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The Implementation of Human Rights in ASEAN

The Example of Corporate Social Responsibility (CSR)

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The *Association of South East Asian Nations* (ASEAN) is a regional intergovernmental organization established in 1967, which includes ten countries: Brunei, Burma (Myanmar), Cambodia, Indonesia, Laos (Lao PDR), Malaysia, Philippines, Singapore, Thailand, Viet Nam. It can be defined as a security community, as its main objective is to preserve peace in the region, even though in the last years it has been evolving in a more holistic organization, which focuses also on the economic and cultural dimension of cooperation. The most important step in this direction is the entry into force of the ASEAN Charter in 2008, which also provided the organization with legal status. The Charter foresees the creation of an ASEAN Community by 2015, based on three pillars: the Political-Security Community (APSC); the Economic Community (AEC); the Socio-Cultural Community (ASCC).

For a long time, the cooperation within ASEAN had not implied a Human Rights dimension. Nonetheless, in 2007 the ASEAN countries adopted a Declaration on the rights of migrant workers, which could be identified as the first step towards the introduction of this dimension within the organization. In fact, the 15th ASEAN Summit, in October 2009, resulted in the creation of the *ASEAN Intergovernmental Commission on Human Rights* (AICHR), and of two sub-commissions, the *ASEAN Commission on the Promotion and Protection of the Rights of Women and Children* (ACWC) and the *ASEAN Commission on the Promotion and Protection of the Rights of Migrant Workers* (ACMW).

Another stage on the path to compliance with human rights was attained in November 2012 with the *ASEAN Declaration on Human Rights*. It can be described as a rather advanced declaration, as it includes the “third-generation” rights¹, such as the «right to development», to «a safe, clean and sustainable environment» (Art. 28.f), to «technical and vocational education» (Art. 31.2). However it attracted some criticisms,² mainly because – as it often happens in the case of regional Human Rights declarations – it circumscribes human rights to the compliance with national law or to the appropriateness to the national traditions. In fact, according to Art. 8: «The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.» It should also be noticed that the Declaration clearly states that its implementation is a responsibility of the individual member states, thus excluding any possible reference to a supranational dimension.

¹ We owe the distinction of three generations of human rights to Karel Vasak. In this framework, it is generally thought that civil and political rights pertain to the “first generation” (the reference is to the “Declaration of the Rights of Man and the Citizen” of 1789); the social and economic rights pertain to the “second generation” (the “Universal Declaration of Human Rights” of 1948 includes both the first and the second categories); the “third-generation” rights are generally thought to include for instance the right to a healthy environment, the access to communication technology, a sustainable development, intergenerational equity, the protection of minorities (the “European Union Charter of Fundamental Rights” can be considered as an example).

² For instance: ITUC/ITUC-Asia-Pacific Statement on ASEAN Human Rights Declaration, November 28, 2012. Source URL: <http://www.ituc-csi.org/ituc-ituc-asia-pacific-statement,12479>

As a consequence, we can state that the *appropriation* of human rights by regional actors constitutes a relevant issue, as it often implies that those rights become tailor-made, rather than being universal. This happens even though all regional declarations make an explicit reference to the UN *Universal Declaration of Human Rights* of 1948.

Another important issue, though, is the actual implementation of the declarations on human rights at the national level: this implies both the *promotion* of human rights, via for instance education or the spreading of information, but also the *protection* of those rights through different mechanisms, such as (binding) laws, well-functioning tribunals or other kinds of conciliation instances. Clearly it is easier to promote than to protect human rights, but the former lacks a necessary coercive element without the latter. ASEAN claims its engagement both in promoting and protecting of human rights, but, as the scholar Vitit Muntarbhorn suggests, the focus is predominantly on promotion.³

The difficulty in the implementation of human rights is particularly relevant in those countries which began to approach the human rights issue in more recent times – generally developing countries, where the state bureaucracy is scarce or lacks the resources needed. At the international level, one possible solution which has been envisaged is the *externalization* of human rights' implementation, i.e. the devolution of a part of this responsibility to private companies, through the Corporate Social Responsibility (CSR).

