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Legal sanction, international organisations and the Bangladesh Accord

Richard Croucher, Mark Houssart, Philip James, Lilian Miles

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Abstract

We use recent research and two 2018 arbitration cases to argue that the 2013 Bangladesh Accord on Fire and Building Safety represents a regulatory model that is in principle worthy of extension to other countries and sectors. It has achieved considerable membership from purchasing multinationals and other stakeholders, and has successfully secured major improvements to building safety. It implicitly challenges arguments in favour of non-legally supported approaches. We argue that its legal basis is the crucial underlying component of its success and has in significant respects been strengthened in its revised 2018 iteration. In view of the weakness of local worker voice, the involvement of the Global Union Federations (GUFs), acting in collaboration with NGOs, was significant in securing the benefits achieved. Such an alliance appears a necessary condition for the model's extension.

Keywords: Global supply chains, regulation, garment industry, Bangladesh Accord on Fire and Building Safety, Rana Plaza.

Introduction

The 2013 Accord on Fire and Building Safety was created to improve conditions in Bangladesh garment factories after the Rana Plaza disaster in which over a thousand workers were killed. It has had considerable success, despite continuing issues (James et al, 2018). The long-established Global Union Federations (GUFs) are involved in the Accord's Steering Committee and that committee is chaired by an International Labour Organisation (ILO) representative, lending it further international credibility. Despite the obvious potential drawbacks that legal regulation represents for them, there are also advantages for them and more than 200 global brands are members of the Accord organisation and espouse its principles. Vitality, it provides for legally-binding arbitration in signatory companies' home countries and operates through a relatively well-resourced and independent inspection

programme. The Accord's implementation, further illustrated below, illustrates how such an approach, firmly based on well-specified legal enforcement, can support the effective implementation of standards to which multinational brands have subscribed. This is particularly the case since two recent arbitration cases, reported on below, have been initiated and voluntarily resolved in pro-labour senses under the Accord's legally-based dispute resolution provisions. Its extension in a new 2018 ('Transitional') version attracted considerable initial support from stakeholders.

We argue that the Accord's core features provide a model capable of use in other countries and sectors. The GUFs' claim to represent labour internationally, their expertise on labour subjects and their links with the ITUC, ILO and other organisations contribute dimensions that the local unions and the NGOs lack. Without their involvement, the recent arbitration decisions discussed below would almost certainly not have been reached. Nonetheless, the NGOs also contribute potential consumer mobilisation capacity to the partnership, one which the GUFs do not possess. These complementary institutional capacities are likely to constitute a necessary condition for reproducing the Accord's success.

The Accord's operation has been widely publicised in organisations concerned with sustainable and inclusive development. It was recently advocated as a model worthy of extension both by several Global Union Federations and the OECD's widely-respected Trade Union Advisory Committee (TUAC, 2017). The willingness of international project donors to support extension, important in an era of declining union resources, has been noted in international trade union forums (ITUC, 2017). The Accord has attracted very little criticism in comparison with alternative options for unions such as the OECD's system for complaints against multi-nationals conduct (OECD Watch 2018). It contains distinctive and significant elements that positively distinguish it from the Alliance, an alternative agreement involving many fewer brands than the Accord and established at the same time. The Accord model

contrasts with that represented by the Alliance (Donaghey and Reinecke, 2017). Established in 2013 alongside the Accord, the latter is close in nature to pre-RanaPlaza models of CSR programmes (terHaar&Keune, 2014). Importantly, the Alliance presents its terms as almost indistinguishable from those of the Accord, referring to them on their website as ‘legally binding’ (Alliance for Bangladesh Worker Safety, 2018) despite material differences. It is controlled entirely by the companies themselves, who determine what and how outcomes from monitoring are reported. There is no independent chairperson and no union involvement. Further, while an independent Chief Safety Inspector is appointed under the Accord, global brands are free to select inspectors for their supplier factories. The Alliance’s operation in practice has been criticised for reporting questionable outcomes on its website (Clean Clothes Campaign, 2017). Overall, the Accord model and notably its legal enforceability offers global brands a greater prospect of mounting a robust defence of their activities in the developing world to consumers, ethical investors and other companies with which they are associated than the alternative.

