

**Business, Human Rights and Peace:
Modern challenges in a historical context**

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I would like to thank the Swiss Foreign Affairs Department, his Excellency the Secretary of State, and his Excellency the Ambassador, for organizing this important event and for inviting me to help set the scene for our discussions today. It is indeed encouraging that such a diverse and informed group of interested parties has come together to address the links between business, human rights and efforts to advance more peaceful societies around the world.

All of you have much to be proud of in promoting this critical agenda here in Switzerland and globally. At the same time, we know that despite efforts to shape a more secure and equitable world for all, many difficult challenges remain in ensuring that companies act as responsible stakeholders, including in countries experiencing conflict and instability. So I welcome this opportunity to reflect on where we stand on this vital subject and to offer some thoughts on what we should be aiming to achieve in the time ahead.

A historical perspective on business, conflict and human rights

I would like to use my remarks today to reaffirm my conviction that responsible business, investment, trade and commerce can serve the greater good of society, and help promote peace within and between nations. In doing so, I will begin by suggesting that it is worth looking back briefly at what history teaches us about how peace and greater protection of human rights is achieved. Then I'll take stock of current efforts to make progress in this area. Finally, I will offer some recommendations on where we need to go from here to ensure that all actors contribute constructively to resolving ongoing conflict and building more peaceful societies where respect for human rights is ensured for all.

I should note that my perspectives are based on over 15 years working in the field of business and human rights, first in the private sector where I led corporate responsibility efforts at The Body Shop, then as director of the Business Leaders Initiative on Human Rights and now as part of broader civil society as executive director of the London-based Institute for Human Rights and Business. Our organization was established in 2009 to serve as a "think and do tank" for the emerging business and human rights movement. We are fortunate to have had the strong support from many leaders in the field, including our founding chair and now patron Mary Robinson, and our current chair John Ruggie, who as you know was the UN Special Representative on Business and Human Rights until 2011. We've also been able to establish our work thanks to strong support from a number of governments, including the Swiss government, which we value greatly.

So in beginning by looking back, it is worth recalling, as the work of Adam Hochschild helpfully highlights, that the connections between business, human rights and peace are nothing new. Hochschild points out that in 1780, 75% of the world's population was in a condition of near or actual forced labour – as serfs, as slaves or as peasants tied to the whims of landowners. Slavery and forced labour were a global business, a service industry that fueled most colonial empires, and made possible the exploitation of commodities and international trade. Arguably, this industry was also a key component in many of the wars and conflicts that followed during the 19th century, not just the American civil war, but also the revolutions of Europe, Latin America and the beginnings of anti-colonialist struggles in Asia and Africa. In this way, it would be accurate to see these abuses of human rights as both a cause and effect of conflict.

What is striking, and perhaps most instructive for our purposes today, is that within only one hundred years of 1780, by 1880, slavery had been outlawed in every country and whilst poor labour conditions remained – the status quo that had existed for thousands of years – since the times of the Greeks and the Romans – had shifted away from international trade and commerce premised on the systemic abuse of human rights. It was a business and human rights revolution. We of course must acknowledge that millions of people today continue to face modern forms of slavery – the scourge of human trafficking shames us all. But we should also recognize that the global norm affirming that slavery and forced labour were no longer acceptable practices in any society was established beyond question.

What was it that caused this cultural shift in such a short time in historical terms? Clearly, combinations of factors were involved, among them, strong civil society action, which pushed for change within nations. The leadership shown by governments to establish new standards and legal obligations to combat these injustices was equally important. As were the development of new business models and the enlightened views of individuals who believed that profits with principles was indeed possible.

What will be the next business and human rights revolution? Where will we see the next tipping point? Will our modern day communications technologies that have done so much to shape global awareness and understanding help us change the terms of debate on ongoing human rights abuses faster than in centuries before ours? And who must be involved in making the next wave of change come about?