The Foundations of Corporate Social Responsibility

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The concept of Corporate Social Responsibility has been given different definitions according to the sources. One of the most recent ones is the EU Communication on a new strategy for CSR, where it is stated that CSR is «the responsibility of enterprises for their impacts on society».⁴ Before the most recent reforms, though, CSR was largely interpreted as «a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis».⁵ The permanent feature, which is the ground of both definitions, is the incorporation of human rights, interpreted in the broadest sense, into the internal management of private companies. Generally, this has resulted in the adoption of *corporate codes of conduct*, which regulate on the one side, the relationship between the employer and the employees, and on the other side, the relationship between the company and the stakeholders, be they public or private.

The gradual establishment of CSR as a viable way to develop the human rights dimension within private companies is the result of a specific global context. In fact, since the end of World War II, but most of all, since the end of the Cold War, the economy has become increasingly more globalized, helped also by the steady market liberalization. On the other hand, though, the politics have not kept pace with the economic globalization process, therefore creating a gap of regulation and of responsibility, which tarnished the most basic fundamental rights of people around the world. This picture of reality is valid both for the industrialized countries and for developing and poor countries, even though these latter have been more affected. Actually, when there is not a global coercive system for the protection of human rights, the power of one state to submit to its domestic

³ Muntarbhorn, Vitit, *Development of the ASEAN Human Rights Mechanism*, briefing paper, DG for External Policies of the Union, Directorate B, European Parliament, September 2012 (EXPO/B/DROI/2012/05).

⁴ COM(2011) 681.

⁵ COM(2001) 366.

legislation, and to punish in case of abuse, a company which depends from a multinational corporation based in another country is very limited. Therefore, the concept of CSR stemmed as a possibility to convince the private companies, in particular the multinational ones, to respect the fundamental rights according to their will and to their internal policy, with the argument that a corporate policy more attentive to social and environmental concerns would benefit the public image of the enterprise itself. In corporate jargon, this has been called the “Triple Bottom Line” for a sustainable economy, based on the three “Ps”: profit, people, planet.⁶ The first initiatives in this sense have been taken in the 1990s, after the first scandals of human rights violations against both the workers and the people living in an area where a specific company is based. The Bhopal case in 1984 has arguably been the most sadly famous one, and surely one of the first cases related to a large-scale human rights scandal by a multinational corporation, the Union Carbide. The solution of a voluntary based CSR was meant to be a temporary measure, until a better international solution to that issue would be foreseen.

It was in 2000 that the United Nations came to the issuance of a list of principles that should be respected by all companies, the *UN Global Compact*. Building on the previous international declarations and conventions – the Universal Declaration of Human Rights, the ILO’s Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the UN Convention Against Corruption –, the UN Global Compact «asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption».⁷

In 2000 also the Organization for Economic Cooperation and Development (OECD) issued its *Guidelines for Multinational Enterprises*. But in this case the guidelines were addressed by the governments of the industrialized countries to the private companies, which generally have their headquarters in those countries. In 2001 the European Union followed the trend in favour of the promotion of CSR, by publishing a “Green Paper”⁸ and by establishing a “Multistakeholder Forum on CSR”⁹ (*CSR EMS Forum*), which included trade unions, employers’ and business’ organizations, and NGOs.

However, the first international acknowledgement of the necessity to react to this gap of responsibility and regulation had been made by the International Labour Organization, which already in 1977 adopted a *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*. This Declaration, by building on the subsequent UN Global Compact and on the already mentioned *Declaration on Fundamental Principles and Rights at Work* of 1998, was amended twice in 2000 and in 2006. Contrary to the UN Global Compact, which is focused specifically on the companies, the recipients of the ILO Tripartite Declaration are the workers’ and employers’ organizations, the governments, and the multinational enterprises (MNEs), thus

⁶ «The phrase “the triple bottom line” was first coined in 1994 by John Elkington, the founder of a British consultancy called SustainAbility. His argument was that companies should be preparing three different (and quite separate) bottom lines. One is the traditional measure of corporate profit—the “bottom line” of the profit and loss account. The second is the bottom line of a company’s “people account”—a measure in some shape or form of how socially responsible an organisation has been throughout its operations. The third is the bottom line of the company’s “planet” account—a measure of how environmentally responsible it has been. The triple bottom line (TBL) thus consists of three Ps: profit, people and planet.» From “Triple Bottom Line. It consists of three Ps: profit, people and planet”, *The Economist*, November 17, 2009. Source URL: <http://www.economist.com/node/14301663>

⁷ United Nations Global Compact. URL: <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>

⁸ COM(2001)366.