Nevertheless, although it represents a major advance on CSR approaches, caution is required in assessing the Accord’s positive governance characteristics. Donaghey and Reinecke (2017) argue that the Alliance represents an essentially CSR perspective as compared to the Accord’s ‘industrial democracy’ approach. The Accord is held to result in ‘a form of trans-national co-determination’. The Accord’s deliberative aspects are undoubtedly valuable. Nonetheless, the ‘industrial democracy’ characterisation sits uneasily with the minimal worker voice existing in Bangladesh, which has been only marginally improved by the Accord. A recent report confirms that worker representation in the garment industry remains weak and patchy, and lacks independence from employers largely because of inadequate protection for the Freedom of Association under local law (Clean Clothes

Campaign, 2017). Similarly, ‘transnational co-determination’ evokes the eponymous legally highly-structured German system. That system offers much greater possibilities for legally-supported workplace-level worker voice (and hence the possibility of effective co-determination) across a much wider range of matters than obtains in the Accord’s case since the latter is primarily concerned with building safety.

We locate our discussion within recent debates about how companies may best be induced to improve working conditions. Until the Accord model emerged, private initiatives designed to regulate international supply chains in the garments sector had been largely limited to CSR approaches which lacked most or all of the Accord model’s elements. International agreements also had major problems. Voluntary International Framework Agreements (IFAs) between GUFs and multi-national companies largely repeated ILO Core Labour Standards, basic floor provisions designed for country- rather than company-level use (Croucher and Cotton, 2011: 57-68). Unsurprisingly, they often suffer from weak coupling between agreement provisions and workplace issues (Marginson, 2016). However, a significant strand of literature has emphasised the utility of voluntary approaches. As we show below, some researchers working within this tradition have criticised calls for more enforcement-based and legally-backed perspectives. We argue here that although alternative approaches remain relevant, the Accord model has been effective. Above all, it shows the value of relatively strong legal support for arbitration creating deterrence via threats to brands’ reputations, backed by GUF support linked to potential consumer mobilisation via the NGOs as essential fundamentals. However, we also suggest that the long-term sustainability of the safety gains made is likely to depend on the strength of workplace worker representation as Walters and Nichols (2007) argued is necessary in all national contexts.

The paper is organised as follows. Part I briefly outlines debates around how compliance with private regulatory initiatives can be achieved. Part II provides the background to the Accord's conclusion, the nature of its provisions and what is known about their effectiveness in securing improved safety standards in Bangladesh garment factories. Part III subjects the agreement's provisions on legal liability and enforcement to detailed examination alongside a discussion of the outcomes of two recent arbitration decisions. Part IV discusses issues regarding the wider use of legally binding provisions of the well-specified type contained in the Accord and backed by GUFs linked to NGOs. Part V concludes.

I: Engendering compliance with labour standards in global supply chains: contrasting perspectives

In this section, we outline the arguments of two main schools of thought distinguished by different views of how corporations might be motivated to themselves adopt and in turn to enforce higher standards on supplier companies.

Much discussion of regulatory policy trends within developed countries has been informed by a shift from 'command and control' strategies towards 'regulated self-regulatory' ones that are seen to form part of a new 'regulatory orthodoxy' (Almond and Colover, 2012). This shift is seen to encompass a movement away from regulatory regimes specifying detailed prescriptive requirements and emphasising enforcement by external regulatory agencies and towards ones that encourage the regulated to institute internal managerial systems aimed at generating compliance. The desirability of this policy trend, reflected in literatures around such notions as 'co-', 'new' and 'experimentalist' governance (see Potoski and Prakash 2004; Trubek and

Trubek 2007; Estlund, 2010; Sabel and Zeitlin 2012), continues to generate much debate.

Underlying this debate are fundamentally different assumptions regarding what motivates corporate compliance. Critics of the new ‘regulatory orthodoxy’ hold essentially pessimistic views of these motivations, emphasising the search for profitability and competitive advantage while de-emphasising quests for corporate legitimacy (Tombs and Whyte, 2013a; 2013b). They consequently view compliance as unlikely in the absence of sufficient external, deterrence-based imperatives and assume that in approaching decisions as to whether to comply with legal obligations corporations tend to be ‘amoral calculators’ who above all judge costs and benefits (Kagan and Scholz 1984). More specifically, compliance is viewed as being crucially determined by the extent to which duty holders believe that there is a real possibility that non-compliance will be both identified and penalised (Short and Toffel, 2010). The arguments presented by this group do not exclude the possibility that companies may themselves derive some benefits from stronger and better-specified regulation, including a reduction in uncertainty and a stronger hand when dealing with supplier companies (Gooderham et.al., 2013).

