

A Neatly Engineered Stalemate: A Review of the Sixth Session of Negotiations on a Treaty on Business and Human Rights

Ruwan SUBASINGHE[¶] 

Keywords: business, corporate accountability, human rights, treaty, United Nations

I. INTRODUCTION

The sixth session of the United Nations (UN) open-ended intergovernmental working group (IGWG) tasked with ‘elaborating an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises’¹ (BHR Treaty) took place virtually during 26–30 October 2020.²

This piece offers a brief overview of the sixth session of the proposed BHR Treaty. Section II discusses the broader context within which the session took place, as well as providing a brief background of what unfolded prior to this session. Section III analyses proceedings at the sixth session from the perspective of the global labour movement. Section IV offers some concluding remarks and highlights the aspirations and expectations of organized labour with respect to the BHR Treaty.

II. CONTEXT AND BACKGROUND OF THE SIXTH SESSION

The sixth session of the IGWG took place in extraordinary circumstances against the backdrop of a global pandemic and calls for racial and economic justice worldwide.³ With

[¶] Conflicts of interest: The author declares none.

* Legal Director at the International Transport Workers’ Federation (ITF), Montreal, Canada. This piece does not necessarily reflect the views of the ITF. I wish to thank Helen Breese of the ITF for her helpful feedback on an earlier draft.

¹ UN Human Rights Council, ‘Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (IGWG)’, <https://www.ohchr.org/en/hrbodies/hrc/wgtranscorp/pages/igwgontnc.aspx> (accessed 30 March 2021).

² Human Rights Council, ‘Sixth Session of the IGWG’, <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session6/Pages/Session6.aspx> (accessed 30 March 2021).

³ International Transport Workers’ Federation, ‘Racial Justice is Union Business, ITF Stands Committed to the Struggle’, *itfglobal.org* (3 June 2020), <https://www.itfglobal.org/en/news/racial-justice-union-business-itf-stands-committed-struggle> (accessed 30 March 2021).

COVID-19 once again exposing the fragility of global supply chains⁴ and business models built on outsourcing, non-standard forms of employment and informality, the clarion call for corporate accountability rang louder than ever before.⁵ As lead firms resorted to abruptly ending the procurement of goods and services and even to defaulting on prior commitments made – with disastrous impacts on workers in the Global South⁶ – the spectre of global supply chains as a frontier of racial capitalism was also in the spotlight.⁷

The sixth session was also preceded by significant activity on the regulatory front. In April 2020, the European Commissioner for Justice, Didier Reynders, announced that he would propose EU-level mandatory human rights and environmental due diligence legislation in 2021.⁸ The governments of Germany⁹ and the Netherlands,¹⁰ among others,¹¹ also put forward supply chain-related legislative proposals while civil society organizations (CSOs) continued to resort to the remedy mechanisms under the French Duty of Vigilance Law to ensure that the application of the law fulfils its promise to achieve accountability of French businesses for activities throughout their global supply chains.¹²

In this context, there was a heightened sense of anticipation for the sixth session even before the Chairperson of the IGWG (Chairperson) published the Second Revised Draft of the BHR Treaty in August 2020,¹³ building on the discussions at the fifth session and input provided by states and CSOs at two intersessional consultations held virtually on

⁴ Ruwan Subasinghe and Helen Breese, 'COVID and the Corporate Duty to Respect Human Rights: It's Time for the Business Community to Step Up', *Cambridge Core Blog* (8 April 2020), <https://www.cambridge.org/or/1o/02//ovid-19-and-the-corporate-duty-to-respect-human-rights-its-time-for-the-business-community-to-step-up/> (accessed 30 March 2021).

⁵ Sharan Burrow, 'A New Social Contract', *Social Europe* (24 June 2020), <https://www.socialeurope.eu/a-new-social-contract> (accessed 30 March 2021).

⁶ Elizabeth L Cline, 'Bangladesh Garment Makers Settle with Sears over \$40 Million in Cancelled Orders', *Forbes* (2 February 2021), <https://www.forbes.com/sites/elizabethcline/2021/01/30/bangladesh-garment-makers-score-victory-against-sears-in-40-million-lawsuit/?sh=1ec0ab75470d> (accessed 30 March 2021).

