporate elites and investors." In other words, the rules of the global economy—prioritizing free trade and investment protection—expand corporate rights while correspondingly weak corporate responsibilities.

B. Jurisdiction and enforcement challenges

Even when legal norms exist to punish corporate wrongdoing, applying them across borders is fraught with difficulties. That is, as the scope expands, enforcement challenges arise.

National courts are often limited to their own jurisdictions, creating a gap that companies exploit by dispersing their operations across jurisdictions. If human rights violations occur in country A, but the parent company and its assets are in country B, no country's court may be willing or able to provide an effective remedy. International courts, such as the ICC, are also not competent or inclined to try such crimes because they do not fall within universal jurisdiction. Host states—where the wrongdoings occur—may lack the capacity to prosecute powerful foreign investors or fear the economic consequences. Home states—where multinational corporations are headquartered—have been reluctant to exercise jurisdiction over their firms' foreign operations, citing principles of state sovereignty and international comity. So there is a huge double standard. The result is a governance vacuum: no court has clear authority or incentive to adjudicate claims. Victims are thus faced with complex legal mazes – they may try to sue in the company's home country, but the case may be dismissed on procedural grounds (such as forum non conveniens or lack of jurisdiction), or they may pursue litigation in the host country, where the company's local subsidiary may be a separate legal entity with limited assets and the parent's involvement is indirect.

Modern examples abound. In Latin America, the decades-long Chevron v. Ecuador case illustrates how jurisdictional barriers can make evasion possible. Indigenous communities in Ecuador won a landmark $9.5 billion lawsuit against Chevron in 2011 for massive oil pollution of the Amazon rainforest. But Chevron had no remaining assets in Ecuador, and when the victims tried to enforce the judgment abroad, Chevron vehemently contested it. The company countersued the Ecuadorian government in international arbitration (under a bilateral investment treaty) and won an injunction effectively blocking the enforcement of the judgment. To date, the affected communities have failed to recover compensation. Instead, the case has become a symbol of "corporate immunity," in which a company exploits a fragmented legal framework—moving assets transnationally and resorting to investment arbitration—and evades compliance with a ruling on human rights and environmental damage. The Chevron vs. Ecuador case, along with other cases—such as the mine dam failures in Brazil or the attacks on environmental defenders in Honduras—has been used by the press to "highlight the need for a legally binding international framework to end the impunity with which corporations operate."

Challenges

Despite increasing awareness and gradual reforms, several fundamental problems persist in international efforts to hold multinational corporations accountable for human rights violations. This section outlines the key issues that constitute the "gaps" in the current system. These include gaps in international law, the opaque nature of corporate supply chains, the lack of extraterritorial jurisdiction mechanisms, and the shortcomings of voluntary compliance approaches. Each problem is interconnected, creating an "architecture of impunity" that the global community is working to eliminate.

• **Gaps in International Legal Instruments:** One of the fundamental problems is the lack of a comprehensive and binding international legal framework governing corporate human rights liability. International human rights law has traditionally been binding on states, not corporations, creating a normative vacuum. Treaties such as the International Covenant on Civil and Political Rights or the Convention Against Torture oblige states to prevent and remediate abuses, but do not impose obligations directly on businesses. There is no global court or tribunal through which victims can sue a corporation for human rights violations. As a result, enforcement relies on local law, which is inconsistent across jurisdictions. Some voluntary international norms address business conduct – for example, the OECD Guidelines for Multinational Enterprises (1976) and the UN Guiding Principles on Business and Human Rights (2011) – but these are non-binding recommendations. The UN Guiding Principles explicitly acknowledge the need for companies to exercise "human rights due diligence" to prevent abuses, but "international norms for companies are not legally binding. Companies can and sometimes do ignore them…Voluntary standards, while valuable, are not sufficient." This gap has practical consequences: when corporate abuses occur, there may be no applicable international law to refer to, and victims may have to resort to weak or unenforced local laws. While certain areas of international law impose duties on companies (for example, international criminal law can prosecute individuals in companies for genocide or war crimes, and anti-corruption treaties require states to punish corporate bribery), these cover only narrow categories and are still dependent on state action. The broader range of human rights impacts—labor rights, environmental rights, indigenous rights, privacy rights, etc.—lack a binding international agreement for corporations. Efforts to create one (such as the ongoing UN treaty negotiations on labor and human rights) suggest that the international community recognizes this gap, but as of today, no such agreement is in place. Consequently, the complexities of existing international instruments do not comprehensively prevent companies from "forum shopping" for permissive jurisdictions or exploiting regulatory gaps.

