联 合 国



经济及社会理事会

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人权委员会 增进和保护人权小组委员会 第五十四届会议 议程项目 4

经济、社会和文化权利

跨国公司工作方法和活动问题 会期工作组第四届会议报告

主席兼报告员:哈吉•吉塞先生

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内容提要

跨国公司工作方法和活动问题会期工作组于 2002 年 8 月 1 日和 2 日举行了第四届会议。专家哈吉·吉塞先生再度当选为主席兼报告员。

主席在开场白中指出,本届会议要解决的主要问题之一是,跨国公司和国家之间的关系问题。他强调,目前的国际经济体系以自由市场哲学、私有化和削减公共部门为基础,这防碍了许多发展中国家的发展。

专家戴维·魏斯布罗德先生随后介绍了以下文件:《跨国公司和其他商业企业的人权原则和责任》(准则草案)(E/CN.4/Sub.2/2002/WG.2/WP.1)以及准则草案的《导言》和《评注》(E/CN.4/Sub.2/2002/WG.2/WP.1/Add.1 和 2)。魏斯布罗德先生说,工作组全体成员原则上同意该准则草案,并介绍了其中最重要的几项措施,特别强调了定义、实施办法、所针对的企业类型以及准则草案的约束力几个方面。

在工作组成员发言之后,其他专家发表了意见,有些赞成立即通过准则草案,有些则建议进一步研究这个问题。随后审议了界定跨国公司的时机和方法问题,到底是根据其雇员人数来界定,还是根据其活动的公共性质来界定。专家们还就准则草案的约束力发表了意见。

许多专家建议设立后续机制。此外,还就国家法庭的作用、跨国公司活动年度 报告的用处,以及是否任命一名人权委员会监测准则草案执行情况特别报告员等 问题提出了一些建议。

其他与会者中,绝大部分都对草案问题表示满意,并重申这一步骤的紧急性和益处,特别是考虑到最近的金融丑闻。所以这些与会者希望立即通过准则草案,但是另一些与会者则比较挑剔,他们一方面指出准则草案不具约束力,另一方面指出工作组超越了其任务范围。

会上提出了一系列新的研究专题,以便丰富工作组今后的讨论,并巩固对跨国公司活动的监督系统。

导言

- 1. 增进和保护人权小组委员会依照第 1998/8 号决议,于 1999 年设立了一个会期工作组,任期三年,负责审议跨国公司的工作方法和活动。之后,小组委员会又根据第 2001/3 号决议,决定把由其设立的这个负责审议跨国公司的工作方法和活动的工作组的任期延长三年,以便使之能够完成任务。因此,小组委员会在延长工作组任期后,召开了工作组第一届会议。
- 2. 工作组成员包括下列专家:哈吉·吉塞先生(非洲)、戴维·魏斯布罗德先生(西欧和其他国家)、米格尔·阿方索·马丁内斯先生(拉丁美洲和加勒比)和弗拉基米尔·卡尔塔什金先生(中欧和东欧)。
- 3. 工作组在此届会议期间,于 2002 年 8 月 1 日和 2 日举行了两次公开会议。
 - 4. 哈吉•吉塞先生当选为主席兼报告员。
- 5. 下列小组委员会委员或候补委员不是工作组成员,但也出席了会议:弗朗索瓦斯·汉普森女士、埃马纽埃尔·德科先生、尤利亚·安托阿尼拉·莫托科女士、弗洛里泽尔·奥康纳女士、戈德弗雷·普雷瓦尔先生、拉莱娜·阿库图阿里索女士、索利·索拉布吉先生、哈利玛·瓦尔扎齐女士、横田洋三先生、勒伊拉·泽鲁居伊女士。
 - 6. 出席工作组会议的专门机构有:国际劳工组织。
- 7. 下列非政府组织代表也出席了工作组会议:欧洲与第三世界中心(普通类)、美洲法学家协会、大赦国际、基督教援助社、人权倡导者协会、人权观察社、图帕克 阿马鲁印地安人运动、土著世界协会、国际人权联合会(人权联合会)、国际争取人民权利与解放联盟、国际人权服务社、律师促进人权委员会、大同协会、世界反酷刑组织(特殊类)、诺华公司基金会的代表克劳斯•莱辛格(其他)。
 - 8. 工作组于 1999 年通过了其任期内的下列议程:
 - 1. 选举主席团成员。
 - 2. 通过议程。
 - 3. 跨国公司的活动。
 - 4. 当前的标准和标准制定活动。