⁷ Brown University Centre for the Study of Race and Ethnicity in America, 'Fast Fashion and Racial Capitalism: Power and Vulnerability in the Global Supply Chains of Gender and Migrant Work' (10 December 2020), <https://www.brown.edu/academics/race-ethnicity/events/fast-fashion-and-racial-capitalism-power-and-vulnerability-global-supply-chains-gender-and> (accessed 30 March 2021).

⁸ European Commission, 'Initiative on Sustainable Corporate Governance' (30 July 2020), <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance> (accessed 4 April 2021).

⁹ The Federal Minister of Economic Cooperation and Development, 'Start of the International Year for the Elimination of Child Labour: Minister Müller calls for Swift Agreement on Supply Chain Law' (21 January 2021), <https://www.bmz.de/en/news/press-releases/un-year-elimination-child-labour-supply-chain-law-57120> (accessed 4 April 2021).

¹⁰ Yvke Vriesinga, 'Maatschappelijk ondernemen als eis', *NRC Handelsblad* (17 June 2020), <https://www.nrc.nl/nieuws/2020/06/17/maatschappelijk-ondernemen-als-eis-a4003022> (accessed 30 March 2021).

¹¹ Ministry of Economic Affairs and Employment of Finland, 'Judicial Analysis Specifies the Planned Corporate Social Responsibility Act in Finland' (30 June 2020), <https://tem.fi/en/-/judicial-analysis-specifies-the-planned-corporate-social-responsibility-act-in-finland> (accessed 30 March 2021).

¹² International Transport Workers' Federation, 'Transport Giant Served Notice under Duty of Vigilance Law in Landmark Legal Move', *itfglobal.org* (1 October 2019), <https://www.itfglobal.org/en/news/transport-giant-served-notice-under-duty-vigilance-law-in-landmark-legal-move> (accessed 30 March 2021).

¹³ OHCHR, 'IGWG Chairmanship Second Revised Draft, Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises' (6 August 2020), https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf (accessed 30 March 2021).

29 May and 25 June 2020, respectively. Soon after its publication, several scholars and CSOs hailed the new draft as ‘negotiation ready’¹⁴ and ‘moving in the right direction’¹⁵ while simultaneously highlighting areas for improvement.

While the first three sessions of the IGWG focused on debate around key concepts and elements of the Treaty, the Chairperson published a Zero Draft together with an optional protocol in July 2018.¹⁶ This was followed by a Revised Draft in 2019,¹⁷ which presented significant changes and improvements.¹⁸ Although the fourth and fifth sessions of the IGWG were expected to feature substantive negotiations of the texts,¹⁹ both rounds saw a lack of meaningful engagement by key industrialized states, while others voiced reservations or outright opposition to elements of the BHR Treaty. These concerns can broadly be summarized as follows: non-alignment with the UN Guiding Principles on Business and Human Rights (UNGPs), especially in relation to Pillar 2;²⁰ extraterritorial jurisdiction and impedance on state sovereignty;²¹ overly broad definitions of ‘victim’ and human rights ‘abuse’;²² focus on punitive legal liability and accountability mechanisms;²³ lack of clarity on the scope of human and environmental rights covered²⁴; and differences in opinion on the ‘objective’ of the Treaty coupled with concerns about the political and diplomatic viability of the instrument.²⁵

For the global labour movement, the Second Revised Draft presented states with a strong basis for an instrument that could achieve political viability while also effectively

¹⁴ Surya Deva, ‘BHR Symposium: The Business and Human Rights Treaty in 2020 – The Draft is “Negotiation-Ready”, but are States Ready?’, *OpinioJuris* (8 September 2020), <https://opiniojuris.org/2020/09/08/bhr-symposium-the-business-and-human-rights-treaty-in-2020-the-draft-is-negotiation-ready-but-are-states-ready/> (accessed 30 March 2021).

