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The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[03 September 2013]

GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS OR TRANSNATIONAL ECONOMIC POWER'S CULTURE OF IMPUNITY[1]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

[1] This declaration a was drafted in collaboration with Alejandro Teitelbaum, a jurist specialized in international human rights law.

In June 2011, the Human Rights Council adopted by consensus the *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* drafted by John Ruggie.

In March 2012, John Ruggie received a well deserved reward for his work: the Barrick Gold mining company (with a heavy record of human rights violations, including violations of environmental rights) named him to the company's advisory board for social responsibility.

In July 2012, the United Nations Secretary-General published a report, submitted to the twenty-first session of the Human Rights Council, with the evocative title: *Contribution of the United Nations system as a whole to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles on Business and Human Rights (A/HRC/21/21).*

The "Background" section of the report failed to mention the attempt to establish a code of conduct for transnational corporations (TNCs) during the 1970s as well as the draft norms adopted by the now defunct Sub-Commission on the Promotion and Protection of Human Rights. This was probably because these antecedents contradict current United Nations policy on TNCs as set forth in the above-mentioned *Guiding Principles* and the report.

The Secretary-General's entire report refers to the *Guiding Principles*, and Paragraph 11 reiterates what we already know: they "do not create new legal obligations". In other words, their implementation is VOLUNTARY. They are thus just like other guidelines emanating from the various bodies mentioned in the same report: *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security of the Committee on World Food Security*; the revised *Sustainability Framework of the International Finance Corporation*; the *Children's Rights and Business Principles*, drafted jointly by the Global Compact, the United Nations Children's Fund (UNICEF) and Save the Children, using as its base the *Guiding Principles* etc. It is worth noting the *Children's Rights and Business Principles* are not based on the *Convention on the Rights of the Child* and its optional protocols.

It is indisputable that TNCs, like all private persons, have the obligation to respect the law. If they do not do so, they must be sanctioned under civil and criminal law, and this at the international level also, as is clear from an examination of the international instruments in force. The recognition of the obligations of private persons – including legal persons – regarding human rights and their responsibility in the event of violations of these rights is enshrined in Article 29 of the *Universal Declaration of Human Rights*. It has been strengthened formally in numerous international conventions, most notably regarding the protection of the environment[2].

The Secretary-General's report enshrines the practice (which is becoming more and more common, as indicated above) of allowing the binding norms of international human rights law to be superseded by the voluntary *Guiding Principles*, just as it enshrines the abdication of the United Nations system for legislating specifically regarding transnational corporations – in spite of the absolute necessity of doing so.

It is interesting to note that the report refers to the *Guiding Principles* and does not mention even once the fundamental judicial instruments of international human rights law: the *Universal Declaration of Human Rights*, the *Charter of the United Nations* and the international covenants on human rights. This striking omission cannot be dissimulated by the report's Paragraph 34, which states: "Given that the Guiding Principles are not a static set of norms, the identification of normative gaps may arise. As such, further development of standards should be carried out by the United Nations human rights system, supported by open multi-stakeholder processes."

It is worth recalling that the *Guiding Principles* are not, contrary to what is indicated in Paragraph XX a "set of norms", neither static nor dynamic, since they do not correspond to the essential characteristics of the rule of law: there is neither compulsory character nor sanction in the event of violation. It is thus not a matter of possible lacunae, as the Secretary-General suggests in his report, but of a veritable normative void in international law.

As indicated in the report, one of the primary promotional mechanisms of the *Guiding Principles* is the *Global Compact*, in which TNCs play a major role.

The Working Group set up under Human Rights Council Resolution 17/4 mentioned in paragraph 3 of the report, has a mandate only to promote the *Guiding Principles*. That means that there is no provision for it to receive complaints (which means the exclusion of oversight and control mechanisms such as exist in other working groups), besides which its mandate does not include drafting proposed codes of norms binding on TNCs.

It is significant that in Resolution 17/4 on the *Guiding Principles* the United Nations basic instruments are not mentioned even once: the *Universal Declaration of Human Rights*, the *Charter of the United Nations* and the international human rights covenants.

The *Guiding Principles* in Practice

On 24 April 2013, in Bangladesh, the collapse of an eight-story building, whose lack of safety was obvious, caused more than a thousand deaths. In this building were several garment factories, and 3,500 persons worked there. Several days later, a fire in another textile factory caused the death of eight persons. And in November 2012, again in Bangladesh, 111 persons perished in another garment factory fire. In all, in recent years, in Bangladesh, some 1,700 persons have died in such accidents.

Some time afterward, The *Accord on Fire and Building in Bangladesh*, (*AISEB*)[3] was agreed by several companies including those involved in the above-mentioned accidents and several trade-union organizations, an event that was widely publicized and celebrated as an example of corporate social responsibility.

In practice, the *AISEB* committed the major transnationals only to paying amounts that are negligible for them – 500,000 dollars per year for the five years that the *Accord* remains in force – necessary for creating safety conditions to prevent fires and the collapse of buildings housing the garment factories of their suppliers.