- 5. 结论和建议。
- 6. 对工作组今后在探讨跨国公司的活动对人权,包括对发展权和卫生环境权的影响方面的工作提出的建议。
- 7. 通过工作组提交小组委员会的报告。
- 9. 工作组收到了以下文件: "跨国公司和其他商业企业的人权原则和责任 (准则草案)"(E/CN.4/Sub.2/2002/WG.2/WP.1); 准则草案的"导言"(E/CN.4/Sub.2/2002/WG.2/WP.1/Add.1); 准则草案的"评注"(E/CN.4/Sub.2/2002/WG.2/WP.1/Add.2)和秘书处的两份说明(E/CN.4/Sub.2/2002/11 和 E/CN.4/Sub.2/2002/12)。
 - 10. 准则草案被作为附件一附在本报告后。
- 11. 会上通过了在会议召开之前,开放议程上的所有项目,以供展开同时讨论的作法。由此,发言者可以有机会就议程上的某个项目或若干个项目同时发表意见。

一、跨国公司对享受公民、文化、经济、 政治及社会权利的影响

12. 主席在开场白中指出,要讨论的主要问题之一是,跨国公司和国家的关系问题。他重申,根据国际人权两公约和《发展权利宣言》,国家对人权负有首要责任,因此,每个国家有必要在各自管辖范围内管理外国投资。尽管如此,跨国公司对发展中国家进行的殖民后开发已经变得令人无法容忍。国际经济体系强调自由市场哲学、私有化和缩小公共部门,这阻碍了许多贫困国家的发展。具体而言,跨国公司拥有预算庞大,基本上受利润的驱使,使用尽可能少量的工人,能够相对较容易地从一国管辖范围移到另一国管辖范围,它们还进口劳工以致损害到当地的劳工,而且不并是总是以它们经营活动所在国的社会需要为考虑。由于这些因素以及许多诸如技术转让不足,缺乏外国投资和人才外流等其他国际经济问题,许多发展中国家要求在联合国范围内予以管制,从而对这种局势作出有效的反应。

二、公司的人权行为原则草案

工作组成员的评论意见

- 13. 魏斯布罗德先生介绍了题为"跨国公司和其他商业企业的人权原则和责任"的文件,以及准则草案的"导言"和"评注"。
- 14. 魏斯布罗德先生首先提到工作组于 2002 年 2 月在日内瓦举行了为期三天的闭会期间会议,其间通过了准则草案。工作组全体成员已就准则草案达成了协议,并同意将其改名为"跨国公司和其他商业企业的人权准则和责任草案"。准则草案第 12 段得到修正,纳入了饮水权。关于准则草案的性质,魏斯布罗德先生强调,该文件具有约束力的意思是指,它根据已被批准的公约把人权法适用于跨国公司和其他商业企业的活动。此外,该文件的措辞通过使用"必须"而不是"应该"来突出责任的约束力,而且准则草案中含有执行措施。
- 15. 魏斯布罗德先生随后审议了准则草案中最重要的几项措施。第一段中强调国家的首要责任是尊重和确保尊重人权,防止侵犯人权并要增进人权。跨国公司和其他商业企业虽然也对人权负有责任,但准则草案中丝毫没有削弱国家在这方面的首要责任。魏斯布罗德先生接着列举了准则草案中的具体权利和义务: 机会平等和非歧视待遇权、人身安全权、工人的各项权利、尊重国家主权和当地社区的权利、保护消费者的义务和保护环境的义务。他还突出了各种定义,包括那些限定准则草案范围的定义,这些定义规定准则草案不仅适用于跨国公司,而且适用于其他商业企业。之所以纳入其他商业企业,是为了确保跨国公司不能改变其身份(例如,合并为国家企业),从而规避准则草案。魏斯布罗德先生指明,准则草案现已含有执行措施,其中包括有监测和赔偿措施。魏斯布罗德先生还指出评注已编为另一份独立文件(E/CN.4/Sub.2/2002/WG.2/WP.1/Add.2)。由于二月份会议时间有限,没能让工作组所有成员都对评注正式表示同意,当然实际上不曾有任何反对意见。魏斯布罗德先生最后表示,希望工作组现在就能够通过准则草案,并着手于其任务的其他方面,比如改进对跨国公司活动的监测和评估工作。
- 16. 主席兼报告员随后请专家们发表评论意见。朴铢吉先生强调准则草案的评注十分重要,可以通过给每条准则提供更详细和具体的情况来澄清各项责任。 具体说,评注中涉及到了各项国际人权文书和其他法律文书、条约机构的一般性

评论意见、政府间组织提供给工作组的材料以及其他参考文件。朴铢吉先生还指出,工作组在编写评注过程中曾与诸多个人和组织进行了磋商。一旦达成协议,或可以将评注纳入准则草案,或可以单独通过准则草案,而把评注作为一份独立的文件。朴铢吉先生强调应优先通过准则草案。

