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BUSINESS AND HUMAN RIGHTS

How to bind the search for profit to the respect for human rights

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INTRODUCTION: BUSINESS INTEGRATED SUSTAINABILITY

Giosuè De Salvo (Mani Tese)

The eBook you're reading is the result of a series of meetings held in spring 2019 and targeting Italian operators of international cooperation and solidarity. The attention was focused on relevant international law innovations and engagement practices for the private sector that set the current standard (especially in the UK and in other northern European countries) for the discussion on "business and human rights" (BHR).The BHR label implies an approach based on businesses full sustainability going beyond philanthropy and corporate social responsibility (CSR). It forces businesses to combine the production of monetary, social, and environmental value while subordinating profit to human and environmental rights.

This approach is at the heart of the United Nations' Agenda 2030, and it can be concretely represented aggregating the 17 Sustainable Development Goals, as indivisible and interconnected, through the "SDGs Wedding Cake" (figure 1). The cake has 3 layers: the first gathers the goals that safeguard the biosphere; the second presents goals related to the functioning of human societies, while the third indicates the space of action for economic actors (producers, consumers, or regulators).

Figure 1: Johan Rockström and Pavan Sukhdev introduced the "SDG Wedding Cake" at the EAT Food Forum in Stockholm (13th June 2016).

A space of action that Kate Raworth - researcher at the Oxford University, former Oxfam and UNDP member, and author of the bestseller "Doughnut Economics"- calls "equal and secure space for humanity" and designed as represented in Figure 2.

Consistent with the bakery-related metaphor, we can imagine Kate Raworth's doughnut with an external circle with the so-called "planet

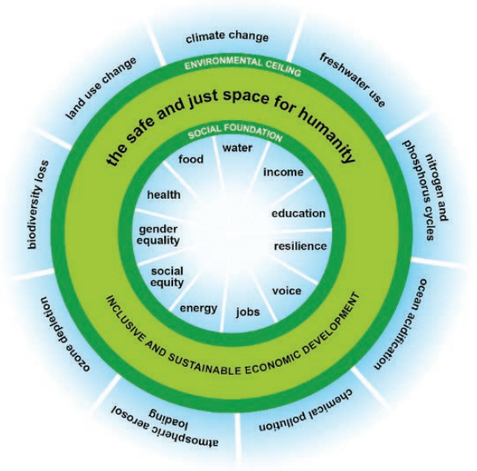


Figure 2: From the book "Doughnut Economics" by Kate Raworth, 2017, Random House Business Books.

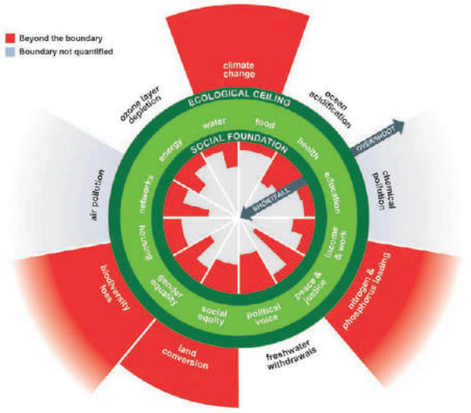


Figure 3: From the book "Doughnut Economics" by Kate Raworth, 2017, Random Home Business Books.

boundaries" and an internal circle, whose ingredients are those social rights determining the substance of our democracies. The central ring is called the "equal and secure space for humanity", in which the global community can share "an inclusive and sustainable economic development". The more data is added to the doughnut, the better the overview on why "business as usual is not an option anymore" in the Agenda 2030 framework.

Keeping in mind that 4 out of 9 planet boundaries have already been overstepped, and considering that a vast number of people still have no access to individual and social rights as set forth in international conventions, it should be quite clear that our past and present style of business management can't accommodate the ambition of reaching the goals set by Agenda 2030, and thus creating an equal and secure space for all.

But what is the level of awareness? And since transnational corporates should be the markets' point of reference, how are they disclosing their attention on the topic? What influences do they have on SMEs?

There are only a few studies on the matter, the most significant one is the "Corporate Human Rights Benchmark 2018", written by a consortium of civil society organizations, big investors, and government agencies. The study aimed at ranking company behaviors towards the promotion and protection of human rights at an international level.

The methodology is based on the UN Guiding Principles of Business and Human Rights (to be further explained in this eBook). Six different areas have been investigated, with different depth of analysis according to policies, practices, and governmental processes put in place to prevent, manage, and remedy the risks related to human rights.

In the most recent issue (2018), the study applies said methodology to 101 multinational enterprises in 3 key sectors – agribusiness, textile and fashion business, and extractive sector – across the four continents.

Considering 100% as the total and maximum mark possible, the average score was 27%.

Some "key messages" concerning the negative results showed in Figure 4 are emerging and revolve around the following question: how aware and how observant are businesses towards human rights today?

Figure 4: 2018 results – Across Industries 27%. For further information visit the website https://www.corporatebenchmark.org

- 40% of enterprises monitored by the study did not have any active mechanism of human rights due diligence. Such mechanisms are among the main tools available for top and middle management to point out risks and violations of human rights, as well as manage them and find possible remedies outside the legal sphere;

- Almost no company showed a strong commitment to granting decent living wages for its own workers and those along the supply chain;

- Only 1 out of 10 companies had policies related to the protection of human rights' defenders.

- Less than half of the documented allegations of human rights violations had been considered, and in only 3% of the cases the victims considered themselves satisfied with the remedy offered.

The CHRB Report shows, on the other hand, a much-needed glimmer of hope. It states how different leading companies have increased by 25% of their total score from the pilot study conducted in 2017. Therefore, change is indeed possible, and it can be achieved in a short period of time.

"Time and willingness": two key words strictly connected with "responsibility". The responsibility of us all to measure up to the challenge of rethinking the economic system, overcoming the twentieth-century tenet, in order to put private and public businesses at the service of mankind, without altering the ecological balance of the planet.

The following chapters will dig deeper into the relationship between business and human rights. The evolution of the international economic and judiciary system will be the topic of the first section. It includes some case studies and some insight into the UN Guiding Principle on Business and Human Rights and the binding treaty on international business negotiated in Geneva at the Council of the UN for Human Rights.

The second part gathers some of the most relevant and innovative voices of civil society organizations (CSO) directly involved on the Italian territory, who will discuss their engagement experiences within the private sector.

The aim of sharing these experiences is to promote their dissemination and to strengthen our capacity, such as associations, trade unions and Ngos, to politically influence economic and institutional decision-makers who are called upon to lead change.

ECONOMIC GLOBALIZATION AND HUMAN RIGHTS: HOW DO WE MAKE THEM COMPATIBLE?

Roberto Antonietti (University of Padova)

Is the so-called "Economic Globalization" deteriorating the levels of respect of human rights on a global scale? In particular, how are foreign direct investments from the largest multinational enterprises impacting the level of respect for human rights in developing countries? Before answering these questions, it is essential to determine what the concepts of economic globalization and multinational enterprises really mean.

Economic globalization expressed itself in various forms throughout the centuries, while its origins are still debated. One clear evidence is the sudden momentum of 4 key factors during the late 90s: (i) bilateral trade flows of goods and services; (ii) international capital flows; (iii) migration flows; (iv) international technology transfer. More specifically, four circumstances have guided this process of improved commercial, financial, and technological integration among countries: growing financial deregulation; constant reduction of financial trade barriers; ICT (Information and Communication Technology) revolution; and the big institutional changes that occurred between the end of 1980 and the beginning of the 1990s. Particular interest was drawn to the Foreign Direct Investments (FDI) upsurge. According to the International Monetary Fund and the OECD guidelines, these investments can be mostly defined as "equity investments" aimed at establishing sustained interests for multinational companies in the recipient countries.

This goal can be achieved in two different ways: through mergers and acquisitions of existing companies or creating brand-new activities through greenfield foreign direct investments (FDI). UNCTAD data show how FDI global flows have been constantly growing since the second half of the 1990s, coming from both developed and developing countries, and mostly directed to the same sending territories.

Nonetheless, the most recent trends show how developing countries, particularly Southeast Asia and Eastern Europe, not only are attracting FDI as much as developed countries, but they are also stimulating multinational companies FDI in both developing and developed countries.

Both the economic and the international business literature have widely documented the direct and indirect effects of a prevalence of FDI attraction, particularly in developing contexts.

Said effects typically take the form of knowledge spillovers prompted by subsidiary companies, transferred to local companies within the control of multinationals. Skills and knowledge flows, tangible and intangible technological assets, management practices, or imitation patterns are the main documented forms of said spillover. Theoretically, less-productive enterprises could be disoriented while more productive enterprises could face expansion in terms of profitability and productivity, since the latter can compete with multinational companies or serve as specialized suppliers within multinational companies' supply chain.

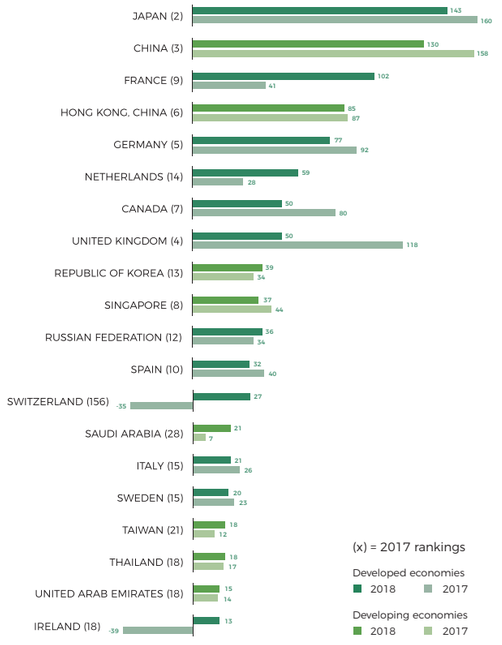


Figure 5: Foreign direct investment outflows, top 20 home economies 2017 and 2018. Source: UNCTAD, FDI/MNE database.

However, empirical evidence attests how FDIs aggregate benefits for the receiving countries are not generated by default. On the contrary, economic growth is correlated to some macroeconomic pre-conditions facilitating the absorptive capacity of knowledge in certain territories (Borensztein et al., 1998; Alfaro et al., 2004). These conditions include adequate endowment of human capital, high degree of trade openness, sufficiently developed domestic financial system, and narrow technological gap towards investing countries. Regrettably, the actual impact of FDI on respect of human rights in the receiving countries is still under-studied. Many case studies show how multinational enterprises are often involved in the exploitation of labor services (at times even child labor) and natural resources, in corruption systems or in eradicating entire communities from their motherland. Nonetheless, other evidence shows how multinational companies can also be key actors for innovation and structural change of local economies towards skill-intensive production for the creation of shared value.

It's not therefore easy to determine whether multinational enterprises are responsible for the exploitation of human rights, especially considering the paradox which seems to characterize our millennium: for which on the one hand there's increasing popularity around CSR (Corporate Social Responsibility) practices from multinational enterprises, and on the other hand the growing number of alleged cases of direct or indirect violation of human rights (Fiaschi et al., 2011). The simple adoption of CSR strategies does not seem to be enough in "condoning" multinational companies from their responsibilities towards human rights. On the contrary, developing CSR strategies after receiving allegations of human rights violation might be seen only as a window-dressing strategy for enterprises. In order to avoid this risk, as well as the violation of human rights, said enterprises have to gain enough experience and knowledge in CSR strategies to propel a rights-oriented transition for both individual businesses and industrial clusters (Giuliani, 2016).

The answer to the original question demands a multidisciplinary approach, able to involve not only economic and business sciences, but also international law, international relations, and sociology. From this perspective, the review conducted by Giuliani and Macchi (2014) allows the identification of certain factors that "filter" the relationship among FDI, CSR, and human rights. These aspects are both internal and external to multinational enterprises.

The multinational enterprise's home country and its derived cultural background, together with the strategic motivation behind each foreign investment strategy (resource seeking, asset seeking, or market seeking), the innovative performances, and the autonomy-degree of the foreign subsidiaries have to be pointed out as main internal factors. The adoption of CSR practices tends to favour the respect of human rights the more multinationals pursue market-oriented strategies rather than those oriented towards efficiency or the exploitation of natural resources. Respect for human rights can be better noticed in the most innovative products and/or processes, with the lowest degree of autonomy subsidiaries have with respect to the headquarter. Moreover, European multinational enterprises seem to be more inclined to apply CSR practices as opposed to the North American ones.

On the other hand, among external factors, it is necessary to distinguish between those related to the country of destination and those related to the sector where multinationals operate.

In the former, the investment activities will be more inclined to respect human rights (i) the greater the endowment of human and tech capital in local enterprises and (ii) the better the quality of public national institutions concening the State's ability to adopt transparent market-rules, in order to enforce contracts and ensure a judiciary system able to be impartial and efficient; (iii) strength of, and pressure from, civil society.