Thinking about these questions brings us straight to the subject of today's conference. We all are aware of just how important business actors are in today's world. In situations of conflict, we know that corporations are often among the most powerful players, especially so in contexts where populations are highly vulnerable to abuse by governments or non-state actors.

But the question today isn't just about how best to minimize the negative impact of business activity, as it might be if we were considering the private sector role in reducing global carbon dioxide emissions for example. Rather it is two inter-connected questions we should be considering:

- How do business leaders ensure, through their own policies and practices – that their actions are not risking the wellbeing of vulnerable populations, particularly in contexts such as conflict or post-conflict environments?
- And, at the same time, what incentives are needed to encourage more businesses in taking proactive steps to be responsible actors in peace-building efforts, helping create more stable societies with greater transparency, accountability and trust between communities?

There are no easy answers to these complex questions. One thing is certain however. Finding effective responses will require new forms of public-private cooperation and partnership and new forms of mutual accountability that apply to all.

I am going to use the phrase “multi-stakeholder” a lot in the next minutes so I should be very explicit by what I mean by it. What I **don't** mean be multi-stakeholderism is governments and businesses operating in isolation from each other and society – and consulting only when necessary. Multi-stakeholderism is **not**

just about community consultation for a new business plan or operation. It is **not** getting a few quotes for the sustainability report or making a philanthropic gesture to the local community.

True multi-stakeholderism involves governments, business and civil society coming together as equal but distinct actors from the start. Clearly, governments have duties under international law and businesses have an economic imperative and a fiduciary duty to their shareholders. But the complexity of conflict requires common frameworks – where all stakeholders participate from the beginning in governance and accountability measures – and where there is adequate transparency between all actors. Only then can real trust develop and only then can sustainable solutions be found.

So let me turn to where I believe we are today on that journey – by offering a brief audit of what is happening and what is not happening on the business, human rights and peace agenda. My aim is to provide a broad overview, as other speakers on our agenda will be going into much greater depth on many of the examples I'll touch on. I will also reflect on some of the concrete opportunities for new cooperation and conclude with some thoughts on the overarching challenge we face – how to scale up and better coordinate all our efforts to make a real and tangible difference in the lives of people everywhere.

An audit of where we are today on business and human rights

Any discussion on the state of the business and human rights agenda today must begin with the global efforts that led to the adoption just over a year ago of the United Nations Guiding Principles on Business and Human Rights. The new Guiding Principles, the culminating product of John Ruggie's work over six years as the UN's Special Representative, reaffirm the obligations of all states to protect against abuses of rights committed by third parties. Equally important, they make clear for the first time that all businesses have an independent responsibility to respect human rights, and stress the need for access to adequate remedies for victims of human rights abuses. The fact that the Guiding Principles for implementation of the so-called Protect, Respect, and Remedy framework on business and human rights were agreed by consensus by all members of the UN Human Rights Council in June last year, is truly a historic achievement. We now have an internationally accepted framework for assessing state, business and multistakeholder efforts and a road map for shaping policy and practice in the years to come.

As many of you will know, a five-person UN expert working group has been established with the mandate of disseminating and helping to implement the Guiding Principles around the world. We are encouraged to see a number of governments, including a number of prominent EU members, now moving forward in developing national action plans to implement the UN Guiding Principles – as we hope will be the case here in Switzerland. We are also encouraged to see how the OECD has aligned its updated Guidelines on Multinational Enterprises with the UN Guiding Principles and that many OECD National Contact Points have been revitalized both in terms of their governance as well as function. National human rights institutions have also moved to meet the challenge of implementation in many of the 90 countries in which they exist, both in terms of the provision of non-judicial remedies but also as important observers of both state and business performance.

