

I. 経緯

- 2013 年 9 月 [人権理事会におけるエクアドル提案](#)
 - “clarify the obligations of transnational corporations”
 - “the establishment of effective remedies for victims in cases where domestic jurisdiction is clearly unable to prosecute effectively those companies”
- 2014 年 7 月 [人権理事会決議 26/9](#)
 - パラ 1 条約作成のための WG 設置
 - [20-14-13](#) で可決。賛否の分布に注意。
- 2015 年 7 月 [OEIGWG](#) 第 1 回会合
 - 先進国はほとんど参加せず。[会合報告書](#)パラ 6。
 - 参加しても、“sat silently in the room (many represented only by low-ranking officials or summer interns)” ([Carlos Lopez and Ben Shea, “Negotiating Treaty on Business and Human Rights”, Business and Human Rights Journal, vol. 1 \(2015\), p. 111, pp. 112-113\).](#))
 - [EU 声明](#) 対象範囲の問題

II. 交渉の現状

- [第 3 改訂ドラフト](#) (2021)
- +各国提案 [A/HRC/52/41/Add.1](#)
- 論点
 - 1 条 定義 雑すぎる? →8 条・9 条との関係
 - ◇ 1.2 “Human rights abuse”
 - ◇ 1.5 “Business relationship”
 - 2 条 目的
 - ◇ 2.1(b) “the human rights *obligations* of business enterprises”
 - 3 条 対象範囲
 - ◇ 3.3 “all internationally recognized human rights” “and customary international law”
 - 6 条 防止
 - ◇ 6.3 “States Parties shall *require* business enterprises to undertake human rights due diligence”
 - ◇ 6.7 “State[s] Parties shall provide for adequate penalties [...] for business enterprises failing to comply with provisions of Articles 6.3 and 6.4”
 - 7 条 救済へのアクセス
 - ◇ 7.5 “States Parties shall enact or amend laws allowing judges to reverse the burden of proof in appropriate cases”

- 8 条 企業の法的責任に関する国内法整備
 - ◇ 8.1 “legal liability... for human rights abuses that may arise from their own business activities... or from their business relationship[]”
 - ◇ 8.6 “liability... for their failure to prevent another... person with whom they have had a business relationship, from causing or contributing to human rights abuses, when the former... should have foreseen risks of human rights abuses in the conduct of their business relationship[]”
 - ◇ 8.8 “the criminal or functionally equivalent liability of legal persons for human rights abuses that amount to criminal offenses under international human rights law binding on the State Party or customary international law”
- 9 条 国内裁判所の管轄権
 - ◇ 9.3 “shall avoid imposing any legal obstacles, including the doctrine of *forum non conveniens*”
 - 民事訴訟法 3 条の 9
 - ◇ 9.4 “jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State, if the claim is connected with a claim against a legal or natural person domiciled in the territory of the forum State”
 - 民事訴訟法 3 条の 6
 - ◇ 9.5 “shall have jurisdiction [...] if no other effective forum [...] is available”
- 10 条 時効
 - ◇ 10.1 “shall not apply [...] in relation to human rights abuses resulting in violations of international law which constitute the most serious crimes”
- 11 条 適用法
- 14 条 国際法規範との整合性
 - ◇ 14.5(a) “All existing bilateral or multilateral agreements [...] shall be interpreted and implemented in a manner that does not undermine or restrict”
 - ◇ 14.5(b) “All new bilateral or multilateral trade and investment agreements shall be compatible”
- 15 条 国家報告制度
- 18 条 紛争処理
 - ◇ 18.2 “a State Party may declare”
- 批判
 - [O’Brien, “Transcending the Binary”, *AJIL Unbound*, vol. 114 \(2020\), p. 186, p. 190. \(2020\).](#)
 - ◇ 発効しないおそれ高く、国連（人権理事会）への信頼低下を招く
 - ◇ 発効しても参加国少なければ、条約の「内外」で対立悪化の恐れ

- 具体的批判
 - ◇ [日本 \(2022\)](#) “consistency with international agreements concluded by each state; the scope of rights to be remedied; and procedures and methods to realize remedy, including the definition of the statute of limitation”
 - ◇ [米 \(2022\)](#) “prescriptive [...], overly broad jurisdictional provisions, unclear liability provisions, and potential criminalization of an ill-defined range of human rights abuses”
 - ◇ [EU \(2022\)](#) “the level of prescriptiveness of the draft instrument in a number of policy areas such as civil and criminal liability, applicable law and jurisdiction, or judicial cooperation, while at the same time using vague and open definitions for other key elements”

以上