1. The *Accord* does not even provide for compensation for the victims of the 24 April collapse in Rana Plaza. The principle of shared responsibility between TNCs and suppliers was ignored once more.

It should be noted that this basic judicial principle is not in force at the international level because NGO proposals, repeated again and again over the past 20 years to the competent United Nations bodies, exhorting them to adopt a binding norm in international law, have gone unheeded.

Following the 111 deaths in the Tazreen Fashion factory (Bangladesh) in November 2012, C & A announced that it would compensate the victims: to the children who had lost a parent in the fire, 50 dollars per month each until the age of 18; to a surviving parent, 15 dollars per month for the education of the child and 1,200 dollars to each family that had lost a member in the fire. The victims still have not received these modest sums promised by C & A.

2.The *Accord* does not include any commitment by the purchasing corporations to increase the prices paid to the suppliers as a means to facilitate an increase in the workers' wages.

3. The *Accord* does not mention any sort of promotion and/or guarantee of fundamental workers' rights to set up trade unions and freely exercise their rights and to defend collective bargaining.

It is obvious that an improvement in work conditions in Bangladesh depends in the first instance on the organization and the struggle of workers of this country. But the obstacles that they face (repression and restrictive laws) are considerable. “When I visited Bangladesh in February, I realized that, among 5,000 factories, only two dozen of them had a local trade-union registered and functioning. Owing to the intimidation and the problems of official recognition, less than one percent of labor is unionized.” (Jyrki Raina, secretary general of IndustriALL Global, posted on the site of this organization, 19 March 2013). Aminul Islam, a labor organizer from the Bangladesh Garment and Industrial Workers Federation (BGIWF) and a member of the Bangladesh Center for Worker Solidarity (BCWS), was found dead on 5 April 2012. The photos taken of his body by the police indicate that Islam was tortured before being killed[4].

4. The *Accord* stipulates obligations concerning, above all, the suppliers. For example, if the building does not correspond to safety standards and if, for the necessary repairs to be carried out, the personnel must suspend work, the factory owner must preserve the employes' jobs and pay their wages. The *Accord* imposes no contribution from TNCs to fulfil this obligation, contrary to erroneous interpretations emanating from some trade-union leaders.

5) Regarding the force of the *Accord* and the possibility of demanding its implementation before a court of law empowered to impose its decisions upon the parties, it is valid only for the suppliers.

The *Accord* stipulates: *The objectives of the protocol are to (i) support and motivate the employer to take remediation efforts in the interest of the workforce and the sector and (ii) expedite prompt legal action where the supplier refuses to undertake the remedial action required to become compliant with national law*.

It is false to claim that the *Accord* is compulsory or binding, since, in the event of a dispute between the parties, it provides only for the possibility of setting up an arbitration tribunal, without specifying formally how the tribunal will be constituted.

The only commitment made by the TNCs regarding the *Accord* – finance the work necessary for the safety of the buildings in the annual amount of 500,000 dollars for five years – translates into pure profit for these corporations.

In fact, on the one hand, owing to a minimal cost and facilitated payments, they burnish their image before the public. On the other hand, all while preventing accidents, the TNCs assure the continuity of production of the factories and the survival of the cheapest labor in the world.

The deficiencies of the *Accord on Fire and Building Safety in Bangladesh* are examples, among many others, that demonstrate how the *Guiding Principles* are of no utility in forcing TNCs to respect human rights. These entities have constantly opposed the adoption of binding norms, which, as the *Accord* once again demonstrates, are the only effective instruments for making more social justice possible.

1 This declaration a was drafted in collaboration with Alejandro Teitelbaum, a jurist specialized in international human rights law.

2 There are binding international instruments for private persons, referring largely to environmental protection, such as Principle 21 of the 1972 Stockholm Declaration on the on the Human Environment, reaffirmed by General Assembly Resolutions 2995 (XXVII), 3129 (XXVIII), 3281 (XXIX) (Charter of Economic Rights and duties of States), the 1992 Rio Declaration on Environment and Development, which is regarded as jus cogens, the United Nations Convention on the Law of the Sea (Montego Bay, 1982); the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, March 1992); the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; the 1991 Bamako Conventionon the ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa; the 1992 Helsinki Convention on the Transboundary Effects of Industrial Accidents; the 1993 Lugano Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environmentt; the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade etc., which established the responsibility of whoever causes the damage, and, in general, the subsidiary responsibility of the state, if it has not adopted preventive measures to avoid the prejudicial effects of such activities. In December 1999, the states parties to the Basel Convention adopted a protocol on liability and compensation in the event of damage resulting from transboundary movements and the elimination of dangerous waste (www.basel.int). Article 16 of the Protocol stipulates: "The Protocol shall not affect the rights and obligations of the Contracting Parties under the rules of general international law with respect to State responsibility." Adopted in May 2001, the Stockholm Convention on Persistent Organic Pollutants entered into force in May 2004.

3 See http://www.industriall-union.org/sites/default/files/uploads/documents/2013-05-13_-_accord_on_fire_and_building_safety_in_bangladesh.pdf#overlay-context

4 See http://www.ethique-sur-etiquette.org/Aminul-Islam-assassine,120