Proponents of current regulatory orthodoxy view motivations as far more mixed and as, at times, embodying a desire for legitimacy, or to ‘do the right thing’ socially (Gunningham, Thornton, and Kagan 2005). Consequently, strategies aimed at engendering compliance should, it is argued, reflectively recognise and engage with these varying motives and prioritise positively supporting and rewarding desired behaviours. From this perspective, more punitive and adversarial approaches run the risk of alienating otherwise cooperative actors and should be reserved for those

organisations that will not respond to positive incentives (Ayres and Braithwaite 1992; Bardach and Kagan 1982).

The doubts expressed by critics of the efficacy of ‘compliance-based’ regulation and the virtues they associate with a more collaborative approach emphasising ‘mutual gains’ and ‘mutual self-interest’, clearly echo these differing perspectives on motivation (see e.g. Locke et al. 2009: 336). At the same time, however, their advocacy of mutuality-based collaboration is very much a qualified one. For example, in relation to how multinational purchasers can help suppliers improve labour conditions and rights through ‘capability building’, it is noted that such initiatives may fail to take into account the conflicting interests of key actors along global supply chains and ignore how institutional contexts influence the scope to improve working conditions (Locke et al. 2007; Locke and Romis 2010; Locke 2013). Locke also acknowledges that the creation of collaborative relationships may be complicated by such factors as uncertainty about the circumstances surrounding interactions, lack of information about each other, and clashing interests (Locke 2013: 179). Finally, it is stressed that an approach rooted in commitment ‘cannot replace state regulation’ or ‘substitute for the countervailing power that strong labour unions provide’ (Locke et al. 2009: 343). Indeed, a common theme in Locke and colleagues’ work is that private regulation cannot, on its own, improve labour conditions and that regulatory effectiveness requires the establishment of complementary systems of private and public regulation (Locke et al. 2007; Locke & Romis 2010; Locke 2013).¹ Irrespective of these qualifications, Locke and colleagues remain firm supporters of commitment- rather than compliance-based regulation to improve labour standards.

Existing research thus allows considerable uncertainty regarding how far private regulatory initiatives, such as IFAs, can be effective in the absence of meaningful

support from the local state and/or effective internal or external monitoring and enforcement mechanisms. This uncertainty is compounded by the fact that current debates focus attention on how to secure compliance from suppliers, rather than the brands they produce for. The work of Locke and his colleagues, for example, in questioning the effectiveness of compliance-orientated regulatory approaches, only does so in the context of buyer – supplier relationships. It does not therefore address the capacity of such approaches to engender compliance among multinational companies with the commitments they themselves have signed up to through either internal codes of practice or externally concluded IFAs. Yet there is ample evidence that these commitments, as with CSR- based ones more generally, are commonly problematic precisely because of their voluntary nature. Banerjee (2017) shows how voluntary CSR and other multi-stakeholder initiatives have failed to take the needs and lack of power of vulnerable stakeholders such as workers in obtaining rights sufficiently into account, meaning that pressure for compliance from below is likely to be weak or non-existent.

II: The Accord agreement

Safety in the Bangladeshi garment industry has long been highly problematic. Accidents have claimed the lives of more than two thousand workers since 2005, and fires and building collapses have occurred regularly. Thus, although the collapse of the Rana Plaza factory in April 2013 that resulted in over one thousand workers dead and injuries to more than two and a half thousand was an extreme case it was a far from isolated one either in that country or in South East Asia more widely.

The Rana Plaza disaster brought unprecedented international pressures by consumer groups, NGOs and GUFs for more effective health and safety governance in the Bangladesh garment industry (Reinecke and Donaghey 2015). The Accord on Fire

and Building Safety was signed by two GUFs (UNI and IndustriALL, a major GUF which had recently absorbed the International Textile, Garment and Leather Workers Federation), and their Bangladeshi affiliates on the one hand, and more than 200 global brands on the other (Anner, Blair, and Blasi 2013). The Accord constituted, at the time of its conclusion, a multi-party private initiative to improve safety standards in approximately 1,800 supplier factories employing some two million workers, or around half of the Bangladeshi garment workforce. Central to it was the establishment of a system of workplace inspections to identify and remedy weaknesses in factory health and safety standards. It has achieved considerable brand buy-in. Only a small number of brands have failed to pay their membership fees (Accord 2018a). Brands undertake to (i) require their supplier factories to submit to rigorous fire safety inspections (Accord, 2013, Article (ii)) accept public disclosure of inspection reports of its supplier factories (Article 11(iii)) require their suppliers to implement repairs and renovations necessary to make their factories safe (Article 12 (iv)) pay suppliers prices sufficient to allow them to afford the necessary repairs and to operate in a safe manner (Article 22 (v) cease doing business with any supplier failing to comply with any of these requirements (Article 13). In addition, signatory companies are obliged, albeit in a qualified way, to continue business at order volumes at least comparable to those that existed in the year preceding the agreement's conclusion during the first two years of its operation, and also to ensure that health and safety committees involving worker representatives are established in all factories (Article 7). In the medium term, the degree to which this last obligation is fulfilled in practice is, as we suggested above, likely to prove important to the sustainability of any gains made.