Figure 6: CSR adoption patterns (1990-2006). Source: Fiaschi et al. (2011).

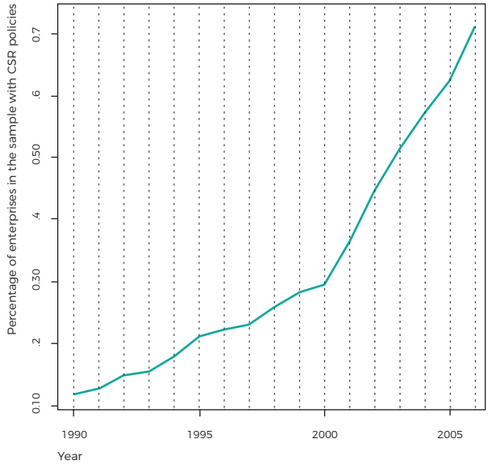
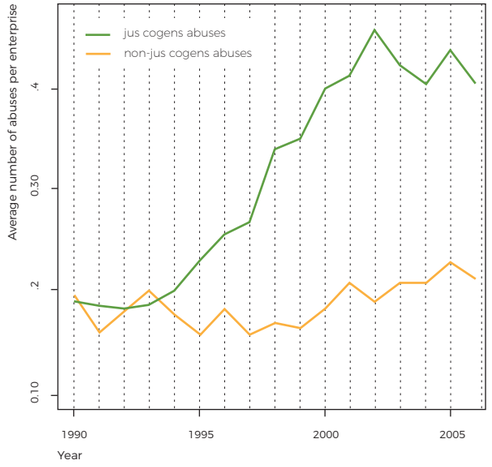


Figure 7: Human rights alleged abuses' pattern by type of abuse (jus cogens; non-jus cogens) (1990-2006). Source: Fiaschi et al. (2011).



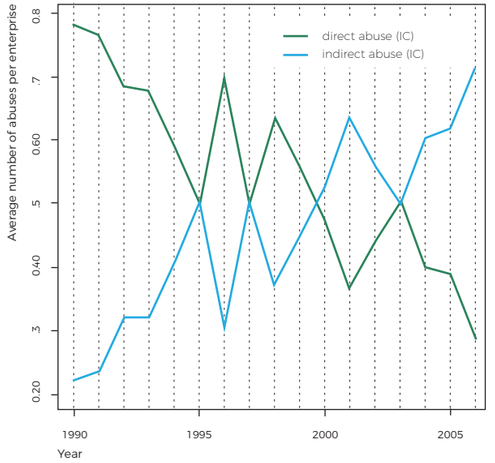


Figure 8: Relative share of direct and indirect jus cogens abuses (1990-2006). Source: Fiaschi et al. (2011).

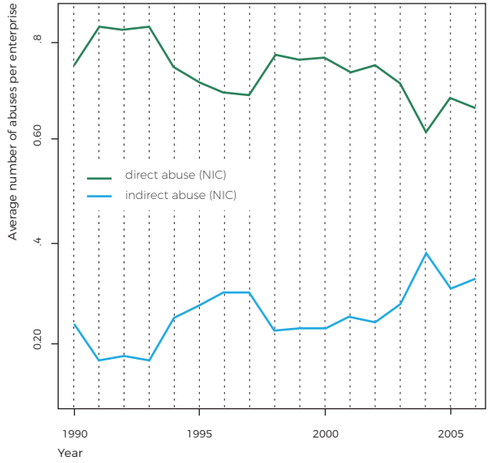


Figure 9: Relative share of direct and indirect non jus cogens abuses (1990-2006). Source: Fiaschi et al. (2011).

Among the sectoral features can be included the degree of competition to which multinational companies must undergo in domestic and international markets as well as the technological intensity.

The empirical evidence seems to show that a higher level of competition is often related to more frequent abuses of human rights, especially for those enterprises operating in the most traditional sectors. In the second case, however, the available literature does not seem to identify a clear causality: if it is true that episodes of human rights violations are more frequent in a low-tech sector and in the primary sector (such as agriculture and extracting activities), must be pointed out that the same violations are not excluded in hi-tech sectors, such as the example of Foxconn in China.

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THE EVOLUTION OF INTERNATIONAL PROTECTION OF HUMAN RIGHTS

Martina Buscemi (University of Milan)

The instruments of international law that govern the relationship between business and human rights (B&HRs) form a rich and articulated framework.

Imposing restraining measures to prevent businesses' abuse is the last step of the broader evolution of international law. Originally called law inter nationes, it was produced by the will of States and that was also exclusively addressed to them. In the early phases, there was no room for the promotion of human rights, if not indirectly. This is shown by the fact that the first conventions on the treatment of workers promoted by the International Labor Organization, adopted at the beginning of the 20th century, were introduced to fulfil State and economic interests such as the regulation of competition between States through equal working conditions[1].

A significant evolution in the field of international protection of human rights can be observed after World War II. Its tragic events deeply shocked the international community and contributed to the strengthening of the idea that the human person must be protected as such[2].

During the second half of the 20th century, an important "conventional movement" supporting human rights emerged. This led to the stipulation of several conventions which, both universally and regionally, imposed specific obligations on States to protect individuals.

The principle according to which individuals can fully enjoy their rights (to health, to life, to a safe environment etc.) only if they are protected

[1] Antonio Cassese, I diritti umani oggi, Bari, 2009, p.18 to have a better overview on the human rights debut in international legislation.
[2] Tullio Scovazzi, Introduction of La Tutela Internazionale dei Diritti Umani, Norme, garanzie, prassi (curated by Pineschi), Milan, 2006, p.4.

both by private and public abuses was then progressively affirmed. In fact, thanks to the interpretative function of those inspection bodies created with human rights treaties, the idea that harmful acts by multinational and local business activities must be prevented and punished by appropriate public measures was developed.

Relevant international law instruments

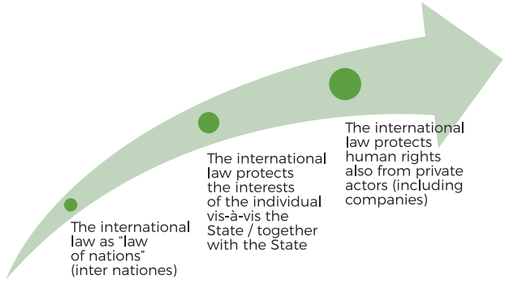
The international Business and Human Rights legal framework is made up of two normative bodies: on the one hand, the treaties on human rights concluded by States with the derived obligations to prevent and punish company abuses (par. 1), on the other hand, soft law aiming to make businesses and States accountable on behalf of Business and human Rights (par. 2). The first international treaty draft on the matter is currently under negotiation (par. 3).

1. State obligations to protect environment and human rights from business activity

The application of human rights treaties has been interpretatively extended to the point of imposing to signatory States not only negative obligations (for example not to interfere with the enjoyment of a right), but also positive obligations. States should ensure that such enjoyment is not hindered by other subjects. Therefore, the signatory States of certain human rights treaties are called to adopt all the necessary measures to prevent abuses deriving from business activities[3].

The treaty-established role of international organizations both regionally and globally, is therefore crucial, foremost because they can identify the practical measures that States will be required to adopt in the field of BHR.

In this context, the pivotal role of the European Court of Human Rights (ECtHR) must be recognized. Individuals can, in principle, direct appeals addressing the conduct of a European Convention on Human Rights (ECHR) signatory State concerning harmful activities committed by companies. For the appeal to be admissible it is necessary, among other things[4], that the ECtHR be competent ratione loci (the violation must have taken place under the jurisdiction of a State party to the Convention, Art. 1 of the ECHR). It must also be competent ratione materiae (the violation must concern a right protected by the Convention), ratione personae (the unlawful, commissive, or omissive conduct must be attributable to the State party), and ratione temporis (the violation must have occurred after the Convention entered into force). Concerning violations of human and environmental rights committed by companies, the State shall be called upon to respond to omission-type offences having failed to adopt measures preventing and punishing the harmful conduct. In these cases, States are not accused of carrying out unlawful conduct, instead, they are responsible for failing to comply with their positive obligations to protect human rights.



Therefore, any State responsibility for the illicit conduct of a company arises if the State has not fulfilled the required due diligence. In the case of damage, once it has occurred, the State incurs responsibility is held accountable for not mending the offence offering an effective remedy/compensation to the victims.

Such responsibility has been recently recognized by the Italian State in the case concerning the harmful effects of Ilva emissions in Taranto. In the January 24th 2019 verdict, the ECtHR declared the Republic of Italy guilty of violating Art. 8 ("Right to respect for private and family life") and Art. 13 ("Right to an effective remedy") of the ECHR.

2. International soft law instruments to make companies more "responsible"

Alongside the treaties on human rights, several "non-binding" international law tools have been developed, to promote voluntary standards of "responsible conduct" for companies, especially multinational companies.

These initiatives have been developed by the Organization for Economic Cooperation and Development (OECD), the International Labor Organization, and the United Nations among other international organizations.

Despite the "soft" nature of said instruments, their political weight should not be underestimated, nor should their ability to persuade companies to comply with voluntary standards, often encouraged by "reputational" reasons.

The main non-binding instruments contributing to the transparency of the companies' activities and their accountability include:

- The 1976 OECD Guidelines for Multinational Enterprises (updated in 2011) are recommendations

[3] See Angelica Bonfanti Imprese multinazionali, diritti umani e ambiente: profili di diritto internazionale pubblico e privato, Milan, 2012, pages 48-169.

[4] For CtEDU individual's appeal requirements see www.echr.coe.int/Pages/home.aspx?p=applicants&c=

that member States are required to address collectively to multinational companies, even though their compliance is voluntary. The correct application of the Guidelines is monitored by National Contact Points (NCPs), charged with facilitating their implementation and managing potentially harmful business activities through mediation and conciliation. In conformity with these guidelines, determined its NCPs in 2002 within the Ministry of Economic Development.

- The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy was elaborated by State representatives, workers, and entrepreneurs, adopted by the ILO in 1997 and amended in 2017. It sets the reference for multinational companies, governments, employers' and workers' organizations in areas such as employment, training, living and working conditions and industrial relations. The Declaration provides a follow-up procedure based on drafting periodic reports on compliance with given standards. It also includes an interpretative procedure for examining disputes on the application of the Declaration.

- The UN Global Compact is an initiative started in the year 2000. The voluntary participation of companies (and other entities) to The Compact involves the commitment to implement, disseminate and promote the Ten Principles on human rights, work, environmental sustainability, corporate responsibility and anti-corruption.

- The UN Guiding Principles on B&HR written under the guidance of the Special Representative of the Secretary-General on Human Rights and transnational corporations, John Ruggie, were adopted in 2011 at the UN Human Rights Council. The internal structure of the Guiding Principles is divided into three pillars: (i) The States' obligation to human rights protection; (ii) the company responsibility to respect human rights; (iii) the need to guarantee access to judicial and non-judicial remedies to victims and potential victims of abuse.

3. Towards a "hard" way?

An "Open-ended Intergovernmentral Working Group on Transnational Corporations and Other Business Enterprises with respect to Human Rights" has been created in 2014 within the UN Human Rights Council and has been in charge of developing a binding legal instrument to regulate business activities.

A first version of the treaty was drafted in 2017 and it provided obligations for companies – this "legal novelty" has, however, been modified in the so-called Zero Draft (the starting version of the "Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises" discussed by the Group in July 2018 in Geneva) and in the more recent Revised Draft, published on July 16th, 2019 later discussed in Geneva during the negotiating meeting in October 2019.

The negotiations are still ongoing and when concluded, they are likely to give rise to the first legally binding treaty on B&HR for the States that decide to join.

THE STATE DUTY TO PROTECT

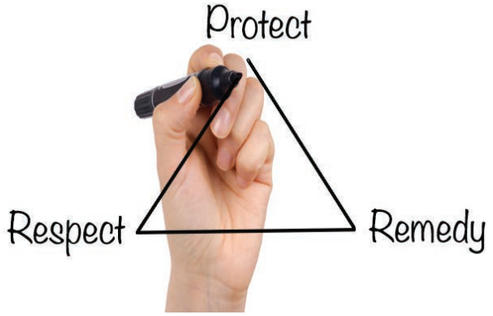
Marta Bordignon (Temple University, Rome Campus and HRIC)

Guiding Principles No. 1 and 2

The first pillar of the UN Guiding Principles on Business and Human Rights refers to the international obligation of States to protect human rights from any type of violation occurring within their territory or under their jurisdiction, carried out by any actor, including private ones. It therefore includes enterprises. As the two following pillars, it is divided into foundational principles (1-2) and operational principles (3-10)[5].

In particular, the Guiding Principle No. 1 refers to the positive obligation under international law requiring States to take appropriate measures to prevent, investigate, punish and remedy abuses related to fundamental rights carried out by enterprises headquartered within their territory. A broad interpretation of Guiding Principle No. 1 includes a wide range of human rights violations that fall within those pursued by the State, such as those related to the right to life, to the so-called collective rights (such as freedom of association and the right of collective bargaining) and to the violation of the principle of non-discrimination.

