



Sustainable value chains – Success factors for an internationally accepted binding standard

Outcome Paper of the Conference
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Background and key messages

On 6 May 2022 the German G7 presidency hosted a high-level hybrid conference on “Sustainable Value Chains – Success Factors for an Internationally Accepted Binding Standard” at Westhafen Berlin, organised by the German Federal Ministry of Labour and Social Affairs. This outcome document summarises the conference discussions, innovative ideas and key messages.¹

What would be the added value of an international binding standard or instrument on business and human rights and what challenges or gaps could it help to address? What are critical “success factors” to achieve broad acceptance for such a measure? These questions were the focus of the conference. Representatives of the G7, international organisations, trade unions, business associations as well as civil society discussed options for the way forward, and distinguished international academics and experts presented their ideas.

The objective of the German Presidency is to facilitate constructive G7 engagement in international fora, namely at the UN and ILO, to explore ideas and options for a consensus-based legally binding instrument at the international level. The conference has sent a clear and strong message and represents a milestone for the G7. It has shown that the G7 is committed to expand its efforts to ensure corporate respect for human rights along global value chains through a smart mix of mandatory and voluntary measures, including legislation, incentives and guidance for businesses at the international level. The G7 is determined to contribute to a global level playing field that is in line with the relevant UN, ILO and OECD standards on responsible business conduct. In cooperation with ILO’s Alliance 8.7, child and forced labour, two of the most serious and pressing human rights violations in value chains, were addressed and effective tools for businesses highlighted.

Key messages

- The G7 can provide global leadership and plays a powerful catalyst role to advance the protection of human rights and the environment along global value chains. This requires **advocating a smart mix of measures at the international level, including a binding instrument on business and human rights.**
- Now is the time to send a strong signal of **support to the efforts underway, the treaty negotiations under the auspices of the UN Human Rights Council, and the ILO discussions on decent work in global supply chains.**
- **Outreach beyond the G7** is particularly relevant to strengthen rules-based multilateralism and generate support for an international standard on business and human rights.
- The G7 should **make fair and decent wages a priority** in order to reduce inequality, build back better from Covid-19 and achieve the Sustainable Development Goals.
- The G7 should **support business enterprises operating in high-risk areas** to act with heightened due diligence, for example by facilitating collaboration of different stakeholders to increase leverage.

¹ In particular, this paper incorporates the essence of five discussion papers prepared for the conference by Nicola Bonucci, Professor Malgosia Fitzmaurice, Professor John H. Knox, Caroline Rees and Professor Olivier De Schutter which are available [here](#).

Where do we stand today?

The United Nations Guiding Principles on Business and Human Rights (UNGPs) are the authoritative global soft-law standard for states and companies to prevent and address human rights abuses that occur in connection with business operations. Together with the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, they establish the responsibility of companies to prevent and deal with the potential negative impacts of their business operations, including those occurring in their value chains. Human rights and environmental due diligence is a key tool in this regard. It helps companies identify, prioritise and address their potential adverse impacts on people and the planet, and plan for and respond to future challenges. In this way, the private sector can build resilience, and ultimately help achieve the Sustainable Development Goals and global climate objectives.

The UNGPs expect states to “consider a smart mix of measures – national and international, mandatory and voluntary” – all of which are needed to address protection gaps and create a global level playing field. Since the adoption of the UNGPs in 2011, significant progress has been made in fostering responsible business conduct. So far, 26 states have adopted a National Action Plan on business and human rights, and 20 are in the process of developing one. In addition, the OECD Guidelines for Multinational Enterprises, which are aligned with the UNGPs, have played an important role in promoting responsible business conduct and due diligence in all 50 adhering countries.

At the 2015 Elmau Summit, G7 leaders voiced strong support for the UNGPs and welcomed the efforts to set up substantive National Action Plans. Jointly, they urged private sector implementation of human rights due diligence and pledged to take action to foster labour rights and decent working conditions by increasing transparency, promoting identification and prevention of risks, and strengthening complaint mechanisms. At the Hamburg Summit in 2017, G20 leaders committed to fostering the implementation of labour, social and environmental standards and human rights, and underlined the responsibility of businesses to exercise due diligence.