More widely, the agreement provided for the establishment of a jointly governed 'civil service'. This body employs and commissions staff to carry out and

follow-up the required safety inspections. It is also responsible for supporting other elements of the agreement, including the introduction of joint health and safety committees, the safety training of workers and the handling of worker grievances and complaints. Resources have been important to its success. The Accord allocates US\$11 million per year and has hired and trained 94 engineers, 35 remediation and complaints case handlers, 30 trainers and 15 training assistants to monitor fire, structural, and electrical safety in its factories (Anner, 2018: 10). The Accord has therefore been able to impose internationally recognised fire and building standards, establish a relatively well-resourced body to undertake inspections including follow-ups, and create a mechanism through which signatory companies can be held legally liable for failing to honour their obligations. In doing so, it can be seen at least partially to address some of the key problems that have been held to constrain the effectiveness of single-employer IFAs, such as a tendency to require compliance with (often poorly drafted and enforced) local laws, insufficient monitoring and enforcement arrangements, and weak local trade union/worker voice (Croucher and Cotton, 2011; Niforou, 2012; Marginson, 2016). The Accord's provisions relating to the transparency of inspection results and progress in remedying identified defects, those concerning ongoing trading relationships and the funding of safety improvements, together with its legally binding arbitration, mean that the agreement ventures into areas untouched by IFAs.

The 2013 document outlines a complaints procedure for workers (Accord, 2013, Article 18). The commitment to publicise all inspection reports (Accord, 2013, Article 19/C) and to detail progress in implementing their recommendations is also significant. It provides scope for unions and pressure groups to monitor whether safety improvements are carried out with sufficient urgency. The salience of transparency is supported by studies concerning the role that it can play in supporting the operation of private regulatory initiatives (Auld and

Gulbrandsen, 2010 and 2014; Schleifer, Fiorini and Stern, 2017). Auld and Gulbrandsen (2010, 2014) analysed the operations of the Forest Stewardship and the Marine Stewardship Councils finding that transparent processes (granting ultimate decision-making authority to members, open engagement with stakeholders, publishing assessment reports, and increasing the online disclosure of audit outcomes) improved both Councils legitimacy and accountability.

The Accord's Operation

Given its provisions' distinctive nature, it is perhaps no surprise that much optimism surrounded the conclusion of the agreement, with one commentator arguing that its full implementation would make a real difference and set a positive example for other countries and industries (Brown 2015). This expectation was largely fulfilled in safety terms (Anner, 2018). A recent analysis (James, et al, 2018) also paints a generally positive if qualified picture of its operation so far; in common with Anner (2018) it shows very considerable improvements in building safety. However, James et al (2018) also pointed clearly to ongoing tensions between signatory brands and their suppliers. In many cases, progress on remedying identified safety defects has been slow and certainly outside prescribed deadlines, while almost 10 per cent of covered factories have been subjected to the Accord's system of warnings and notices because of their lack of commitment to implementing safety improvements. In addition, although it remains unclear how far buyers are providing financial support to help make required improvements, tensions between the improvement of safety and the financial objectives of buyers appear to persist. The continuation of existing pricing models has been a problem and there are differing perceptions between union and company signatories about how far brands are funding safety improvements. These continuing problems point to the need for sustained pressure on employers.

Nonetheless, the same analysis showed that, with the exception of a small number of new supplier factories, inspections have been conducted in all relevant workplaces and an extensive programme of follow-up inspections has been undertaken. It further showed these inspections to have identified a vast number of electrical, fire and structural safety defects and indicated that many of these have been remedied. A common perception was found to exist among those interviewed that safety standards had improved significantly as a result of the Accord (James et al, 2018). It may therefore be argued that the Accord has to date generated unusually positive outcomes, a view apparently shared by global unions. In the build up to the July 2017 G20 summit in Hamburg, several GUFs called on participants to look to the Accord as a model for promoting sustainable business practices (UNI 2017).

