

# Human Rights and business: the implementation of principles and soft rules at the national, European and international level

*Edited by Cristiana Carletti*



Cover:  
**Stefano Notargiacomo, *Allegoria*, 2000,  
Farnesina Art Collection.**

**Human Rights and business:  
the implementation  
of principles and soft rules  
at the national, European  
and international level**

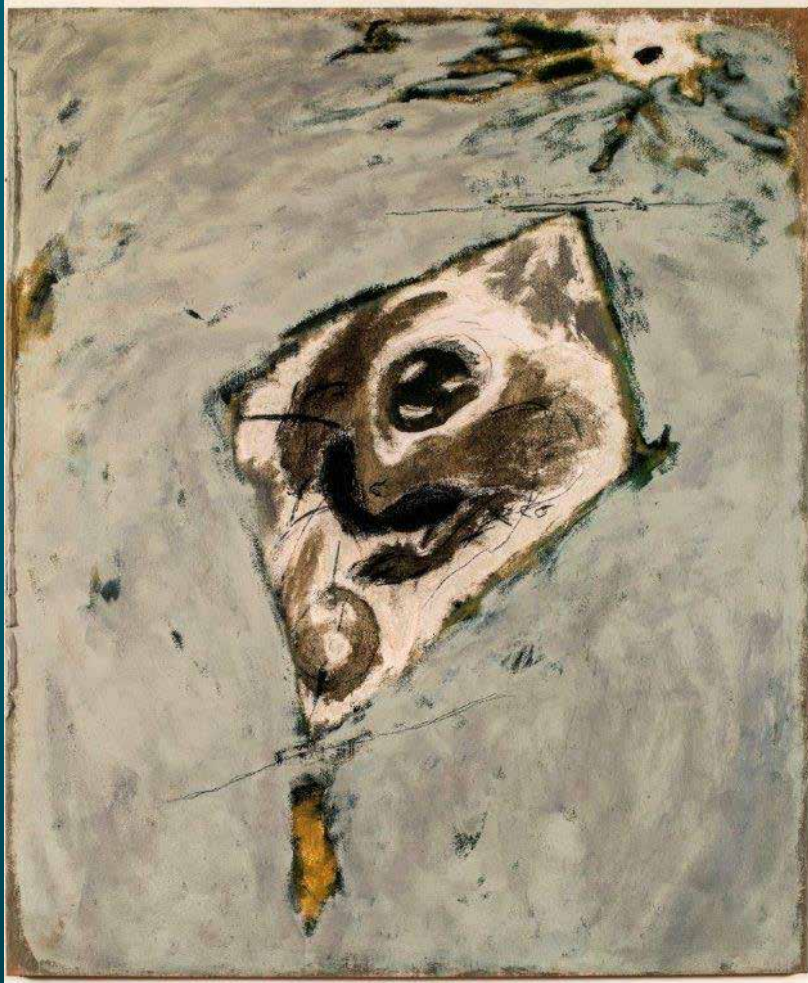
*Edited by Cristiana Carletti*



Pietro Ruffo, *Riot's Atlas II*, 2013-2016,  
Farnesina Art Collection.

## INDEX

<i>Preface</i> .....	5
<i>Introductory note</i> .....	7
<b>PART ONE: THE NATIONAL SYSTEM</b> .....	<b>8</b>
a. The compilation of the first National Action Plan on business and human rights.....	8
b. Structure and contents of the first National Action Plan on business and human rights ..	9
c. Monitoring, assessment and review of the first National Action Plan on business and human rights: the mandate of the ad hoc Working Group (GLIDU).....	13
<b>PART TWO: THE EUROPEAN AND INTERNATIONAL SYSTEMS</b> .....	<b>17</b>
a. European Union: the Legal Opinion of the European Fundamental Rights Agency on “Improving access to remedy in the area of Business and Human Rights at EU level” ...	17
b. Council of Europe: the Recommendation of the Committee of Ministers CM/Rec(2016)3 on human rights and business .....	19
c. The role and mandate of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises.....	22
d. A complementary perspective on the nexus business-human rights: the UN Intergovernmental Open-ended Working Group on multinational enterprises and other business enterprises on human rights .....	26
e. The technical contribution of the UN Treaty Bodies: the General Comment No. 24 of the UN Committee on economic, social and cultural rights on obligation of States in the context of business activities .....	27
f. The linkage between human rights defenders and business as reported by the UN Special Rapporteur on human rights defenders .....	29
g. Some new ideas on the nexus business-human rights: the analytical tools and guidelines of the UN High Commissioner for Human Rights .....	31
<i>Conclusions</i> .....	35
<i>Basic documents</i> .....	36



Gianni Dessi, *Isola sola*, 1982,  
Farnesina Art Collection.

