

International Focus Workshop

Future Research Agenda for Human Rights Responsibilities of MNCs in the Developing World – Towards an Integration of Perspectives and Improved Measurements

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Organized by:
The human rights group within the
Transatlantic Doctoral Academy on Corporate Responsibility (TADA)

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PANEL 1: HUMAN RIGHTS RESPONSIBILITIES OF BUSINESSES

What rights are companies responsible for? How can we formulate ideas about the responsibility to respect and the duty to protect beyond the Ruggie framework? Can the concept of CSR be an answer to human rights responsibilities of MNCs?

Prof. Todd Landman (University of Essex): “Moral externalities Globalization, Human Rights & the Demand for Multinational Responsibility”

Prof. Todd Landman explores the new responsibilities and challenges pending on MNCs regarding human rights, which are enclosed in the paradigm of “sustainable capitalism”. In his view, the critical point is to create economic arguments for global firms in order to motivate them to behave responsibly towards human rights since negative externalities can represent a significant reputational cost for the companies involved. Therefore, he argues that firms need to maximize their positive externalities in the long term, specifically in the protection of human rights along their supply chain. Participant comments on Prof. Landman’s presentation were linked to the existence of financial incentives for companies to include human rights; the necessity to overcome the dichotomy between moral and pragmatic arguments to tackle human rights; the importance of providing a financial argument for CEOs who are more profit oriented than morally oriented; the necessity to specify the characteristics of firms (exposure and sector); and that the inclusion of human rights in CSR is a matter of political not economic rationale.

Allen Radtke (University of Essex): “The Ontology and Group Agency of Financial MNCs and their Human Rights Responsibilities”

Allen's discussion addressed conceptual confusions regarding MNCs and their human rights responsibilities. The first confusion lies in the ontology of corporations and their ability to be agents who bear moral responsibilities; while the second confusion deals with understanding negative and positive human rights in respect to the state's compelling interest in ensuring economic stability as a public good. MNCs in the financial sector, he argues, in their pursuit of short-term private gain, can constrain states from providing the long-term public good of economic stability that is necessary to achieve certain human rights. The main argument lies on the assertion that there are negative rights claims against the state on the grounds of failing to

meet its fiduciary duty if it does not protect its subjects from excessive socio-economic instability (i.e., financial crisis on a global scale) through international financial regulation and supervision.

PANEL 2 RESPONSIBILITY AND COMPLICITY

How can dimensions of responsibility be formulated in terms of complicity or human rights abuses in the developing world and conflict areas?

Prof. Wettstein (Universität St. Gallen): “The Human Rights Responsibilities of Business: From Complicity to Advocacy”

Prof. Wettstein’s discussion consisted of an analysis of Ruggie’s framework and aimed to pinpoint some conceptual inconsistencies present in order to expand upon Ruggie’s definition of corporate complicity. Ruggie’s definition appears quite limited insofar as it includes direct and indirect involvements in human rights abuses by companies, but neglects passive types of complicity. For instance, it omits silent or beneficial complicity, which occur when the corporation is not involved in the crime but benefits from it. Silence results in complicity when there is a duty to speak up. A duty to speak up inherently implies to protect human rights, countering Ruggie’s strict distinction between protecting human rights (attributed to states) and respecting human rights (ascribed to corporations). Taken further, a duty to speak up infers the passage from complicity to formal advocacy. Conditions of legitimate human rights advocacy by corporations include large scale, severe and systematic human rights violations, and violations of concern to entire civil society. Moreover, corporations are required to collaborate, be transparent and to take a public stance. Comments on Prof. Wettstein’s presentation were linked to: who should be held accountable of supposed charges; shareholders’ considerations of costs and risks when corporations engage in advocacy; and political consequences of engagements in advocacy (i.e., when does political advocacy become political lobbying?).