The two signatory global unions and some 100 brands have concluded a follow-on ('transitional') Accord agreement under which its safety programme would continue for a further three years until May 2021 (IndustriALL, 2018a). The brands recently involved are supplied by some 1200 factories, as opposed to over 1600 factories in its previous iteration (IndustriALL 2018a, 2018b). This agreement in some respects goes further than its 2013 predecessor. In common with the original Accord (Accord, 2013, Article 17A), it requires the establishment of safety committees and the provision of safety training in all covered factories (Accord, 2018, Article 12a). However, it goes further to state that workers' rights to Freedom of Association must be protected to ensure their safety (Accord, 2018, Article 13). It also provides an enhanced dispute resolution mechanism (now to include mediation to make the costly arbitration process unnecessary) (Accord, 2018, Article 3) and obliges suppliers to pay severance to workers if they have to close or relocate a factory for safety reasons (Accord, 2018, Article 8). In addition, it emphasises working with the Bangladeshi

government to establish a national regulatory body that would eventually be capable of taking over the Accord's functions (Accord, 2018, Article 15).² In both of these senses it seeks sustainability through increased worker voice and government involvement.

Thus, the Accord model is multi-stakeholder, has a clear and collectively agreed and publicised remit, places funding responsibilities on large purchasing companies, includes a local 'civil service', has ILO involvement, employs workplace inspections and incorporates a sizeable element of public transparency. It requires independent workers' health and safety representatives on health and safety committees as recommended by leading experts (Walters and Nichols, 2007; Quinlan, 2014). It is therefore more inclusive of core stakeholders, better-resourced and more transparent than either the Alliance or other single-employer alternatives such as International Framework Agreements. The Accord organisation facilitates the type of discursive, persuasive and information-sharing exchanges advocated by those who reject enforcement-led approaches. It also incorporates and integrates technical expertise from inspectors, which can also play an important role in persuading companies to put resources into improving workers' health and safety (Croucher and Cotton, 2011: 111.). As of late April 2018, 152 companies had signed the new, 'Transitional' Accord (Wright, 2018).

We now turn to the important matter of legal enforcement showing how it has recently worked in practice, and underline the GUFs' role in bringing the cases.

III: Legal enforcement

Legally-binding arbitration is a key feature of the Accord. In this section we report on two recent decisions which led to major improvements. The decisions simultaneously established an important principle which expanded GUF possibilities of invoking arbitration after disagreement on the Accord's Steering Committee. On the union side, only the GUFs have the internal human resources and external networks to pursue such matters, which local unions lack (Croucher and Cotton 2011: 50-2; 101-2). This is therefore a matter of access to justice for the great majority of the world's trade unions. Although we understand that the GUFs received *pro bono* legal representation in the cases reported on below, arbitration costs were met by them (private information).

The Accord 2013 structured arbitration in the following ways. Where a brand is considered not to have complied with its obligations, the agreement (Articles 4 and 5) provided that the issue should be submitted to the Accord Steering Committee, comprising equal representation from the trade union and company signatories, and a representative from and chosen by the International Labour Organization (ILO) as a neutral chair, for initial adjudication by majority decision within 21 days. It will be evident that voting would be likely to lead to deadlock unless the chair cast a vote, unlikely in view of the conception of the chair as neutral. Nevertheless, in the view of the GUFs and the ILO chair (but not that of at least some companies), a decision of the committee could then be appealed against to a final and binding arbitration process. Any arbitration award, the agreement stated, was enforceable in a court of law of the domicile of the signatory against whom it was made. It was subject to The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention), where applicable. The process for binding arbitration, including, but not limited to, the allocation of costs relating to any arbitration and the process for selection of the Arbitrator, is to be governed by the well-known and respected

UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006).

The cases followed formal complaints brought by GUFs some two years ago against several major brands for failing in their legal obligations under the Accord (Allchin and Kazmin, 2015; Irish Times, 2015; Daily Observer, 2015). Failing resolution of the complaints against one of these brands at the Steering Committee, the GUFs submitted a Notice of Arbitration to it under the UNCITRAL rules on 8 July 2016. Subsequently, on 11 October 2016, a further notice was issued to another brand. In both cases it was alleged that the companies had failed to (a) require suppliers to remediate facilities within the mandatory deadlines imposed by the Accord; and (b) negotiate commercial terms to make it financially feasible for their suppliers to cover the costs of remediation. Declarations that the brands had violated their obligations under the Accord were therefore sought, along with orders requiring them to contribute to remediation costs. In the subsequent settlement, the brands agreed to pay these costs (IndustriALL, 2017).