• **Opacity in Supply Chains and Institutional Structures**: The second major issue is the deliberate opacity and complexity of modern corporate operations. Multinational often source materials and labor through extensive supply chains involving subsidiaries, suppliers, and subcontractors in multiple countries. This fragmentation hides accountability. Human rights violations, such as child labor, forced labor, or hazardous working conditions, often occur at the lowest levels of supply chains—on farms, in mines, or in factories that are contractually several layers away from the multinational brand or retailer. When violations are discovered, the parent company can claim that it did not know about or control the actions of an independent supplier. Legally, the separate legal entity doctrine means that the parent company is generally not automatically liable for the actions of a supplier or even a subsidiary. In addition, limited transparency makes it difficult for outsiders to track which company sources from which factory or plantation, especially since suppliers can change frequently or operate informally. This opacity is a significant barrier to accountability. It hinders investigations and allows companies to shift blame. For example, after the Rana Plaza collapse, fashion brands initially downplayed their connections to factories; investigators and activists had to comb through the rubble to find brand labels and purchase orders proving which companies sourced from there. More generally, victims of abuses in supply chains often "do not have realistic opportunities to address or find solutions to these problems themselves,"especially when they are marginalized groups such as migrant workers or poor rural communities. The UN Guiding Principles call on companies to source from tected – or will be completely ignored – by the multinational beneficiaries. The opacity issue is compounded by the use of shell companies and subsidiaries in corporate structures. Companies may channel operations through layers of entities in different jurisdictions (often for tax purposes), which can also shield the true controlling mind from liability. Overall, the lack of transparency and traceability in global business operations remains a critical challenge: without clarity on "who does what" in a corporate empire, enforcing accountability is like chasing a moving target shrouded in legal obscurity.

• **Lack of Extraterritorial Jurisdiction and Enforcement:** The principle of territorial sovereignty in law means that most countries do not readily investigate or prosecute human rights crimes that occur outside their borders. This poses a severe hurdle when the wrongdoing occurs in one country (often a developing host state) but meaningful redress could only be obtained in another (often the home state of the corporation). The current international legal order provides limited avenues for extraterritorial enforcement. There are a

few exceptions – for example, some states allow civil lawsuits in their courts for foreign torts (the U.S. Alien Tort Statute was one, before its restriction; Canada and the UK have slowly opened their courts for some overseas human rights claims in recent judgments).
Anti-corruption laws and anti-trafficking laws sometimes have extraterritorial reach, and universal jurisdiction principles allow states to prosecute egregious crimes like torture or genocide regardless of where they occur. However, for ordinary human rights and environmental abuses linked to business, there is generally no obligation on a home state to provide a remedy.This lack of extraterritorial jurisdiction essentially creates a loophole by geography – if abuses happen in a country with weak courts, the corporate perpetrator can escape sanction, and stronger courts elsewhere often declare it “not our case.” Efforts to encourage more extraterritorial oversight have met political resistance;Governments fear overstepping their mandate or disadvantaging their multinational enterprises. The result is that justice for victims becomes a matter of luck and venue. As noted earlier, many cases are dismissed on procedural grounds. The forum non conveniens doctrine, for instance, has been used by corporations to argue that the appropriate forum is the host country (even when, ironically, the host country's legal system is too weak to hold them accountable).
Additionally, even if a victim wins a lawsuit in one jurisdiction, enforcing that judgment in another jurisdiction (where the company's assets are) can be arduous or impossible. In the Chevron–Ecuador case, Ecuador's courts rendered a verdict against the company, but enforcement in the U.S. (Chevron's home) was denied, and an international arbitration further imposed enforcement ￼ ￼. Such scenarios highlight a systemic issue: accountability gaps thrive in the spaces between national jurisdictions. Until there are stronger norms or agreements requiring companies to submit to oversight for their overseas conduct (or mechanisms for cross-border cooperation in legal matters), this gap will persist. The U.N. Working Group on Business and Human Rights and various human rights bodies have encouraged states to exercise “extraterritorial obligations” – meaning states should regulate and adjudicate the overseas activities of businesses incorporated in their territory – but these remain soft recommendations. In practice, the unwillingness to assert extraterritorial jurisdiction continues to be a major impediment in closing legal loopholes.