Recent years have shown that voluntary initiatives by governments and companies to improve sustainability along value chains have an important pioneering role, but – by themselves – are not sufficient to drive the change needed. In recent years an important paradigm shift has occurred. States, businesses and other stakeholders are increasingly supporting legislation to protect human rights along global value chains.

There is a clear trend to regulatory approaches at the national and regional level: France, Germany and Norway passed corporate due diligence legislation, and related proposals are being discussed in other countries, including the Netherlands, Spain, Finland, Austria and Belgium. The Netherlands have adopted a child labour due diligence law. The European Commission has presented a proposal for an EU directive on corporate sustainability due diligence. Furthermore, it has launched a number of other complementing legal initiatives that include due diligence requirements, for example in relation to conflict minerals, sustainable batteries and preventing deforestation in global supply chains. Specific human rights issues, such as forced labour, are high on the agenda of governments worldwide. Modern slavery legislation has entered into force in the United Kingdom and Australia. In addition, Canada has committed to developing legislation to eradicate forced labour from Canadian supply chains. Forced labour has been the focus of import bans adopted in the United States, Canada and Mexico. The President of the European Commission has also announced the intention to propose a ban on products in the EU market made with the use of forced labour.

While the UNGPs envisage a mix of voluntary and mandatory measures at both national and international levels, we have yet to see progress on binding measures at the global level. Despite growing consensus on the need to enhance business respect for the environment and for human rights, opinion remains divided on how best to achieve this goal. In 2014 at the initiative of Ecuador and South Africa, the UN Human Rights Council established an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights with a mandate to elaborate a legally binding instrument. While a number of governments have been participating in this process, it has so far lacked the support of a critical mass of states. The support of industrialised western countries will be key for the effective implementation of any such instrument. At the ILO level, work is beginning on a comprehensive strategy on decent work in global supply chains that could also address normative gaps. The current debate on the role of an international instrument is polarised and dominated by calls for an ambitious and far-reaching treaty on the one hand (including by many civil society organisations that advocate on behalf of affected rights-holders) and warnings to avoid burdens on companies on the other hand. In this context, any effort to explore what could be both meaningful in terms of outcomes for people and the planet as well as politically feasible at the international level needs to be approached carefully.

Why do we need a binding standard on business and human rights at the international level?

Considerable challenges remain to ensure full respect for human rights, including international labour standards, and prevention of environmental harms in corporate operations and value chains. On any given day, at least 25 million people are subject to forced labour worldwide. According to the ILO, the number of children in child labour has risen to 160 million worldwide, with millions more at risk due to the impacts of Covid-19, particularly in low- and middle-income countries. Access to effective remedy is a core component of the UNGPs. As the UN Working Group on Business and Human Rights has pointed out, meaningful progress for this core component of the UNGPs is a major and urgent priority for the next decade – and a critical issue for realising human rights and sustainable development.

Forced labour and child labour are sustained and exacerbated when working adults do not earn fair and decent wages. According to the 2022 World Inequality Report, the richest 10% of the global population currently takes 52% of global income and owns 76% of all wealth, while the poorest half of the population earns just 8.5% of global income and holds 2% of wealth. The ILO estimates that 327 million workers globally are paid at their countries' minimum wage or below. This represents about 19% of the world's wage earners, and includes 152 million women. Meanwhile, legal minimum wages overwhelmingly fall below the level of a living wage.

Regions where armed conflict is present, authoritarian states with widespread or serious human rights violations, political and social instability or repression as well as institutional weakness or collapse of state infrastructure present heightened risks to companies. They may unintentionally fuel conflict or facilitate human rights abuses by other actors.

The world faces a global governance gap that presents challenges for the human rights protection system. This is why faster and wider UNGPs uptake and implementation needs to be based on a strategic, ambitious approach that delivers greater coherence and scale. Raising the ambition and increasing the pace of uptake require us to capitalise on the momentum towards mandatory measures in order to develop a full smart mix – internationally as well as nationally. Without inter-state cooperation and without a clear regulatory framework at the international level, a global level playing field remains unattainable.