The two arbitration cases have shown the 2013 Accord's value in holding brands to account. Before the Permanent Court of Arbitration (PCA), both brands argued that the claims should be dismissed in their entirety on grounds of inadmissibility because there was no majority on the Steering Committee to send the case for arbitration (PCA, 2017, Procedural Order 2, s.IV/A/35 p.10).³ On 4 September 2017, however, the PCA Tribunal constituted to hear both cases jointly decided that the preconditions to arbitration under article 5 of the Accord had in fact been met (PCA, 2017, Procedural Order 2, s.I/2, p.2). In doing so, it rejected the respondents' (global brands') argument that a deadlocked Steering Committee (with the ILO representative, as a neutral chair, declining to cast a vote) could not be said to have produced a 'majority decision' (PCA, 2017, Procedural Order 2, s.IV/C/59, p.16). The PCA Tribunal held that the precondition had been sufficiently specified under the

Accord's clause 5: a joint investigation had been carried out (PCA, 2017, Procedural Order 2, s.IV/C/52, p.14). It further ruled that while the Accord Steering Committee allowed interested stakeholders a first chance to examine the subject-matter of alleged violations of safety standards in the Accord, it was not intended to be exhaustive in fact-finding terms, thereby allowing full fact-finding to take place during the arbitral process (PCA, 2017, Procedural Order 2, s.IV/C/51, p.14).

The Tribunal also issued directions on confidentiality and transparency. It noted that while the 2010 UNCITRAL Arbitration Rules required hearings to be held in private and provided that any awards could only be made public with the consent of the parties, they were otherwise silent on matters of transparency and confidentiality (PCA, 2017, Procedural Order 2, s.II/4, p.5). The Tribunal acknowledged the interests of the public, numerous Accord signatories and wide range of other stakeholders. Thus, the Tribunal recognised the Accord's inclusive base and the broad spectrum of stakeholders which it represented. It also, however, observed that the Accord itself acknowledged the need to protect the business information and reputational interests of the brand companies (PCA, 2017, Procedural Order 2, s.V/69, p.18). To strike a balance between these competing interests, the Tribunal consequently ruled that although the identity of the respondents and their representatives should be kept confidential, the cases' outlines could be publicised on the Accord's site (PCA, 2017, Procedural Order 2, s.V/101, p.25).⁴

The PCA went on to rule that the arbitrations could proceed to the merits phase and that hearings would take place in March 2018. On 15 December 2017, however, IndustriALL Global Union and UNI Global Union announced that they had reached a settlement agreement with one of the respondent brands (IndustriALL, 2017). Although the exact content of the settlement agreement remains confidential, the GUFs claimed that it will ensure that factories associated with the brand will be remediated and that substantial funds

are made available for that purpose. Subsequently, on 22 January 2018, it was announced that a settlement had also been reached with the second brand under which the company concerned agreed to pay \$2 million towards remediation of more than 150 factories and to contribute a further US\$300,000 to the joint Supply Chain Worker Support Fund that IndustriALL and UNI Global Union established to support the work of the global unions in improving the pay and conditions of workers in global supply chains (The Guardian, 2018). At the time of the case's filing in October 2016, none of the brand's known supplier factories had completed the required remediation, and all of them had at least one high risk safety hazard which had not been fixed. These included factories lacking fire alarm and sprinkler systems, lacking fire doors, and not separating flammable materials from the factories' boilers. The unions' claim for arbitration 'spurred several of the brand's contracted factories towards better progress—one went from a remediation rate of roughly 50 percent in October 2016 to more than 90 percent in October 2017'. The combined number of factories covered by both settlements exceeds 200 (The Guardian, 2018).

In this context, IndustriALL's general secretary, Valter Sanches, suggested:

'This settlement shows that the Bangladesh Accord works. It is proof that legally-binding mechanisms can hold multinational companies to account. We are glad that the brand in question is now taking seriously its responsibility for the safety of its supplier factories in Bangladesh. Their financial commitment serves as an example for other brands to follow.'

(The Guardian, 2018)

The dispute resolution procedure under the 2018 Accord remains substantially the same as that in the Accord 2013, except that there is an opportunity for the parties to participate in a mediation process in order to make arbitration unnecessary where there is no

resolution of the dispute by the Steering Committee (Article 3). This is highly likely to reduce the costs of resolving disagreements. Moreover, Clause 3 of Accord 2018 presents more specific arrangements than the 2013 version:

"Any arbitration award shall be enforceable in a court of law of the domicile of the signatory against whom enforcement is sought and shall be subject to The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention), where applicable."