¹⁵ Carlos Lopez, ‘Symposium: The 2nd Revised Draft of a Treaty on Business and Human Rights – Moving (Slowly) in the Right Direction’, *OpinioJuris* (8 September 2020), <http://opiniojuris.org/2020/09/07/symposium-the-2nd-revised-draft-of-a-treaty-on-business-and-human-rights-moving-slowly-in-the-right-direction/> (accessed 30 March 2021).

¹⁶ OHCHR, ‘IGWG Chairmanship Zero Draft, Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises’ (16 July 2018), <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf> (accessed 30 March 2021); OHCHR, ‘Draft Optional Protocol to the Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises’, <https://www.ohchr.org/en/hrbodies/hrc/wgtranscorp/pages/igwgontnc.aspx> (accessed 30 March 2021).

¹⁷ OHCHR, ‘IGWG Chairmanship Revised Draft, Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises’ (16 July 2019), https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf (accessed 30 March 2021).

¹⁸ International Trade Union Confederation (ITUC), ‘Joint Trade Union Statement on a Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises’ (11 October 2019), <https://www.ituc-csi.org/joint-trade-union-statement-on-a> (accessed 30 March 2021).

¹⁹ *Note verbale* from the Permanent Mission of Ecuador to the United Nations, by the IGWG Chairmanship regarding the release of the revised draft legally binding instrument, Note 4-7-156/2019 (16 July 2019), https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/NV_Ecuador_RevisedDraft_LBI.pdf (accessed 30 March 2021).

²⁰ Human Rights Council, ‘Report on the Fifth Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises with Respect to Human Rights’, A/HRC/43/55 (19 January 2020), para 12, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/43/55 (accessed 30 March 2021).

²¹ *Ibid.*, para 18.

²² *Ibid.*, para 15.

²³ *Ibid.*, para 70.

²⁴ *Ibid.*, paras 24, 25 and 35.

²⁵ *Ibid.*, para 10.

addressing accountability gaps in international human rights law.²⁶ Global unions lauded further conceptual clarity, alignment with the UNGPs, and a more coherent structure. Among other things, they welcomed the strengthening of the gender dimension throughout the text, the focus on preventive measures *beyond* human rights due diligence, and the explicit recognition that human rights due diligence shall not *automatically* absolve a legal or natural person conducting business activities from liability.²⁷

From the outset, trade unions have campaigned for a BHR Treaty that holds (transnational) companies liable for human rights violations throughout their activities, including those by supply chain entities, irrespective of the mode of creation, ownership, or control.²⁸ It was interesting, therefore, to note that global unions²⁹ considered the Second Revised Draft to have delivered on this front by, among other things, holding parent companies and lead firms accountable for human rights abuses committed in their own operations, through their subsidiaries and business relationships. Even though the draft captured many of the trade unions' previous demands,³⁰ the International Trade Union Confederation (ITUC) and seven Global Union Federations set out a list of suggested amendments in a submission³¹ to the IGWG, which were later presented during the sixth session (discussed below).

III. SUMMARY OF DISCUSSION AT THE SIXTH SESSION

Even before the opening bell, a statement by the United States rejecting the BHR Treaty process began to circulate on social media much to the chagrin of CSOs.³² This was merely a continuation of the United States' policy not to engage with the IGWG, limiting itself to sending letters of opposition. Nevertheless, the sixth session got off to an auspicious start with the UN High Commissioner for Human Rights, Michelle Bachelet, delivering a strong message in support of the BHR Treaty process.³³ She stated that the COVID-19 crisis had 'laid bare the inequities and fragility of global supply chains and that embedding

²⁶ Makbule Sahan and Ruwan Subasinghe, 'Ending Corporate Impunity is at the Heart of a Sustainable Post-Pandemic Recovery – That's Why We Need a Strong Binding Treaty', *Equal Times* (10 October 2020), https://www.equaltimes.org/ending-corporate-impunity-is-at#.YE_maZ1JHD4 (accessed 30 March 2021).

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ ITUC, 'Joint Trade Union Statement', note 18.

³¹ ITUC, 'Trade Union Comments: Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises' (8 October 2020), <https://www.ituc-csi.org/legally-binding-instrument> (accessed 30 March 2021).

