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Mandate of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

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Dear Members of the Thun Group of Banks,

With this open letter I would like to express my gratitude for the open exchange I had with colleagues from UBS and Crédit Suisse on the occasion of my recent official visit to Switzerland in my capacity of Independent Expert on the effects of foreign debt on human rights.

One of the objectives of my visit to Switzerland had been to study the integration of the UN Guiding Principles on Business and Human Rights and of other human rights standards in public and private financial institutions, including in their investment decisions and asset management.

In my end of mission statement,¹ I expressed support for your initiative to discuss the meaning and implications of the UN Guiding Principles on Business and Human Rights for international commercial banks. The exchange of good practices among leading international banks is crucial for improving human rights due diligence in the banking sector. I would therefore encourage additional international banks, in particular financial institutions headquartered in non-European countries, to join this informal network.

In my meetings, I expressed concern that the Thun Group's second discussion paper² may be interpreted as unduly limiting the responsibilities of banks in the context of their client relationships and aligned myself with similar concerns expressed earlier by the UN Working Group on Business and Human Rights, the Office of the High Commissioner for Human Rights and other leading human rights experts.³

¹ Available at :

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22195&LangID=E>

² The papers of the Thun Group are available at :

<http://www.menschenrechte.uzh.ch/en/publikationen/thun-group-of-banks.html>.

³ See letter of the UN Working Group on Business and Human Rights to the Thun Group of Banks, available at :

I am pleased that the Thun Group, during its last meeting in June 2017, engaged in an open dialogue with non-governmental organizations, the Office of the High Commissioner for Human Rights and the UN Working Group on Business and Human Rights, which was also invited and has participated in the meeting, and is considering updating its second discussion paper, to avoid room for misinterpretation of the UN Guiding Principles on Business and Human Rights.

With a view of enriching our exchange, I would like to encourage the Thun Group of Banks to discuss in the near future as well the relevance of the Guiding Principles on Foreign Debt and Human Rights ([A/HRC/20/23](#)), endorsed by Human Rights Council resolution [20/10](#), for their work. I regret that the Guiding Principles on Foreign Debt and Human Rights – although they specifically address the financial sector – have largely been absent in discussions about human rights due diligence of financial institutions, including its commercial banking sector.⁴

In my view, this is an important lacuna in discussions on human rights due diligence as recently underlined by the secret lending scandal involving state-linked enterprises in Mozambique. While responsibilities for this financial corruption scandal are to a large extent home grown, one wonders how it was possible that private financial institutions did not consider the risks of facilitating the placement of bonds on international financial markets for state-linked business corporations lacking sound business plans and a minimum of transparency. The lending aggravated the financial crisis in Mozambique and undermined the political stability and the enjoyment of economic, social and cultural rights in this country.⁵ It is just one example underlining the importance of ensuring transparency, responsible borrowing and lending, and human rights due diligence in international lending.

Furthermore, I would like to propose to the Thun Group to reflect on lending to States and State-linked corporations operating in contexts marked by widespread and systematic violations of human rights. The crimes against humanity committed during the former apartheid regime in South Africa or during past dictatorships in South America are historic examples of how the financial sector can either contribute to the consolidation of criminal regimes or more directly contribute to human rights violations through providing funds for weapons or other means that facilitate the commission of such violations. Lending to regimes that commit gross human rights violations may prolong disrespect for human rights and increase the likelihood of gross violations of human rights.

http://www.ohchr.org/Documents/Issues/TransCorporations/WG_BHR_letter_Thun_Group.pdf and the OHCHR response to a request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector available at:

<http://www.ohchr.org/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf>

⁴ The Guiding Principles on Foreign Debt and Human Rights are available at: <http://www.undocs.org/A/HRC/20/23>

⁵ See the joint communications sent to the Government of Mozambique (AL/MOZ/2/2016), the International Monetary Fund (AL/OTH/23/2016), Credit Suisse (AL/OTH/25/2016) and the VTB Group (AL/OTH/24/2016) on 26 August 2016, available at: <https://spcommreports.ohchr.org/Tmsearch/SearchSessionNumber?number=34>

Respecting economic sanctions imposed by the UN Security Council should be considered just a minimum standard of conduct. Unless lending decisions are subjected to human rights impact assessments, appropriately targeted or mitigated by contractual measures, financial lending can have a persistent impact on criminal regimes, making it possible for them to consolidate autocratic rule, perpetuate political exclusion and human rights violations, and reduce the need for political concessions. Sometimes it may be best not to lend on any condition, as financial inflows could impair the human rights situation, either immediately or over the longer term.

As I have pointed out in my report presented to the Human Rights Council in 2015, there are no easy solutions for avoiding human rights harm when financial institutions engage with clients in such situations.⁶ Therefore I would welcome further reflection by leading international banks on how their safeguard policies could be strengthened with the view to prevent sliding into financial complicity when operating in such delicate contexts.

I remain at your disposal to take part in such discussions if you consider this to be useful and look forward to further opportunities for discussing issues of common concern.

Yours sincerely,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized, somewhat abstract shape.

Juan Pablo Bohoslavsky

Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

⁶ The report is available at: <http://www.undocs.org/A/HRC/28/59>