In general, this obligation implies the protection of human rights through: i) the adoption of legislation designed to protect vulnerable



individuals or groups, such as children, women, migrant workers or people with disability; ii) a procedural obligation to prevent, investigate, punish and redress human rights violations; iii) finally, the obligation to disclose any high-risk activities, such as those carried out by chemical or mining industries.

On the other side, the commentary to Guiding Principle No. 2, makes a clear reference to the expectations States should have towards all enterprises registered within their territory or operating under their jurisdiction. The content of this article has been read as a reminder that, despite the absence of international regulations obliging States to regulate the extraterritorial activities of their companies, States must nonetheless adopt a series of measures obliging parent companies to communicate the impact of their activities along the entire supply chain.

In legal terms, companies do not directly violate human rights, but they are responsible for violations of existing regulations on specific matters. These abuses, which are sometimes criminal offences, concerning human rights in the sense that they fall within the sphere of States obligations to protect human rights. According to Guiding Principle No. 3 provisions, indeed, States "should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights"[6].

Starting from this concept, the following Guiding Principles elaborate the provisions anticipated in GP No. 1, providing the general meaning of the State's duty to protect in the field of business and human rights, as envisaged by both the first and the third pillars. More concretely, Guiding Principle No. 3 refers to the general regulatory framework and to the political measures that must – or at least should – be implemented by national institutions to protect individuals by corporate-related violations. To support the implementation of these measures, State's authorities have several solutions and multiple instruments available, envisaged by the Guiding Principles themselves, as will be better specified in the following paragraph.

2. The normative and political functions of States: Guiding Principles No. 3-10

Guiding Principle No. 3 is considered as the "core principle" concerning the State's obligation to protect human rights. It refers to the overall regulatory function of the State and it entails the adoption of specific laws among its main tasks, such as regarding the protection of workers and the environment, corporate law, etc.

The State's role even includes monitoring the effective implementation of these norms, as well as updating the regulatory framework in force to ensure the existence of regulations aimed at ensuring human rights respect.

Further, States may also approve laws or put in place policies that can oversee companies' activities, provide guidelines on how to respect human rights and, finally, oblige corporations to prevent or mitigate their impact on human rights. An example of how States can act in the field of business and human rights is given, on the one hand, by the domestic regulations adopted requiring a due diligence process on human rights for some types of companies and,

[5] Every UN Guiding Principles mention refers to Marco Frasciglione, PhD, translation Imprese e Diritti Umani. In attuazione del quadro dell'ONU "Proteggere, rispettare, rimediare" IRISS-CNR, 2016.
[6] Frasciglione M., Principi Guida su Imprese e Diritti Umani. In attuazione del Quadro dell'ONU "Proteggere, rispettare, rimediare", IRISS-CNR, 2016, p.10.

on the other hand, the adoption by an adequate number of States of the National Action Plan (NAP) on business and human rights (including Italy, as clearly explained by Giada Lepore in her contribution to this e-book).

The following Guiding Principles No. 4, 5, 6 and 9 enumerate the specific obligations of States in this field, such as the adoption of norms concerning: i) the role played by export credit agencies, investment insurance or guarantee agencies; ii) the role of business enterprises with which the State conduct commercial transactions and whose action may impact on human rights; iii) the risk of gross human rights violations in conflict-affected areas, where companies are more likely to be involved in human rights violations; iv) the provision of human rights clauses within contracts or investment treaties concluded by States with other States or companies.

Finally, Guiding Principle No. 8 refers to the need for vertical and horizontal coherence of domestic policies. In this case, the vertical coherence refers to what has already been mentioned, namely the adoption of policies, procedures and laws able to guarantee the effective implementation at the national level of international human rights norms. On the other hand, the horizontal coherence requires adequate participation by all State's institutions – both at central and local level – not only in adopting regulations, but also in governing business activity in different fields.

This need for political coherence is further underlined by Guiding Principle No. 10, which reaffirms how States should comply with the Guiding Principles, should guarantee the full and effective implementation of their obligations to protect human rights at the international level, including as members of multilateral organizations, especially the international financial ones.

THE NATIONAL ACTION PLANS

Giada Lepore
(former consultant to the Interministerial Committee on Human Rights)

The Action Plans are policy documents that States draw up in order to identify the future lines of action in terms of policies and legislative instruments on a given topic. In terms of "Business and Human Rights", a National Action Plan (NAP) is a policy strategy implemented by the State to ensure the protection of human rights from possible negative impacts of business activities. To be effective, the NAP must respond to some fundamental criteria[7]: i) it must be based on Guiding Principles and be conceived, therefore, as an instrument for their implementation, adequately reflecting the international obligations assumed by the State regarding human rights; ii) it must promote respect for human rights on the part of companies and the adoption of measures that favor access to remedies by victims; iii) it must be adapted to the peculiarities of the country; iv) it must be elaborated following an inclusive and transparent process; v) it must be constantly monitored and updated to respond to social and normative changes of the relevant context, and it is for this reason referred to as a "living document".

In Italy, the body that dealt with the drafting of the NAP was the Comitato Interministeriale Diritti Umani (CIDU, Interministerial Committee for Human Rights), composed of representatives competent in making decisions related to human rights and nominated by the different administrations[8]. The drafting process revolved around two working groups, one "institutional" and the other "non-institutional" (composed of trade unions, non-governmental organizations, academia and companies), that contributed to the drafting of the NAP. The text was then published online to allow public consultation. After that, it has been integrated with some observations and comments and ultimately presented in December 2016.

[7] UN Working Group on Business and Human Rights, Guidance on National Action Plans on Business and Human Rights, (www.ohchr.org/Documentrs/Issues/Business/UNWG_%20NAPGuidance.pdf).

[8] CIDU is a body within the Ministery of Foreign Affairs and the Direzione Generale per gli Affari Politici e di Sicurezza; chaired by a high-grade diplomat and it consists of several representatives from Ministries, Administrations and Public Entities that handle the topic of human rights in different ways. Among its main tasks it has to coordinate the Administrations involved in the compliance with the most important international human rights treaties; it must file the required Italian periodic and specific reports to various UN bodies and to other regional entities (Council of Europe, European Union); it also has to monitor national legislative processes in compliance with the State internatuional committments and finally it does consultancy work. https://cidu.esteri.it/comitatodirittiumani/it

The Italian NAP identifies specific commitments to be borne by the Government over five years. Here we will only focus on some of the measures, divided into four macro-areas:

i) Due diligence and transparency. Particularly relevant are those measures that promote effective implementation of the Legislative Decree 254 of 2016 (which transposes the Directive EU 95/2014 on the disclosure of non-financial information by big companies) and provides the recognition of civil and commercial law for the evaluation of future legislative reforms in the field of duty of care or due diligence on companies[9].

ii) The State-Enterprise nexus. The Plan places a specific focus on public or state-controlled companies' due diligence. It provides the promotion of respect for human rights for companies competing in public tenders and with contracts stipulated with companies for goods and services purchase[10];

iii) Most Vulnerable Categories. It envisages a reinforcement of inspections in controlling and fighting irregular and illegal employment and promotes a quality agricultural work network[11]. Other relevant measures concern the promotion and dissemination of the culture of non-discrimination and inclusion among companies[12].

iv) Access to remedies. To guarantee access to remedies, the Plan provides for "awareness" on some priorities, such as the provision of remedies against the excessive length of civil trials, the introduction of criminal law provisions against economic crimes, the control over the possibility to introduce the class action and the possibility of guaranteeing access to free legal aid also to non-resident foreign citizens, with particular regards to victims of crimes such as human trafficking (and allowing them to report any abuse regardless of their status)[13].

Italy was the first country in 2018 to start the mid-term review to update its measures: the final text has been presented during the annual United Nations Business and Human Rights Forum.

The revision process has privileged, in line with the UN Agenda 2030, a multi-stakeholder approach that gave more attention to the following three aspects: i) the protection of vulnerable groups, with particular reference to human rights defenders[14]; ii) trainings[15]; iii) the identification of the competent administrations to implement each single measure[16].

The NAP has envisaged the establishment of a specific Working Group to monitor the progressive implementation of the plan, along with the updating and possible revision.

As things stand, not many initiatives have been undertaken and the implemented measures mainly regard training; it will be necessary, however, to wait for the end of the NAP (2021) to assess its general implementation status. It will not be easy: through its programmatic lines, NAPs (to be adopted by the highest number of States) often have broad and generic content, and it is precisely the broadness of the text used to formulate measures that affect the ability to measure and evaluate results achieved.

Although this aspect seems to "weaken" NAPs, one must not forget that these documents essentiallycontribute to knowledge dissemination and prepare the needed cultural substrate to create and establishstrong consensus and common conscience on the subject. These elements are necessary to require political and legislative intervention.

[9] See https://cidu .esteri.it/comitatodirittiumani/resource/doc/2018/11/all_1_-_pan_bhr_ita_2018_def_.pdf for the full NAP.
[10] Measures No.34 and 35.
[11] Measures No.3, 4, 5.
[12] Through the promotion of policies and enterprise good practices on inclusion and Diversity Management, the promotion of bodies like the Disability Manager, the provision of enterprise incentives with trainings on inclusion and diversity, with special attention to women and LGBT-QIA+ rights (Measure No.23).
[13] Measures No.46 and 51.
[14] Protection of human rights defenders is reaffirmed both in the General Principles that "(..) reinforce cooperation with and support of human rights defenders through their essential role in human rights promotion", and referring to the support expressed in the Guidelines on Business and Human Rights Defenders (Measure No.46).
[15] The NAP includes on topic training activities promotion and preparation for journalists and publishers, police officers, public administration employees, judjes and lawyers.
[16] Set of competences, NAP, page 35.

CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

Angelica Bonfanti (University of Milan)

The second pillar of the United Nations Guiding Principles on Business and Human Rights (UNGPs) focuses on the corporate responsibility to respect human rights, namely the responsibility of enterprises to respect human rights while conducting their economic activities.

This pillar has a more innovative feature than the other two, which respectively focus on the duty of States to protect human rights in the presence of business activities and on access to justice. In fact, Corporations are not universally recognized as subjects of international law, the second Pillar of the UNGPs addresses them with recommendations concerning their expected behavior.

According to the 13th Guiding Principle, corporations must abstain from causing adverse human rights impacts through their own activities and are required to prevent and mitigate the negative effects directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. Corporate responsibility to respect human rights covers the supply chain, and hence also activities put in practice abroad by affiliated enterprises or by contractual outsources and partners. It concerns all the human rights impacted by corporate activities, taking account of their dimensions, their commodity sector and their geographical distribution.

Corporate responsibility to respect human rights, thus, marks a new tendency aimed at rebalancing State/investor relations by establishing standards of conduct to be also respected by enterprises.

Human Rights Due Diligence (HRDD): definition, function, and implementation

HRDD is one of the instruments that Guiding Principle No.15 indicates to implement the corporate responsibility on the respect of human rights. HRDD is an ongoing process that enterprises should undertake in order to identify, prevent mitigate and account for their impacts on human rights. More precisely, in accordance with Guiding Principle No.17, the company should consistently evaluate impacts and potential risks that it can cause or it could contribute to causing. The process should be adapted to the specific corporation and business features, and, as far as possible, should cover the entire supply chain including also cases of complicity. The HRDD process should be conducted through external and independent experts, with effective collaboration and consultation of all stakeholders, that should be based on appropriate qualitative and quantitative indicators. Although a uniform model hasn't been developed yet - the adoption of which would be desirable -, useful tools are: EU Sector Guides on Implementing the UN Guiding Principles on Business and Human Rights (https://publications.europa.eu/en/publication-detail/-/publication/ab151420-d60a40a7-b264-adce304e138b) the OECD Due Diligence Guidance for Responsible Business Conduct (www.oecd.org/investment/due-diligence-guidance-forresponsible-business-conduct.htm) and the SHIFT UN Guiding Principles Reporting Framework (www. ungpreporting.org).

About the legal status of HRDD: is it an obligation?

Ultimately, it is worth devoting a few observations to the legal status of HRDD and its possible evolution. Since the UNGPs are a non-binding legal tool, they do not exclude the possibility that in the future corporate responsibility to respect

human rights and HRDD might evolve into real international law obligations, either customary or treaty-based.

In this context, three interesting developments should be taken into account (on this topic, see A. Bonfanti (ed.), Business and Human Rights in Europe: International Law Challenges, Routledge, 2019). First of all, the adoption by several States, like France and the UK, of legislation providing for HRDD obligations - in terms of monitoring, reporting and transparency obligations – to be implemented by domestic corporations and covering also their transnational supply chains.