³² US Mission to International Organizations in Geneva, 'U.S. Government's Opposition to the Business and Human Rights Treaty Process' (26 October 2020), <https://geneva.usmission.gov/2020/10/26/the-u-s-governments-opposition-to-the-business-and-human-rights-treaty-process/> (accessed 30 March 2021).

³³ UN Office of the High Commissioner for Human Rights, '6th Session of the Open Ended Inter Governmental Working Group in-charge of the Elaboration of an International Legally Binding Instrument on Transnational Corporations and other Business Enterprises, with Respect to Human Rights: Opening Statement by Michelle Bachelet, UN High Commissioner for Human Rights' (26 October 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26417&LangID=E> (accessed 30 March 2021).

respect for human rights across value chains was a key part of efforts to recover better and uphold human dignity and rights'.³⁴ She ended her intervention by inviting all stakeholders to engage constructively to promote principled, responsible and accountable business operations.³⁵

As with previous sessions, the opening statements by states, observers, Inter-Governmental Organizations, International Organizations, and non-governmental organizations set the tone for the entire meeting. A total of 21 states, two observers and the European Union (EU) intervened on the first morning, representing a good mix of industrialized and developing economies.

China, an original sponsor of Resolution 26/9 setting up the IGWG in 2014,³⁶ claimed that the overly detailed coverage of human and environmental rights put the right to development at risk.³⁷ India effectively agreed with this position, holding that the BHR Treaty needed to consider 'the socio-economic developmental concerns of developing countries while making transnational corporations more responsible in the protection of human rights'.³⁸ India also challenged the scope of the Treaty by reiterating its position that the BHR Treaty should focus only on business activities of a transnational nature and not national enterprises as they already have domestic laws to regulate them.³⁹

With the EU failing to secure (or seek) a negotiating mandate from the European Commission⁴⁰ despite sustained pressure from a large number of European Parliamentarians⁴¹ and CSOs,⁴² it disappointingly criticized some elements of the Second Revised Draft, including its scope, provisions relating to civil and criminal liability, and the articles on applicable law and judicial cooperation.⁴³

The United Kingdom slated the text, claiming that it was 'incompatible with several key principles of international law, including principles of sovereignty and due process'.⁴⁴

³⁴ Ibid.

³⁵ Ibid.

³⁶ Human Rights Council, 'Elaboration of an International Legally Binding Instrument on Transnational Corporations and other Business Enterprises with Respect to Human Rights', A/HRC/RES/26/9 (14 July 2014).

³⁷ 'Text of China's Statement', https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/GeneralStatements/States/China_General_Statements_Preamble_Article1_and_2.doc (accessed 30 March 2021).

³⁸ 'General Statement by India under Agenda Item 4 at the 6th Meeting of the Open-Ended Intergovernmental Working Group for the elaboration of an International Legally Binding Instrument on Transnational Corporations and other Business Enterprises with respect to Human Rights, by Mr Animesh Choudhury, First Secretary' (26 October 2020), https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/GeneralStatements/States/India_General_statement.doc (accessed 30 March 2021).

³⁹ Ibid.

⁴⁰ European Coalition for Corporate Justice, 'UN Treaty on Business & Human Rights negotiations Day 1 – the round of discussions kicks off with an improved draft' (15 October 2019), <https://corporatejustice.org/news/16786-un-treaty-on-business-human-rights-negotiations-day-1-the-round-of-discussions-kicks-off-with-an-improved-draft-text> (accessed 4 April 2021).

⁴¹ European Parliament, 'Regarding: The EU must Adopt a Negotiation Mandate to Participate in the UN Negotiations for a Binding Treaty on Business and Human Rights' (16 July 2020), https://www.business-humanrights.org/documents/4912/2020-07-20_-_EU_Parliament_-_Letter_requesting_a_negotiation_mandate.pdf (accessed 30 March 2021).

⁴² See, e.g., social media campaign on Twitter: #WhereIsTheEU.

⁴³ European Union, 'Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights 6th Session' (26 October 2020), <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session6/Pages/Session6.aspx> (accessed 31 March 2021).