- 17. 阿方索·马丁内斯先生强调,通过准则草案不仅紧迫,而且重要,但是他指出,尽管紧迫,仍应尽可能确保这份文件在技术方面的正确性。阿方索·马丁内斯先生说,准则草案是必要的,因为跨国公司的活动在不断扩大,有时会对社会集体产生消极影响,不应该只由跨国公司自己来管理这些活动。然而,工作组所面临的问题是,虽然有必要设法制订对跨国公司的活动具有约束力的规则和准则,但是在联合国范围内不可能执行这类规则和准则。鉴于这种情况,准则草案的案文应尽可能地载明了具有约束力的责任。
- 18. 艾德先生完全支持阿方索·马丁内斯先生的评论意见。他说工作组的任务引出了三个问题。第一个问题是,跨国公司的责任是什么?;第二个问题是,责任为何人而定?;第三个问题是,谁能够保证使跨国公司承担责任?艾德先生指出,关于第一个问题,准则草案中切实地载明了跨国公司的责任。关于第二个问题,艾德先生强调准则草案一定不能只限适用于跨国公司。他例举了跨国公司的供应商的情况。就可可生产而言,众所周知跨国巧克力公司的国家供应商们为了维持有利可图的生产水平历来雇用童工和奴隶。因此,准则草案也应适用于这些供应商,虽然他们不是跨国公司。至于第三个问题,艾德先生说准则草案强调国家对增进和保护人权负有首要责任是正确的。尽管如此,仍然有国家管理无效的现象,这往往是由于政府认为自己势力太弱,或者由于国家和跨国公司之间存在腐败和勾结现象,再或者由于国家在国际经济论坛中承担有义务,所以限制了它们增进人权的能力。艾德先生强调,在讨论如何确保遵从准则草案时,有必要审议这些问题。

专家们提出的修正建议

19. 阿方索·马丁内斯先生和三名小组委员会的专家对准则草案提出了一些修正建议。马丁内斯先生指出,西班牙文本和英文本在序言部分第 13 段中有差异。

- 20. 汉普森女士提出了以下三项修正案:
 - (a) 在第 15 段末尾添加: "每个跨国公司或其他商业企业须执行这些原则,并把它们纳入其各项合同或与承包商、分包商、供应商及按受方进行的其它安排和交易中。"
 - (b) 在第 19 段"指"后插入: "在一个以上国家经营的经济实体或"
 - (c) 增添一个新的第 21 段如下:
 - "这些原则仅适用于跨国公司和雇员人数超过 100 人的其他商业 企业。"
- 21. 德科先生指出准则草案的法文译本中存有一些问题,他已经向秘书处提供了一份修正单,本报告法文本后所附的准则草案案文中已纳入了这些修正。
 - 22. 横田三洋先生建议在第1和第2段之间插入一个新的段落如下:
 - "跨国公司和其他商业企业须避免从事一切支持、怂恿或鼓励国家或 其他任何实体违反或侵害人权的活动。而且,它们须确保它们所提供的货 物和服务不会被用来违反或侵害人权。"
 - 23. 横田三洋先生还建议在第 10 段末尾添加:
 - "只要他们符合国际人权准则和标准并符合良好的治理原则,如保证透明度、责任制和禁止腐败。"

小组委员会的专家的评论意见

- 24. 其他专家也就准则草案进行了讨论。他们没有按照先后顺序来讨论,而是集中对所提出的几个问题发表了评论意见。专家们谈到通过准则草案具有普遍重要性。一些专家认为准则草案是杰出的,其价值就在于它承认跨国公司对大多数国家经济的影响在日益增强这一全球趋势。一位专家补充说,重要的是,这些准则承认跨国公司一方面能够促进经济福利的增长,而另一方面也会损及享有人权。有些专家强调,对准则草案的需要十分迫切,所以主张小组委员会在今年通过该草案。而另一些专家则认为需要就该文件作更多的工作。
- 25. 一些专家提出了准则草案应适用于哪类商业企业的问题。一位专家担心, 使准则草案适用于跨国公司以外的其他商业企业不符合工作组任务的精神,

而且纳入"其他商业企业",可能意味着将所有的商业实体,甚至连当地的街角 商店也包括在内。他要求对准则草案的范围下更准确的定义,使之只适用于跨国 公司及合作企业。另一位专家建议有必要集中关注对享受人权危害最大的实体, 即跨国公司。在这方面,这位专家指出,欧洲立有专门针对跨国公司的法律,这 就证明事实上可以只对这些实体加以管制。