• **Reliance on Voluntary Compliance and Corporate Self-Regulation:** The final key issue is the inadequacy of relying on voluntary measures to prevent or redress human rights abuses by MNCs. Over the past decades, in lieu of binding rules, a proliferation of corporate social responsibility (CSR) initiatives, codes of conduct, and multi-stakeholder agreements have emerged. Many multinational companies today publish sustainability reports and professional commitment to human rights standards. However, these commitments are only as good as the company's willingness to implement them – there is often no external oversight or penalty for non-compliance. Voluntary initiatives have undeniably raised awareness and led some companies to improve practices, but they are not a substitute for accountability. One problem is inconsistency: some firms genuinely invest in robust human rights due diligence, while others engage in “bluewashing” or superficial PR efforts. Without legal mandates, laggard companies face little pressure to change, undercutting responsible Competitors. Another problem is the lack of trust and transparency: communities affected by corporate projects frequently have no seat at the table in designing or monitoring voluntary programs. For example, global Frameworks like the UN Global Compact rely on companies to self-report progress, and enforcement is limited to expulsion from the initiative, which has minimal practical impact. Likewise, industry-led certification schemes (in sectors like mining, forestry, garments, electronics, etc.) sometimes set standards, but auditors may miss or even cover up abuses, as seen in the Rana Plaza case where prior audits failed to detect grave structural risks. Ultimately, without legal accountability, victims' rights to remedy are at the mercy of a company's discretion. As Human Rights Watch observed, “governments have often failed to oversee or regulate the human rights practices of companies… In the absence of legally binding standards, ensuring that all companies take their human rights due diligence responsibilities seriously becomes extremely difficult. Voluntary standards, while valuable, are not enough.” This is increasingly driving calls for mandatory measures – for instance, several jurisdictions are moving toward laws requiring human rights due diligence —such as France's 2017 Duty of Vigilance Law and the EU's proposed Corporate Sustainability Due Diligence Directive). The push for a UN treaty also stems from the realization that purely voluntary regimes leave too many gaps. The role of voluntary compliance in the current landscape, therefore, is a double-edged sword: it is better than nothing and has fostered important dialogues, but it cannot by itself close the impunity gap. When a serious violation occurs, voluntary commitments alone rarely deliver justice – ultimately, an affected community cannot force a corporation to remedy harm unless there is a legal obligation.

Historical Background

Multinational corporations (MNCs) have been influential in the global economy for centuries, often operating beyond traditional legal constraints. The evolution of MNC influence dates back to the colonial period: for example, in the 18th century, the British East India Company effectively governed vast territories and was infamous for its abuses and manipulations until public outcry spurred reform. Notably, as early as 1777, a London court held an East India Company official responsible for abuses committed in Bengal, an early example of extraterritorial corporate accountability. But such cases were rare, and for most of modern history, corporations operated with minimal direct accountability under international law. States have jealously guarded sovereignty, and international human rights instruments such as the 1948 Universal Declaration of Human Rights and the 1966 human rights conventions have imposed obligations on states—not on private corporations.

II. After World War II, the rise of multinational enterprises accelerated, raising new concerns about their legal immunity and human rights impacts. In the post-colonial era, newly independent states became wary of foreign corporate power. In the 1970s, developing countries pressed for a New International Economic Order that would rebalance economic power and regulate transnational corporations. This culminated in the United Nations opening negotiations in the late 1970s on a Draft Code of Conduct for Transnational Enterprises. The draft code aimed to define the responsibilities of multinational corporations and protect the rights of host states. However, these negotiations ultimately stalled in the early 1990s, coinciding with a shift toward global economic liberalization and fierce resistance from developed countries seeking to attract foreign investment. This failure highlighted a recurring trend: international efforts to impose binding rules on corporate conduct have often been overshadowed by competition among states for investment and the influence of corporate lobbying.