Irene Pietropaoli (Middlesex University): “Criminal Complicity in Conflict Areas”

Irene’s research concentrates on the liability for gross human rights violations or international crimes of corporations operating in areas of conflict or weak governance, presenting a juridical problematization of the avenues of prosecution in these circumstances. Particularly tricky is the case when corporations play an indirect role in violations by doing business with a perpetrator. Indirect ways to contribute to conflict or violations may include sharing profits with joint ventures or aiding and abetting governments or armed groups. Companies face allegations of complicity in human rights abuses when they engage in a business relationship with an actor who is carrying out the abuses. Global guidelines and standards for companies to follow in such situations exist. However, there are no clear, enforceable regulatory standards or international mechanisms for addressing

corporate behavior. Jurisprudence on this issue has been mixed and often contradictory. Which, then, is the best forum for holding corporations responsible on grounds of complicity? International Human Rights law, the Ruggie framework, and International Criminal Law have not provided answers. Irene placed a lot of importance on the role of transitional justice and her future research will center on analyzing and examining: the liability for corporate complicity in achieving the objectives of transitional justice; how to determine the responsibility of MNCs to create or aggravate oppression or conflict; and whether the remedies for complicity need to be adapted to the special circumstances of a transitional context.

Jordi Vives i Gabriel (Universität St. Gallen): “The Political Roles and Duties of Transnational Corporations in Front of Human Rights Issues”

Jordi’s starting remark was that until recently, human rights issues were left out of the CSR agenda. This has started to change, however, with business initiatives such as the UN Global Compact and the Alien Tort Claim’s Act. Currently, there is growing recognition that MNCs are actors capable of influencing public institutions and norms, and that they are taking on much greater responsibilities that extend beyond what was originally expected of them. The rise of MNCs’ power and influence conflicts with the idea that the State is the exclusive global actor with a monopoly on power. In a post-Westphalian world order, however, there is a rise in Neo conservative policies, MNCs have gained much power and influence, and they play an important role in global governance. The research questions raised by Jordi deal with the desirability of a system in which MNCs are called to promote human rights and the risks and limits which arise from such broadened responsibilities. Comments from participants included: the inherent conflict between the universality of human rights and the local scope in which firms operate in; the necessity to have a democratic and accountable system in which MNCs can exercise their new human rights responsibilities; and the need to re-theorize the role of the State in a post-Westphalian world dominated by corporate institutions.

Adriana Orellana (HEC Université de Lausanne): “Defining Corporate Complicity with Human Rights Abuses”

Adriana investigates how the notion of corporate complicity has changed in the last decade and theorizes a broader definition of corporate complicity. From a condition of mere compliance to legal requirement, corporate complicity nowadays encompasses not only the duty to respect human rights, but also to protect human rights. This broader conceptualization of the notion of corporate complicity ultimately delineates new boundaries for corporate obligations. She identified three dimensions to allege violations of human rights according to this new conceptualization: closeness of the firm to the centre where the human rights violation took place; capabilities of the company to intervene; and the severity of the

human rights abuses. Adriana offers different degrees of complicity and points out that in order to successfully avoid human rights abuses, business need not only respect human rights but to also protect human rights. Thus, business ceases merely being an economic actor, and passes on to being a political one (as argued in the political CSR literature). The following comments were raised: whether the dimension of “severity” might be misleading insofar as when a violation of human rights occurs, this violation is *per se* severe; whether the notion of closeness integrates violations further along the value chain; and the idea to integrate moral philosophical concerns other than legal and soft-law considerations.

PANEL 3 CSR IN PRACTICE

What can we learn from practice in specific regions and industry sectors in the developing world?

Maria Prandi (ESADE Business School): “The Business and human rights trending topics: advancing the research agenda”

The purpose of Maria Prandi’s presentation, leveraging on her experience on more than 15 years on the Human Rights and Business topic, presented her views on how far we have advanced in the debate in recent years and what are the main challenges yet to be overcome in the academic or practitioner realm. Never before in human history did humanity count on so many instruments to monitor and enforce Human Rights. Although many of them are still voluntary, some are becoming binding under certain circumstances. In the past two decades, companies have learned that: the “cut and run” strategy is not the best option; there are growing reputational risks to mismanaging human rights issues; more issues need to be tackled by companies; the proximity to the supply chain is growing; and more transparency and participation in defining human rights policies is needed.