- 26. 专家们还提到关于使准则草案适用于雇员人数超过 100 人的企业的修正案。阿方索•马丁内斯先生也认为准则草案可以考虑这一顾虑,即不应把所有企业都包括在内。一位专家对以 100 名雇员作为界限的依据表示质疑,他强调,问题不在于企业实体的规模,而在于它所从事的活动的类型。因此,他建议草案案文不应注重雇员人数,而应注重企业实体是否从事影响人民的公共活动。而另一位专家认为,很难使准则草案只适用于私营实体的公共活动,因为这样便可能限制准则草案的范围,而许多公共部门通常不承担而由私营实体进行的活动也同样可能对享受人权产生重要影响。在这意义上,该专家认为按照所提议的,用一个粗略的数字作界限,可能更有效。
- 27. 一些专家讨论了准则草案的约束力问题。一位专家指出序言部分中仅 "促请作出一切努力,使[准则草案]得到普遍了解和尊重"。该专家认为这种 措辞软弱,有损于准则草案具有约束力的概念。对于这一评论意见,另一位专家 说,序言部分的措辞表明是小组委员会"促请",而这是小组委员会所能做的一 切;因此,使用"促请"一词与准则草案的约束力无关。另一位专家对断言准则 草案具有约束力感到惊讶。这位专家提到国际法的传统来源和新来源,指出准则 草案不属于这两类中的任何一类。该专家还指出工作组的任务不包括制定具有约 束力的标准,而且准则草案中没有后续机制。另有一位专家强调,许多国家尚未 批准所有主要的人权文书,所以如果提及习惯国际法可以加强准则草案。
- 28. 专家们还讨论了执行和监测准则草案的问题。一位专家赞成在第 16 段中纳入包括非政府组织在内的监测机制。该专家还希望国家法院能够在监测准则草案执行情况方面发挥作用。另一位专家提出,工作组可以建议一个由一些专家组成的后续机制并纳入草案。又有一位专家建议把关于跨国公司活动的年度报告作为一种后续机制。另一种后续措施可以是,要求联合国确保跨国公司在为获得服务而与私营部门实体签订的合同中尊重准则草案。

29. 一位专家提出,可以要求人权委员会任命一名跨国公司问题特别报告员,由他运用准则草案来衡量公司的行为。另一位专家提议,允许在国内法院的诉讼程序中援用准则草案,以此作为一项执行措施,并建议在准则草案的 H 节中提及国内法院。另有一位专家指出国内法院有时会很软弱,甚至腐败或与跨国公司勾结,因此他强调必须把国际压力作为后续机制的一部分。还有一位专家担心准则草案中没有制裁措施,所以,尽管急需通过准则草案,他仍主张工作组再多花一些时间来审议如何加强这些准则的执行工作,和如何反映那些未来受益者的真正需要。

劳工组织的评论意见

- 30. 国际劳工组织(劳工组织)的观察员满意地看到,其组织在 2001 年工作组第三届会议中提出的许多评论意见都得到了考虑。劳工组织就准则草案提出了一条修正建议,就评注提出了两条修正建议。
 - (a) 把序言部分第7段中的"劳工组织多国企业委员会"改为"劳工组织 理事会多国企业小组委员会";
 - (b) 删除关于第5段的评注(a)中的"例如"一词;
 - (c) 在关于第5段的评注中增加一条(c):

"雇主只有在劳工组织第 29 号公约所规定的条件下,才能够使用监狱劳工。该公约允许这类劳工的条件是,有关囚犯须经由法院判罪,自愿受到私营企业的雇佣,并由一所公共当局监督和控制。"

非政府组织的评论意见

31. 非政府组织普遍欢迎准则草案。一些非政府组织坚持认为人权法在国际法中占居首要地位,应适用于所有私人行为者。同样,一些非政府组织认为准则草案中承认国家对人权负有首要责任是正确的。一个非政府组织指出,鉴于最近爆发的各种公司丑闻,跨国公司需要有一份关于道德标准的声明,该组织还强调人权法是这些道德标准的基本依据。一些非政府组织欢迎在制定准则草案时所采取的透明的磋商程序,但是某个法人团体的一位代表认为,企业没能够充分参与拟订程序。一位兼跨两个商业协会的代表说,人权委员会在成立工作组时已经超

出了其职权范围。对此,一个非政府组织指出,他在为一家跨国公司工作之后,明白了追求权力如何能够导致侵害人权。另一个非政府组织支持准则草案,并指出如果没有这些准则,跨国公司将能够继续在有罪不罚的情况下活动。

