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Business and Human Rights:

How should Japan engage in dialogue with ASEAN?

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(1) United Nations Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights (herein after, the “UNGPs”) are guidelines designed to control adverse impacts of business activities on human rights. In the Sapporo G7 Climate, Energy and Environment Ministers’ Communiqué of April 2023, G7 Ministers stress their commitment to transforming global value chains towards net-zero, climate-resilient, pollution-free, more circular and nature positive ones, while also ensuring their security, and respect for human rights and in line with the relevant international guidelines in the field of responsible business conduct, such as the UNGPs.

Looking at the world situation, authoritarian regimes are on the rise and civil society is shrinking significantly. On the other hand, governments, corporations, civil society organizations, investors, and consumers are becoming more active in their efforts on business and human rights issues, including addressing the issue of forced labor in supply chains. These demonstrate the UN Guiding Principles are becoming increasingly important. The October 2023 G7 Trade Ministers' Statement reaffirmed the importance of promoting the respect for human rights and international labor standards in business activities and global supply chains. Mainly in Europe, human rights due diligence (human rights DD) is becoming mandatory. Expectations towards companies to respect human rights and be responsible are increasing rapidly.

For about 30 years, there has been a debate at the United Nations about how to regulate human rights violations incurred by companies operating transnationally, between investor countries and companies that do not want to be regulated and investment recipient countries and human rights NGOs which want companies to be regulated. In 2011, in order to overcome this conflict, the UN Guiding Principles on Business and Human Rights were unanimously endorsed in the UN Human Rights Council. The

UNGPs are not legally binding, but they provide a common global platform for states, business, and civil society and form normative standards and authoritative policy guidance. National policies and corporate initiatives are developed based on the UNGPs, and it is the basis for people to demand that the state and companies protect and respect human rights.

The UN Guiding Principles consist of three pillars. The first pillar is the duty of the state to protect human rights, the second pillar is the responsibility of companies to respect human rights, and the third pillar is access to remedy.

The first pillar of the state's duty includes protecting against human rights violations, clearly stating the expectation of companies to respect human rights, implementing policies to promote corporate respect for human rights, and requiring companies that do business with state institutions to conduct human rights due diligence. Further, in conflict-affected areas, the risk of gross human rights abuses is heightened, states should help ensure that business enterprises operating in such areas are not involved with such abuse. The second pillar calls for companies to formulate a basic policy on respect for human rights, implement human rights DD to identify, prevent, mitigate, and explain human rights impacts, and establish processes to correct adverse human rights impacts. Even if a company does not cause human rights violation, it is also responsible if it contributes to such human rights violation in its supply chain.

In sum, the UN Guiding Principles reaffirm the obligation of states to protect the rights of all people, stipulate the responsibility of companies to respect their rights, and call on states and companies to establish remedies to address human rights violations. Companies are expected to respect the rights set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the ILO Declaration on Fundamental Principles and Rights at Work, regardless of the degree of the laws of the countries where they operate.

(2) National Action Plan

The UN Working Group on Business and Human Rights, which was established to promote the UNGPs, recommends that governments develop a National Action Plan, a

policy document that sets out how they will implement the UNGPs. The five underlying principles of the substance of national action plans are as follows:

1. Complementarity and interrelatedness of State duties and corporate responsibilities
2. Tailoring to national circumstances with a “smart mix” of measures
3. Vertical and horizontal coherence
4. Raising the bar and levelling the international playing field
5. Issues of gender and groups particularly vulnerable to abuse

The key term here is a “smart mix.” Human rights DD is a practical and achievable approach for companies to fulfill their responsibility to respect human rights. Human rights DD can be promoted in a variety of ways, including enforcing laws and regulations, providing effective guidance to companies, and encouraging information disclosure. Thus, it is important to each country needs to put in place policies based on national circumstances that ensure that human rights DD.

(3) Business and Human Rights Initiatives Around the World

The G7 Leaders’ Declaration of the Summit in 2015 in Elmau, Germany, touched upon the issue of responsible supply chains for the first time at a G7 summit. In 2013, the United Kingdom became the first country to establish an NAP, followed by several European nations. The European Union (EU) tabled its proposal for a directive on corporate sustainability due diligence in 2022, and it took effect in July 2024. This marks a trend toward obligatory human rights DD. In Asia, Thailand became the first country to establish an NAP in 2019, followed in 2020 by Japan. The G7 Trade Ministers’ Statement of 2023 reiterate their commitment to strengthening outreach and engagement on business and human rights beyond the G7, including throughout Asia.