For what concerns Italy, this introduction should be the object of future evaluation according to National Action Plan (Piano di Azione Nazionale Impresa e Diritti Umani) adopted by CIDU[17]. The provision for the victims' right to file collective actions before Italian tribunals, according to the recently adopted law 12/04/2019 No. 31, represents, a fundamental step in this direction.

Secondly, HRDD obligations are established also by European Union law: examples are Directive 2014/95/EU on the disclosure of non-financial information, Regulation 2017/821 on conflict minerals and Regulation 995/2010 on trade of timber.

In the end, the introduction of HRDD obligations is currently discussed within the negotiations of the United Nations treaty "to regulate, in international human rights law, the activities of transnational corporations and other business enterprises". According to the draft (July 2019) corporations will have to undertake "environmental and human rights impact assessments in relation to [their] activities and those under their contractual relationships [...] carrying out meaningful consultations with groups whose human rights can potentially be affected by business activities, and with other relevant stakeholders".

The treaty's final version and its ratification by a consistent number of States, where several multinational corporations are headquartered, would mark an important evolution in this field.

[17] http://cidu.esteri.it/resource/2016/12/49118_f_PANBHRITAFINALE15122016.pdf, p. 17.

THE MECHANISM ASSURING AVENUES OF REMEDY TO THE VICTIMS

Marco Fasciglione (CNR)

The three pillars forming the UN Guiding Principles received general recognition and acceptance from States, International Organizations, civil society, and enterprises themselves rapidly making them the main international standard in the area of business and human rights.

Nevertheless, the path from the proclamation of these principles to their concrete enforcement through policy and regulatory instruments, such as State's National Action Plans, has been characterized essentially by the emphasis placed upon the first two Pillars, excluding almost entirely the third one on the access to remedies.

A rather odd approach when considered the centrality of remedy mechanisms in the contemporary systems of protection of human rights. It is well-known, that the simple affirmation or recognition by States of fundamental rights for the individuals does not suffice per se: in absence of remedies and tools that victims can use at the domestic or at the international level, the recognition of such rights risks to remain a "dead letter".

It is exactly for this uneven implementation of the Guiding Principles that scholars have started

to refer to the third Pillar as the so called "Forgotten Pillar". The limited emphasis on the third Pillar doesn't take into consideration the existing relationship between the positive obligation of States to protect human rights from the negative impact of private actors and the necessity to guarantee adequate access to remedies for the victims. This obligation is indeed the Guiding Principles first Pillar's cornerstone; it is fulfilled only if: «[…] individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities[18][…]»

The fact that this obligation involves the responsibility of the State in case this latter fails to regulate the conduct of private actors, stems from the international system for the protection of human rights and is materially applied by the principal human rights international monitoring systems. In the same way, the access to a remedy is a principle representing the very same basis of the right of access to justice for the victims of violations of human rights and it can be considered as being part of international customary law.

This guarantee keeps a fundamental role also with regard to the impact on human rights stemming from corporate actors; this for two reasons at the very least. The first one refers to the close link existing between the obligation of States to ensure access to justice for the victims of abuses- enshrined in the third Pillar- and the obligation of the State to protect, encompassed by the first Pillar. This, in the sense that the access to a remedy is a key-element through which the State fulfils its obligation to protect individuals from corporate human rights violations. This link is "crystallized" by the same Guiding Principles, both in the formulation of Principle No. 25, and in its commentary in which it is underlined that unless States take appropriate steps to investigate, punish and redress business-related human rights violations, the obligation of protection pending on them risks to be rendered weak or even meaningless.

The second reason, also related to Principle No. 25 and to its commentary, refers to the idea that the guarantees recognized by the international system of protection of human rights would become illusory or simply theoretical if states be allowed to limit themselves to just declare them, without ensuring victims with the faculty to have their rights respected by obtaining reparation for any eventual damage. This perspective of analysis highlights, moreover, that the positive obligation of the state to ensure access to remedies for the victims exists independently from the problem of establishing who is the author of the violation, and consequently the entity liable for it.

Finally, and from an operative point of view, it is worth to note that the Guiding Principles distinguish between judicial mechanisms of remedy, namely those instruments available thanks to the State's jurisdictional system, and non-judicial grievance mechanisms referring to those redress avenues existing outside the jurisdictional system of the State (namely the ombudsman system, mediation, etc.).

Secondly, the guiding Principles also distinguish between State-based mechanisms of remedy – that's to say redress avenues managed by the agencies of the State or by independent organisms that have an official status in the domestic jurisdictional system on the basis of State legislation – and non-State mechanisms of remedy, totally private instruments of remedy (as for example the grievance mechanisms which are administered by a business enterprise alone or with stakeholders in order to facilitate the resolution of litigation that may involve the enterprise).

In both cases, in order to fulfil their obligation to protect, States are required to perform a thorough evaluation of their own legal system efficiency. This activity, therefore, has to be aimed at identifying the barriers that prevent access of victims to remedies and at determining the measures to adopt in order to remove these barriers. In this way only, States may avoid the main failure of a legal system: the denial of justice.

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Id. "La responsabilità degli attori economici privati in materia di diritti umani nel sistema europeo" in G. Cataldi, A. Caligiuri, N. Napoletano (a cura di), La tutela dei diritti umani in Europa tra sovranità statale e ordinamenti sovranazionali, Padova, 2010, pp. 448-474.

[18] Human Rights Committee, General Comment No.31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (26th May 2004), par.8; Human Rights Committee, Arenz et al. C. Germany, Communication No.1138/2002, 24th March views, Communication No.1020/2001, 7th August 2003 views, UN Doc.CCPR/C/78/D/1020/2001 (19th September 23), par.7.2.

THE HISTORICAL SIGNIFICANCE OF A BINDING TREATY FOR ENTERPRISES

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The United Nations' Agenda 2030 on Sustainable Development signed in September 2015 is without any doubt the most ambitious goal ever set by the international community. Despite all of their complexities and limits, the 17 Sustainable Development Goals (SDGs) engage governments from all over the world in some forms of political activism, after years of discussions, started in 1976 with the UN report "Our Common Future". In that occasion, the UN World Commission on Environment and Development had already pointed out the need for a serious committment of States towards sustainable development, and finally, after a long wait the SDGs represent an important and awaited global innovation.

Clearly, this is a colossal campaign of geopolitical marketing, in which the contradictions of the UN approach towards poverty reduction (as the Millennium Development Goals, MDGs) remain unbothered. On top of that, new and more unsettling initiatives are being launched constantly. The disruptive effects of the present economic system determined a crisis in which the priority is to deal with the multiple negative externalities of the globalization processes as we experienced them. The current economic paradigm underpinned by feedstock extraction and exploitation, sped up climate change processes much more rapidly than it was projected. Human life on this planet is at risk and even the shrewdest capitalist asks for radical changes. The SDGs are now studied by several research centers, think tanks and research groups in the academic environment and in work units operating within companies. Measuring instruments for governmental and corporate activities, rural communities and urban realities have been developed to evaluate progress within the Agenda 2030 framework. There are also annual reports and certification models. Then what isn't working out?

We can't overcome the systemic core crisis by simply replacing some small parts in the reformist geopolitics workrooms. The economic and financial globalization is built on capital deregulation, that consequently triggers a social and environmental cycle of unsustainability, supplanting the role of public law with an extensive creation of private contracts. This strategy has weakened multiple expressions of state authority (from European democracies to Arab monarchies). Concurrently, nobody challenges deregulation, neither the SDGs nor the UN Guiding Principles on Business and Human Rights approved in 2001 with the attempt to limit multinational corporate operations.

The trigger has to be defused and it can be done revitalizing public influence and powers as precondition for sustainable development, even though in the real world happened the exact opposite. The Guiding Principles firmly avoid any binding approach. Rather, they present market incentives (positive branding) and a guideline framework for corporations toward the protection of human rights and of the environment, aimed at encouraging public-private partnership[19] model (PPPs). This model introduced by the UN with the MDGs and according to some influential analysts it is an expedient to reinforce and institutionalize the self-promotion of those private actors that occasionally apply a profit logic within the development field of global governance processes. The 17th SDG focuses on the global partnership for Sustainable Development and requires alliances between governments and private sectors in order to "mobilize, readdress and liberate the transformative power of thousands of billion dollars of private resources" mainly through direct investments in key sectors (energy, infrastructure and transportation). In other words, SDGs are helping a deeper institutional hybridation in key domains. It's hard to believe that this is the most favorable condition for sustainability to happen.

Since corporations can stimulate economic development and increase social welfare in the countries they operate in, a lot of governments, both from the Global North and the Global South, compete to attract investments lowering domestic tax regulation standards affecting human and environmental rights. This leads to a government lack, whereby companies find themselves operating outside of the jurisdiction of the State they're headquartered in, and inside a system of weak rules, or weakened by the host States. Some experts define this situation as immunity bubble: a space without any risk of sanction and without any duties or accountability. Judging by the increasingly complex corporate architectures this immunity bubble seems deemed to become a concrete business goal to pursue. Reading the news on environmental and human rights violations published by media and in reports monitoring big multinational companies' activities, seems that economic development and social welfare are failed promises. The University of Maastricht and the International Peace Information Service have tallied 1800 worldwide legal applications for human rights violations by companies between 2005 and 2014 alone.

Faced with this scenario, the UN Human Rights Council Member States have started an intergovernmental debate based on the idea that the Guiding Principles were blatantly insufficient, mostly addressing their voluntary approach, along with the necessity to break down procedural and financial obstacles towards the access to justice. The Council approval (June 26, 2014) of the resolution promoted by Ecuador and South Africa to establish an Intergovernmental Working Group (IGWG)

aimed at elaborating "an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises"[20] can be considered historical. The long-awaited turning point promptly led to a resistance wave especially from western governments that voted against it. USA and EU hostile pronouncements and refusals to be part of it were not long in coming. The industrial Associations, tried in any way to delegitimize the process and make their voices heard through governments and international organizations.

But the pathway started four years ago is still open today. A binding treaty draft exists and it is at the center of negotiations among governments. The discussion is fierce, but the climate emergency may turn the tables and establish with more urgency the necessity of such diplomatic path. The binding treaty for companies in the human rights field is not a treaty against the private sector: the firms that operate with responsibility are aware of the positive role they can have within the society are the first victims of an unregulated market, and they share the necessity of a disciplined playground. Instead, it's a treaty that addresses abuse and hypocrisy sometimes hidden in the folds of corporate social responsibility. In the end, it is an attempt to fill the completely unsustainable gap between the binding regime dominating trade rules on one hand, and the voluntary approach of the human rights area on the other, every time enterprises are involved.

Courage and clear vision will be needed in order to drive actions towards the expected result, along with patience for a path that is expected to be long and winding. For the governments dealing with the sustainability agenda, it is about moving from words to deeds and showing that they are still capable of completely accomplishing their role. The scientific community clearly says: "There is no time to waste". Therefore, the treaty is the necessary legal answer to the climate emergency.

[19] Peter Utting and Ann Zammit, Beyond Pragmatism: appraising UN-business partnerships, United nations Research Institute for Social Development, Geneva, 2006, www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/225508544695E8F3C12572300038ED22/$file/luttzam.pdf

[20] UN Doc. A/HRC/RES/26/9 (www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOnTNC.aspx).

WHAT TYPES OF INTERNATIONAL TRADE MAKE DEVELOPMENT SUSTAINABLE?

Monica Di Sisto (Fairwatch, Stop TTIP Campaign)

The 3% global growth expected for 2019, concerns in several ways the United Nations Conference for Trade and Development (UNCTAD) and are highlighted in the "2019 Report on World Economic Situation and Prospects"[21] .

The report explains from the outset that in the face of improved global economic prospects, over the past two years several large developing countries experienced a drop in their per capita income (PCI). For 2019 are expected further reduction or weak PCI growth in Central, Southern and West Africa, Western Asia, Latin America and the Caribbean.

In this scenario, nearly a quarter of the global population will be living in extreme poverty. In addition, where per capita growth is strong, it's often generated in core industrial regions, leaving peripheral and rural areas behind.

In the 2018 Trade and Development Report, UNCTAD pointed out the "international trade disappointment": without strong global demand, trade is unlikely to act as an independent engine of sustainable global growth[22].

As recently reiterated in a major statement by the European Parliament[23], trade can function as an important conveyor of Sustainable Development, but only under certain conditions. But trade's international profile and its focus on global chains that aggregate 60% of world trade around "intra-firms" transactions (within the same groups), is a challenge to meeting these necessary conditions. Especially when the "duty to protect" (the first pillar of states' obligations under the UN Guiding Principles on Business and Human Rights) is involved.

Despite the widespread rhetoric about trade war and increasing protectionism preventing a bright future for global trade because States would become inward-looking on their national interests, current data on trade policies presented by UNCTAD clarify once and for all that customs rates remained substantially stable in the last few years, and that tariff protection can be considered critical only for a small number of markets. Since 2017, the average tariff in developed countries is about 1.2%, while in many developing countries it resultedhigher due to uneven development, especially in South Asia and in the Sub-Saharan African countries, where they do represent an important revenue source for State budgets. Some higher-tariff sectors such as agriculture (the average export tariff for developing Countries goes from 2.5% to 20%, depending on which relations and agreements exist between the parties[24]), farming, clothing, textiles and leather, are key industries for low-income countries and they often have to compete with each other for the access to resources.

