



Towards More Effective Engagement between the EU and Non-State Actors on Human Rights

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Thank you for the opportunity to speak this morning on such an important topic – how the world’s most effective regional inter-governmental organization engages with entities other than its member states on an issue fundamental to its own history and existence: the values of Europe itself as expressed by internationally recognized human rights.

The march of European leaders together in Paris in the days following the attack on the offices of Charlie Hebdo as well as the appalling suffering of migrants trying to reach Europe’s shores – or stranded between its internal borders – are two powerful reminders that human rights are no abstraction. The fortunes of European states and non-state actors are deeply intertwined.

Context

On the question of today’s conference – how engagement between the EU and non-state actors can be more effective – it is important to start with the reflection that “no one would choose to start from here.”

The EU is engaged in its own existentialist crisis with three major and interconnected threats to its integrity and future:

1. The first is, of course, the financial crisis that has engulfed some members of the Eurozone and in particular the bailout and referendum affecting Greece.
2. Second, is indeed the issue of migration into the EU and within the EU that pits member states' commitment to human rights against the fears of local populations and national politicians wishing to represent or exploit those concerns.
3. Finally, Europe's security issues have not gone away. One example is seen in the ongoing situation in Ukraine and EU member states from the Baltic to Bulgaria are rightly concerned about what might come next. And of course there is the issue of terrorism and the EU response to terrorism.

If this were not enough, a second tier of challenges faces EU member states, and sub-regions, that are increasingly nationalist in outlook. Look no further than the United Kingdom's planned referendum on its EU membership sometime over the next two years. Human rights do not escape its gravitational pull; with the UK Government committed to repealing the UK Human Rights Act and introducing a British Bill of Rights, which might re-calibrate the UK's relationship to the European Court of Human Rights. Although the 47-state Council of Europe is certainly not the 28-state European Union, incorporating the European Convention on Human Rights into the EU itself was a commitment of the Lisbon Treaty in 2009, reflected also in the content of the EU's own Charter on Fundamental Rights, and as such, a retreat from the European Convention is a retreat from the EU itself.

As I said, no one would choose to start from here. But here is where we are and I do see some definite opportunities for more effective multi-stakeholder engagement in the months and years ahead. My remarks will focus on opportunities within the realm of business and human rights but I think this field, one which many of us here today represent, is symbolic of the wider human rights/non-state actor debate in the EU. Arguably it is one of the most profound of such interfaces raising issues across many of the EU's main policy areas from Justice and Home Affairs to Trade, Development, External Relations and issues of Collective Security.

I will also try to pitch the remainder of my remarks within the context of how the EU sees itself. We are now almost halfway through the decade and Europe's 2020 growth strategy puts out the following stall to the world:

In a changing world, we want the EU to become a smart, sustainable and inclusive economy. These three mutually reinforcing priorities should help the EU and the Member States deliver high levels of employment, productivity and social cohesion. Concretely, the Union has set five ambitious objectives - on employment, innovation, education, social inclusion and climate/energy - to be reached by 2020.

Many of these objectives are significantly off-track. How can better multi-stakeholder action on human rights help? First I will make some short observations on the EU's internal dynamics before turning to the issue of the EU's place in the world and the central role that greater cooperation on business and human rights might deliver.

Europe's internal coherence and Corporate Social Responsibility (CSR)

In 1993, the then President of the European Commission, Jacques Delors, called on enterprises to combat social exclusion and unemployment. In 1996, the European Business Network for Social Cohesion was formed (later renamed CSR Europe) to create "a space for men and women in business to share experiences, develop solutions and engage in a smart policy dialogue with the EU with a view to enhancing corporate social responsibility within their organisations and beyond."

The way Europe came to see CSR was very much developed through this lens. For many years I have been one of those who strongly criticized the EU's old position on corporate responsibility as being entirely voluntary and EU-centric. But it is important to remember that it was instigated at a different time, 20 years ago, in the aftermath of the Cold War when Europe had the luxury of being inward gazing. Germany had just been reunited, peacefully.