- 32. 两个非政府组织提交了一份对准则草案的批评意见单。这些批评意见有:工作组的任务是审议跨国公司,而非其他商业企业,准则草案背离了这一任务;准则草案忽略了人权准则对跨国公司具有强制性这个方面;准则草案要求跨国公司的雇员对侵害人权行为负责,这有悖于跨国公司依据民法和刑法所负有的责任;准则草案优先重视自愿性的准则,这便使国家在实施合法的人权准则中只发挥次要作用;准则草案仅为跨国公司提供了一个不具约束力的人权框架。这两个非政府组织呼吁制定一个具有法律约束力的框架来惩罚跨国公司侵害人权的行为。
- 33. 某个私营部门基金会的一名雇员以个人名义发言,她与跨国公司有 25 年的工作经验。她首先感谢工作组在拟订准则草案过程中与私营部门进行了磋商。 其次,她认为,对于准则草案中所载明的人权,任何跨国公司都会毫无问题地予以尊重,因为尊重这些权利是经营成功之本。再者,她认为准则草案仍存有执行方面的困难。例如,获得保健的权利不单是制药工业的义务。最后,发言人强调,有必要制定准则草案 H 节中提及的核查程序,并指出为了确保客观性,必须确立外部基准点。
- 34. 一个非政府组织要求准则草案适用于所有私营企业,包括当地、国家和国际企业,因为任何企业,不论其规模,都可能侵害人权。另一个非政府组织则要求准则草案明确适用于"承包商、分包商、供应商和按受方"。一个非政府组织主张普遍适用准则草案,不单独针对某些公司行为者。而另一个非政府组织认为"其他商业企业"的说法太模糊,并使工作组超越了其任务范围。还有一个非政府组织强调,有必要使准则草案适用于所有企业实体,因为任何限定都只会造成漏洞,使公司得以逃避责任。
- 35. 大多数非政府组织都提出了准则草案的约束力问题。一个非政府组织说,要求具有法律约束力的原则反映了一些个人,特别是农村的贫困和农业人口的忧虑,他们需要保护,以免受公司对政府政策造成的影响,包括对国家和国际贸易法及政策的影响。另一个非政府组织强调,拟订和通过一份具有法律约束力

的文书所需时间会太长,以致无法及时满足由于公司不负责任而造成的受害者的愿望。这些受害者包括:在工作场所遭受歧视的妇女、童工、从事色情业的妇女和儿童、男女同性恋者和由于性别模糊而受到歧视与解雇的变性者、土著人、患有疾病或没能接受教育的人等等。该非政府组织还指出,关于准则草案的约束力的讨论忽略了一个事实,即有些跨国公司的目的是为了推动发展和增进人权。在这方面,该组织的代表提到"威尔士王子国际商业领导者论坛关于跨国公司和其他商业企业的人权原则与责任草案的声明",其中称赞准则草案是迄今最具权威性和最全面的一套准则,使《世界人权宣言》能够适用于公司。另一个非政府组织提到苏丹境内的各个石油公司侵害人权的现象,并指出,拥有具有法律约束力的国际原则至关重要,这样才能确保企业成为发展的积极动力。

- 36. 一个非政府组织感到失望的是,准则草案不具有约束力,这便可能使其受到特别是发达国家的政治、经济和战略摆布。该组织的代表尤其强调,土著人民是跨国公司的受害者,因为他们的土地和遗传资源遭到剥夺。一位兼跨两个法人团体的代表说,任何对公司适用人权标准的文件都应该只是自愿性的,他强调以一律十的做法将会限制革新。而且,这类原则应由企业自己来制定,在这方面准则草案没能利用过去的成就。
- 37. 一些非政府组织请求设立监测机制,包括制裁侵害人权的跨国公司的措施。另一些非政府组织要求纳入一个能够接纳个人或集体控诉的监测机制。有个非政府组织建议成立一个"常设论坛"。另一个非政府组织鼓励联合国条约机构和人权委员会的特别机制予以参与,这或许能够改善对准则草案的监测和执行工作。这个非政府组织还鼓励工作组建立一个拥有如国际和区域人权机制、非政府组织和公司等诸多行为者的监测机制,以便获得和提供信息,并在出现侵害事件时予以资金补救。该组织主张根据工作组任务规定第 4(f)段,展开进一步研究,并强调工作组有必要,而且特别应根据世界贸易组织的《服务贸易总协定》来审查服务部门的贸易自由化问题。
- 38. 一些非政府组织主张立即通过准则草案。有个非政府组织鼓励通过并广泛适用准则草案,因为这很重要,可以保证避免公司将其活动由一国转到另一国,企图寻找对公司管制最薄弱的管辖范围。另一个非政府组织指明,通过准则草案以后,工作组就可以把注意力集中放在执行工作上。一个非政府组织请求小