Perhaps one of the greatest conceptual contributions of the Guiding Principles has been that we now focus not just on ensuring accountability, as we should, but also on the importance of prevention. What is it that a government or a company can do to prevent possible negative impacts of business operations, in particular in situations of conflict? The Guiding Principles offer a way forward through the relatively new concept of human rights due diligence. This essentially means that as part of its responsibility to respect human rights, a company needs to "know" and to "show" the processes and actions it has taken in relation to its risks and possible impacts on the enjoyment of human rights.

If we think of the workplace 'health and safety' revolution of the past 30 to 40 years, we have an important insight into what human rights due diligence should mean in practice. Reducing the risk of injuries or fatalities at work is now part of the DNA of most reputable companies worldwide – and there are direct

legal responsibilities for business managers to do so in most jurisdictions. But this is also an issue of cultural change. For example, when an accident at work happens, it is now part of standard business practice for that incident to go directly into accident reporting work books and a range of procedures are set in motion to investigate and correct the problem. This, in good companies, is an automatic behavioural response. So too should it be for the broader range of human rights issues in the years to come – and in particular in high risks context such as conflict or post-conflict environments.

We at the Institute have developed a report based on the UN Guiding Principles that seeks to offer practical guidance for companies working in such difficult environments. Titled “From Red to Green Flags: The corporate responsibility to respect human rights in high-risk countries”, our report sets out for managers practical guidance around what we term “enhanced due diligence” when operating in high-risk contexts. This is based on “3Rs” of understanding **risk**, building **relationships**, and providing **remedy**. Copies of the report are available here and for free download at our website – ihrb.org.

And while we all believe business enterprises can and must do more to ensure they are acting responsibly when working in conflict and other high-risk settings, it is also clear that companies can’t be expected to carry the burden alone. Governments must also show more proactive leadership in helping ensure responsible business conduct in such situations. During his mandate, John Ruggie stressed this point as well. UN Guiding Principle 7 makes clear that, and I quote:

“Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
- (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
- (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
- (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

The commentary to this Guiding Principle also points to the need for greater policy coherence, including the importance of home States fostering closer cooperation among their development assistance agencies, foreign and trade ministries, and export finance institutions as well as between these agencies and host governments. The value of multilateral approaches to prevent and address business involvement in conflict situations, as well as effective collective initiatives, is also stressed.

It for this reason that the Swiss government actively supports a number of key multi-stakeholder initiatives which address business responsibilities for human rights in conflict situations including the Voluntary Principles on Security and Human Rights and the ongoing development of a new Code of Conduct for Private Security Service Providers. The potential and actual impacts of security related activities, and in particular the operations of private and public security, need to be better understood, recorded and mitigated as rigorously as health and safety in the workplace.

Human rights are inalienable and universal. Human rights due diligence is not. Undertaking ongoing human rights due diligence will cost businesses time and money. We cannot expect a business to undertake comprehensive human rights due diligence on every action it takes – it would go out of business very quickly if it did. One big question we are all grappling with one year after the Guiding Principles came into

existence as an international norm is how much and what kind of human rights due diligence is enough? Where is the threshold of what can be reasonably expected of companies? There is no single answer to this question – the levels of due diligence undertaken will undoubtedly vary according to different business sectors and different operational contexts. However, it seems clear that in high risk contexts, such as conflict-related situations, the level of expectation around corporate due diligence needs to be significantly more rigorous than in less difficult environments.

Multi-stakeholder initiatives, such as those in which the Swiss government is actively engaged, are very important for establishing where the ‘thresholds of reasonableness’ might lie in relation to human rights due diligence and conflict. They allow governments, business and civil society to sit together and argue about, but then hopefully agree, on what reasonableness means within the context of very specific dilemmas.

It is sometimes argued that multi-stakeholder initiatives are an alternative to regulation – which of course is another important way of prescribing the nature of human rights due diligence. We do not see this as a zero sum game. It is true that developing forms of mandatory reporting, such as relating to transparency in the case of conflict minerals – as the Dodd Frank Wall Street Reform Act in the USA is seeking to address – is an emerging aspect of human rights due diligence which may become more widely embraced in the time ahead. The US Securities and Exchange Commission is currently playing ‘catch up’ in actually defining what the due diligence required in this case will actually look like in practice. Requiring mandatory reporting or other elements of due diligence without defining clearly what the requirement is in practice creates uncertainty and increases business risk – sometimes leading to unintended consequences – such as the rush by some companies to move their supply chains away from central Africa altogether as a result of the recent changes in US law.