In the late 20th century, several high-profile incidents exposed regulatory gaps that allowed corporations to avoid liability for human rights abuses. A watershed moment was the Bhopal disaster of 1984, in which a toxic gas leak at a Union Carbide chemical plant in India killed thousands of people. The aftermath revealed how a US-based parent company had largely avoided legal consequences for mass casualties abroad. Bhopal has become "a vivid example of corporate impunity for human rights abuses", highlighting "the lack of clear human rights obligations for corporations, the difficulty of holding a parent company accountable for its subsidiaries, the abuse of the forum non conveniens doctrine, and the inability or unwillingness of states to pursue multinational corporations". In practice, US courts have rejected Bhopal victims' claims in favor of Indian jurisdiction (citing forum non conveniens), and the resulting Indian settlement has been widely criticized for being inadequate. Union Carbide's CEO was never tried, demonstrating how legal loopholes and jurisdictional barriers can shield corporate actors from full accountability.

Another turning point came in the 1990s with the Ogoni crisis involving the Royal Dutch Shell oil company in Nigeria. Indigenous communities in the Niger Delta faced environmental destruction and violent repression of protests. In 1995, Nigerian authorities executed nine Ogoni activists (including author Ken Saro-Wiwa) after a flawed trial amid allegations that Shell was complicit in encouraging the repression. The incident highlighted how foreign companies can benefit from or be complicit in state violence but escape punishment. Shell faced a global backlash and eventually civil lawsuits (for example, under the Alien Tort Act in the United States), but eventually settled out of court in 2009 without admitting liability. No criminal case was ever filed. The Shell-Ogoni case has become emblematic of the accountability gap: it has highlighted the inadequacy of traditional legal frameworks to hold a multinational corporation accountable for human rights violations committed in a host country with weak rule of law.

In response to such incidents, there were parallel efforts to develop international standards. The 1990s and early 2000s saw a push for corporate social responsibility and voluntary initiatives. In 2000, the UN launched the Global Compact, which calls on companies to voluntarily comply with human rights, labor, environmental, and anti-corruption principles. At the same time, the UN Subcommission on Human Rights called on companies to impose direct human rights obligations. Instead, Professor John Ruggie, Special Representative, who proposed the "Protect, Respect and Remedy" framework in 2008 and presented the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011. The UNGPs, unanimously endorsed by the Human Rights Council, made clear that states have a duty to protect human rights and businesses have a responsibility to respect human rights; but crucially, the Guiding Principles are not legally binding. This marked a shift in state-institutional relations: instead of imposing harsh laws, the international community adopted (at least temporarily) a voluntary, guidance-based approach to corporate human rights responsibility.

Despite these soft law advances, the late 20th and early 21st centuries continued to be marked by corporate abuses and limited legal remedies. From sweatshops in global supply chains to mining and oil projects linked to displacement or violence, multinationals often operated in a governance vacuum. The 2013 Rana Plaza factory collapse in Bangladesh—where more than 1,100 garment workers were killed when an unsafe building housing supplier factories collapsed—showed starkly how deadly these gaps can be. Global brands had codes of conduct for their suppliers, but these voluntary commitments did not prevent disaster or provide legal accountability for those responsible. In general, historical experience has shown that as corporate influence expands under globalization, binding regulations have struggled to keep pace. Major milestones in international law (such as the establishment of the International Criminal Court in 2002) have reinforced the trend toward corporate immunity, particularly by excluding legal entities (corporations) from jurisdiction. Even efforts to address abuses within domestic courts—such as the U.S. Alien Tolerance Statute (ATS) lawsuits against corporations for overseas human rights abuses in the 2000s—have faced setbacks. Kiobel v. In Shell (2013), the U.S. Supreme Court restricted the ATS's cross-border reach, a decision that critics said "created lawless spaces where even U.S.-based entities could commit torture and war crimes with impunity if the crimes were committed abroad." This legal pendulum swing—from early claims of jurisdiction to modern dismissals—highlights a historical pattern: mechanisms for corporate accountability have typically emerged only after serious abuses, and even then, progress has been stalled and prone to gaps.