## Preface

*In a “perfect world” the release of a publication on the relationship between business and human rights would certainly make reference to the labour environment as a human development favourite setting and so far (as reminded by Pope John Paul II in his Encyclica Centesimus Annus) as a place where the conditions of the human community and of each individual should be developed. In the imperfect world where we live this publication reports about the long road to bring business companies to change their attitudes and to ensure respect of human rights also in a developed country like Italy. It is not only the right track, to be carried out as soon as possible, but also the beneficial approach for all, business included.*

*The good news is that, notwithstanding the high number of violations of human rights perpetrated in many business companies, all over the world the business sector is seriously committed to comply with the international conventions and to realise the goals of the Agenda 2030 for Sustainable Development, signed on September 25 2015 by the Heads of States and Governments representing the 193 UN Member States. The fight against all inequalities, gender included - as expressed by the formulation “no one left behind”, represents the shared core message of the 2030 Agenda, addressing not only governments but also business companies.*

*Obviously the common opinion considers the 2030 Agenda as another UN utopia. It may be, but we should not distrust to dream for a better future. Indeed, to face actual challenges and future risks in relation to climate change, digital revolution, and conflicts for the increasing scarcity of natural resources, two reactions are feasible: to support the ‘retrotopia’, defined by Bauman, that means to restate the natural order and protect ourselves from every opportunity of dialogue and confrontation, or alternatively to reinforce our commitments to design and to implement a new utopia, i.e. a setting where equity and social, economic, environmental and institutional sustainability should be concretely pursued and achieved.*

*The above mentioned approaches ask each of us to adopt a position and the good news is that the change towards the “sustainable utopia” is already in place among individuals, business companies, governments; all of them are convinced about the need to adjust the current models of production, consumption and social management in order to prevent further disasters and improve our future.*

*This publication, while deserving special attention to all the above mentioned actors, stresses the innovative contents of the 2030 Agenda for Sustainable Development: the universality of its Sustainable Goals, the need for a collective contribution for a new human development, an integrated approach to solve problems and to implement actions to effectively achieve sustainable development. Also the universal and participatory role of business companies is important. In each Developed or Developing Country, they represent productive hubs that should not be stigmatized if they really offer “decent” job opportunities and ensure the economic, environmental and social wellbeing of peoples. Their impact depends upon the participation of their workers in defining business goals and tools, the evaluation of business results and good/bad behaviours, pushing for a different approach to pursue a tangible sustainable development.*

*The publication reminds us about the ‘challenge into the challenge’ of the human development paradigm: due to different and divergent interests among all the concerned stakeholders, the global development governance could not be addressed by governments alone. Business shall change too. Its development strategies should be suitably revised to positively impact on individual and collective conditions as well as to promote different dialogue and collaboration with civil society.*

*Only following this approach the third component of the 2030 Agenda will be favoured: the integrated vision of development and the measures needed to change the cultural attitudes of our contemporary society too much short-time and consumer oriented. The real utopia is to believe that the actual model could solve global problems.*

*If this is the paradigm shift that will give us the chance to solve global problems, then work and build a positive utopia, as that one proposed by the 2030 Agenda, will be worth it.*

Professor Enrico Giovannini, Spokeperson of the Alleanza Italiana per lo Sviluppo Sostenibile (ASviS)



Federico Pietrella, *Dal 16 al 23 Novembre 2013*, 2013,  
Farnesina Art Collection.