A binding standard on business and human rights at the international level will present a number of advantages:

- **For businesses** it will help ensure a level playing field, creating legal certainty and reducing the risk of unfair competition from companies that are not subject to similar requirements. It will create common expectations of suppliers serving different buyers, creating more clarity and predictability for suppliers and facilitating collaboration between buyers and suppliers in pursuit of improved supply chain practices.
- **For consumers**, it will help reduce today's wide variation in the approaches and reliability of ethical product labels and standards, and ensure more consistent and adequate methods, enabling greater consumer confidence in the guarantees they offer.
- **For investors**, the adoption and enforcement of robust regulatory and policy frameworks will assist in their own due diligence regarding companies that are subject to such monitoring, and will provide valuable clarity and leverage in their engagement strategies, helping reduce their own exposure to risks.
- **Rights-holders** would be better protected from human rights abuses and better equipped to exercise their right to effective remedy under a binding international instrument that is both enforced nationally and enables state bodies to collaborate internationally in providing access to remedy. This would help to improve the living and working conditions for millions of people along global value chains, particularly in low- and middle-income countries.
- **Governments** themselves should have a strong interest in ensuring a minimum degree of international harmonisation of domestic legislative and policy frameworks that address the human rights impacts of business. They would avoid the risks of unhealthy regulatory competition rewarding cost-competitiveness at the expense of human and environmental rights.

What is the way forward?

Towards an internationally binding instrument on business and human rights

With new impetus for the international debate there is a chance for a broad agreement on an internationally binding instrument on business and human rights. To help move towards a global level playing field aligned with the authoritative standards of the UN, OECD and ILO, the G7 has begun an open and strategic discussion on a coordinated approach regarding the role and added value of an international legally binding standard.

The conference has highlighted some critical success factors to be considered in order to achieve a global consensus, including lessons learnt from the negotiation and implementation of Multilateral Environmental Agreements and other international agreements:

Process

- In addition to a clear and transparent working method, an inclusive negotiating process is crucial. To ensure effective prevention and remediation, meaningful stakeholder engagement is needed; this includes the perspectives of civil society organisations, trade unions, affected individuals and communities, as well as human rights and environmental defenders, on how to ensure effective prevention and remediation. Companies and business associations also need to be heard in order to create a framework that is implementable and proportionate. This inclusiveness is exemplified by the Convention on Biological Diversity, which brings together governments, businesses and indigenous and local communities. At the same time, undue influence should be restricted and separate mechanisms for civil society and the private sector could be considered (as for example the UN Committee on Food Security, for example).
- There is no need to reinvent the wheel. Efforts should build on existing institutions and processes like the ongoing UN Human Rights Council's treaty negotiation process which enjoys strong support by international civil society and the global workers movement. The same is true for the ongoing ILO discussions on ensuring decent work in supply chains, which address challenges and gaps identified as an obstacle in this regard and consider standard setting and other non-normative measures, so that ILO standards remain fit for purpose.

Content

- First of all the problem to be addressed needs to be clarified. What are the transnational gaps that can only be closed collectively? What risks do rights-holders still face and what challenges are companies confronted with in addressing systemic impacts in their value chains?
- Prevention of, and access to effective remedy for, business-related human rights violations need to be at the core of any internationally binding instrument.
- To support coherence and effectiveness of mandatory measures at the international level, it is critical to build on the common understanding and conceptual clarity provided by the UNGPs and standards that already integrate them, such as the OECD Guidelines for Multinational Enterprises and the ILO MNE Declaration.
- To provide tangible results for rights-holders worldwide and to ensure a level playing field, any legally binding international instrument needs monitoring and compliance mechanisms. Inspiration could be drawn from Multilateral Environmental Agreements containing non-compliance procedures that enable a collaborative, non-confrontational process aimed at supporting and improving state compliance over time. They can ensure transparency and the participation of the developing countries.
- Several Multilateral Environmental Agreements have impactful Conferences of the Parties, making the treaty regimes dynamic and not static. This enables adjusting obligations to evolving stakeholder expectations and changing circumstances. This could also be a success factor in the field of business and human rights.
- Including appropriate flexibility mechanisms can be helpful to encourage participation of a critical mass of states. They can both take into account the different capabilities and conditions of states and help them to comply with their obligations under international human rights law. As the experience of international environmental law shows (for example in the ozone and access rights regimes), flexibility does not mean including only “soft obligations”. Any approach would need to account for the variety of legislative frameworks and constitutional structures that exist across states and allow implementation by diverse legal cultures. At the same time, flexibility should not sacrifice the achievement of the goals of the instrument, including prevention, access to remedy for the affected communities and individuals, and to fill existing regulatory gaps.

