

Working Group on the Drafting of a Legally Binding Instrument on the responsibility of transnational corporations.

Comments by Alfred de Zayas

This panel will focus on victims. We would need the whole day.

Allow me to make some preliminary remarks before I do a short tour d'horizon of those sections of my reports that are relevant.

First, we want to promote a precautionary approach – we need to prevent violations of human rights by corporation

The compensatory approach does not meet the challenge. Of course, victims are entitled to recourse and effective remedy – but that is after the fact – that means reparation of the damage, a mere band aid.

We also want to develop the penal aspect of corporate responsibility. The fight against corporate impunity must be clear that company executives are personally liable for their decisions. It is not enough to have corporations pay compensation. Those executives who bear responsibility for the killing of human rights defenders, for the destruction of the environment, for cancers and other illnesses must be made accountable.

In my report to the Council 2016 I devote an entire section to this issue.

Let me remind you of the Nuremberg trials and the conviction of company executives of I.G.Farben, Krupp and Flick, who were found guilty of complicity in Nazi crimes. Let me also recall the fate of Bruno Tesch, the Zyklon-B producer, who was tried before a British court in Hamburg, convicted and executed.

This should be a warning to executives who sell chemicals that are used in chemical weapons or who support paramilitary groups that kill peasants and indigenous populations who oppose toxic mining, oil and gas activities on their lands.

Second, let me focus on one category of victims – the indigenous – who frequently do not have the means to defend themselves.

The Declaration on the rights of indigenous peoples does not provide any protection, precisely because it is a mere Declaration, yet another not-binding instrument like the Guiding Principles on Business and Human Rights, with no enforcement mechanism.

The crucial provision on the need to obtain free, prior and informed consent before entering indigenous lands continues to be violated with impunity.

One day the Declaration should become a Convention and a Committee should be charged with monitoring compliance and providing remedies to victims.

NOW TO MY REPORTS ON corporate abuse and impunity – Chevron refuses to pay 9.5 billion judgment – leaves victims without compensation

ISDS Occidental Petroleum v. Ecuador

Concluding remarks

In my statement earlier this morning and in my report to the Human Rights Council 2016, I invoked the relevance of penal law. Surely the concept of crimes against humanity is pertinent here – whether the destruction of the environment, otherwise known as genocide, massive pollution through toxic waste, involuntary evictions and transfers of population, denying help to those in dire need – including persons suffering from cancer, aids and hepatitis C, persons incapable of paying 100.000 dollars for medicines and treatment –

The International Criminal Court should pronounce itself in appropriate cases submitted pursuant to article 7 paragraphs 1(d) and 1(k) of the Rome Statute. I explain this further in my chapter in William Schabas (ed), *Cambridge Companion to International Criminal Law*, (Cambridge 2016).

Let me leave you with a question – judging by the voting record in this Council of many delegations, mostly from developed States, whenever a resolution on economic and social rights came was tabled, judging by their endorsement of investor protection at the expense of the State's necessary policy space and ontological function to regulate in the public interest, judging by their tolerance of abusive policies of International Financial Institutions, including the IMF and World Bank, judging by their reluctance – hitherto – to expeditiously adopt a binding treaty on corporate legal responsibility – Ladies and gentlemen – would they vote today for or against the Universal Declaration of Human Rights? Humanity looks up to this Council in the hope that it will give more than just lip service to human dignity.

Monday this week a member of the European Parliament, Lola Sanchez, reminded us of some fundamental truths about human rights and human dignity – which we all should take seriously.

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