(4) Business and Human Rights Initiatives in ASEAN

Until now, European and other investor countries have taken the lead in promoting the implementation of the UN Guiding Principles, but in recent years, many countries in

Asia have been formulating national action plans. Thailand, Pakistan, Mongolia, Vietnam, Indonesia and Nepal have developed action plans to promote responsible business conduct, attract responsible investment, and to foster international trust.

According to ITUC, among the 10 worst countries listed for their suppression of the rights of workers, three are Asian: Bangladesh, the Philippines and Myanmar. This indicates the urgent need to promote respect for human rights in Asia via the implementation of human rights DD. In countries that lack policy measures for protecting human rights and the rights of workers, it is difficult for companies to implement human rights DD and to fulfill their duties to respect human rights. For example, dialogue with labor unions is indispensable for the implementation of human rights DD, but it is difficult to engage with labor unions unless adequate laws and enforcement are in place to ensure workers' rights, such as freedom of association and the right to collective bargaining, in the countries where we operate. Therefore, in order for companies to fulfill their responsibility to respect human rights through human rights DD and conduct sustainable business activities, state's sound governance and policies that promote respect for human rights and human rights DD are prerequisites for companies to fulfill their responsibilities to respect human rights.

In ASEAN, the ASEAN Intergovernmental Commission on Human Rights (AICHR) promotes protection and awareness of human rights in ASEAN. In 2012, the ASEAN Declaration of Human Rights was developed and published, reaffirming their commitment to the Universal Declaration of Human Rights, the Charter of the United Nations, the Vienna Declaration and Programme of Action. Every five years, the AICHR produces a five-year work plan, the most recent plan incorporates business and human rights initiatives. Since 2013 the ASEAN Human Rights Dialogue has been organized by the AICHR. In this way, constructive dialogue is being held within ASEAN to promote respect for and protection of human rights.

(5) The role of Japanese companies as leaders in responsible supply chains in Asia

According to JETRO survey, approximately 80% of Japanese companies responding recognize human rights issues in their supply chains as important management issues. However, only about 30% of the respondents are conducting human rights DD. In Asia, where there is room for improvement in protection of human rights, Japan has a major role to play, and expectations for Japan are high. Strengthening efforts to respect human

rights together with local companies in the ASEAN region will lead to resilient, inclusive and internationally competitive supply chains. The Japanese government needs to create an enabling environment for Japanese companies to fulfill their responsibility to respect human rights. In the face of the rise of authoritarian regimes, the promotion of policies that support human rights DD is regarded as a battle for rule-making of economic activities. To what extent democratic societies, the rule of law, and the values of human rights can be maintained is at stake.

Recognizing that "business and human rights" is a common issue for both ASEAN and Japan, the Japan government should promote the following three initiatives in the future. The first is to leverage the momentum of the NAP formulation to support ASEAN member countries in filling the gap between domestic laws and international standards. It is to establish a common platform and initiative regarding legal technical support and migrant labour issues. The second is to create a counterpart in Japan to support and interact with the AICHR. In order to address systemic risks that cannot be dealt with by companies, it is necessary to work with the relevant organizations of the partner countries. The third is to promote sustainability, including human rights and labor, in trade and investment with ASEAN and other Asian countries. It is to integrate the perspective of human rights into the coordination and collaboration for supply chain resilience, decarbonization, green strategy, and measures on climate change. As a unique Japan's approach that will differentiate Japan from Europe, North America, and China, the author recommends the construction of a "Japan-ASEAN Business and Human Rights Dialogue" to promote corporation in human rights DD and stakeholder engagement

(This is an English translation of an outline of the lecture delivered by YAMADA Miwa, Chief Senior Researcher at Inter-disciplinary Studies Center, Institute of Developing Economies, IDE-JETRO, at the 98th Policy Plenary Meeting of CEAC on May 27, 2024.)