One reason for the emphasis on voluntary CSR was that many EU member states already had well-established mechanisms for social dialogue. Unlike the UK, for example which had been riven by major industrial action all through the 1980s, many other EU members had much more consensus-driven relations between workers and management, and in some countries trade unions sat on the supervisory boards of companies. Perhaps this is why the attack on CSR first came from the Anglo-Saxon and Celtic fringes of Europe but the 2011 re-definition of CSR – very much in line with the UN Guiding Principles on Business and Human Rights and other international standards – was essential and long overdue.

Limiting CSR to voluntary actions makes some sense when a coherent level playing field of regulation within the EU itself is ensured. However, taking such an approach when you start to consider the interests or impacts of European companies beyond Europe in the wider world makes no sense whatsoever.

The new CSR definition goes some way towards addressing such concerns, but is not sufficient on its own. I believe it remains one of the main limiting factors that restricts multi-stakeholder cooperation on issues such as human rights. This is no longer the unique fault of the EU but it is the fault of the conceptualization of CSR itself. CSR has been attacked by business for not being core to business operations, and by civil society for the very same reason and also for relegating societal impacts to the margins of concern (often resulting in philanthropy and little more). At the OECD Global Forum on Responsible Business Conduct in Paris last month, both global trade union and business representatives publicly distanced themselves from CSR in favor of the more normative 'responsible business conduct' approach or "RBC". If the OECD has now fully moved on from CSR isn't it about time the EU does likewise, given the commonality in membership if for no other reason? I know the EU has created something of a CSR industry but this is not reason enough to continue unreformed. And, of course, let me stress that I am not condemning good work that has been undertaken under the "CSR umbrella" – it is just that we have been carrying the wrong umbrella to put it under.

I'll stop here on the CSR point. In my book of last year – "The Social License" – I spend a whole chapter deepening the critique in social contract terms. Hobbes, Locke and Rousseau would not

have liked CSR, Kant would have hated it, and it is therefore surprising that many in the human rights field have also struggled to come to terms with it.

As well as a farewell to CSR, there are two other crosscutting issues we need to address if we are to have more effective multi-stakeholder engagement. I make these comments on behalf of my IHRB colleagues in our regional Responsible Business centres based in Myanmar, Kenya and Colombia where we interact regularly with ambassadors, company representatives as well as local and international NGOs and trade unions. Through this lens we get some insight into how the EU projects itself globally on this issue:

Are human rights an impediment to European economic growth?

With 50% youth unemployment in member states such as Spain, jobs are everything. We are witnessing a period of our history where a whole generation of Europeans will scarcely know the workplace for the first part of their adult lives. We are right to be concerned. For those rightly focused on growth and employment, human rights can look like a constraint, a drag-factor. Now there are few people in this room that need to be convinced as to why this is not the case, but let's be honest, there are many policy-makers who would role their eyes when reading the title of today's conference. On which cloud do those guys live they might think?

Perhaps the Charlie Hebdo tragedy reminds us all that human rights include workplace rights but also include fundamental libertarian values such as freedom of expression. Without freedom of expression and the right to privacy there can be no innovation, creativity and entrepreneurial behavior. Human rights do not constrain economic growth – they are the bedrock of sustainable economic growth.

We have a massive educational task ahead of us but sometimes it is our business leaders, such as Paul Polman or Peter Sutherland, that can help us make this case. Or sometimes it is business associations that will invoke human rights in calling for leveler global playing fields – whether it be on mass surveillance and privacy protections, on the one hand, or recruitment agency policies, on the other.

Are human rights a pre-competitive issue?

The third crosscutting point is perhaps the most fundamental of all – is cooperation on human rights a competitive or pre-competitive issue, or both? We really do not talk about this enough. Take for example the CSR agendas of some member states. I have been in China, for example, when I have seen a EU-member state issuing its CSR guidance to its own companies incorporating the UN Guiding Principles on Business and Human Rights. But the framing has been competitive in tone, focusing on how to help our national companies promote their business abroad. Take the case of Sweden, being the only EU member to have a CSR memorandum with China, something I very much support. This all sounds fine, until you talk to the EU's external action service in China about the EU's strategic approach on business and human rights in China or even which CSR activities individual member states are undertaking.