### **Introductory note**

*The role of business, its structural and operational features at the national and international level, and of business strategies in compliance with ethical values and fundamental principles as enshrined in Basic Laws and international binding or soft instruments, is at the core of global contemporary priorities.*

*This publication has a twofold aim: to promote larger public awareness on this issue, to understand business opportunities in compiling programmes and challenging actions to enhance economic development while respecting human rights and fundamental freedoms; to introduce a brief summary for experts on the recent national activities to address public, private, institutional and non-institutional instances working at the global and regional level in order to adopt common rules to strengthen human rights standards.*

*The publication is developed as follows: in Part One the first National Action Plan on business and human rights 2016-2021, adopted by Italy in December 2016 and voluntarily submitted to the United Nations, is introduced. Even if a proper monitoring mechanism is not provided for within the UN system, the substantive relevance of this document is confirmed by the establishment of an ad hoc open-ended national body involving all concerned stakeholders to assess its implementation and review to improve its factual impact. In Part Two the most recent documents released in several intergovernmental systems (i.e. European Union, Council of Europe, United Nations) are examined to analyse specific aspects of the issue and to compare them with the Italian National Action Plan and its commitments.*

*This focus is aimed at giving the NAP an added value, due to its progressive application with reference to some global goals that Italy took into account in advance, calling for business support and its active and constant dialogue to this scope.*

*The relevance of this topic and the commitment of a large numbers of States within the UN system confirms that this publication is important but preliminarily approaching the mutual challenges of the business economic development and human rights protection.*

## PART ONE: THE NATIONAL SYSTEM

### a. The compilation of the first National Action Plan on business and human rights

The Italian Ministry of Foreign Affairs and International Cooperation defines the strategic priorities of our foreign policy, also encompassing the fruitful dialogue with International organizations, in particular with the United Nations (UN).

In this context the promotion and protection of human rights is set forth: since 1978 the Inter-ministerial Committee for Human Rights (CIDU) has been in charge for this scope, through the active contribution of representatives of central administrations, research centres, liaison offices of international bodies and relevant personalities.

Following the great attention of the UN for the issue of business and human rights, encouraging the establishment of the Special Representative of the Secretary General and the appointment of Professor Ruggie for this mandate, the CIDU has launched the process aimed at compiling the first National Action Plan (NAP) on business and human rights.

The compilation has at the core the UN Guiding Principles (UNGPs) on business and human rights, adopted by the UN Human Rights Council in 2011. The UNGPs rest on three key-pillars: the State duty to protect human rights violations; the business responsibility to respect human rights; the access to jurisdictional, legislative and administrative remedies for victims of human rights violations.

Earlier in December 2013 Italy approved and presented to the European Commission “The Foundations of the Italian Action Plan on UN Guiding Principles on Business and Human Rights (UNPGs)”. This document, compiled with the contributions from several central administrations under the coordination of the Ministry of Foreign Affairs and International Cooperation, sets in a very complex and articulated manner the priorities to protect and promote human rights within the UN and EU systems, to strengthen the relationship between business and human rights and to make aware Italian companies about UNGPs in the domestic and global value chains perspective.

Following the Foundations, Italy has undertaken a new approach in the drafting of a National Action Plan on business and human rights.

In procedural terms, a flexible and open dialogue has been carried out with institutional actors, completed by a gradual – first analogous and then joint - participation of other stakeholders to different ad hoc working groups: in all settings the membership produced contributions to be included in the NAP. As it concerns its contents, the document is essentially in compliance with structural and substantive criteria of the UN Geneva-system to facilitate its elaboration as well as its preliminary and periodic assessment in line with UNGPs.

The narrative of national commitments to implement UNGPs and of business expectations according to UNGPs pillars 2 and 3 has a specific relevance in the NAP. Similarly the domestic setting, where UNGPs and other legal or programmatic instru-

ments have been already applied with positive results, is really significant. The core of the NAP is represented by the general and, if appropriate, detailed description about programming and operational measures to face present and future challenges of the relationship business-human rights at the national and international level. This approach has demanded for the elaboration of short, medium and long term key actions for orienting, preventing, mitigating and correcting business activities that could negatively impact on human rights standards and their effective protection. Finally the definition of a roadmap and basic criteria for evaluation as well as the establishment of mechanisms and monitoring procedures to follow-up NAP commitments and to review it have been properly defined.

## **b. Structure and contents of the first National Action Plan on business and human rights**

The compilation of a NAP on business and human rights, whereas the international system is extremely dynamic and has not provided for a binding instrument, has required a robust effort from our Country.

Indeed a targeted approach has guided the elaboration of the NAP, apart from the feasibility to identify complementary key actions in the field of corporate social responsibility – which aims at equally protecting human rights standard.