However multi-stakeholder approaches can help clarify what is best regulated and what is best not – and also gives all parties practical experience of what due diligence means in practice before deciding on what should be mandated versus other incentives. There is a clear business case for regulation in situations where companies are not willing to make voluntary commitments or act to undermine and underbid their more responsible peers.

Some specific examples of post-conflict situations

So what does all this mean in practice? Where does the business and human rights agenda, in particular in high-risk contexts, go from here?

Take as one example the attention that has been given over recent months to the changing situation in Myanmar (Burma). As you all know, there is much talk about the business opportunities that will be available in particular after the suspension of many of the sanctions imposed by the European Union and the United States. Clearly this could be seen as a post-conflict situation, yet also one in which the civil war (the longest running in modern history) goes on in some parts of Myanmar and where new conflicts may emerge such as the vulnerability of the Muslim minority in the country.

Myanmar of all countries is one where commitments to human rights due diligence really matter – starting with the choice of business partners and suppliers in one of the world’s most corrupt countries according to Transparency International’s Corruption Perceptions Index. It is therefore important for governments to make explicit commitments to the UN Guiding Principles on Business and Human Rights within the context of investments into Myanmar. We were pleased that EU Foreign Ministers did so on the 23rd of April this year and that the US government has gone still further by placing mandatory reporting requirements for their companies planning to invest in the country.

The question now is how these commitments can result in practical actions. This is why the Institute for Human Rights and Business has recently placed a coordinator in Yangon and will work, in collaboration

with the Danish Institute for Human Rights and other partners to create over the coming months a “Myanmar Resource Centre on Responsible Business” for international business, local business, civil society and trade unions on how international standards can be applied in practice, within the context of very real local dilemmas. I am pleased that we already have the commitment of a number of governments to support the Resource Centre, as well as the necessary support of the full range of local actors. We note with interest the opening of a Swiss Embassy in the country and we look forward to further dialogue with governments on this important dimension of fostering peace and sustainable development in Myanmar.

A second example of post-conflict business and human rights work I wish to mention briefly concerns the world’s newest nation - South Sudan - and the proposed pipeline development from the oil fields south through Ethiopia and then an expanded port complex in Lamu in northern Kenya. Significant international investments are already being made in the project, added to the fact that both Uganda and Kenya now also have their own oil reserves. We all hope that East Africa never faces the oil-related conflicts and tensions that have dogged West Africa for many years. But are we doing enough now to ensure that this is the case? What can be done by governments, investors and oil companies to ensure human rights due diligence is done well and in partnership – and remains an ongoing process with adequate early warning of all possible grievances?

Where are the gaps in government action?

I conclude by offering a number of more challenging, and perhaps more critical reflections.

A key aspect of the UN Protect, Respect, Remedy framework on business and human rights is that it marries government duty and business responsibility as two inter-related pillars of the same framework. A key aspect of the first pillar, and the Guiding Principles that relate to it, is policy alignment. The process of policy alignment is, by definition, a difficult one and I know of no government that would have claimed to have succeeded or was even close to ensuring that commitments to international human rights law were fully consistent with economic, investment, trade, corporate law and other policy considerations. This is in part a factor that representation within various relevant UN agencies, the World Bank Group, the OECD and other relevant fora spans a diversity of government ministries. Efforts to develop national action plans on business and human rights, such as those currently being developed by the UK, German, Dutch or US governments, are hugely helpful in identifying where greater alignment is needed and have instigated cross-ministry processes for doing so.