As explained by the UNCTAD, the widespread use of legislative and other non-tariff measures, along with technical barriers to trade (TBT) that regulate about two thirds of world trade, and various forms of sanitary and phytosanitary measures (SPS), actively generate tension between the main global economies. Said regulations and standards are increasingly under attack at the WTO's Commercial Dispute Settlement Body (DSB) and in arbitrations provided by commercial and investment treaties already in force[25] . These standards, whose protection at national and international level fall fully within the UNGPs "Duty to protect".

Agri-food sector is the broadest area of implementation of export-restrictive measures: pesticide residues, toxins and bacteria, pesticides and fertilizers residue, hormones and immune system-interfering substances use, contamination of genetically modified organisms, as well as production and safety standards, are an extremely complex subject. They determine whether a product or a service is placed on and stays on a certain market. The measurements and impact assessments on human, animal or environmental health varies considerably between industrialized and emerging countries but also among the most developed countries themselves.

While the European Union recognized the precautionary principle with the Maastricht Treaty[26] and thus it can stop a product based only on alleged contamination or danger, the US system and those that rely on it outsources the harmful impact assessment to the consumer. Therefore, it is possible to withdraw a product from the market only after solid scientific investigation and evidence has been presented, often in court, by the affected citizen or community, demonstrating that a certain product or service is unequivocally causing harm.

But ironically, the same European Union, in the latest-generation trade treaties, sporadically quotes the precautionary principle, and when it does it is incomplete (as contained in the recent Trade Partnership Treaty with Japan[27]) or it conforms to its most common definition (as in the CETA Treaty with Canada[28]).

[21] https://unctad.org/en/PublicationsLibrary/wesp2019_en.pdf
[22] https://unctad.org/en/PublicationsLibrary/tdr2018_en.pdf, p.V.
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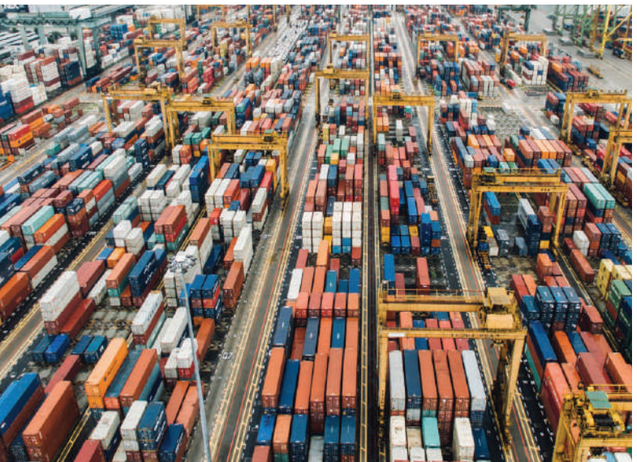
None of the latest EU trade agreements consider measures to address the potentially negative impact on human health or climate. Nor do they contain any reference to incidences that may cause "an unreasonable obstacle to trade" or try to step away from voluntarism. At present, if not protected with some solid Non-Tariff Barriers (TBT) or some Sanitary and Phytosanitary Measures (SPS), any obligation or regulation implementing an international Convention or some sort of social protection, employment or Sustainable Development promotion measures adopted by one of the parties is included in a separate chapter of the bilateral trade agreements on "Sustainable Development." The specific agreement involved determines the depth to which this separation is articulated, that is, in any case voluntary and non-binding on the parties. They cannot, therefore, claim its application through trade offsets or arbitration mechanisms for the settlement of disputes between the parties or for the protection of investors between partner States, contained within the same Treaties. Such choice leads us to question the real priorities of the legislator, given the cogent and urgent commitments imposed by the ambitious objectives shared in the 2030 Agenda.



Towards greater policy coherence in trade

Law No. 125 of 2014 established the inter-ministerial Committee for Development Cooperation (in Italian CICS) chaired by the Prime Minister and composed of some Ministers identified by the Law itself, including the Minister for Foreign Affairs and International Cooperation. Art. 15 of the same Law assigns to the CICS the task of ensuring the proper planning and coordination of all development cooperation activities, as well as their coherence with national policies, leaving the door open for possible acquisition of opinions by the National Council for Development Cooperation (CNCS).

During the semester of Italian presidency of the Union, a group of Concord members Italian NGOs, developed a comprehensive proposal to implement a National Plan for development policies coherence (CPS and PCD). The proposal has been substantially disregarded in the reform of the Italian system of development cooperation and in the elaboration of the new Sustainable Development Strategy aftermaths. The importance of including international trade as interpretative key to the effectiveness of Italian aid is evident also in the 2016 Annual Report of the Italian Agency for Development Cooperation (AICS). In the report, trade is never referred to as a determining or hindering key for local development, particularly in rural areas, despite several passages describing the activity of Italian Cooperation as engaged in supporting production and integration in the market of the partner countries. In the 2016-2021 National Action Plan drawn up by CIDU (inter-ministerial Committee for Human Rights), the Italian government committed itself "to provide support and incentive mechanisms consistent with the objectives of the NAP, in relation to the process of internationalisation of Italian companies and in order to promote their virtuous behavior and in collaboration with Confindustria, Unioncamere and the network of bilateral Chambers of Commerce abroad"[29]. With regards to Principles No.9 and No.10, it also engaged in supporting a system of "human rights credits" in international trade through the proposed introduction of a "special tariff" for those goods coming from countries and/or produced by companies that don't respect human rights[30].

It is relevant to seize the opportunity of the present global commercial and institutional impasse to rethink global trade governance completely; just like the aftermaths of the Second World War generated a General Agreement on Trade and Tariffs (GATT) in order to accelerate or curb goods flows according to the interests of protection and stimulus expressed by the different countries. A New Trade Deal should be set forth, as proposed by the UNCTAD under the leadership of the United Nations, enhancing the knowledge and experiences of co-governance between States and civil society and promoted in ILO and FAO frameworks. It will be then possible to put human and planetary rights before individual interests, accelerating or curbing the goods flows, ending the current overproduction and waste trends, to guarantee decent incomes for all, and effectively slow down climate change.

Even without profoundly changing global trade governance, the current structure of treaties and negotiations should be completely reviewed: not only to make them actual development tools, but also to make the commitments already contained in PAN 2016-2021 effective.

It is also necessary:

a) to reverse the priorities order in current FTAs texts, requiring Contracting Parties to commit to facilitating trade, provided that they respect, and do not constitute a detriment, to the protection and promotion of human, social, environmental and labor rights.

[29] http://cidu.esteri.it/resource/2016/12/49118_f_PANBHRITAFINALE15122016.pdf, p. 11.
[30] Ivi, p. 25.

b) to equip whole public interest sectors with exclusion clauses from the negotiation, which would exclude them from the scope of the new Treaties and from any arbitration mechanisms in force or only discussed.

c) to only start multilateral or bilateral negotiations once the contracting parties bindingly adhere to the fundamental international treaties (regardless of their binding or voluntary nature) in matters of work, environment, climate and human rights.

d) to exclude the possibility for investors to claim against partner States in mechanisms external to ordinary justice.

e) to guide negotiations and to implement agreements through an independent, ex ante, ex post and permanent monitoring, that involves civil society, assesses their impact on labor, environment, climate and human rights, while presenting binding solutions and compensation mechanisms for the contracting countries in real time.

WHO CONTROLS THE CONTROLLER? THE LIMITS OF MARKET'S SELF-REGULATION

Deborah Lucchetti (Fair and Clean Clothes Campaign)

"A large cloud of smoke suddenly covered the floor, the supervisor cut the power and there was a blackout"

Mehmood, 58, production manager, five-year employee of Ali Enterprises, survived the disaster.

Since the 1980s, globalization generated radical transformations also in the textile and clothing sectors, changing their production structure, intensifying competition between suppliers, and promoting production outsourcing to push costs as down as possible. This has clearly been to the detriment of the working conditions and the environment. In the recent years, several brands developed unilateral codes of conduct to defend themselves against activists' accusations of reiterated and serious human rights violations along the global supply chain. As a consequence, the private social audit industry has also flourished, to verify compliance with norms and international standards and thus facilitate business access to markets while reassuring distant and disoriented consumers about the actual sustainability of the products they buy.

The situation has not improved over the years and the structural problems affecting the whole system show that trade audits do not improve working conditions in factories. The above mentioned is demonstrated by the numerous accidents and thousands of deaths occurred in several certified companies.

The Case of Ali Enterprises

A soon as Muhammad Jabir had been informed of the fire that broke out at Ali Enterprises in Karachi on the 11th September 2012, he started looking for his son, employed in production, but it was too late. His son was already dead, along with 260 other fellow workers, including children between the ages of 15 and 17. After the first months of mourning, Muhammad and the other victims' family members founded the Ali Entreprises Factory Fire Affectees Association (AEFFAA) supported by the Pakistani National Trade Union Federation.

Within a year, more than 200 people, including survivors and victims' relatives, came forward to claim their rights. They sought adequate

compensation as well as structural and lasting changes in the global supply chains of the textile and clothing industry.

Ali Enterprises, then a German KIK's supplier, was a rat trap.

When the fire broke out, the emergency alarm did not work. There was only one emergency exit, and the fire extinguishers were not only insufficient in number but also malfunctioning. In addition, there was no external safety ladder,

the windows were barred, and the factory was overcrowded.

The illegally built wooden mezzanine floor was not isolated from the warehouse and thus facilitated the fire rapid expansion from the ground floor where it broke out next to a stock of flammable material, turning the factory into a fiery hell with no way out. The severe structural irregularities and poor safety measures, in clear violation of national laws and international standards, did not prevent the factory from receiving the SA8000 social certification.

The company that had been subcontracted to issue the certificate inspected the area only a few weeks before the fire, and it was the Italian RINA Spa.

The survived workers and the victims' families have personally engaged in a battle for justice and accountability. They spoke up for the need to identify the most appropriate legal means of repair for both the production countries and the ones that create the demand. The AEFFAA has left no stone unturned and submitted its petitions to the UN, in courtrooms and in soft law contexts in Germany and Italy.

On the sixth anniversary of the tragedy, together with an international coalition of eight organizations defending human rights, workers and consumers, lodged a formal complaint against RINA at the OECD National Contact Point at the Ministry of Economic Development in Rome. The drafters claim that RINA violated the OECD guidelines for multinational companies by failing to assess the seriousness of the fire risks in the factory, and thus accuse the company of negligent inspection behavior. The conciliation procedure is currently underway.

In September 2016 an agreement has been signed to compensate for medical expenses and loss of income (thus excluding psychological and moral damage) amounting to USD 5.15 million[31] as a result of the negotiation between the KIK, IndustriALL Global Union and Clean Clothes Campaign, facilitated by the International Labour Organization (ILO) based on the blueprint of the agreement reached for the victims of the Rana Plaza.

A system failure

Ali Enterprises is not an isolated case. Several other tragedies have occurred within companies regularly inspected by audit companies and then certified according to social standards that should guarantee compliance with minimum safety and working conditions.

The best-known incident is the collapse of the Rana Plaza building in Bangladesh (April 2013) when more than 134 workers lost their lives. The audits carried out by TÜV Rheinland on behalf of Amfori BSCI did not detect child labor nor serious structural defects in one of the five factories involved in the accident and the building was even defined "of good construction quality". Also Bureau Veritas, another auditing company, inspected one of the five factories, neglecting numerous obvious and serious structural irregularities. The list could continue with other cases, extreme examples of bad conditions characterizing the clothing production sector.

Tragedies such as these could have been avoided if clear signals had not been ignored and if audits had been carried out appropriately, with the aim of identifying the real problems that put workers' lives at risk. On the other hand, commercial audit firms and numerous initiatives to comply with social standards help maintain high levels of risk while making billions in profits, without contributing to improving working conditions and safety in the sector.

The limits of an unclear and voluntary system

The world of certification societies is pervaded by limits and structural problems that undermine their credibility. Fraud, forgery of documents, auditors' corruption and interviews with "educated" workers are widespread.

[31] With the contribution of Pakistan's Sindh Employees Social Security Institution they reached the 6.6 million dollars.

Workers and unions are poorly involved and often those interviews are conducted within the company under internal managers' supervision. Audits are not adequate to detect in-depth social problems because they're kept short to reduce costs, and they don't have a real understanding of fundamental human rights' nature, such as freedom of association. Their inspections are ineffective in detecting the actual conditions experienced by workers. Moreover, the reports are not public. This prevents various stakeholders (NGOs, trade unions, media) from playing the irreplaceable role of independent observers.