This approach has been determined to deal with the global actors – States and business companies – fuelling the economic, social and environmental development. The NAP commitments remind to the role and the contribution of Italy in the drafting process of the UN 2030 Agenda for Sustainable Development and the achievement of its 17 SDGs. Today our Country is fully engaged to give its own voluntary contribution at the national, regional and international level, to prevent and to remedy to potential and concrete negative impact following human rights violations from States and business, with particular attention to the most vulnerable groups (women, children, persons with disabilities, LGBTI people, migrants and asylum seekers, ethnic and religious minorities).

In this perspective a specific relevance has the following commitment reported in the NAP: “Reinforce, cooperate with and develop industrial relations between social partners and multi-stakeholders initiatives to achieve better implementation of human rights in the conduction of economic activities, in specific business sectors and along the entire supply chain”.

The NAP on business and human rights 2016-2021 focuses on six priorities representing the business and human rights areas that it intends to address through ad hoc measures, as illustrated in section C on national priorities:

- “1. promoting human rights due diligence processes, aimed at identify, prevent and mitigate the potential risks, with particular focus on SMEs;
2. tackling *caporalato* (especially in the agricultural and construction sector) and other forms of exploitation, forced labour, child labour, slavery and irregular work, with particular focus on migrants and victims of trafficking;
3. promoting fundamental labour rights in the internationalization process of

- enterprises with particular regard to the global productive processes;
4. strengthening the role of Italy in a human rights-based international development cooperation;
  5. tackling discrimination and inequality and promoting equal opportunities;
  6. promoting environmental protection and sustainability”.

At the same time the NAP contains a reference to the need of promoting stronger relationships with business as fundamental ways towards reinforced cooperation to protect high human rights standards. This commitment has been translated into the request addressed to business companies to respect the national legislation in force, in compliance with hard and soft international law, in matter of right of association and assembly, labour rights, consumers’ rights, environmental conservation. At the same time institutional actors are committed to inform about human rights promotion, facilitating multi-stakeholders initiatives with the participation of business companies, calling for a transparent communication about the impact of business on human rights, achieving the protection of high human rights standards through the sharing and reception of national and international best practices.

In the main section of the NAP, each UNGP is examined in relation to past performances and future actions, completed by national commitments on business and human rights for 2016-2021.

#### Guiding Principle 1

*States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.*

#### Guiding Principle 2

*States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.*

In relation to **Fundamental Principles**, the NAP includes targeted commitments as follows: carry out a comprehensive overview of the domestic legal framework in compliance with legally binding international human rights instruments and soft law standards, with particular focus on human rights and business; facilitate the adoption and the good application of ‘fair and ethical labour recruitment procedures by business, both at national and international level, and improve the implementation of regulations on the role of intermediaries and of the provisions of incentives for regular work contracts and agreements’; strengthen dialogue and mutual cooperation with non-institutional stakeholders (trade unions, human rights defenders, non-governmental organizations and civil society) for the promotion and protection of human rights; promote ‘awareness raising and information campaigns on the topic of the relationship between economic activities and human rights, through educational programmes and activities for the youth’ and more in general a larger culture of human rights through traditional and innovative communication tools.

As it concerns the **Operational Principles**, the inclusion of commitments and related measures in the NAP to reinforce the **General Governance Tasks** is worth of mentioning.

**Guiding Principle 3**

*In meeting their duty to protect, States should:*

- a) *Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;*
- b) *Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;*
- c) *Provide effective guidance to business enterprises on how to respect human rights throughout their operations;*
- d) *Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.*

Governance tasks have been formulated for example for monitoring the implementation of legislation concerning business activities at the national or international level, and for protecting labour rights in different sectors, the rights of the most affected categories of victims of human rights violation, the right to a safe environment. At the same time the dialogue and interaction with business companies should be pursued to reinforce due diligence in order to prevent and repress business activities violating human rights through institutional channels or by national and international initiatives with business companies and interested stakeholders (trade unions, non-governmental organizations, academia).

The **direct relationship State-business** is also significant in the NAP.