In the mid-2010s, a coalition of states led by Ecuador and South Africa, frustrated by the slow pace of progress, resurfaced the issue on the global agenda. In 2014, the UN Human Rights Council voted to begin negotiations on a legally binding instrument on labor and human rights. This ongoing effort represents a new chapter in a series of efforts to close the gaps that history has repeatedly shown. The evolution of multinational corporate influence from colonial charters to contemporary corporate conglomerates shows a tension between corporate power and the capacity of the law to constrain it. Past major incidents, such as Bhopal, Ogoniland, and Rana Plaza, have served as sobering lessons in how gaps in governance and jurisdiction allow corporations to evade accountability. Each incident has generated renewed calls for reform, spurring developments such as international labor standards, environmental agreements, and human rights mandates.

Major Parties Involved

France: France has positioned itself as a leader in holding multinationals accountable through local legislation. In 2017, it passed a landmark Duty of Care law that imposes a legal duty on large French companies to exercise human rights and environmental due diligence in their global operations. The law requires companies to detect and prevent human rights violations (for example, forced labor or environmental damage) and authorizes legal action if they fail to implement an adequate “duty of care plan.”

United States: The United States has generally opposed or resisted multilateral efforts to impose binding human rights obligations on corporations. Washington did not support the 2014 UNHRC resolution that initiated treaty negotiations and has avoided participating in these negotiations for years. The U.S. government’s approach has favored voluntary frameworks, such as the UN Guiding Principles on Business and Human Rights and local laws targeting specific issues, over broad international regulations. Notable U.S. actions have been primarily local and piecemeal: the U.S. uses measures such as the Dodd-Frank Act’s conflict minerals rule and import bans on goods produced with forced labor, but has not adopted comprehensive legislation requiring companies to exercise due diligence on human rights issues. In general, the U.S. position has been skeptical of new binding international agreements, emphasizing national jurisdiction for corporate self-regulation and any accountability measures.

Ecuador: Ecuador and South Africa have pioneered efforts to establish an internationally enforceable legal framework on business and human rights. In response to UN Human Rights Council Resolution 2026/9 June 202014, Ecuador created the Open-Ended Intergovernmental Working Group (OEIGWG) to prepare a legally binding agreement on human rights and transnational businesses. Ecuador, which is the chair of the process, has been a vocal supporter of closing security gaps that have allowed businesses to evade accountability. Ecuador provides a large body of legal support. It has signed an agreement to hold multinational corporations accountable. He chaired several rounds of negotiations and circulated draft documents intended to grant rights and duties to companies.

United Nations Human Rights Council (UNHRC): The UNHRC plays a central role in developing a global response to corporate human rights abuses. In 2014, it launched an initiative to establish an intergovernmental working group to draft a binding treaty on business and human rights, a process driven by concerns about "governance gaps" that allow multinational corporations to evade responsibility under existing international law. The Council initiative, led by Ecuador and South Africa, has held annual negotiations since 2015 with broad participation from dozens of states. The Office of the UN High Commissioner for Human Rights endorsed the treaty effort, calling it the next major milestone since the 2011 Guiding Principles and stating that it could help ensure that human rights "truly take precedence over profit" in business decisions. In turn, the Human Rights Council also supports the UN Guiding Principles on Business and Human Rights, approved in 2011, which provide an international platform for voluntary standards that clarify state duties and corporate responsibilities.

Relevant UN Resolutions and Other Documents

https://documents.un.org/doc/undoc/gen/g14/082/52/pdf/g1408252.pdf https://documents.un.org/doc/resolution/gen/g11/144/71/pdf/g1114471.pdf

Possible Solutions

1. Establishing a binding legal framework
2. Cooperating effectively and comprehensively with NGOs and UN bodies and developing existing ones.
3. Making regulations to ensure mandatory transparency and independent auditing
4. Strengthening Access to Justice Across Borders
5. Building Institutional and Judicial Capacity in Host States

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