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I am grateful to the Business and Human Rights Resource Centre for the opportunity to comment on the new book edited by Surya Deva and David Bilchitz, *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?*

As you can imagine, having developed the UN Guiding Principles on Business and Human Rights (GPs), I read the book with great interest. In my final remarks to the UN Human Rights Council, in March 2011, I stated that its endorsement of the GPs would not bring business and human rights challenges to an end, but it would mark the end of the beginning: by at long last providing an authoritative global normative platform and policy guidance for all stakeholder groups to build on. The contributing authors address both strengths and weaknesses of the GPs. In doing so, they enrich the debate and help inform the evolving agenda. The Foreword by Olivier de Schutter, as one would expect, is insightful and judicious. I very much appreciate, and have learned from, these contributions.

But I confess to having real problems with the co-editors' own chapters, the tone of which they already signal in their Introduction. Deva and Bilchitz are legal formalists, whereas my academic and practical experience is in figuring out how to make actual global governance processes work. In his blog on the book, Larry Catá Backer describes their approach as being hierarchical and top-down, mine as polycentric and bottom-up. That we disagree on foundational issues is perfectly fine; dialogue between different paradigms can be productive. But so keen are Deva and Bilchitz to undermine the normative legitimacy of the Guiding Principles and assert the primacy of their preferred approach that, in making their case, they also resort to *ad hominem* remarks and insinuations, and they misrepresent key facts. If taken seriously by readers who have not followed this debate closely, this can only lead to adverse consequences for the perception and further uptake of the GPs. And I am not fine with that. Some illustrations follow.

Although I don't recall ever having met either of the co-editors, they nevertheless have determined that I am morally obtuse and unworthy of carrying the human rights torch. Words they use to describe me include "blind" and "obsessive." I am said to "lack understanding" of core human rights issues. Consensus around the Guiding Principles is said to have been "manufactured," while other approaches got locked in a "cage." When they disagree with or misunderstand choices I made, they attribute nefarious motivations to me—typically, that what I did was done at the behest of business ("business in the driving seat?"). They even create their own facts, the most disturbing being the incredible claim that I refused throughout the six years of my mandate to meet with victims—when such encounters were well known at the time, in

some instances were arranged by NGOs, and several are described in my own book reflecting on the mandate, *Just Business: Multinational Corporations and Human Rights.* To note but one example, my interest in site-level grievance mechanisms to address disputes between companies and communities before they escalate into major confrontations came from one such encounter, in the Peruvian Andes.

Equally misleading (and utterly perplexing) is my alleged "rejection of law as a source of binding normativity." In point of fact, I sent a memorandum to every UN member state in February 2011 conveying my recommendations for follow-up to the mandate, including the need for an intergovernmental process to clarify the applicability to business enterprises of international standards prohibiting gross human rights abuses, potentially amounting to international crimes. National courts have reached very different conclusions on this question, I reported, even within the same jurisdiction. One way to achieve such clarity, I went on to suggest, is through a legal instrument modeled on the UN Convention Against Corruption. That memorandum was posted on the Business and Human Rights Resource Centre website at the time, and I recapitulate it in the final chapter of my book (along with the amicus brief to the U.S. Supreme Court that I submitted in the *Kiobel* case, with Philip Alston and the Global Justice Clinic at New York University Law School). Indeed, as far back as 2007, in an *American Journal of International Law* article, I wrote that international legal instruments must and will play a role in the continued evolution of the business and human rights regime, but "as carefully constructed precision tools," closing specific governance gaps that other means cannot reach.

The Guiding Principles represent two unprecedented steps for the United Nations: they are the only authoritative guidance the Human Rights Council and its predecessor, the Commission on Human Rights, have ever adopted on the subject of business and human rights; and this is the only time that either has "endorsed" a normative text *on any subject* that governments did not negotiate themselves. Of course, I would wish to see more and faster progress in implementation. But in comparison with normative and policy developments in other difficult domains, the GPs uptake since the Council's endorsement in June 2011—by other international standard setting bodies, governments, businesses, workers organizations, and civil society actors—has been relatively swift and widespread.

So let us not turn the clock back to the discord and conflict that characterized the forty years since these issues were first put on the UN agenda in the 1970s. Victims would be the losers. It would benefit only those, on various sides, whose interests are served by derailing what has been achieved, and the momentum for the important work that still lies ahead.

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