⁹ COM(2006)136. Website URL of the CSR EMS Forum:

http://circa.europa.eu/irc/empl/csr_eu_multi_stakeholder_forum/info/data/en/csr%20ems%20forum.htm

showing a more global and inclusive approach. Actually, this declaration underlines a particularly relevant issue, which is the definition of the term “multinational enterprise”: according to the declaration, this term designates both the parent company and the local enterprises of the same branch (Art. 6). In fact, the first problem regarding MNEs is their responsibility vis-à-vis the state judicial authorities when they act through their subsidiary local enterprises. Nevertheless, this declaration is in line with the UN Global Compact as far as its voluntary approach is concerned, as it states clearly that the ILO «recommends to observe» those principles «on a voluntary basis» (Art.7).

The second phase in the establishment of CSR

In 2005, the UN appointed a Secretary-General’s Special Representative on Business and Human Rights, in charge of drafting a set of Guiding Principles, in cooperation with the broadest number of partners, be them NGOs, workers’ and employers’ organizations, private companies or public authorities. The designated person was John Ruggie, an Harvard scholar, who in 2008 already developed the “Protect, Respect and Remedy Framework for Business and Human Rights”. In 2011 the framework was then completed by the *UN Guiding Principles on Business and Human Rights*, which were adopted by the UN Human Rights Council on 16th June of the same year.

The new logic behind the Framework and Guiding Principles constitutes an innovation as the role of the different stakeholders is concerned, and the subsequent attempt to overcome the divide between coercive obligation and moral duty, thus between the role of the state and that of the private enterprise. The first point, “protect”, focuses on the responsibility of the state, in accordance to the existing law. The second point, “respect”, is addressed to the enterprises, which have the duty to respect human rights in every activity both within the enterprise and in their relationship with other stakeholders and the territory in which they act. This is not based on legal obligations, thus it lies on a voluntary decision. The third and final point, “remedy”, is meant to be a shared responsibility: while the ultimate obligation to remedy to a human rights violation is the responsibility of the state’s judicial authorities, the state can also act through non-judicial mechanisms, and the enterprise has a role too, as it should put in place some non-judicial conciliation mechanisms, which would provide a viable solution in those cases when the state judiciary is not able, for whatever reason, to address this kind of issues.

The UN Guiding Principles have been broadly welcomed by the international community, as they constitute an holistic approach, which considers the state and the private actors as two parties that can cooperate in the field of human rights. The International Trade Union Confederation is among those international actors which praised the work done by the Special Representative¹⁰ However, there have also been criticisms, notably on the part of Human Rights Watch, according to which the new Guiding Principles are still based on the willingness and responsibility of each enterprise, while a coercive approach would be needed, as the voluntary approach to CSR has not led to an improvement in the compliance to human rights in the last decades.¹¹

¹⁰ ITUC, Letter to John Ruggie, May 27, 2011. Source URL: <http://www.ituc-csi.org/letter-to-john-ruggie.html>

¹¹ Albin-Lackey, Christopher, *Without Rules. A Failed Approach to Corporate Accountability*, HRW 2013 World Report, January 2013. Source URL: <http://www.hrw.org/world-report/2013/essays/112459?page=1>
To read also Mr. Ruggie’s response: Ruggie, John, *Progress in Corporate Accountability*, IHRB, February 4, 2013. Source URL: <http://www.ihrb.org/commentary/board/progress-in-corporate-accountability.html>

The value granted to the UN Guiding Principles can be measured also on the subsequent reforms of the other international standards and policies for CSR.