Clause 3 also specifies that:

"The process for binding arbitration, including, but not limited to, the allocation of costs relating to any arbitration and the process for selection of the Arbitrator, shall be governed by the UNCITRAL Arbitration Rules (as in its last revision) unless otherwise agreed by the parties. The arbitration shall be seated in The Hague and administered by the Permanent Court of Arbitration."

Thus, any decision made by the arbitration tribunal is enforceable in a court of law in the global brand's home country or any other country signatory to the New York Convention. Therefore, countries must ensure that awards are recognised and enforced within their jurisdictions in the same way as domestic awards. In the 2013 version, no governing law clause existed and no seat of arbitration was specified. If a party were to refuse to arbitrate

then there would be no national court in which the claimant could file a motion to compel arbitration. The 2018 version also specifies the following where the 2013 text was silent: "The arbitration shall be seated in The Hague and administered by the Permanent Court of Arbitration" (Article 3). Thus, the 2018 version addresses the previous Accord's silence on both arbitral institution (who should hear the case) and seat of arbitration, which in turn determines which national law governs the procedure (Dunmore, 2017).

IV: Discussion

We set out to use insights from recent literature on the operation of the Accord, together with two arbitration cases brought under the Accord agreement's provisions, to shed new light on the deterrence-versus voluntarism models. We also sought to use the results of this analysis to assess the degree to which the Accord constitutes a model that could beneficially be transferred to other sectors and geographical contexts.

On the first issue, that of deterrence, the conclusions flowing from the analysis are, at one level, straightforward. There is clear evidence that the Accord has served to improve factory safety through a deterrence-based regulatory regime comprising the agreement of legally binding safety related requirements, an extensive programme of inspections, including follow-ups and public transparency of the operation of this programme and its outcomes. Improvement was promoted by the opportunities for dialogue offered within the organisation's governance. As we argued above, the active involvement of the GUFs as the voice of international labour was important, and ensured consolidation of an emerging element of international joint regulation.

Little evidence has been adduced of collaborative and mutually-reinforcing relationships between global brands, supplier factories, government and unions (James

et al, 2018). Rather, GUFs, acting in alliance with NGOs, were able to enforce worker priorities through a combination of the threat of consumer pressure, public concern and the resources and capacities they were able to devote to enforcing arbitration and achieving improvements on the ground. The successful alliance between the GUFs and the NGOs therefore represents a significant case of labour-NGO cooperation.

Our positive view of the Accord's impact on building safety is reinforced when it is considered that many of the factories concerned had previously experienced audits done by, or on behalf of, global brands that failed to pick up the problems identified by Accord inspectors. In fact, Rana Plaza itself had been audited twice before the disaster – in 2011 and 2012 – by an audit company acting on behalf of a large North American brand which is now being sued by four survivors (Brown, 2017). Taken together, these experiences suggest, as Brown (2017) has argued, that the Accord's effectiveness is considerably higher than the CSR-based auditing arrangements that preceded it.

Our analysis does not, of course, exclude the possibility that cooperative problem-solving between purchasers and suppliers can contribute to better compliance with labour standards. Nor does it reject the idea that positive dynamics between brands, suppliers and The Accord can be established in the way some researchers cited above have argued may be done. It does, however, strongly suggest that the scope for such cooperation and especially its development in the longer term is likely to be very limited in the context of developing countries like Bangladesh. These countries are highly dependent on revenue from supplying multinational purchasers and trading relationships that are strongly buyer-led and cost-based (Gereffi 1994; Gereffi et al. 2005). James et al (2018) and Anner et al (2018) both show that even under the most propitious and compelling circumstances, collaborative arrangements alone had not

previously played a central role in resolving poor working conditions. On the contrary, it was the Accord's deterrence-based regulation enforced by the GUFs which had driven global brands and supplier factories to improve health and safety standards.

On the second issue, when considering the Accord as a transferable model, account must be taken of the impetus to its development provided by scale and severity of the Rana Plaza disaster and subsequent international scrutiny. The garment industry is highly sensitive to such reaction because of the importance of consumer sentiment to their business model. Many companies in other sectors are less exposed to consumer sentiment. The industry also has a higher degree of employer interest in the building safety subject than in many other related issues such as the Freedom of Association.