⁴⁴ 'UN Human Rights Council 6th Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises with respect to Human Rights: Statement by the Government of the United

The United Kingdom notably criticized the legal liability provisions for ‘creating unrealistic burdens on business, far beyond the standards of due diligence’.⁴⁵ On the other hand, France limited its participation to lamenting the absence of a threshold from which companies would be subject to the requirements of the BHR Treaty, while also stating that further details were needed on the *content* of due diligence obligations placed on companies.⁴⁶

A number of states, including Brazil⁴⁷ and Russia,⁴⁸ engaged with the text in mixed fashion, making concrete proposals for amendments. Of note, Egypt⁴⁹ and Senegal⁵⁰ not only supported the BHR Treaty process, but urged states to move beyond hiding behind the UNGPs.

Perhaps one of the most striking aspects of the sixth session was the dual onslaught on the BHR Treaty process by the International Chamber of Commerce (ICC) and the International Organization of Employers (IOE). The ICC called on all parties to consider whether the revised draft is actually moving in the right direction and whether the process might benefit from consultations to review ‘alternative approaches’.⁵¹ The IOE reiterated its view that the BHR Treaty continues to diverge from the UNGPs and called for a complete ‘reboot’,⁵² presumably meaning the abandonment of the entire process.

The ITUC and the Global Unions engaged constructively throughout the sixth session, offering various amendments to the text, including the following:⁵³

- The scope of rights covered should refer to all international labour standards with the distinctive and disproportionate impact of business-related human rights impacts on *workers* explicitly recognized.

Kingdom of Great Britain and Northern Ireland’ (26 October 2020), https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/GeneralStatements/States/UK_general_statement.docx (accessed 30 March 2021).

⁴⁵ Ibid.

⁴⁶ ‘Sixieme Session Du Groupe De Travail Intergouvernemental A Composition Non Limitee Sur Les Societes Transnationales Et Autres Entreprises Et Les Droits De L’homme’ (26–30 October 2020) on arts 5, 6 and 7’, https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/Articles5_6_7/States/France_art%206.docx (accessed 30 March 2021).

⁴⁷ ‘OEIGWG on TNCs and OBEs – 6th session (ITEM 4) Part I – GENERAL STATEMENT by Brazil, National Capacity’ (26 October 2020), https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/GeneralStatements/States/Brazil_General_statement.docx (accessed 30 March 2021).

⁴⁸ ‘Text of the Russian Federations’ Statement’, https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/GeneralStatements/States/Russia_Article%201_%d0%92%d1%8b%d1%81%d1%82%d1%83%d0%bf%d0%bb%d0%b5%d0%bd%d0%b8%d0%b5%20%d0%bf%d0%be%20%d0%a1%d1%82%d0%b0%d1%82%d1%8c%d0%b5.docx (accessed 30 March 2021).

⁴⁹ ‘Text of Egypt’s Statement during the Sixth Session’, https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/GeneralStatements/States/Egypt_general_statement.docx (accessed 30 March 2021).

⁵⁰ ‘Text of Senegal’s Statement during the Sixth Session’, https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/GeneralStatements/States/Senegal_general_statement.docx (accessed 30 March 2021).

⁵¹ ‘Text of the ICC’s Statement during the Sixth Session’, https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/GeneralStatements/InterGovOrgs/ICC_General_statement.docx (accessed 30 March 2021).

⁵² ‘Text of the IOE’s Statement during the Sixth Session’, https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/GeneralStatements/NGOs/IOE_General_Statement.docx (accessed 30 March 2021).

⁵³ ‘Texts of the ITUC’s Statement during the Sixth Session’, <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session6/Pages/Session6.aspx> (accessed 30 March 2021).

- While welcoming the expanded scope of human rights protected under the BHR Treaty, the respect for fundamental principles and rights at work should be divorced from the requirement to ratify Core Conventions of the International Labour Organization.
- Remedies for victims should include reinstatement in employment, especially considering that a critical challenge for workers exercising trade union rights is fear of discriminatory dismissal. Compensation alone without reinstatement risks condoning the dismissals of trade union activists, thereby contributing to an ongoing atmosphere of workplace intimidation.
- Trade unionists should be explicitly recognized in the BHR Treaty text as human rights defenders, given the enormous risk of threats and retaliation in practice.
- While welcoming sanctions for business enterprises failing to conduct mandatory human rights due diligence, further clarity is needed on the relationship of this provision with the much broader requirement for states to put in place a system of liability for human rights abuses.
- Courts of the domicile of the victim should also have jurisdiction for claims under the BHR Treaty as right-holders, including returning migrant workers, may otherwise be denied access to a judicial remedy.
- A complementary international mechanism is necessary to oversee compliance with the BHR Treaty.