The lack of co-ordination, which must amuse the Chinese and other major third country states to no end, is not due to lack of resources or capacity on the side of the EU, or at least not primarily. More it is that CSR is generally seen as a competitive issue between member states and fair enough until we consider the implication for human rights. Should human rights be a competitive issue between member states in human rights-sensitive countries such as China? No, of course not we might all think. Then why don't we make business and human rights pre-competitive?

You will be aware that many EU member states are developing, or have developed, Business and Human Rights Action Plans at the current time – and much to their credit. But what about the EU's own Business and Human Rights Action Plan? Until this is firmly in place, I worry that the result will be a set of perverse national incentives that will push government policy, and with it stakeholder engagement, to the national level and increasingly into the competitive space.

There are many multinational Chinese companies that are seriously interested in business and human rights, particular in third countries in Southeast Asia or Africa, so too Chinese Ambassadors. Should they really be faced by a multitude of EU embassies sending different

messages and issuing their own sometimes inconsistent guidance on human rights due diligence, for example, or would they not respect more a strategically aligned approach? In other words, are EU member states themselves willing to make business and human rights, at least the bedrock of it, a pre-competitive issue? And, if this is the case, will they facilitate Chinese companies (or Indian, Russian, Brazilian or whatever) to sit with companies registered in EU-member states to share expertise and knowledge?

Example 1: More effective engagement in Trade Policy

Let me offer just a few specific examples about how more effective engagement might reap results, not least for the victims of human rights abuses themselves. You will be aware that negotiating bilateral trade agreements lies firmly within the competence of the European Commission and that the EU now has a number of such of agreements, some of which make reference to human rights. Let's take the example of the EU-Colombia agreement. The Colombian extractive sector has been for a long time associated with particular parties in the internal conflict linked to significant human rights abuses: from land grabs, pollution, abuses by public and private security forces to the assassination of trade union leaders. Yet the Havana-based negotiations between FARC and the Colombian Government requires agreement on land and therefore some agreement on access to assets such as oil, coal, gold and artisanal mining. The fact that the UK is one of the largest importers of Colombian coal seems to barely register on the radar of all but a few civil society organisations here. But in the Netherlands it is a much bigger issue, and for many German NGOs it is inherently linked to global agreements on climate change as much as the more immediate human rights concerns.

For the human rights community, which is the greater priority? That Colombia continues to develop economically and that combatants from all sides, including the internally displaced, can develop livelihoods – whether they be in mining or agriculture, or that the EU moves to a full embargo on all coal imports to meet climate change commitments? I know it is much more complex than this, with issues such as Carbon Capture technology to consider, but are we effectively engaging within the context of the EU-Colombia Trade Agreement? Are the current NGO or industry-based initiatives enough? Is there not a role for much greater EU leadership?

Example 2: Maximizing the benefits of the new EU non-financial reporting requirement

You will all be aware that the largest 6,000 publically listed companies will soon need to report under the new EU Directive. First of all, my congratulations to Richard Howitt MEP and all those who worked so hard to bring this about. We look to the Danish government and its work developing guidance for its own reporting requirement – in many ways the model for the EU “report or explain why not” approach. We know from the California Supply Chain requirements or Dodd Frank 1504 in the USA, that mandated reporting without guidance on human rights due diligence, mitigations and remedies will actually be against the interests of European companies. The French Parliament is currently also debating its own human rights due diligence guidelines for its companies and the British Government will produce guidance on forced labour and trafficking later this year. Shouldn't we all be a little more joined up on this? Is it pre-competitive and if so where is the European Commission on all of this?

It is perhaps telling that the most active leadership for the UN Guiding Principles Reporting Framework or the development of Human Rights Benchmarks for ranking company performance comes from individual member states, such as Sweden, the Netherlands and the UK, and not from the European Commission. We have great hopes that the forthcoming Dutch Presidency of the European Union will address this issue. But there is enormous opportunity for much more effective engagement on due diligence, reporting and benchmarking company performance on human rights – we are only at the start of this agenda.