It must be also added that there's the risk of a progressive dismantling of labor inspectorates, that will consequently lead to control system privatization, which has never been called upon to co-responsibility and compensation for violations and accidents.

Recommendations

Social certifications should help improving working conditions in global production chains. If States and enterprises' actions aren't regulated, the above-mentioned certifications risk to be a fig leaf, only useful to reassure the markets but not to protect the weak subjects of the supply chain: the workers and the communities on which the economic activity impacts the most.

According to the United Nations Guiding Principles on Business and Human Rights, States have the duty to protect citizens from abuses deriving from any economic activity, and therefore they have to implement binding rules for enterprises to reach effective control on global supply chains. Accordingly, they must reinforce public control through labor inspectorates, enact laws that commit companies to a due diligence process on human rights, and make transparency mandatory. States need also to impose an accountability obligation when human rights violations in their supply chains are involved. In terms of certification companies, an obligation to answer for the truthfulness of their inspections and if found wanting is needed, as well as sanctions if risks and/or violations of laws are not identified.

Contractors and certification firms must undertake a supply chain monitoring system structural reform by moving from a "corporate-oriented" to a "worker-centered" approach, complementary and not substitute to public control. In particular, the audits should be public, workers have to be involved in the inspection processes undertaking corrective actions, and auditee and auditor should be free from any conflict of interests. In addition, contractors must modify their purchasing practices to allow suppliers to correctly both directly and indirectly comply with international laws and conventions.

ONE ACTION, ONE VOTE OF PROTEST. THE STRENGTH OF CRITICAL SHAREHOLDING

Mauro Meggiolaro (Shareholders for Change)

Critical shareholding is a form of complementary activism to civil society campaigns of awareness or boycott, that also allows shareholders and co-owners to act together with responsible citizens and consumers. Going to the bank and buying even a single share of any listed company is the minimum requirement to become a critical shareholder. In doing so, the right to participate in the annual shareholders' meeting is guaranteed, and so is the right to ask questions and receive answers from both the company president and chief executive officer. The critical shareholder does not present himself as a "disturber", but rather as a careful observer, who seeks dialogue with enterprises. The questions are carefully prepared by studying budgets and producing ad hoc studies, possibly with field research.

How did it generate in Italy?

The first Italian organized, and long-term initiatives of critical shareholding can be traced back to the Legambiente "environmental shareholders" project. From 1989, the Italian environmental association bought symbolic block of shares of large Italian companies, such as Montedison, Enimont, Enichem, Fiat, Sme, Sip or Enel to "force their ecological conversion". According to the former national president of Legambiente, Roberto Della Seta, "the main purpose above all was to create dialogue with small shareholders often kept out of important decisions. A strategy that has produced good results."

The "ecological shareholders" project ended after Eni and Enel assemblies in 2000, but the idea of "critical shareholder" has then been adopted by Fondazione Finanza Etica (Ethical Finance Foundation, created by Banca Etica in 2003). In 2003, a table on responsible shareholding was born, initially involving Fondazione Finanza Etica, Banca Etica, Etica Sgr, Legambiente Lombardia, Mani Tese, Amnesty International Italia, and the monthly magazine Valori.

The Ethical Finance Foundation (Fondazione Finanza Etica) project

In 2007 the Foundation acquired a symbolic number of Enel and Eni shares (respectively 250

and 80), on proposal of the Campaign to Reform the World Bank (today called "Re: Common") and Greenpeace Italy. Fondazione Finanza Etica had its debut shareholders' meeting with Eni on the 10th of June 2008 in Rome, followed the day after by the Enel meeting.

Eni was asked to pay more attention to two projects that could entail financial risks for the company, such as gas flaring[32] in the Niger Delta and oil extraction from the depths of the Caspian Sea, in Kazakhstan. The questions addressed to Enel, on the other hand, concerned the group's energy policy, strongly criticized for being too oriented towards the exploitation of polluting and dangerous energy sources: coal and nuclear power.

The Foundation choose Eni and Enel as target companies because their activity presents many opportunities for criticism, and they were already in several contesting campaigns' crosshairs. Furthermore, the Foundation explicitly wanted to continue the work started by Legambiente in the '90s, including the two companies in its "ecological shareholding" experiment.

From Eni and Enel to the European networks

Fondazione Finanza Etica focused exclusively on Eni and Enel until the Italian Disarmament Network (Rete Disarmo) proposed to purchase three shares of the Italian defense giant Finmeccanica (today called Leonardo) in 2016. The next year, in agreement with the Italian Forum of the Movements for Water (Movimento delle Acque), the Foundation participated in the Acea assembly with five shares and presented itself at the Rheinmetall assembly in Berlin with one share and again supported by Rete Disarmo. In 2018 it was the turn for Generali (insurance company, ten shares, in support of Re: Common) and in 2019 the Swedish fast-fashion giant H&M (three shares), in collaboration with the Clean Clothes Campaign. Having the possibility to speak at Rheinmetall and H&M assemblies means that the range of action of critical shareholding project can go beyond Italian borders aiming at involving also European civil society networks.

Meanwhile, on Banca Etica Group initiative, in December 2017, the European network of active shareholders SfC (Shareholders for Change and Ethical Finance Foundation) brought new topics to the attention of company directors (regarding the remuneration policies of managers), speaking on behalf of the entire network of active (and not only symbolical) investors. Thanks to the collaboration with Shareholders for Change, the Foundation happens to represent, in some cases, thousands of shares. For the critical shareholder, born as a symbolic initiative from share ownership, it is a real quantum leap.

Thirty-seven assemblies and dozens of questions

Over the past twelve years, Fondazione Finanza Etica participated in thirty-seven assemblies and submitted dozens of questions to seven large listed groups, always in collaboration with Italian and international civil society organizations. Their questions often generated rather unsatisfying answers, but produced new questions, inspired meetings with companies management before and after the assemblies and, at last, paved the way to some important results.

The critical shareholding approach reminds to companies that outside the stock markets there is a civil society requiring answers, explanations and brave choices towards sustainability and aimed at overcoming short-term industrial development perspective.

The continuous cycle of critical shareholding

The information provided by companies at the general meeting is generally not enough for a critical shareholder. However, those often incomplete or disappointing answers underlie dialogue continuity.

After the assembly, a closed-door meeting or a call with management can be requested to the company. Letters with new questions can be sent and, if they do not lead to satisfactory answers within a year, the same questions can be re-submitted to the next yearly assembly.

Critical shareholding is a permanent commitment, which requires a lot of attention and preparation, and it does not end with participation in the assemblies. On the contrary, for many responsible shareholders, the questions or motions presented at the meeting are the last ratio, after trying all the other possibilities (sending letters, meetings or calls, dialogue, etc., as can be seen in Figure 1).

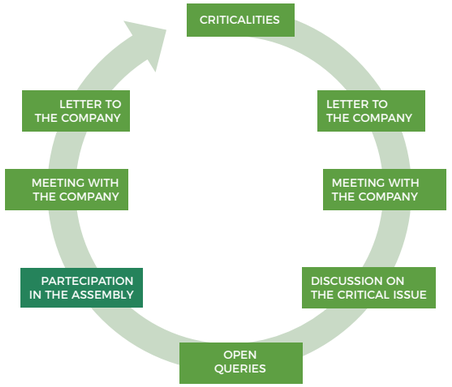


Figure 1: Critical shareholding

[32] Gas flaring consists in burning the eventual natural gas surplus derived from oil extraction without any energetic purpose, because it would be too expensive to build adequate facilities to transfer it in the places where it could be used (Source: Wikipedia). Such practice release in the air pollutants and toxins like benzene that is highly carcinogenic and increases people's vulnerability towards respiratory diseases. In addition, gas flaring releases huge quantities of greenhouse gasses in the atmosphere, further worsening cllimate change. (Source: Banca Etica, L'azionariato critico approda in Italia, 9th June 2008, www.bancaetica.it/comunicato-stampa/lazionariato-critico-approda-in-italia

Critical ownership is not just for large organizations

Not only large organizations or large numbers characterize critical shareholdings. As shown in the following table, over the years, in Italy, the lead has been alternately taken by local committees against coal or biomass plants, environmental lawyers, environmental doctors, and individual activists: critical shareholding is indeed an effective tool even for small and medium-sized territorial companies, which introduce specific topics and skills and often are the first ones to speak up when it comes to alleged environmental or human rights violations by companies.

COMPANY	YEARS	MAIN ISSUES	COLLABORATION AND FURTHER ACTIONS
Eni (Oil and Gas)	From 2008 to 2019	Gas flaring in Nigeria and Congo. Suspected international corruption in Nigeria (Bonny Island OPL2454), pollution of the Niger Delta, polluting activities in Basilicata and Kazakhstan. Overpaid managers. Presence in tax havens: questionable investment plan on renewables.	Re: Common (Crbm) invited Global Witness, Friends of the Earth Nigeria, Corner House, Environmental Rights actions Nigeria HEDA Nigeria, Val d'Agri Activists (Basilicata), Friends of the Earth Mozambico, Amnesty International Italia, A Sud, Federconsumatori, SIC_ Shareholders for change (for a total 150.000 shares in Eni)
Eni (Energy)	From 2008 to 2019	Critics on nuclear, coal and biomass power plants investments, critics on the Hydroaysen project (large dams in Chilean Patagonia) and on the large dams in Guatemala and Colombia. Presence in tax havens. Controversies on the Columbian coal supply ("Bloody Coal"). Critics on the Western Sahara investments.	Re: Common (Crbm) invited Luis Infanti, bishop of Chilean Patagonia (delegated by the Missionaries Oblates of Mary Immaculate ICCR), Campaign "Patagonia sin represas", Mapuche community (Patagonia) Alvaro Ramazzini, Guatemalan bishop (delegated by the Missonaries Oblates of Mary Immaculate ICCR), several Italian and foreign and foreign (Romania, Russia) committees, against coal power plants. For Netherlands, Iidma (lawyers for the environmental, Spain) Colombian activists, Urgewald, (German association included in DKA, German critical shareholders), Greenpeace Italy, Forum Stefano Gioia (against Mercure biomass power plant) SpeziaViadel Carbone, SfC – Shareholders for Change (with a total amount of 219.661 shares in Eni)

THE IKEBIRI CIVIL LAWSUIT AGAINST ENI

Luca Saltalamacchia, attorney-at-law
(Saltalamacchia Law Firm, Naples)

Various perspectives can be applied when talking about business and human rights, but in the writer's opinion the victims' point of view is the closest one to reality. Discussing about business and human rights implies considering a series of very serious crimes committed by businesses, mostly big multinational companies: homicides, torture, kidnappings, intimidation, forced population transfer, rape, illegal detention, threats, beatings, child labor, environmental as well as any other form of devastation against the weakest part of our societies, such as indigenous peoples, minors, workers, minorities, women, farmers. Aiming at describing the bigger picture, we should therefore specify that the focus is on criminal companies and the related violation of human rights.

The problem can be detected all along history, but only in the last few decades it has gained the attention it deserves from both NGOs and public institutions. Over several years, international institutions have been approving recommendations and directives on the subject, some examples are the UN ("UN Guiding Principles for Business and Human Rights" adopted in 2011), the OECD ("OECD Guidelines for Multinational Enterprises" approved in the OECD Declaration of 27 June 2000) and the European Union (Communication on the "Renewed EU strategy for the period 2011-14 on corporate social responsibility" COM (2011) 681, October 2011).

Currently, these recommendations are not being translated into binding regulations yet, but rather into mere exhortations that require corporate spontaneous compliance. It is therefore easy to understand why the number of fundamental human rights violations committed by companies is set to increase even further.

Even more recently, the respect for fundamental human rights was strongly bound to the protection and safeguard of the environment. This theme also concerns Italian companies, which often triggered devastating consequences in terms of pollution and violation of human rights, both in Italy and abroad. Statistically, these disasters are mostly derived from fossil fuels' storage, processing, and shipping.

This phenomenon has also been hidden from the media, probably because there is still a lack of

awareness among the public. In 2017 an Italian multinational was held accountable for the first time for an environmental disaster committed abroad.

The above-mentioned lawsuit was supported by the Ikebiri community against ENI and its Nigerian subsidiary NAOC. The Ikebiri community is based in Nigeria, in one of the many branches of the huge Niger Delta, in the state of Bayelsa. It is an indigenous community; its members mostly draw sustenance from the environment around them. The Nigerian branch of Eni (Nigerian Agip Oil Company) operates in this territory, and their activities have caused serious damages due to the many oil spills that have been occurring since the 1970s. One of the largest spills occurred in April 2010, and since then NAOC repeatedly expressed its promise to compensate the community for the spill.

However, after years of negotiations, the Ikebiri territory is still heavily polluted, and the community didn't get any compensation. The Ikebiri decided then to bring ENI and NAOC before the Italian civil court, asking for a monetary compensation, added to soil clean-up for any pollutant or, alternatively, an adequate compensation that would cover land reclamation costs.