As the week progressed, interventions by states on specific articles noticeably dwindled, while CSOs continued to engage with extraordinary discipline and rigour until the final day of the sixth session.

IV. WAY FORWARD

The fact that the sixth session took place at all during a global pandemic is an achievement in itself, and the Chairperson and the Office of the High Commissioner for Human Rights deserve the utmost praise for organizing this important week of negotiations virtually. However, for the global labour movement, there was an overwhelming feeling of disappointment following what many thought would be a defining moment in the BHR Treaty process. Instead, many of the same criticisms and complaints by states resurfaced, while the business community shifted the goal posts again. Despite these polarized positions, the report of the sixth session was presented to the Human Rights Council⁵⁴ with a view to moving towards actual negotiations on the text in 2021. The Chairperson agreed to compile and distribute documents containing concrete

⁵⁴ Human Rights Council, 'Report on the Sixth Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises with Respect to Human Rights', A/HRC/46/73 (14 January 2021).

suggestions, modifications, deletions, as well as expressions of support for the current provisions of the second draft text, and general comments and requests for clarification.⁵⁵

Despite the lack of significant progress at the sixth session, it is arguable that the BHR Treaty process *itself* has helped fuel legislative change at the national and regional levels. This is apparent from the mandatory human rights and environmental due diligence proposals across Europe, which reflect the recognition that corporate social responsibility and voluntary measures are inadequate to guarantee decent work in global supply chains. Indeed, regulation in this space is increasingly supported by large companies and investors.⁵⁶ At least one significant industry association has even accepted that some form of liability for corporate human rights abuse in supply chains is necessary.⁵⁷

For trade unions, now is the time for governments to listen to their citizens clamouring for binding measures and corporate accountability.⁵⁸ While interesting proposals for a more politically viable framework convention have been put forward,⁵⁹ the international community must not lose sight of the fundamental objective of the BHR Treaty process – combating impunity and delivering justice workers and communities. Organized labour will continue to call on states and businesses to firmly express their commitment to making the BHR Treaty a reality.

The failure of many enterprises to clearly demonstrate their respect for human rights during the COVID-19 crisis not only highlights the limitations of voluntary corporate social responsibility standards, but flaws in the global supply chain model itself. An ambitious BHR Treaty can truly realign the normative asymmetry between the legally enforceable rules that protect business and the soft law approaches to corporate accountability. Ending the impunity for corporate human rights abuses must be at the heart of a ‘new social contract’ based on the respect for human rights, the rule of law, and climate justice.

⁵⁵ Ibid.

⁵⁶ Investor Alliance for Human Rights, ‘The Investor Case for Mandatory Human Rights Due Diligence’, <https://investorsforhumanrights.org/sites/default/files/attachments/2019-12/The%20Investor%20Case%20for%20mHRDD%20-%20FINAL%20for%2011.25%20launch.pdf> (accessed 30 March 2021).

⁵⁷ European Brands Association, ‘EU Mandatory Human Rights Due Diligence: AIM Contribution to the Debate’ (February 2021), <https://www.aim.be/news/aim-launches-its-contribution-to-the-mandatory-human-rights-due-diligence-debate/> (accessed 30 March 2021).

⁵⁸ ITUC, ‘ITU Global Poll 2020 Shows Urgent Need to Repair the Social Contract’ (11 September 2020), <https://www.ituc-csi.org/global-poll-2020-social-contract> (accessed 30 March 2021).

⁵⁹ Claire Methven O’Brien, ‘Transcending the Binary: Linking Hard and Soft Law Through a UNGPs-Based Framework Convention’ (2020) 114 *American Journal of International Law Unbound* 186, 186–191.