The group discussed together with Maria Prandi the upcoming trending topics in the human rights-Business debate:

Infrastructure	Research Topics
<ul style="list-style-type: none"> The Taylorisation of the Ruggie Framework Guiding Principles for companies/countries/sectors UN Treaty on private & military security firms The Arms Trade Treaty The Montreux document New prospects of legislation regarding impacts of companies in third countries (EU communication on CSR and Edinburgh University Report) The OECD Guidelines now include suppliers The US Dodd-Frank Act Domestic initiatives: California Transparency in Supply Chains Act (06/12) Increase in the number of litigation processes Increase on shareholder activism 	<ul style="list-style-type: none"> Land grabbing Complicity (US Supreme Court) The shift from voluntary to binding instruments Environment in the supply chain Human rights policies developed by Chinese companies in Africa Companies operating in high-risk areas Creation of management/financial incentives Mechanisms to reduce incoherences in firms Design of labels with information on CSR (via mobiles and websites) Complicity issues

Actors involved	Methodologies
Governments (Business & HR national plans) Multilateral orgs (Ruggie framework – alliances) Employees (volunteers programmes) Trade Unions (global agreements / i.e., Inditex) Private and Public pension funds NGO (partnerships) Consumers Victims	How to influence more effectively decision-makers The need for practical capacity building Interdisciplinary Complementarity Sharing (fact findings, methodologies) Networking

Valeria Cavotta (HEC Université de Lausanne): “MNCs and Human Rights: Protoinstitutionalization of Political CSR”

Valeria Cavotta discussed her recent paper on how the Millennium Development Goals (MDGs) are impacting MNC activities in CSR. Her research attempts to answer the question *Where are potential loci for protoinstitutions in political CSR?* She defended the argument that given the politization of the firm, MNCs face a process of institutional change, which can fall in symbolic meanings & weakly entrenched practices. By juxtaposing institutional theory, sensemaking and political CSR, different roots and loci for institutionalization effects are distinguished for the various dimensions of political CSR—such as the codification of best practices (public-private partnerships) and identity building (moral legitimacy). Valeria concluded that following the evolution of the engagement of the private sector in global problems, these attempts result in a failed institutional try. Future research may need to investigate what actually remains of the latent institutional logics embedded in the MDGs campaign or in the conceptualization of political CSR.

Britta Sadoun: “Where are the limits of MNCs responding to insufficient state efforts? Business in High-Risk Areas—Respecting Human Rights in a Difficult Environment”

Britta, leveraging on her professional CSR work experience at DHL-Deutsche Post (particularly in human rights and the UN Global Compact), explained how the Ruggie guidelines have represented a change of paradigm from a “blame and shame” to a “know and show” and what this change might imply for a corporation’s approach to human rights issues. Britta discussed how to include human rights into management practices and whether there is an explicit need for a “business case”. According to Britta, MNCs should follow two steps of analysis: they should investigate and be aware of the level of protection of human rights by the host state; and they should clarify and try to foresee what the impact of business can be in terms of human rights. One-way Britta advocates to achieve this is by identifying what the current stakeholder expectations are. To conclude, Britta pointed out the need to map and understand who corporations need to respond to, who the interested stakeholders are, and what channels and formats are being used. The “know & show” paradigm should not replace the “blame and shame” approach, but complement it.

Damiano de Felice (London School of Economics): “Work in progress: Private banks and the corporate responsibility to respect human rights”

Damiano presented the research he is carrying out on the private banking industry and its responsibilities to respect human rights. He discussed several relevant aspects the industry faces in regards to human rights and divided his presentation into three parts: the links that bind the banking industry with participants; indirect abuses by customers and suppliers or via financial product design; direct abuses circumscribed to customers and employees (particularly discrimination). Following, he emphasized the emerging context banks face as a result of the rising pressure of NGOs, and institutions (sustainability indexes, IFC and export agencies). Lastly, Damiano covered the reactions of banks and what actions and responses they have developed in order to confront the alleged accusations of human rights abuses. Initiatives such as the Equator Principles, the Thun group or the UNEP Statement of Commitment by Financial Institutions (FI) on Sustainable Development (2011) were discussed. He concluded by reflecting on the actual impact of dedicated policies on human rights protection developed by the banking industry.