In fact, in 2011 the OECD updated its *Guidelines for Multinational Enterprises*, by building on the UN Guiding Principles, of which it acquired in particular the approach to remedy, based on non-judicial mechanisms, by envisaging the creation of National Contact Points (NCP), which are meant to be a forum for a multi-stakeholder conciliation. Even though the OECD Guidelines are based on a voluntary approach, their impact is potentially relevant as far as they represent a recommendation «by governments to multinational enterprises operating in or from adhering countries»¹², which means that the governments of industrialized countries ask to their companies to respect those principles, also when acting in third countries, which are generally the most affected by fundamental rights violations.

Following the issuance of the UN Guiding Principles, also the European Union reformed its CSR policy. In October 2011, the European Commission presented a Communication titled “A renewed EU strategy 2011-14 for Corporate Social Responsibility”, in which it stated that «CSR offers a set of values on which to build a more cohesive society and on which to base the transition to a sustainable economic system».¹³ As it has been underlined also by the European Trade Union Confederation (ETUC)¹⁴, the most relevant innovation of this new strategy is the new definition given to CSR, which represents a shift from the idea that the enterprise can pick those principles that fit with its internal policy and choose to respect only those ones, to the idea that the enterprise is always responsible for any impact that its activities could have on society and environment.¹⁵ On the other hand, though, while the “Multistakeholder Forum on CSR” ended its activities in 2004, there has not been a new initiative to continue the dialogue on CSR policies and best practices. Actually, in 2006 the European Commission gave its support to the “European Alliance for CSR”, but in this case it is about a business-led initiative. Finally, the latest development in CSR regulation in the EU is a proposal of the European Commission for a Directive “on the disclosure of non-financial and diversity information by certain large companies and groups”¹⁶, submitted to the European Parliament and the Council on April 16th of this year. This confirms the necessity for voluntary based CSR to be supported by public policies through the issuance of mandatory rules.

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Corporate Social Responsibility in ASEAN

The ASEAN countries are particularly concerned by the incorporation of the principles on the respect of environment and of human rights into the enterprise policy, as most of them are developing countries, which try to attract Foreign Direct Investments (FDIs) and provide favourable conditions for the establishment of foreign companies on their territory. This means that the majority of the companies on their territory are based in foreign countries, and thus it is more difficult to exert a control on them. However, the issue of CSR does not regard only the companies which belong to a multinational brand, and thus depend on a parent company based in another

¹² OECD, *OECD Guidelines for Multinational Enterprises*, OECD Publishing, 2011, p. 3.

Source URL: <http://dx.doi.org/10.1787/9789264115415-en>

¹³ COM(2011) 681.

¹⁴ ETUC resolution on a renewed EU strategy 2011-14 for Corporate Social Responsibility (CSR), Adopted by the Executive Committee on 7-8 December 2011. Source URL: <http://www.etuc.org/IMG/pdf/EN-Resolution-Corporate-social-responsibility-a-new-EU-strategy-2011-2014.pdf>

¹⁵ On the definitions of CSR given by the European Commission see the footnotes 4 and 5.

¹⁶ COM(2013) 207.

country, but also to the supply chains linked to multinational corporations: in this case the multinational corporations are not directly responsible for the activities of the companies that belong to their supply chain. It is thus of utmost importance that the ASEAN countries establish a common framework for CSR, which would be addressed first of all to their local companies.

As an evidence of the importance of CSR in the ASEAN countries, the Jakarta Post reports that «In Indonesia, Komnas HAM [Indonesian Human Rights Commission] statistics show that 1,009 of the 5,422 human rights cases it handled in the period January-November 2012 were complaints against businesses in areas such as land and labor disputes, forced evictions and environmental damage».¹⁷