组委员会先通过准则草案,然后再提交给人权委员会下届会议予以通过。还有一个非政府组织提到了实地人员不稳定的生活和工作情况,立即通过准则草案可以真正使他们获益。

39. 一些非政府组织向工作组提出了具体建议。一个非政府组织建议修改关于准则草案执行问题的第 15 段的第一句话,把"按照"改为"遵循"。该组织还请求把评注明确作为一份权威性的解释文书。另一个非政府组织鼓励工作组根据其任务规定,继续审查、获取和收集关于跨国公司活动的资料。再有一个非政府组织建议考虑如何宣传准则草案,比如在即将召开的世界可持续发展首脑会议上,因为在小组委员会以外,尚无人知晓这份草案。还有一个非政府组织也提到有必要使工作组与世界可持续发展首脑会议联结起来,并指出准则草案可能有助于加强社会议程。有个非政府组织要求在准则草案中清楚说明应促进肯定行动计划,这个建议得到小组委员会一位专家的支持。一个非政府组织主张工作组把移徙工人明确纳入准则草案的适用范围。该组织还强调有必要说明,对于那些未加入草案中所涉及的人权文书的国家中的公司,准则草案同样适用。另一个非政府组织要求在准则草案中明确规定要保护土著人民。

政府代表的评论意见

40. 一位政府代表指出工作组的讨论十分丰富,清楚证明了急需采取行动解决跨国公司侵犯人权的问题。这位代表建议由人权事务高级专员办事处,根据预先确定的人权标准,设立一项公司合格证书,作为一种可能的后续机制。

三、关于工作组今后工作的建议

- 41. 工作组讨论了今后的工作问题。
- 42. 主席建议工作组在未来审议以下三个方面的问题。第一,工作组应审议制药公司的行为,特别是在分发药物以控制艾滋病毒/艾滋病等流行病方面。第二,应审议贫困与跨国公司这个问题。主席强调跨国公司拥有全球财富的一大部分,可以鼓励它们更多地参与扫贫方案。第三,主席建议工作组把研究跨国公司对发达国家中享受人权的影响纳入工作范围,他指出,不只是发展中国家受到公司侵害人权所造成的影响。

43. 艾德先生感谢主席提出了上述三方面新问题。关于第一个建议,艾德先生指明,各个公司,尤其通过授予和利用知识产权,在竞相垄断知识。艾德先生还指出,虽然小组委员会已经开始根据世贸组织的《与贸易有关的知识产权协定》来审议这些问题,但还可更深入地分析这些复杂问题。另一位专家也支持主席的第一个建议,他提及小组委员会在上届会议中曾就专利问题进行了重要讨论。工作组是可以审议这个问题的另一个机构。魏斯布罗德先生表示工作组最后会审议主席关于上述新问题的重要评论意见,而且将在讨论保护知识产权和药品问题时考虑其第一项建议。

四、通过报告

44. 工作组于 2002 年 8 月 8 日举行的会议上通过了本报告。

Annex

DRAFT NORMS ON RESPONSIBILITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH REGARD TO HUMAN RIGHTS

The five members of the working group (Chairperson El-Hadji Guissé, Miguel Alfonso-Martínez, Vladimir Khartashkin, Soo-Gil Park and David Weissbrodt) took into consideration the comments at its session convened during the fifty-fourth session of the Sub-Commission as well as E/CN.4/Sub.2/2002/WG.1/WP.1 and E/CN.4/Sub.2/2002/WG.1/WP.1/Add.1 in preparing these Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights for the purpose of consideration by the working group during its session at the fifty-fifth session of the Sub-Commission, in the expectation that the working group will submit a draft in light of comments already received and to be received by the Sub-Commission for plenary consideration at the fifty-fifth session.

RESPONSIBILITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH REGARD TO HUMAN RIGHTS

Preamble

Bearing in mind the principles and obligations under the Charter of the United Nations, in particular the preamble and Articles 1, 2, and 55, inter alia, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Recalling that the Universal Declaration of Human Rights proclaims a common standard of achievement for all peoples and nations, to the end that Governments, other organs of society, and individuals shall strive by teaching and education to promote respect for human rights and freedoms and by progressive measures to secure their universal and effective recognition and observance,

Recognizing that even though States have the primary responsibility to promote and protect human rights, transnational corporations and other business enterprises, as organs of society, are also responsible for promoting and securing the human rights set forth in the Universal Declaration of Human Rights,

Realizing that transnational corporations and other business enterprises, their officers and their workers are further obligated to respect generally recognized responsibilities and norms in United Nations treaties and other international instruments such as the Convention on the Prevention and Punishment of Genocide; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the International Covenant on Economic, Social and Cultural Rights; the International