Over three years ago, IHRB helped produce European Commission human rights guidance on implementing the UNGPs for three high-impact business sectors with Shift. Our friends at Global CSR in Denmark did the same for European SMEs in collaboration with other partners. These initiatives set a benchmark for multi-stakeholder consultation in the production of human rights guidance, now emulated by other governments (such as Switzerland) in their own work. But what has happened with the European Commission since then? Now is the time for more active leadership to help EU-based companies navigate fundamental challenges such as adequate knowledge about negative human rights impacts, extent of mitigation, how much transparency is required and what effective remedies look like in practice.

Example 3: Supply chain and third country leadership

Since the Rana Plaza disaster in Bangladesh two years ago, I have seen how a number of EU member states stepped up to take action and challenge the way the whole supply chain auditing industry has worked over the past twenty years. I think particularly of Denmark, the Netherlands and Germany. The Accord in Bangladesh was important, the fact that Chancellor Merkel herself was willing to intervene on the issue of the compensation fund even more important. A potential game changer might be the G7 statement that the German Government facilitated last month – which clearly brings global supply chains into the human rights nexus. But follow up will be key. An even more significant development might come next year if G20 nations make a similar statement at their meeting in China.

Much will depend on how the German and Chinese Governments can collaborate over the rest of this year. But let's not forget, the European Union itself is a G20 member and should be more than an interested bystander in this discussion. A G20 agreement on human rights in global supply chains is more likely to happen if we can all point to concrete examples of pre-competitive multi-stakeholder cooperation on the ground in third countries. I know, through our own work and that of others, that European companies and Chinese companies are already engaging on human rights issues in countries such as Myanmar and Kenya. But where might I ask is the European Union?

We would like to see the External Action Service of the European Union as a permanent partner in such efforts. When it comes to cooperating in the United Nations, in relation to proposals for a binding treaty of business and human rights, the EU does indeed play an active role. Would this not be strengthened if it also played a corresponding role in the application of business and human rights in practice?

It is also worth noting that the European Union can set an example with its own supply chain. Public procurement is about 20% of GDP in most member states and the new EU Directive on Public procurement allows, but does not require, the integration of human rights into such tenders.

Example 4: Domestic engagement within the EU

There has been much less focus over recent years on how stakeholders might collaborate within the EU on domestic human rights issues. Part of this has been politics. As mentioned earlier, this has been the bread and butter of other Europe-based institutions, in particular the Council of Europe and to some extent the OSCE. But it is also highly relevant and the work of the Fundamental Rights Agency in Vienna begins to show some of the possibilities. There is no higher priority in Europe at the moment than issues of migration and the FRA's recent work on severe forms of labour exploitation is timely – echoing our own business guidance for the European Commission in 2012.

The role of private sector labour providers is one of the most omnipresent business and human rights issues globally, and not least in the EU, be it berry pickers in Scandinavia from Thailand, Ukrainian workers in Poland or Bulgarian hotel workers in the UK. The Gang-master Licensing Authority in the UK, regulation born out of multi-stakeholder collaboration, is one model but there needs to be many more. Can the EU not help address this issue more effectively in partnership with industry, trade unions and civil society? A multi-stakeholder process based on the existing EU guidance would be a start.

Conclusion: More governance entrepreneurship from the EU

The EU has begun to move effectively towards greater regulation on business and human rights, but mainly on the issue of transparency and reporting and not on broader human rights due diligence itself. This might come with time but in the meantime there is a lot that can be done to make engagement more effective. I hope my remarks have suggested some ideas for where further progress could be achieved.

Practically speaking, there are two golden opportunities. First, the Dutch Presidency next year is a chance to re-kick-start Commission activity on the whole agenda. Second, the leadership the German Government has shown over recent months on responsible supply chains provides an important opportunity to move towards a stronger role for the EU on these issues within the

G20 and OECD and in particular to demonstrate pre-competitive behavior in emerging economies.

Thanks once again for inviting me to be here today. I look forward to our discussions.