As a consequence, the ASEAN reform started in 2007 provided for a first impulse in order to develop the CSR topic within the organization. In fact, the *ASEAN Socio-Cultural Community Blueprint*, which represents the foundations of the third “pillar” of the ASEAN Community, includes a specific provision on CSR. It makes an explicit reference to the ISO 26000 standard – issued in 2010 by the International Standardization Organization¹⁸ – and more generally to the international standards on social responsibility. Moreover, it clearly states that the objective is to «develop a model public policy on Corporate Social Responsibility or legal instrument for reference of ASEAN Member States by 2010»¹⁹. The 2010 deadline has not been fulfilled, as to this day there is still no framework or policy which has been adopted by the ASEAN governments in the field of CSR. Nonetheless, a thematic study on CSR has been foreseen by the Five-Year Work Plan of the ASEAN Intergovernmental Commission on Human Rights for the period 2010-2015, and it has been confirmed by the Seventh meeting of the AICHR that took place in November-December 2011, which adopted a budget for the period 2013-2015.²⁰ The Asian Forum on Human Rights Development reports that some civil society representatives held a public hearing on CSR in the run up to an ASEAN meeting, in May 2011, which encouraged ASEAN «to live up to the commitments it has already made through the Charter and other human rights treaties to protect human rights and ensure that development is sustainable».²¹ This is an evidence that the civil society is concerned by this issue and that it tries to exert a pressure on the governments.

This could probably be interpreted as a first important step towards the adoption of a common ASEAN framework for CSR, however something more tangible has been made, generally on the initiative of private actors.

The creation of the *ASEAN CSR Network*²² can arguably be considered as the most relevant initiative: it was launched on January, 11 2011, and it builds mainly on the experience of the Singapore Compact for Corporate Social Responsibility²³, founded by the National Tripartite Initiative for CSR in January 2005. It is a project which stemmed from the initiative of the ASEAN Foundation and of some business organizations from Indonesia, Malaysia, Philippines, Singapore, Thailand, while the Chamber of Commerce and Industry of Viet Nam joined later. The Secretariat

¹⁷ Almuttaqi, Ibrahim, *ASEAN's role in corporate social responsibility*, The Jakarta Post, January 29, 2013.

Source URL : <http://www.thejakartapost.com/news/2013/01/29/asean-s-role-corporate-social-responsibility.html>

¹⁸ ISO 26000, *Guidance on Social Responsibility*, 2010.

¹⁹ ASEAN Socio-Cultural Community Blueprint, Jakarta, ASEAN Secretariat, June 2009, paragraph C.3 (Promoting Corporate Social Responsibility), pp. 13-14.

²⁰ Press Release of the Seventh Meeting of the ASEAN Intergovernmental Commission on Human Rights, Bali, December 2, 2011. Source URL: <http://www.asean.org/news/asean-secretariat-news/item/press-release-of-the-seventh-meeting-of-the-asean-intergovernmental-commission-in-human-rights-aichr>

²¹ Forum-Asia, *Corporate Social Responsibility in ASEAN Needs to Emphasize “Responsibility”*, May 2, 2011.

Source URL: <http://www.forum-asia.org/?p=6931>

²² Website: www.asean-csr-network.org

²³ Website: www.csrsingapore.org

of the ASEAN CSR Network is based in Singapore, where it also took place the first meeting. According to the ASEAN Foundation, this new network could take the example from a European organization, CSR Europe²⁴ – a network of private enterprises and national business organizations, which supports the promotion of CSR in the European enterprises.

According to the ASEAN CSR Network policy statement, «businesses in the participating countries of the ASEAN CSR Network should take account of their economic, social and environmental impact in the way they operate. With commitment to CSR, businesses are expected to align their vision and business strategy with the needs and expectations of stakeholders while embedding such principles into their daily operations».²⁵ In shaping its objectives, it makes reference to the UN Global Compact and to the ISO 26000, but it relies in particular on the first one: actually the principles stated in the UN Global Compact – Human Rights, Environment, Labour, Anti-Corruption – are integrally reported in the ASEAN CSR policy statement, with the exception of the order of presentation – the paragraph on Human Rights is downgraded to the last position.