**Guiding Principle 4**

*States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.*

**Guiding Principle 5**

*States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.*

**Guiding Principle 6**

*States should promote respect for human rights by business enterprises with which they conduct commercial transactions.*

In this field Italy is committed to ensure that 'business enterprises that: i) are owned, controlled by the State; ii) receive support, benefit from services from Government agencies; iii) contract and conduct commercial transactions with the State, operate in full compliance with human rights enshrined in domestic legislation, international regulations and standards, and soft law instruments'. To this scope the collaboration with the Italian Anti-Corruption Authority is crucial to effectively enforce the regulations on public procurement respecting human rights in terms of socially responsible conducts, legitimacy and transparency, effective contracts performance, fair implementation of the anti-corruption domestic legislation.

Special attention has been devoted to **activities of Italian business companies in conflict-affected areas**, where institutional actors work to ensure the respect of human rights standards.

#### **Guiding Principle 7**

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

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

The best institutional assistance to business companies in these zones is based on good programming of cooperation interventions, also including awareness raising addressed to actors in the so called 'weak governance' areas.

Due to the evolutionary features of conflict-affected areas, our Country has deserved special attention to multilateral challenges and has reacted offering a coherent reply in terms of NAP commitments and related implementation.

#### **Guiding Principle 8**

*States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.*

#### **Guiding Principle 9**

*States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.*

#### **Guiding Principle 10**

*States, when acting as members of multilateral institutions that deal with business-related issues, should:*

- a) *Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;*
- b) *Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;*
- c) *Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.*

In relation to the **coherence of business and human rights policies and regulations**, a fruitful dialogue with all competent Government departments and agencies

is needed to develop ‘instruments to enhance fair competition for the safeguard and promotion of human rights’, to create systems for the evaluation of business and trade activities based on human rights credits, to adopt peer review mechanisms on NAPs on business and human rights, to promote training for public officials and judicial authorities.

As far as **UNGPs third pillar**, the establishment of a legislative and operational framework on business companies accountability and related remedies for victims is a relevant issue.

#### **Guiding Principle 25**

*As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.*

#### **Guiding Principle 26**

*States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.*

#### **Guiding Principle 27**

*States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.*

Our commitment in this field consists of several actions to be realized from 2016 to 2021 such as: ‘Identify eventual gaps and/or existing barriers jeopardising access to judicial remedy for victims of business-related human rights abuses especially with regard to extraterritorial violations also basing on the relation between parent company and subsidiary’; ‘Evaluate the introduction of relevant additional legislative measures to strengthen access to effective remedy both in civil, criminal and administrative law’. Also the non-judicial grievance mechanisms, yet in force or to be established, are properly taken into account and disseminated to the attention of the public opinion to strengthen the national framework for the protection of human rights violations from business.

### **c. Monitoring, assessment and review of the first National Action Plan on business and human rights: the mandate of the ad hoc Working Group (GLIDU)**

The NAP adoption should provide for the establishment of a monitoring and evaluation mechanism over the implementation of national commitments.

As for the Italian case an ad hoc Working Group on business and human rights (GLIDU) has been created within the CIDU, composed of representatives of concerned central administrations. Since its inception on March 13 2017, it has been convened also on November 20 2017 and will take at least two meetings per year (the third meeting was held on 29 March 2018 and the fourth meeting is scheduled for 8 October 2018).

Moreover, with the aim of guaranteeing the multi-stakeholder approach as adopted since the preliminary drafting process, the GLIDU works jointly with a consultative body composed of all relevant non-institutional stakeholders such as business community, trade unions, NGOs, civil society organizations, human rights defenders, individual experts and representatives from academia. This body has been convened for the first time on November 20 2017.

The GLIDU has the task of supervising the progressive implementation of the NAP, coordinating monitoring activities and proposing modifications and/or revisions of the measures foreseen in the Plan on the base of either legislative or policy necessities to better respond to relevant national approach changes on business and human rights.

So far the GLIDU has identified some points of the NAP showing its robustness and weakness. The former is represented by the diversification of categories of potential victims of human rights violations, the multi-stakeholder approach including small and big business companies working at the national level and abroad as key-actors in development and cooperation processes. The latter insists on the NAP contents relating to UNGPs third pillar to ensure an effective and efficient coherence of the structural and operational system provided for in the NAP. On a more general note the monitoring mechanism needs to be empowered through the adoption of proper indicators to measure the use of human and financial resources to achieve the goals of the NAP.