WRAP-UP SESSION AND CONCLUSION: GROUP ACTIVITY

What have we learned? Working towards a research agenda on business and human rights.

Group activity 1: Major outcomes

In order to bring together the major learning outcomes resulting from the workshop, each participant was asked to write down in a card a memorable notion or impression he/she would walk away with after the two-day focus workshop. After discussion, the ideas offered led to two main clusters:

- a) The need of connectivity at all levels (connection, collaboration, intense complexity and cross disciplinary collaboration); and
- b) The need for effective mechanisms to ensure the private sector respects and protects human rights on binding bases (accountability tools, importance of decision making processes, binding vs. voluntary, moral responsibility and incorporation into value chain).



Figure 1: Result of Group Activity 1

Group activity 2: Future research

Lastly, participants were asked to propose a future research agenda on business and human rights drawing from the workshop. As the first group activity, suggestions addressed similar issues related to the urgency to change current practices. More precisely, the discussion was built on two pillars:

- a) The need to advocate the respect and the protection of human rights (implementations: theory and practice, mainstreaming human rights to core business, conceptual clarity and praxis); and
- b) The need to research on effective mechanisms for achieving such advocacy (measurements, global standards for MNCs/states, shift voluntary to binding, the business case for human rights).

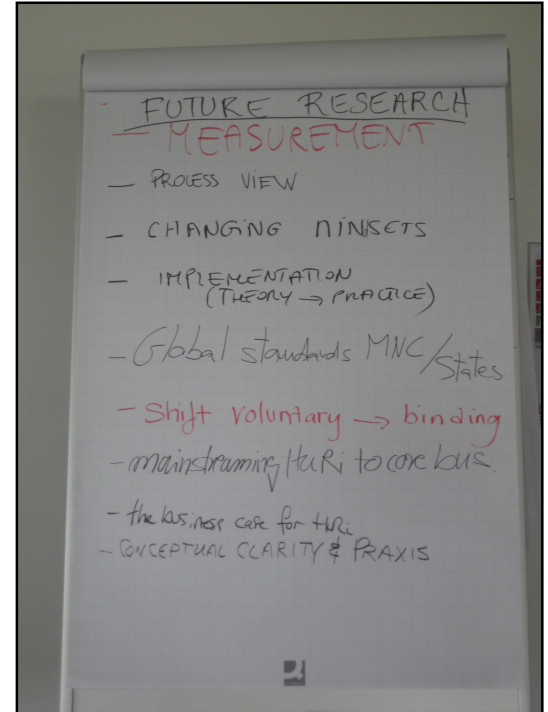


Figure 2: Result of Group Activity 2

Concluding remarks

Overall, the two group activities can be summarized in three clusters:

- The need for connectivity at all levels. That is to say, the increasing role of collaborations across different organizations and institution types is indispensable to the advancement of the Business-human rights agenda. Such connectivity is not only important at an organizational level within the practitioner world but also within the academic realm. Cross-disciplinary debates and skills in law, politics, business, philosophy and economics are an indispensable asset to better approach issues and discussions in the field.
- The increasing need to constrain private economic agents to the human rights principles in face of an inactive or diminishing role of the State and/or public institutions. Binding versus voluntary agreements, hard versus soft law, multi-stakeholder initiatives; all these concepts are tools that try to enhance respect and protection of human rights. Universal jurisdiction is also a topic that may become more prevalent in the near future.
- The importance of the decision-making processes and how different mechanisms of accountability might help advance and clarify the role and impact of corporations in regards to human Rights. The risk of falling into ambiguity if there is not a clear balance between a pragmatic and a theoretical approach to Business and human rights.

Finally, although we are still facing a long road ahead, participants converged in pointing out a slight optimism regarding the progress that has been made in the field of Business and human rights in recent years.