While the accusations against NAOC assumed the company's responsibility, those against ENI were based mainly on the duty of care that weighs on the company, and on the due diligence tools

In photo from left to right: Godwin Ojo (Director of Friends of the Earth, Nigeria), Luca Saltalamacchia (lawyer of the Ikebiri community), Colin Roche (Friends of the Earth Europe).

they say they have equipped. The final verdict, pending before the Court of Milan, was reached after the transaction signed by the parties.

Given the unprecedented nature of said verdict, it hasn't been easy addressing the many and complex procedural and substantive issues such as the jurisdiction limitations of the Italian judge, the procedural legitimacy of the indigenous community, the responsibility of the main company for an act committed by the subsidiary.

A first issue concerns the companies' head offices: ENI is based in Italy, while NAOC in Nigeria. According to the European legislation (Brussels Regulation 1bis), there are no suitable criteria to proceed under the European Union jurisdiction, although the two questions (against Eni and against NAOC) are connected. On the other hand, the defense's hypothesis that the Italian Judge can claim jurisdiction on the case was based precisely on the connection between the two questions.

A second issue is that in Italian legal system the category of the indigenous community does not exist. What is, from a legal point of view, an indigenous community? What's its nature? These are difficult questions to answer, especially because they're connected to the problem of identifying a leader who can act on the behalf of the community and who can cooperate with a lawyer (the village headman? The council of elders?). They might only seem matters of form, but they concern the legitimacy and the will to act, which constitutes preliminary issues that often stop a trial.

As for the main company's liability for a fact committed by the subsidiary, it should be noted that this possibility is excluded from the current Italian national legislation, notwithstanding extraordinary cases of substantial correspondence between the two.

According to what's expected, ENI should be considered guilty because it publicly committed itself to demand any subsidiary compliance with due diligence minimum standards in terms of respect for the environment and fundamental human rights.

Since there was no pronunciation of the judge, these issues haven't been absorbed by the Italian legal system yet. Access to justice was formally and substantially very complex since the indigenous community could not enjoy, for example, of free legal aid; in truth, the community didn't even have an Italian tax code (which cannot be released to an entity that does not reside in the state territory), which is essential to register a trial. The trial started after 5 years of troubled and long preliminary phase.

Therefore, the relationship between businesses and human rights can be summed up recognizing that in most cases, businesses that violate human rights remain unpunished due to ineffective legislation at both international and national levels, but also due to administrative and political protection policies for enterprises coupled with the victims' difficulties to access justice.

In fact, it's no accident that trials involving huge corporations are rare, despite the massive number of violations happening every day all over the world.

PARTICIPATION IN THE LIFE OF BUSINESSES WITH A VIEW TO ECONOMIC DEMOCRACY

Simone Siliani (Fondazione Finanza Etica)

Critical shareholding - carried out by Fondazione Finanza Etica as described in Mauro Meggiolaro contribution to this e-book - is not just civil society organizations and NGOs intruding in finance (the holy temple of capitalism), neither it can be considered just a façade operation. Rather, it concerns the different ways of conceiving and experiencing the enterprise, particularly for those listed on the stock exchange and whose success is therefore measured by their shares' ability to increase the final capital of the company.

Savings are collected through the release of shares or bonds which are placed on regulated markets.

The Inter-ministerial Committee for Credit and Savings, CONSOB (with supervisory and control functions), Consolidated Law on Finance, the European Union (with the Transparency Directive) regulate said markets. Anyone can invest money and buy shares of any listed company, betting on a positive return. However, success depends more on market trends than on company activity itself, and therefore what really matters is market risk, instead of business risk.

This listed companies' feature determines that:

- they rely on many, small, "selfish" and fragmented shareholders, generally short-term concerned. In other words, small shareholders tend to not care about the company's production performance (let alone the social and environmental ones), instead they only look for a guaranteed earning each year;

- a single shareholder holds, by a long, the most stakes and hence makes all the decisions in the name of the company.

As a result, General Shareholders' Meetings are reduced to mere formalities, instead of being the most important moment for shareholders to direct the company. In other words, meetings should allow internal democracy to the fullest, and every company owner, whether big or small, should exercise their right/duty to run company governance actively and responsibly. But usually, meetings take place under a stealthy and hypocritically formal atmosphere: (almost) no discussion takes into consideration the issues on the agenda, particularly when it comes to discussing financial statements and company progress reports of the previous year; no governance assessment and (when applicable) no Administrative Board renewal assessment; no attention to the documents that define the remuneration policy of directors and above all the CEO. The average shareholder's concern at this point is to get over the meeting quickly and smoothly, so that they can continue to manage the company taking crucial decisions in other, less democratic moments. The interest of the small shareholders archipelago (when present) is to approve the point on dividends, that is, on the value of the shares in which they have invested their money and, finally, on the "mythical" final refreshment.

At this point, it's blatant that the presence of critical, active, and responsible shareholders is just a poorly tolerated disturbance in such illusory democratic corporate environment, when in fact they simply exercise their right/duty, as owners, of "active citizenship" within the company. Furthermore, in the writer's opinion, critical stakeholder's actions correspond literally and in spirit with the article 41 of the Italian Constitution. The article states that "the private economic initiative is free", but "it cannot take place in contrast with social utility or in such a way as to damage security, freedom, human dignity" and can be implemented designating those citizens who invest their savings in listed companies as "their" company supervisors and leaders, consistently with this constitutional requirement. On the other hand, Article 41 also states that, "the law determines appropriate programs and inspections to aim and coordinate public and private economic activity towards social purposes", remarking also the related Statal duties.

The role of the public supervision and guidance becomes even more crucial when it comes to companies in which the State is the main shareholder – Fondazione Finanza Etica holds shares of some exemplary companies like Eni, Enel and Leonardo.

The Article 43 of the Italian Constitution reinforces such governmental corporate activism stating that "for general utility purposes, the law may reserve ... to the State - but also to public bodies or to communities of workers or users - certain companies or categories of companies, that refer to essential public services or sources of energy or situations of monopoly and have a character of prominent general interest ". Where "general interest" shall be understood as environmental and human rights protection, usually affected by these companies' activities. And lastly, Article 47 of the Italian Constitution assigns to the shareholders at least part of said supervision and guidance responsibility towards social purposes for the companies they own by declaring that the Italian Republic favors "the direct and indirect equity investment in the large production of the country" and as contained in the previous articles.

Therefore, critical shareholding prompts new considerations on shareholders' role in listed companies and allows to participate in the life of companies with a perspective on economic democracy. Accordingly, critical shareholding can be also embedded into ethical finance and into the debate on the use of money. Becoming shareholder of a company does not only mean seeking the highest profits in the shortest possible time but implies most importantly becoming a co-owner of the company. Taking ownership comes then with the duty to know how the stakeholders' money is being used and therefore it entails also interacting with company management (those who practically deal with that money).

Moreover, the fact that when the most relevant shareholder is the State, it doesn't participate directly in the corporate structure of a large company to maximize revenues, instead it focuses on achieving development goals widely acknowledged by the represented national community and it should encourage a discussion. A relevant topic when Enel, Eni, and Leonardo are involved, because their reference shareholder is whether the State directly or Acea, whose shares are mostly held by the Municipality of Rome.

The contradictions found by Fondazione Finanza Etica in the behavior of such a "special" shareholder, should be investigated not only by the company's internal stakeholders, but also by every Italian stakeholder (above all the active electorate and the public institutions). As an example: Leonardo produces weapons, and the State is both the main shareholder of the company and the subject that authorizes weapons sale to countries at war. This situation, also violating Law 185/90 on the arms trade, implies additional responsibility for the Government precisely because it is the reference shareholder of that company.

Similarly, since the Italian State is one of Eni shareholders and since the company is involved in a case of international corruption (concerning the use of the OPL 245 oil extraction concession in Nigeria, for an alleged $ 1.092 billion bribe), Government responsibility must go beyond general national energy and fossil fuels policies guidance and control.

At the same time, it's not out of place to discuss about participation in companies in terms of economic democracy: with social capital dispersion, power is polarized in the hands of managers, whose sole goal is to maximize share values to meet the expectations of most shareholders.

Emphasizing each co-owner's active role and ethical responsibility, critical shareholding can be considered a tool to improve citizens and small shareholders knowledge and participation in companies' financial choices.

A good example is the case of Assicurazioni Generali, in which the issues presented by the critical shareholders concerning management's remuneration (the variable part of which exceeded the fixed part by 519%), gained the attention of small shareholders who otherwise would have never noticed the problem.

The good news is that critical shareholding often leads to significant results: large companies that usually dismiss consumer proposals, campaigns, and protest movements, are much more attentive to requests from the shareholders. Shareholder participation can't replace awareness campaigns and other forms of pressure on companies, but it can be used as important and additional tool alongside other initiatives. Moreover, it could be even more effective if small shareholders and large institutional investors (pension funds, mutual funds, and others) came together with movements and NGOs that have been fighting for years to improve the social and environmental conduct of businesses.

HUMAN RIGHTS IMPACT ASSESSMENT IN THE AGRI-FOOD SUPPLY CHAINS

Giorgia Ceccarelli (Oxfam Italia)

Human Rights Impact Assessments (HRIAs) allow companies to measure the impact of their economic activities on human rights and to identify coherent strategies to tackle and avoid any kind of negative impact on people and communities.

Virtually all big economic actors – both at the global and national level – have by now adopted codes of conduct and social auditing mechanisms that help them tackle possible risks deriving from workers' rights violations at every level of their supply chain, while trying to protect themselves. However, such mechanisms are characterized by some structural deficiencies that limit the possibility for big companies to take full responsibility, by shifting the management of the main risks related to workers' rights to the next level of suppliers.

This is the case of agri-food supply chains, in which the large-scale distribution requires its suppliers to sign codes of conduct and to be constantly subject to external audits aimed at verifying the factual compliance with such codes. Said codes of conduct, however, do not consider how they negotiate and sign supply contracts, how they generate prices and therefore if the latter guarantee fair working conditions and fair wages for agricultural producers and workers, who indeed grow and produce that food.

Human rights impact assessments are based on a different approach. They consist in studies made by independent researchers that evaluate the mechanisms of the supply chain altogether, analysing the role of every actor involved, including the commercial practices implicated in the negotiation of the supply of a given good or service. HRIAs are, therefore, one of the crucial steps to fulfil company responsibility to respect human rights, as established by the United Nations Guiding Principles on Business and Human Rights.

Such analyses allow companies to understand the type of structural causes behind the main human rights violations derived from their business approach and to identify the appropriate prevention mechanisms and risk management. HRIAs are an integral part of a more consistent process of due diligence, which goes beyond the simple auditing approach, and they should always be paired with risk assessment analyses, traditionally carried out in order to evaluate an economic investment.

Adopting this kind of approach while building corporate human rights policies on such set of analysis can generate better products and thus better business opportunities for companies. Other benefits include also more effective risk mitigation, improved resilience along the supply chain and a more honest relationship with clients. Most importantly, the use of HRIAs can guarantee a better standard of living to those working in companies supply chains, thus contributing more effectively to the Sustainable Development processes.

Commonly, the analysis consists of five separate steps aimed at generating some recommendations, then implemented as indicated in the consequential action plan:

1) Context analysis;
2) Mapping impacts on human rights;
3) Structural causes analysis, priorities identification and recommendations;
4) Sharing results with the company and with the main stakeholders for validation;
5) Final analysis report completion and communication

Among the main impact assessment features, it is fundamental involving every supply chain stakeholder, including relevant local communities, trade unions and civil society organizations: it is indeed crucial to not confine the analysis to just documentary research or interviews to the (supplier) company staff.

In order to achieve full accountability on human rights issues, the whole analysis process should be properly supported and informed from the onset by the company senior management. Likewise, a transparent disclosure about methodology, obtained results, and future steps is also essential for both the company and the research group, and must come with precise timing indications in order to implement the action plan.

« Once the intended procurement starts, all you see is numbers and no one can see how it can impact on people's work »

(One of the Coop Trading representatives interviewed during the assessment/evaluation)

An example of HRIA on the italian processed tomatoes supply chain

Between June and December 2018, Oxfam carried out a HRIA on the Italian industrial tomato supply chain, on behalf of the Finnish S-Group, operating in retailing, hospitality, and restaurant services. The analysis stemmed from the company clear intention to test out a different approach to human rights policy, starting from the tomato supply chain, that in recent years had been the scene of serious cases of exploitation and illegal hiring practices. The analysis' goals were:

- Assess the company's possible and realistic impacts on workers' living standards and working conditions while employed in the harvesting and processing of tomatoes in Italy. Identify the structural causes of such impacts and the needed measures to prevent, mitigate and/or remedy any possible violation;

- Gather instructions that could inform the development of the new company's approach to human rights.

