REMARKS of Christy Hoffman, Deputy General Secretary of UNI Global Union to the IGWG.

I am the Deputy General Secretary of UNI Global Union, a global union federations representing 20 million workers in the services industry, present in 150 countries and I speak today on behalf of UNI and the International Trade Union Confederation.

The global trade union movement is in favour of a binding UN treaty to govern Business and Human Rights. We welcome the working group on regulating TNCs because we too seek the international regulation of international business. However, In its approach, UN treaty should build on and not undermine the implementation of the United Nations Framework for Business and Human Rights (UNGP), which we regard as a critical step forward in raising the bar for business responsibility.

We have been asked to address two topics: 1) the legal and economic reality of corporate practice today and its impact on the fulfilment of human rights and 2) our view on the essential elements of a treaty.

First, it is well established that labour rights are fundamental human rights, enshrined in many international instruments. The right to join and form unions is explicitly mentioned in three major international instruments. And yet, these rights are under attack. Just last week, the UN Special Rapporteur on Assembly and associational rights reported to the General Assembly that many governments are “failing dismally” at their responsibility of protecting these rights. Without protection of assembly and association rights, workers have little power to change the conditions which, in turn, exacerbate broader problems such as global inequality, poverty, violence, child and forced labor, human trafficking and slavery.

What is the role of the TNCs in this environment?

* TNCs could potentially help creating jobs and support economic and social development but the current model of trade, with the majority of trade tied to global value chain in highly competitive low cost markets means jobs created by TNCS often fall short of decent working standards.
* In fact, a recent study by the ITUC of 50 major corporations revealed that 94% of the workforce had no direct employment relationship, which makes them extra vulnerable to exploitation and abuses.
* The jobs created by transnational corporations (TNCs) are precarious. Cost pressures from global buyers mean that supply or value chain related employment is often insecure, involves poor working conditions and frequently fundamental human (including labour) rights violations. Indeed, forced labour, child labour, anti-union discrimination, forced overtime, unpaid wages and hazardous workplaces are common in global value chains.
* Corporate social responsibility (CSR) practices to date have had little positive impact on these issues, and have in effect deferred addressing the underlying issues by distracting the international community with processes that have brought limited results, especially in ensuring compliance with fundamental labour standards.
* As for the legal framework, to quote the recent report on association rights, “The lack of effective cross-border and national legal and enforcement framekworks rewards and spreads noncompliance, even lawlessness.” Administrative and judicial process in countries from which TNCs source products are too slow, too weak, under-resourced or corrupt. Local companies are often undercapitalized making them essentially judgment-proof
* There is usually no effective remedy at home against the local firm, or abroad against the lead firm which may have contributed to the violation. TNCs are in essence immune from legal accountability when the violation is caused by a supplier

Second, what essential elements could be included in an international legally binding instrument on business and human rights to help address these gaps?

Workers’ rights are recognized as human rights under international human rights law, including the UN Guiding Principles. Therefore, any potential treaty should cover workers’ rights and in particular fundamental principles and rights at work. In addition, we raise three critical concerns:

First, the treaty should apply to TNCs and all other business enterprises.

Considering the serious challenges and threats posed to the rights of workers throughout global supply chains, we believe that it is important to address the particular risks of the operations of TNCs. Thus, we welcome and encourage the importance given to the responsibilities of TNCs by the IGWG.

However, this should not mean that corporations, including state-owned enterprises and local businesses, which can equally have an impact on human rights, should be excluded from a treaty. Indeed, it can be difficult to draw a distinction between the operations and responsibilities of transnational and local corporations. Furthermore, most TNCs are operating through subsidiaries or joint ventures incorporated in domestic law. As a result, a potential treaty should be applicable to all business enterprises regardless of their size, sector, operational context, ownership and structure in order to avoid accountability gaps. This would be consistent with other international instruments such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational enterprises and the UN Guiding principles on Business and Human Rights.

Second, a treaty should oblige states to adopt regulatory measures that require business to adopt and apply human rights due diligence policies and procedures. It should elaborate and clarify the steps that companies need to take in order to fulfill due diligence requirements and establish that a breach of these requirements gives rise to civil, criminal or administrative liability. According to the UNGPs, human rights due diligence requires the assessment of actual and potential human rights impacts from business activities as well as acting on the findings made and communicating how adverse impacts are addressed.

The UNGPs highlight that companies can have an impact on human rights by both causing the violation or by contributing to it or by being linked to the violations through business relationships. This definition of human rights due diligence has been a major step forward towards a comprehensive understanding of the impact corporations can have on human rights and how this could be addressed. A potential treaty should build on this achievement and develop concrete steps states should take to ensure that business enterprises comply with these obligations.

Third, the treaty must establish extraterritorial jurisdiction for human rights abuses.

A treaty should reflect the complexity and inter-related nature of today’s global economy, including the structures of TNCs and their supply chains in order to address the existing accountability gaps with respect to human rights obligations. This would require the recognition of the need for the extraterritorial application of the treaty. A large number of serious violations of human rights occur in countries which lack an independent judiciary or functioning courts offering effective access to justice for victims due to conflict or weak governance. Extraterritorial jurisdiction becomes crucial to victims of human rights abuses where host states are unwilling or unable to ensure effective access to justice.

To conclude, the labor movement has a deep interest in a binding human rights instrument. Voluntary initiatives and “soft law” measures are positive steps but do not go far enough to address the critical threats to the exercise of fundamental rights in today’s globalized economy.