The agreement that evolved was, moreover, only achieved after massive joint efforts on the parts of global unions and consumer NGOs, in the face of substantial resistance by global brands (Reinecke and Donaghey, 2015). Even then, some global brands refused to sign up to the agreement and chose instead to become members of the Alliance. This background further demonstrates the challenges which attempts to replicate the Accord agreement are likely to face. So, too, does the hostile reception given by employers to proposals raised in the ILO to develop a 'horizontal' measure to regulate global supply chains (Thomas and Turnbull, 2017). None of this invalidates the argument that the Accord represents a model that can usefully be adopted elsewhere. Voluntary extension of the Accord to other garment-related industries is envisaged.⁵ Other industries around the developing world such as footwear and furniture production also show similar patterns of low-technology, labour intensive production in which brands order from low cost local producers (Scott, 2006).

National governments, as in the Bangladesh case, may have reservations (James et al, 2018) and indeed these are threatening the Accord's continuing operation in late 2018, but the case also shows that they may be overcome. Alamgir and Banerjee (2018) demonstrate how contestations surrounding the Bangladesh garment industry have created new private forms of governance and new regimes of compliance around global production chains in ways that create positive synergies for all those concerned. These forces played a role in reversing the Bangladeshi government's initial refusal to sign up to the then proposed extension of the Accord (Textile Today, 2017).

One virtue of the Accord has arguably been that it has operated at a sector level, reducing the potential for individual factories to cut corners on safety in response to pressures from individual brands and thereby taking such economies out of competition. The Accord's provisions on the maintenance of orders to factories clearly represented an acknowledgement of this risk. By contrast, its current restriction to one country leaves clear scope for brands to escape its provisions by re-directing orders to another national location. Anecdotal evidence suggests that brands are increasingly sourcing production from lower cost countries in East Africa and Asia where safety standards are likely to be less rigorously monitored and enforced. This raises the question of how far brands may seek to escape regulation by using 'spatial fixes' (Silver, 2003: 41 ff). It also raises issues about the sustainability of the safety improvements that the Accord has achieved. These issues link back to the 'root cause' identified by Anner et al. (2013). They also point to the potential benefits of concluding Accord-type agreements at a cross-national sectoral level in ways similar to the 2006 Maritime Labour Convention (Bollé, 2006). Only the ILO and the GUFs have the legitimacy, international informational capacities and resources required to broker and

police such agreements.

V: Conclusion

The 2013 Accord on Fire and Building Safety has had a substantial and positive impact on Bangladesh garment factories' structures and fire arrangements. It has done so via a joint union-management approach which developed a regulatory regime encompassing well-specified legally binding commitments on global brands to be enforced via arbitration. Within this regime, the establishment of a relatively well-resourced inspection and follow-up programme entailing transparent reporting of the Accord's operation has also been significant.

GUF and NGO dialogue with brands, backed by legal sanction rather than the voluntary approaches advocated by some researchers has provided the essential foundation of success. GUF-NGO partnership has been central to the model's creation and practical application on the ground. Yet far from driving brands away, the Accord has generated greater interest from brands than the alternative Alliance model. A revised and strengthened version of the Accord, along with its extension to other environments is now proposed. Given the importance of legal advice and assistance, and notwithstanding the proposed increased use of mediation, extended application of the Accord model will be assisted if the GUFs and their partners are able to access augmented resources. Indications exist that these may be forthcoming from the international donor community.

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1Locke goes so far as to argue that national governments in developing countries have far more ability to impose their will on global brands than is previously believed, and that they *can* ensure that common standards are applied to all producers within the same regional or national economy (Locke, 2013: 18-20). In the Bangla Deshi case, the argument discounts the extensive overlap between politicians and clothing factory ownership (James et al, 2018).

²Under an agreement concluded in October 2017 with the Bangladesh Ministers of Commerce and Labour, the BGMEA joint monitoring committee has been established, to review on a bi-annual basis progress towards meeting certain conditions for such a handover of functions. These include demonstrated proficiency in inspection capacity, remediation of hazards, enforcement of the law against non-compliant factories, full transparency of governance and remediation progress, and investigation and fair resolution of workers' safety complaints. In the event that the committee agrees that the conditions for handover have been met, the agreement further provides that there will be a transition period of six months, after which the national regulatory body would take responsibility for factories now covered by The Accord.

³The PCA is an inter-governmental organisation located in The Hague, and was first established in 1899. It is not a court in the traditional sense but an arbitral tribunal which resolves disputes between member states (of which there are 121), international organisations or private parties arising out of international agreements.

⁴The respondents are identified as Respondent in PCA Case No. 2016-36 in the 8 July 2016 action, and as Respondent in PCA Case No. 2016-37 in the 11 October 2016 action.