Civil society will rightly question government responses that do not fully align with stated commitments to policy coherence. For example, an ongoing case in the US Supreme Court involving the country’s Alien Tort Claims Statute has engendered amicus briefs from the same four governments I just mentioned, and in the case of the USA, representing a partial reversal of opinion, on whether US courts should be used to hear complaints against alleged corporate involvement in human rights abuses involving non-US headquartered companies (so called extra-territorial accountability). This subject remains one of the thorniest and most challenging issues within the field of business and human rights. However, when considering states experiencing conflict, extra-territorial legal mechanisms seem to be part of the range of strategies needed to ensure that adequate remedies are indeed available for all victims. It is quite within the rights of European governments to argue that cases involving companies headquartered in their countries should not be litigated in US courts, but they need at the same time to demonstrate corresponding avenues to justice in Europe that are equally if not more effective than what exists today.

It seems that we also have an uneven playing field when it comes to the reporting responsibilities of companies. For example, Denmark has a mandatory reporting requirement for its companies, which now includes human rights impacts, and there are corresponding initiatives within the USA, in relation to Myanmar, Congo and also issues such as trafficking and forced labour (in the case of the state of California). We must continue to call for greater coherence between governments on their expectations concerning corporate disclosure, as business needs both certainty and a level playing field. If France, for

example, were to require its companies to report on social impacts in high-risk countries, why wouldn't we expect Switzerland to do the same? Governments should continue to discuss their efforts for greater policy coherence both between domestic ministries as well as between states in key groups such as the European Union or the OECD. The development of national action plans on business and human rights are a very good starting point in this process.

As part of his final report to the UN Human Rights Council, John Ruggie included an addendum report, which touches directly on these issues in the context of state actions to address corporate involvement in conflict situations. I'm sure Gerald Pachoud who worked as part of John Ruggie's team and is now with the UN Peace-building support office in New York will have more to say about how the proposals put forward by Ruggie, and in a new report of the Secretary General on the role of the UN system in implementing the Guiding Principles could be taken forward. Ruggie's report offered a number of innovative proposals governments should give serious consideration to at this stage including offering mediation services for local conflicts involving business, developing multilateral agreement on risks and prohibited activities for business in conflict or other high-risk situations and defining what corporate activities should prompt State responses and what these should entail. I hope we can reflect on some of these ideas during today's discussions.

Final thoughts

Let me conclude by returning to the historical example I began my remarks with today. If anyone had been giving a public speech 230 years ago that had called for the end of global slavery they would have been laughed at or even locked up as a dangerous radical (perhaps not in Switzerland but certainly in many parts of Europe). I think, for example, of the work of Thomas Paine at the time, and the persecution he faced. More relevant, many business leaders would have called such views naïve and threatening the interests of the European economy. However, already by 1780 there were some business leaders who saw a different path, who were already thinking about supply chains free of forced labour. Some of these business people were to become key leaders of the industrial age.

There are business leaders today as well, still a minority perhaps but a growing one, who imagine a future where global businesses do not externalize the true social and environmental costs of their operations. They imagine a future where conflict represents not just a failure of government and society, but also a failure of private enterprise itself. They imagine a future where **all** stakeholders are involved in agreements on how commodities should be exploited and traded, and are willing to be more accountable and more transparent in their actions.

I come here today after chairing a meeting yesterday in the Arctic circle with representatives from governments, businesses and indigenous communities of Norway, Finland, Sweden and Russia. The issue they are addressing concerns how a new mining industry can develop that serves the interests of people and communities and does not sow the seeds of future conflict. The same question is being asked today in Myanmar, East Africa and many other parts of the world. It is the governments, communities and businesses brave enough to engage today in the messy detail of multi-stakeholder discussion and agreement that will be the leaders of tomorrow. Those that fail to do so will deepen insecurity and raise the risk of renewed or future conflict.

Thank you once again for the invitation to be here today. I look forward to our discussions.