Furthermore, other sector-based initiatives have taken place in the last years, in order to promote CSR in the South-East Asian region. In particular, we should mention the developments in the field of the stock exchange regulation. The importance of this sector derives from its power to impose its own regulation to a large number of listed companies, thus it could make it compulsory for those companies to comply with, for instance, CSR. This is what has been happening in some countries of the region: the Malaysia stock exchange has been the first one to make the CSR compulsory for all its listed companies. «Bursa Malaysia requires listed issuers to include in their annual reports a description of the CSR practices and activities undertaken by them and their subsidiaries; this is mandatory.»²⁶ Also the Singapore stock exchange (SGX) has started a similar process, but for the moment only on a voluntary basis. A relevant element to underline is the envisaged connection among the seven ASEAN stock exchanges, which could potentially extend the Malaysian regulation to the entire network.²⁷

Finally, we should mention the only initiative in ASEAN to make CSR a legally binding provision, undertaken by Indonesia. In fact, in 2007 Indonesia issued a law – Law No. 40/2007 – which stipulates that the Limited Liability Companies that use natural resources must comply with the Corporate Social Responsibility provisions. As a consequence of a strong protest on the part of the companies directly involved, the law was amended, providing for an obligation to comply with CSR only for those companies which heavily rely on the exploitation of natural resources for their business activity. Notwithstanding the amendment, this first attempt to introduce CSR as a legal obligation can already be seen as a positive element. In fact, one of the problems that the Asian countries encounter when trying to introduce a stricter regulation is the accusation of protectionism, which eventually prevents them from issuing binding rules on the respect of human rights and the environment, to avoid the interruption of foreign capital inflow.

²⁴ Website: www.csreurope.org

²⁵ Source URL: <http://www.asean-csr-network.org/c/news-a-resources/csr-policy-statement>

²⁶ SMU-APRL/Mazars, Business and Human Rights in South-East Asia. Recommendations on the thematic priorities and possible activities for the UN Working Group, December 8, 2011, p. 9. Source URL: <http://www.ohchr.org/Documents/Issues/TransCorporations/Submissions/AcademiaAndIndependentResearchers/SingaporeManagementUniversityAPRLAndMAZARS.pdf>

²⁷ Ibidem.

Conclusion

This short research tries to show how the global issue of CSR has been evolving and what has been done until now within ASEAN. What becomes clear at this stage is that there was a shift from the temporary character of CSR towards its establishment as the right – or the only – solution to the problem of the respect of human rights within the private companies. As it was already mentioned, some international actors criticize this approach, because it is considered ineffective: not only Human Rights Watch espouses this point of view, but also the US trade unions (AFL-CIO), which in April 2013 published a report titled “Responsibility Outsourced. Social Audits, Workplace Certification and Twenty Years of Failure to protect Workers’ Rights”. The report explains how the Multi-Stakeholders Initiatives (MSIs) resulted in the creation of an ever increasing number of private accountability companies: «a multibillion-dollar social audit and certification industry has emerged alongside most CSR programs since the 1990s».²⁸ It presents some case studies, for instance in the Philippines and Indonesia, as far as ASEAN is concerned, which clearly show that CSR has been used by the multinational corporations in order to enjoy a certain credibility at the international level, while their internal policy on workers’ rights has not changed much. The accountability companies generally are dependent on the corporations that pay them, therefore they do not exert any kind of pressure on the enterprises they evaluate.

On the other hand, we could rely on other reports, as the one released by APEC (Asia-Pacific Economic Cooperation), titled “Corporate Social Responsibility in the Global Supply Chain” and published in 2008, where some positive case studies are presented, notably in Indonesia, Singapore, Thailand and Viet Nam.

As a consequence, the evaluation of Corporate Social Responsibility in ASEAN does not provide a clear picture. However, the domestic regime and the state capacity to protect – as stated in the UN Guiding Principles – is fundamental when evaluating the effectiveness of the implementation of human rights, because the private companies alone would not make any significant improvement. Therefore, the conclusion of this essay will be a predictable one: CSR can be considered as a positive strategy to involve also the private actors in the respect of fundamental rights, with the aim of creating a better and more cohesive society, but the role of the public authorities is essential. For this reason the establishment of a common CSR framework within ASEAN is needed, as it could help to strengthen also the role of the state in those countries.

²⁸ AFL-CIO, *Responsibility Outsourced. Social Audits, Workplace Certification and Twenty Years of Failure to protect Workers’ Rights*, Report, April 23, 2013, p. 8. Source URL: <http://www.aflcio.org/Learn-About-Unions/International-Labor-Movement/Responsibility-Outsourced-Report>

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