



Statement of His Excellency Archbishop Silvano M. Tomasi
Permanent Observer of the Holy See to the United Nations and
Other International Organizations in Geneva
at the 26th Session of the Human Rights Council

Agenda Item 3

*“Report of the Working Group on the issue of human rights and transnational corporations
and other business enterprises”*

11 June 2014

Mr President,

The Delegation of the Holy See welcomes the document developed by the working group in elaborating the *Guiding Principles on business and human rights “Protect, Respect and Remedy”*. While the unanimous endorsement of the *Guiding Principles* by the Human Rights Council signalled a strong global political commitment, targeted efforts have been necessary in order to effectively disseminate them worldwide to all stakeholders.

Since 2011, the Working Group has supported dissemination and implementation efforts by reaching out to new audiences, multipliers and catalysts. It has also contributed to the provision of a space for constructive dialogue on progress and challenges around the implementation of the *Guiding Principles*, both internationally and regionally; to the construction of a stronger business and human rights regime, including through the development of national action plans on business and human rights; and to the enhancement of the understanding of the notion of effective remedy for adverse human rights impacts linked to business activities.

Despite the significant efforts made to implement the *Guiding Principles*, key challenges remain: these include broadening dissemination, reaching scale in implementation, building trust between stakeholders and overcoming barriers to effective remedy. The difficulties are many: both at the level of organizational applications and legal implications and at the level of understanding the meaning and benefits of the principles themselves. But the main claim seems now to have gained a wide agreement: businesses have to recognise human rights as the binding framework of their activities. Thus, the Holy See delegation

welcomes the opportunity of taking another step in addition to the Working Group efforts to promote the *Guiding Principles*.

The ability of international corporations to partially escape territoriality and carve for themselves an existence “in-between” national legislation is rightly one of the concerns of the International Community. Their mobility in terms of their country of incorporation, management, production, and financial flows allows them to navigate national legislations, take advantage of regulatory arbitrage and choose the jurisdictions that may offer the best return in terms of profits. Pope Francis, in his Apostolic Exhortation “The Joy of the Gospel”, and other religious leaders in the International Community have repeatedly pointed out that profit cannot be the only rationale of business activity. Transnational corporations are part of the human family and as such their activity should abide by the standard of human rights¹.

Another point of concern to the International Community is the *inherent complexity* of the transnational corporations regarding their diverse operating models (*modus operandi*) which makes them very hard to monitor and supervise. The resulting absence of robust and timely transparency makes it very difficult to measure *compliance with rules and legislations*. *Human rights violations all too often occur out of utter neglect* toward consequences that would have been foreseeable had anyone cared to think about them. These sorts of “neglects” are not casual, but systemic. They are the rational result of a systemic exclusion of the vulnerable in the logic of economic activities. Pope Francis describes this reality as follows: “*It is no longer simply about exploitation and oppression, but something new. Exclusion ultimately has to do with what it means to be a part of the society in which we live; those excluded are no longer society’s underside or its fringes or its disenfranchised – they are no longer even a part of it. The excluded are not the “exploited” but the outcast, the ‘leftovers’.*”²

The death of over eleven hundred innocent workers in the collapse of the Rana Plaza garment factory in Bangladesh last year was egregious but unfortunately the very tip of an iceberg. The violation of human rights in the workplace is a daily life experience for tens of thousands of people across the world especially in jurisdictions with lax enforcement of laws and regulations. day. In this sense my Delegation shares the conclusion of the Report on the priority to “*review access to remedy for victims of business-related adverse human rights impacts, including legal and practical barriers to accessing*

¹ Pope Francis, Apostolic Exhortation *Evangelii Gaudium: The Joy of the Gospel*. (Washington: United States Catholic Conference, 2013) No. 56 & n204. Archbishop Justin Welby, “*Good Banks: Transcript of Archbishop Justin Welby’s speech on 12th June 2013*”. (third in a series), “The City and the Common Good: What kind of City do we want?”, St Paul’s Institute. London.

² Pope Francis., no.54.

courts, and the availability and effectiveness of State-based non-judicial mechanisms”.

Another significant challenge to a State-driven International order and the application of the *Guiding Principles* is the emergence of transnational corporations as *global players* with multiple centres of operation. The size of their operation, their numbers of workers, their financials flows allow them not only to be “just another player in the market,” but to shape significantly laws and rules, markets and societies to their own advantage and purpose. That corporations have a *social role* through the “social license to operate” that is granted to them by societies through their government agencies is not some novelty but unfortunately a forgotten dimension of modern business school curricula. Both the Church and the International Community assert that beside legitimate profit, economic enterprise *must work for the common good*. For globalization to be true to humanity, these corporations have to abide by the standard of human rights and must assume their share of responsibility toward the common good.³

Mr. President,

The Delegation of the Holy See is aware that there are no easy solutions for addressing the multifaceted and complex challenges of business and human rights, or for providing the effective remedy and accountability that victims are legitimately seeking as a matter of urgency. Addressing those challenges and effectively managing business-related human rights risks requires sustained attention and a “smart mix” of regulatory and policy approaches and incentives. The constructive and welcome engagement of all stakeholders in international economic and commercial matters will help to achieve an integral development and solidarity which is grounded in a vision of the future that guarantees an equitable distribution of resources and is responsive to the interdependence of people.⁴

The Commentary to the Foundational Principle 11 states the universality of human rights and therefore the responsibility of corporations operating at transnational levels: “*The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting*

³ Pope Francis, *Ibid.*, no. 203 & 205.

⁴ Cf. Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, n. 373. Rome, 2004.

human rights”⁵. By stressing that their responsibility stems directly from human rights, the *Guiding Principles* underline that the mandatory nature of this responsibility is ultimately a moral one, and they also express one of the major difficulties in the application of the guidelines: how can we convince international corporations to rise up willingly to this responsibility if no national legal obligation binds them to do so?

A binding instrument would raise moral standards and change the way international corporations understand their role and activities. In this regard, it has been proposed that the synergy between public sector corporations and private ones could constitute another emerging form of economic enterprise which cares for the common good without giving up profits⁶.

Mr. President,

The *Guiding Principles* are an important instrument in setting up a framework for the activity of Transnational Corporations. The responsibility to respect human rights stems from the recognition that businesses have a social function that cannot be reduced only to the production and distribution of goods and services. As important actors within a globalised world they bear a responsibility to abide by, and to promote human rights in their own domain of activity. While the *Guiding Principles* can improve the integration of the priority of the human person and the environment in international economic activity, only a binding instrument will be more effective in advancing this objective.

⁵ UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *Guiding Principles on Business and Human Rights – Implementing the Human Nations ‘Protect, Respect and Remedy’ Framework*, United Nation Publishing Service, Geneva, 2012, p.13. HR/PUB/11/4.

⁶ *When we consider the issues involved in the relationship between business and ethics, as well as the evolution currently taking place in methods of production, it would appear that the traditionally valid distinction between profit-based companies and non-profit organizations can no longer do full justice to reality, or offer practical direction for the future. In recent decades a broad intermediate area has emerged between the two types of enterprise. (...) This is not merely a matter of a “third sector”, but of a broad new composite reality embracing the private and public spheres, one which does not exclude profit, but instead considers it a means for achieving human and social ends. Whether such companies distribute dividends or not, whether their juridical structure corresponds to one or other of the established forms, becomes secondary in relation to their willingness to view profit as a means of achieving the goal of a more humane market and society. (...) Without prejudice to the importance and the economic and social benefits of the more traditional forms of business, they steer the system towards a clearer and more complete assumption of duties on the part of economic subjects. (Caritas in veritate 41)*