Covenant on Civil and Political Rights; the Convention on the Rights of the Child; the four Geneva Conventions of 12 August 1949 and two Additional Protocols for the protection of victims of war; the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; the Rome Statute of the International Criminal Court; the United Nations Convention against Transnational Organized Crime; the International Convention on Civil Liability for Oil Pollution Damage; the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment; the Rio Declaration on Environment and Development; the International Code of Marketing of Breast-milk Substitutes and the Ethical Criteria for Medicinal Drug Promotion of the World Health Organization (WHO); the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education; conventions and recommendations of the International Labour Organization (ILO); the Convention and Protocol relating to the Status of Refugees; the African Charter on Human and Peoples' Rights; the American Convention on Human Rights; the European Convention on Human Rights; the Charter on Fundamental Rights of the European Union; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development (OECD); and other instruments,

Taking into account the standards set forth in the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, aware of the Guidelines for Multinational Enterprises of the OECD and its Committee on International Investment and Multinational Enterprises; the Global Compact initiative of the United Nations which challenges business leaders to "embrace and enact" nine basic principles with respect to human rights, including labour rights and the environment; and the ILO Declaration on Fundamental Principles and the Rights at Work,

Conscious of the efforts of the ILO Committee on International Investment and Multinational Enterprises; the interpretation of standards by the Subcommittee on Multinational Enterprises of the Committee on Legal Issues and International Labour Standards of the ILO Governing Body, the ILO Committee of Experts, the Conference Committee on the Application of Standards, and the ILO Declaration Expert-Advisors; as well as the ILO Committee on Freedom of Association which has named business enterprises implicated in States' failure to comply with ILO Conventions No. 87 concerning Freedom of Association and Protection of the Right to Organize and No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, and seeking to supplement and assist their efforts to encourage transnational corporations and other business enterprises to protect human rights,

Taking note of global trends which have increased the influence of transnational corporations and other business enterprises - and particularly transnational corporations - on the economies of most countries and in international economic relations, and the growing number of other business enterprises which operate across national boundaries in a variety of arrangements resulting in economic activities beyond the actual capacities of any one national system,

Noting that transnational corporations and other business enterprises have the capacity to foster economic well-being, development, technological improvement and wealth, as well as the capacity to cause deleterious human rights impacts on the lives of individuals through their employment practices, environmental policies, relationships with suppliers and consumers, interactions with Governments and other activities,

Noting also that new international human rights issues and concerns are continually emerging and that transnational corporations and other business enterprises often are related to these issues and concerns, such that further standard-setting and implementation are required at this time and in future,

Acknowledging the universality, indivisibility, interdependence and interrelatedness of human rights, including the right to development, that entitles every human person and all peoples to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized,

Reaffirming that transnational corporations and other business enterprises, their officers and their workers have human rights obligations and responsibilities and that these human rights responsibilities will contribute to the making and development of international law as to their responsibilities and obligations,

Solemnly proclaims these norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights and urges that every effort be made so that they become generally known and respected.

A. General obligations

1. States have the primary responsibility to respect, ensure respect for, prevent abuses of, and promote human rights recognized in international as well as national law, including ensuring that transnational corporations and other business enterprises respect human rights. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to respect, ensure respect for, prevent abuses of, and promote human rights recognized in international as well as national law.

B. Right to equal opportunity and non-discriminatory treatment

2. Transnational corporations and other business enterprises shall ensure equality of opportunity and treatment, for the purpose of eliminating discrimination based on race, colour, sex, religion, political opinion, nationality, social origin, social status, indigenous status, disability, age (except for children who may be given greater protection), or other status of the individual unrelated to the individual's ability to perform his/her job.

C. Right to security of persons

- 3. Transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, other violations of humanitarian law, and other international crimes against the human person as defined by international law.
- 4. Security arrangements for transnational corporations and other business enterprises shall observe international human rights norms as well as the laws and professional standards of the country or countries in which they operate.

D. Rights of workers

- 5. Transnational corporations and other business enterprises shall not use forced or compulsory labour as forbidden by the relevant international instruments and national legislation as well as international human rights law.
- 6. Transnational corporations and other business enterprises shall respect the rights of children to be protected from economic exploitation as forbidden by the relevant international instruments and national legislation as well as international human rights law.
- 7. Transnational corporations and other business enterprises shall provide a safe and healthy working environment as provided by the relevant international instruments and national legislation as well as international human rights law.
- 8. Transnational corporations and other business enterprises shall compensate workers with remuneration that ensures an adequate standard of living for them and their families. Such remuneration shall take due account of their needs for adequate living conditions with a view towards progressive improvement.
- 9. Transnational corporations and other business enterprises shall ensure the freedom of association and effective recognition of the right to collective bargaining by protecting the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without distinction, previous authorization, or interference, for the protection of their employment interests and for other collective bargaining purposes as provided in the relevant conventions of the ILO.