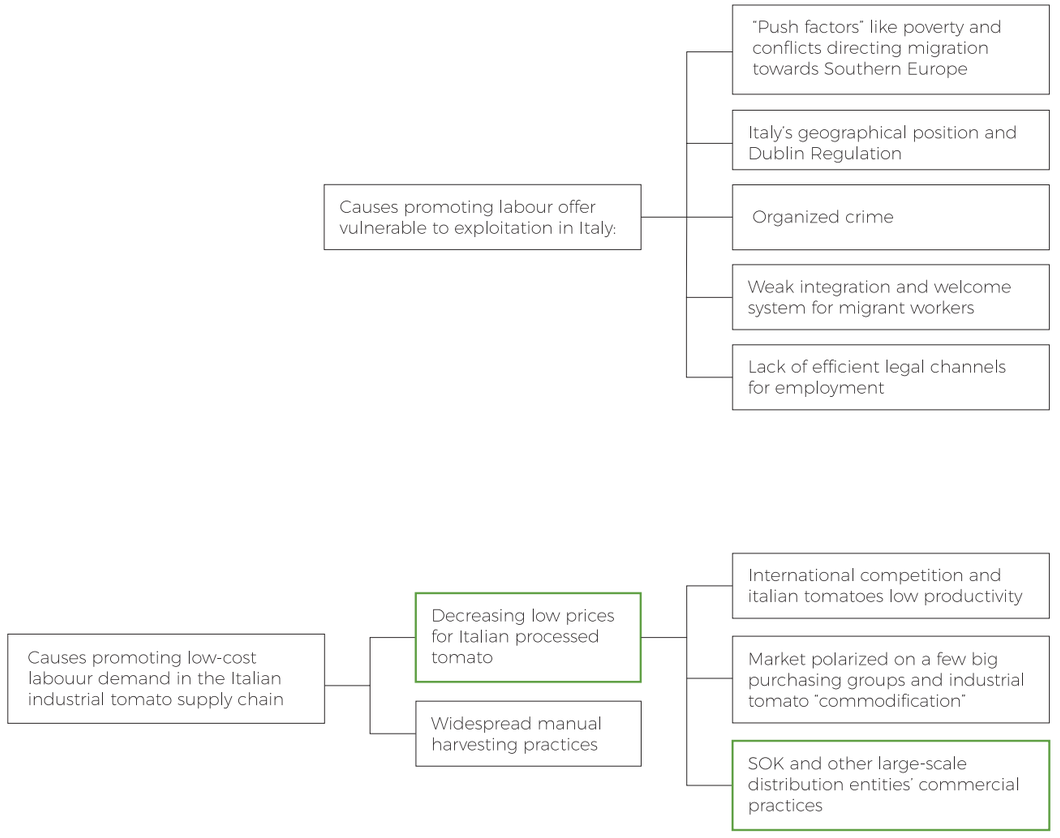
The context analysis – concretely the analysis of seasonal employment supply and demand in Italy and of S-Group's trade flows and volumes – suggested to focus further evaluation only on the two main long-term suppliers, which bought fresh tomatoes mostly from Southern Italian areas where manual harvesting is still widespread.

Identifying risks and structural causes highlighted how extremely widespread are low wages, excessive working hours and piecework pay in the Capitanata area, despite the tightening of legislation against illicit intermediation and work exploitation (the so called caporalato provision L. 199/2016), by putting not only the intermediary, but also the employer – who "exploits the condition of need or necessity of the workers" – in the cross hairs.

None of the interviewed workers reported to have access to clean water during the working day and shockingly, every year the number of deaths on the field increases.

Also the transportation to the fields has been proved to be a deadly endeavour; news reports from last summer reported workers being crammed into crumbling trucks for which they pay five euros per day.

Living conditions are terrifying. In the area around Foggia, thousands of people live in ghettos with no running water, no electricity, and no basic sanitary facilities. Moreover, almost a third of farmhands claims to have no shelter and to be living as a homeless person in the nearby fields. As of today, no company code of conduct or audit takes into account these workers' living conditions, nor guarantees appropriate wages that could ensure a decent standard of living for these people.



In such a context, the company publicly admitted that "pushing down the prices might have a human cost" and that it had undertaken a first set of commitments in order to ensure that the purchase price negotiations would not "undermine the prerequisites for an ethical form of production".

The Finnish S-Group experience with HRIAs proves to other companies that assessing the impact of their economic and commercial activities is not only important but also possible.

Credit must be given to S-Group for carrying out this study, sharing commercial data and sensitive information with the researchers, still respecting competition law. The hope for the future is to see more companies undertaking similar initiatives to analyse their supply chains and to revise their business models towards the full respect of human rights.

« We never go below our production costs/prices, but often happens to sign zero-margin contracts »

(An interviewed representative from a tomato processing company)

For more information:

Oxfam, February 2019, The People Behind the Price. A Focused Human Rights Impact Assessment of SOK Corporation's Italian Processed Tomato Supply Chains.

https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620619/rr-people-behind-prices-tomato-060219-en.pdf

MULTISTAKEHOLDERS INITIATIVES IN NATURAL RESOURCES MANAGEMENT

Alessandra Prampolini (WWF Italy)

Preservation and proper management of natural resources has been, since decades, an integral part of the debate on new, fair, and inclusive models of human sustainable development. One of the biggest challenges of our times is letting natural systems protection and of biodiversity coexist with a form of development that encourages sustainable lifestyles from a social, economic and environmental point of view, reducing the present, unsustainable ecological footprint of the wealthier part of world population.

Natural ecosystems are at the very basis of our social structure. With the term "natural capital" is usually referred to the available stock of natural resources, both renewable and non-renewable, sustaining human life and thus providing the so-called "ecosystem services" in terms of benefits both at the local and at the global level, on which every human activity and condition is based. Consequently, the achievement of Sustainable Development Goals identified by the UN Agenda 2030, such as Clean Water and Sanitation, Climate Action, Life below Water and Life on Land, present a crucial prerequisite for the fight against social injustice, conflict contexts, the spread of diseases and general inequality (as explained by the "SDG wedding cake" by Rockstrom and Sikdev, found in the introduction of this e-book).

The urge for a truly Sustainable Development model that takes also natural capital and its interactions with the social basis of human life into account, gave rise in 2014 to the "donut economy" by the economist Kate Raworth. In this framework the "donut" is the space in which humankind can prosper sustainably, without an excessive use of resources, and thus without jeopardizing the quality of life in the medium and long term, nor giving up the social dimension of well-being.

The donut (see also the introductory chapter) is therefore made of a social base, that has to be granted to avoid deprivations, and an ecological ceiling made of physical planetary boundaries, above which environmental degradation would be irreversible and incompatible with human well-being.

The participatory approach

Natural capital preservation and natural resources correct management are processes that directly affect the economic interests and the cultural values

of any community involved. Therefore, a correct approach towards environmental conservation has, throughout time, increasingly involved stakeholder engagement processes, initiated by big civil society organizations such as the WWF. Gradually, the presence of facilitators among all the involved entities (institutions, public and private economic actors, civil society organizations) has become crucial when it comes to planning and implementing projects that combine preservation and fair management of natural resources.

Participatory approach is the WWF stakeholder engagement cornerstone: whether the solutions are delivered from a competent body to the general public (top-down approach), or developed from the spontaneous collaborations of citizens (bottom-up approach), it is necessary that all the involved entities are committed to considering multiple interests.

It is not an immediate process, and it requires developing a trusted, inclusive, and transparent relationship among the different entities as well as continuous monitoring and feasible goals.

Such processes may take different forms and might establish a consultative organ, which would ideally guarantee the achievement of co-managing conflict areas or resources subject to excessive human exploitation. In a co-management framework, each party involved identifies for itself some intermediate goals, and constantly monitors them in order to achieve one specific and final target. In this case, the challenge lies in being able to have everyone involved acting at the same time.

The multi-stakeholder engagement standardization

The standardization of some multi-stakeholder engagement processes has gradually highlighted the opportunity to focus the conservation efforts on a limited number of actors that have influence on the international markets: it is therefore useful to gather a few key actors around the same table. This approach proves to be particularly effective when dealing with the exponential growth of the soft commodities production, that's to say forestry, agriculture, and fishing-derived products. With increased world population, urbanization levels and buyer power, the demand for timber, cane sugar, palm oil and tuna also boosted out of all proportions.

The great majority of soft commodities production heavily impacts many crucial conservation areas in terms of natural resources exploitation (80% of deforestation at the global level is caused by food and fiber production; agriculture accounts for itself between 70% and 85% of the global freshwater use each year; more than 4000 species are threatened by the expansion of agricultural activities and more than 80% of fish species are unsustainably exploited).

Consequently, human well-being is seriously and immediately affected by the fact that agriculture, forestry, and land management are responsible for one fifth of the global CO2 emissions, strongly contributing to global warming with significant effects on peoples and territories: around one and a half billion people are employed in the agricultural sector and around 45 million people depend directly on fishing for their survival.

Several initiatives, discussion rounds, and management boards have been created to adequately address the challenges related to natural capital management – such as lack of fresh water, fishing overexploitation and deforestation – within the category of multi-stakeholder initiatives (MSIs). MSIs are negotiation-driven measures, commitments, and principles, developed to create criteria and indicators. This process should make production and consumption more responsible and, sometimes also combined with certification mechanisms, should gradually lead to a transformation of traditional trade practices.

MSIs have the advantage of involving several actors in the production chain by aiming at ensuring credibility and transparency. Such wide alliance facilitates the achievement of transregional and transnational sustainability and conservation goals, thus becoming a precious tool complementing natural resources governance.

One of the main examples of MSI is the Forest Stewardship Council (FSC), aimed at stopping the dramatic scale of deforestation at the global level. FSC certifies that forestry products are produced

SOCIAL IMPACTS

1,3 billion
people economically active in the agricultural sector.

80%
food produced by small landowners in developing countries over the global production.

400+
years needed to compensate the emissions related to the production of palm biodiesel as a substitute for fossil fuels, if grown in former rainforest peatlands.

30-50%
expected increase of food real prices in the next decades.

CLIMATE

20%
global GHG emissions caused by agriculture, forestry, and other land usages.

56%
of non-CO2 GHG like methane generated from agricultural activities.

400+
years needed to compensate the emissions related to the production of palm biodiesel as a substitute for fossil fuels, if grown in former rainforest peatlands.

FRESH WATER

70-85%
of the global water used in agriculture.

250 billion
volume in cubic metres of water used in the cotton industry every year. 1.6% of the global use of water.

15,000
litres water used on average to produce one kilogram of meat from cattle farms.

BIODIVERSITY

4,000
plant and animal species threatened by the expansion of agriculture.

70%
of the orangutans on the Borneo Island live outside of the protected area. Palm oil and pulp (the latter used to make paper) extraction threatens this endangered species. Borneo and Sumatra are the only places in the world where orangutans still leave in the wild.

250,000
every year more than 200,000 loggerhead turtles and 50,000 leatherback turtles are caught on the longline for tuna and sharks and tens of thousands are injured.

Source: WWF Italy

with raw materials from correctly managed forests, according to principles of forest governance and custody chain. The former ensures that forests are managed following specific sustainability standards, while the latter supervises the full production processes.

FSC certified forests can be currently found in 84 countries, for 200 million hectares of total area. The 38.000 custody chain certificates have been released in 123 countries, thus proving the global reach of the initiative. At the very beginning, during the '90s, such extent was a significantly innovative approach, challenging the chain of actors involved, and gathering for the first time at the same table institutions, companies and local communities from all over the world. In fact, FSC pulls together a heterogeneous group of companies, environmental organizations, civil society associations and individual members, organized into three different branches, according to the scientific field of interest (social, environmental, and economic), further divided into two sub-sections: Global North and South. Accreditation and certification processes are based on some FSC authority's assessments, both in the place of origin and throughout all the production chain, including the final retailing.

As mentioned, the development of such international, inclusive and homogenous management processes has been, in the past twenty years, an incredibly innovative solution and it has significantly contributed to the notoriety of natural resources management topic and focus the attention from all over the world. Despite such results, in the last few years emerged also some limits, that hopefully will lead to some adjustments soon. For one thing, the spread of MSI certified products can take some time, starting with small percentages if compared to the global production and with focus on the international markets, barley reaching the consumption levels at a local or national levels. Such system rules out small entrepreneurs and local companies almost completely, due to higher initial expenses compared to a standard product and to a general lack of customer awareness on the importance of MSI and their relevance in terms of sustainability. Ultimately, MSIs impact assessment can also be an issue because it's often not homogenous due to highly significant context and implementation regional differences.

New technologies can help overcome some of these limits and they will soon allow increasingly better knowledge and monitoring of habitats, species, and flows. Other limits, on the other hand, require institutionalization and binding practices often outside MSIs' competence. In conclusion, MSIs are just one of the many tools available in natural resources governance. Governments and International Organizations should provide legislative and fiscal support mechanisms also through public contract and financial incentives. Institutional and civil society's dynamics can help certification and sensibilization processes also via pressure and attention produced by MSIs

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