*Monday 14 November 2016*

Intervention from Alfred de Zayas, UN Independent Expert on the Promotion of a Democratic and Equitable International Order during the Side event ‘Rights and Resources - Embedding human rights into corporate tax regimes’ organised during the 2016 United Nations Forum on Business and Human Rights

**Business enterprises responsibility to respect HR through their tax planning behaviour**

My 2016 report to the General Assembly (A/71/286) is devoted to tax evasion, tax fraud and tax havens. In it I recall that the Guiding Principles on Business and Human Rights do not contain any provision concerning the obligation of businesses to pay their fair share of taxes. There is no mention of tax evasion, tax fraud or tax havens. Nor is there any mention in the commentary of the International Bar Association, as if businesses were exempt from human rights obligations in the field of taxation. Perhaps this obligation could be interpreted in the Guiding Principles under the rubric due diligence, but it should have merited a separate article.

The exploitation of loopholes has become the favourite play of an organized tax avoidance industry dominated by four accounting firms (Deloitte, PricewaterhouseCoopers, KPMG and Ernst and Young), and avidly copied by others. It is having a disastrous impact on human rights. As reports have documented, these firms are setting the standards to suit themselves, working in collusion with law firms, banks and company executives, and frequently engaging in revolving-door practices with government. This behaviour illustrates a selfish approach to business, driven by short-term profit, which severely undermines democracy and the welfare of the people, depriving them of essential resources for health care, education, security and other basic needs.

This and other issues were discussed during the Human Rights Council’s second inter-governmental working group on the drafting of a legally binding instrument on the social responsibility of transnational corporations, held in Geneva from 24 to 28 October 2016. As a panellist, I strongly supported the elaboration and adoption of such a treaty, albeit aware that there will be no consensus. The obligation to pay taxes and the prohibition of setting up shell companies, giving so-called “sweetheart deals” to corporations and shifting corporate profits to tax havens must be specifically codified. This will allow filling the gaps of the Guiding Principles and ensure that soft law and hard law complement each other for the benefit of human rights.

The Guiding Principles have been around since 2011 and received lip service by States. Little has been done to make them enforceable. A classical example of its violation with impunity is the secret elaboration of mega trade treaties TPP, TTIP and CETA, notwithstanding the stipulations of Principles 9 and 10. There is no excuse for secret negotiations excluding key stakeholders such as consumer unions, labour unions, health professionals, environmental protection groups, etc. It is a disgrace that much of the information was revealed not by governments but by whistleblowers. Why this lack of transparency and accountability? Commerce is not national security – nor is it a human rights free zone.

The bottom line must be that any exercise of power – political or economic-- must be subject to democratic controls. And in case of conflict between commercial treaties and human rights treaties, it is the latter than must prevail.

I thank you.