E. Respect for national sovereignty and human rights

10. Transnational corporations and other business enterprises shall recognize and respect applicable norms of international law; national laws; regulations; administrative practices; the rule of law; development objectives; social, economic, and cultural policies including transparency, accountability and prohibition of corruption; and authority of the countries in which the enterprises operate.

- 11. Transnational corporations and other business enterprises shall not offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other improper advantage. Nor shall they be solicited or expected to give a bribe or other improper advantage to any Government, public official, candidate for elective post, or any other individual or organization. Transnational corporations and other business enterprises shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights. They shall further seek to ensure that the goods and services they provide will not be used to abuse human rights.
- 12. Transnational corporations and other business enterprises shall respect civil, cultural, economic, political and social rights and contribute to their realization, in particular the rights to development; adequate food and drinking water; the highest attainable standard of physical and mental health; adequate housing; education; freedom of thought, conscience and religion; and freedom of opinion and expression; and refrain from actions which obstruct the realization of those rights.

F. Obligations with regard to consumer protection

13. Transnational corporations and other business enterprises shall act in accordance with fair business, marketing and advertising practices and shall take all necessary steps to ensure the safety and quality of the goods and services they provide. They shall not produce, distribute, market, or advertise potentially harmful or harmful products for use by consumers.

G. Obligations with regard to environmental protection

14. Transnational corporations and other business enterprises shall carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate as well as in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights, public health and safety; and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.

H. General provisions of implementation

15. As an initial step towards implementing these Human Rights Responsibilities, each transnational corporation or other business enterprise shall adopt, disseminate and implement internal rules of operation in compliance with these Responsibilities. Further, they shall take other measures fully to implement these Human Rights Responsibilities and to provide at least for the prompt implementation of the protections set forth in these Responsibilities. Each transnational corporation or other business enterprise shall apply and incorporate these principles in their contracts or other arrangements and dealings with contractors, sub-contractors, suppliers and licensees in order to ensure their implementation and respect.

- 16. Transnational corporations and other business enterprises shall be subject to periodic monitoring by national, international, governmental and/or non-governmental mechanisms regarding their application of the Human Rights Responsibilities. This monitoring shall be transparent, independent, and take into account input from stakeholders, including complaints of violations of these Responsibilities. Further, transnational corporations and other business enterprises shall conduct periodic evaluations concerning the impact of their own activities on human rights under these Responsibilities.
- 17. Transnational corporations and other business enterprises shall provide prompt, effective and adequate reparation to those persons, entities and communities that have been adversely affected by failures to comply with these Responsibilities through, inter alia, reparations, restitution, compensation and rehabilitation for any damage done or property taken. In connection with determining damages and in all other respects, these Responsibilities shall be enforced by national courts.
- 18. Nothing in these Human Rights Responsibilities shall be construed as diminishing, restricting, or adversely affecting the human rights obligations of States under national and international law. Nor shall they be construed as diminishing, or adversely affecting more protective human rights norms.

I. Definitions

- 19. The term "transnational corporation" refers to an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.
- 20. The phrase "other business enterprise" includes any business entity, regardless of the international or domestic nature of its activities, including a transnational corporation; the corporate, partnership, or other legal form used to establish the business entity; and the nature of the ownership of the entity. These Responsibilities shall be presumed to apply, as a matter of practice, if the business enterprise has any relation with a transnational corporation, the impact of its activities is not entirely local, or the activities involve violations of the right to security as indicated in paragraphs 3 and 4.
- 21. The term "stakeholder" includes stockholders, other owners, workers and their representatives, as well as any other individual or group that is affected by the activities of the business. The term "stakeholder" should be interpreted functionally in light of the objectives of these Human Rights Responsibilities and include indirect stakeholders when their interests are or will be substantially affected by the activities of the transnational corporation or business enterprise. In addition to parties directly affected by the activities of business enterprises, stakeholders can include parties which are indirectly affected by the activities of businesses such

as consumer groups, customers, Governments, neighbouring communities, indigenous peoples and communities, non-governmental organizations, public and private lending institutions, suppliers, trade associations and others.

- 22. The terms "contractor", "subcontractor", "supplier" and "licensee" include any natural or legal person who enters into any agreement with the transnational corporation or business enterprise to accomplish the enterprise's activities.
- 23. The phrases "internationally recognized human rights" and "international human rights" include civil, cultural, economic, political and social rights, as set forth in the International Bill of Human Rights and other human rights treaties, as well as the right to development and rights recognized by international humanitarian law, international refugee law, international labour law and other relevant instruments adopted within the United Nations system.