- The principle of “Common but Differentiated Responsibilities” has contributed to make international environmental treaties successful. This principle establishes the common responsibility of states for the protection of the global environment. But in addition, it also lays down different standards of conduct for developed and developing nations. The principle is directly linked with the principle of capacity building of developing countries. Bearing in mind the universality of human rights, both principles could also be helpful for a global instrument on business and human rights.
- The UNGPs demand that attention be paid to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalised, and that due regard be taken of the different risks that may be faced by women and men. Any legally binding instrument should thus incorporate gender-based justice, women’s rights, and gender equality into the treaty text. Structural causes of discrimination and violence, asymmetries of power, and particular hurdles for women and girls (especially in the areas of participation and remedy) should be considered. The same must happen for other groups in need of protection, such as human rights defenders and indigenous peoples.

Eradicating child and forced labour

Business has both a key role and responsibility in delivering change. Now it is important to further foster and strengthen convergence around the criteria that should underpin any credible living wage benchmark. Progress will be severely constrained until action is taken at much greater scale. Just as the Net Zero 2050 target has had a political and practical galvanising effect on climate action, a target on living wages – logically tied to the 2030 deadline of the SDGs – could serve the same purpose in scaling up action on this critical component of inequality. In any scenario, progress has to be measurable. This requires meaningful, comparable, public information on the extent to which companies are making a real difference in the wages of the lowest-paid workers.

What is the role of the G7?

Closing transnational gaps in human rights protection and corporate accountability along global value chains is a global challenge that requires collective action. As an association of nations bound by shared values, the G7 is uniquely positioned to make the vision of the UNGPs a reality and achieve tangible results for affected individuals and communities, thereby also contributing to socially sustainable globalisation.

Given the economic and political weight of G7 members, jointly they can provide global leadership and play a powerful catalyst role to advance the protection of human rights and the environment along global value chains. This requires advocating a smart mix of measures at the international level, including a binding instrument on business and human rights.

Given the unprecedented momentum for regulatory approaches that promote corporate sustainability, G7 leadership has the power to push for a steep increase in policy coherence.

Now is the time to send a strong signal of support to the efforts underway, the treaty negotiations under the auspices of the UN Human Rights Council and the ILO

discussions on decent work in global supply chains. International civil society and the global workers movement, as well as many partner countries outside the G7, expect the G7 to engage constructively in these fora. At the UN level, one option could be to engage with the “Group of Friends of the Chair” to be announced soon by the chair of the IGWG.

Outreach beyond the G7 is particularly relevant to strengthen rules-based multilateralism. The G7 could conduct outreach with governments and social partners – including employers and their organisations, and trade unions – as well as civil society actors and academic centres in a wide range of countries, both geographically and in terms of economic development. These efforts would support the inclusive co-creation of, and generate support for, an agreed international instrument on business and human rights.

As part of global consensus on business and human rights, the G7 should make fair and decent wages a priority in order to reduce inequality, build back better from Covid-19 and achieve the Sustainable Development Goals. The G7 can support a global target for fair and decent wages and ensure public corporate reporting that is meaningful and comparable. The G7 members should ensure that their business enterprises operating in high-risk areas are not involved with forced labour and other human rights abuses. They can support companies to act with heightened due diligence by facilitating collaboration of different stakeholders to increase leverage, in particular through sector dialogues and collective actions.