To this scope the NAP has provided also for the creation of an assessment procedure to further perform its mid-term review in order to identify factual criticalities in implementing NAP commitments and measures. The procedure has been operationalised in 2018 and is unique within UNGPs national frameworks; it will have been developed into the following steps according to the multi-stakeholders approach: May-June 2018, the GLIDU has been in charge for monitoring the implementation of the NAP commitments and possible improvement/integrations and for dialoguing with the stakeholders to receive their comments and suggestions for the NAP review; July 2018, the GLIDU has selected and taken in the revisions on the NAP's contents; August-September 2018, launch of the on-line consultation of the NAP reviewed version; within October 2018, adoption of the NAP final version by the CIDU.

The multi-stakeholders dialogue is crucial also to promote the NAP dissemination to the public and to experts both at the national and international level. For this reason the GLIDU is made aware and updated about all the proposed initiatives; when it was convened the realization of ad hoc workshops at the Italian Ministry of Foreign Affairs and International Cooperation has been promoted to debate over the issue in all its aspects. Only to mention a few among the several initiatives carried out in 2017 and 2018: this happened respectively on March 13 2017 on the occasion of the Workshop on "The new NAP on business and human rights: its implementation,



also in the view of UN 2030 Agenda for Sustainable Development” and on November 20 2017 for the Round Table on “Human rights and business: the NAP and the FRA Legal Opinion”. These occasions, in the opinion of the GLIDU, support the role of the academia as ‘place of experimentation, beyond the training, of new sustainable patterns’: so far the CIDU and the GLIDU have sponsored the high training Course of the School of Advanced Studies Sant’Anna of Pisa for the realization of the 2018 Summer School on Business and Human Rights.



Gastone Novelli, *Viaggio nel paese delle meraviglie*, 1966, Farnesina Art Collection.

## PART TWO: THE EUROPEAN AND INTERNATIONAL SYSTEMS

States and non-institutional stakeholders have deserved special attention to the issue of business and human rights in the most part of regional and international frameworks. This process was aimed at elaborating non-binding legal instruments, detailing some of its aspects to carry out national and international activities impacting on human rights protection, and giving assistance in preventing and repressing human rights violations through best practical and cooperative interventions in compliance with UNGPs.

In Part Two the key documents introducing interesting and innovative soft rules are deeply but briefly examined to show the dynamicity of the issue at the European and international level and to test the potential or factual reaction of our Country as for the contents of the Italian NAP 2016-2021.

### **a. European Union: the Legal Opinion of the European Fundamental Rights Agency on “Improving access to remedy in the area of Business and Human Rights at EU level”**

The relationship business-human rights has been developed by the EU institutions in relation to UNGPs third pillar, i.e. the access to remedies.

In this context the following principles, even if partially linked to the issue under reference, have been introduced: the corporate social responsibility and due diligence.

In 2001 the European Commission released the Green Book on Corporate Social Responsibility (RSC), updated through the 2020 EU Strategy and ad hoc strategy for 2011-2014. The meaning of the principle is now closer to the UN approach, that is recommending the State and business companies to respect fundamental rights by assuming voluntary commitments as well as specific responsibilities in defining and implementing economic and development policies to protect potential victims/claimants.

In order to monitor these conditions the European Commission has established a peer review mechanism based on periodic national reporting, and has released handbooks on topics such as labour rights, information and communication, CSR in the manufacturing sector. The UNGPs were gradually mentioned for the definition of EU internal policies as reported in the Plan of Action on Human Rights and Democracy 2015-2019, and external affairs in line with the EU Parliament resolution of October 25 2016 on social responsibility for serious breaches of human rights in Third Countries and the reinforcement of financial resources for civil society within the EIDHR framework.

The due diligence has been introduced in the EU legislation in order to monitor and control the respect of basic criteria for trade goods entering into the EU market in terms of origin and transparency. This has impacted on domestic legislations over control mechanisms, business companies accountability, sanctions, access to remedy for victims.

In June 2016 the EU Council stressed the linkage among EU law, EU policies and UN-

GPs by adopting its Conclusions on business and human rights, focusing on the third pillar – access to remedy. In comparison with the UN voluntary national reporting and the role and mandate of the OECD national focal points, the EU has a proactive role on the above mentioned third pillar, as reported in the Legal Opinion adopted by the EU Fundamental Rights Agency in April 2017.

The negative impact of business activities on the enjoyment of human rights at the national or transnational level, from public and private actors, directly or along the supply chain, demands for a greater access to justice and remedy. The Legal Opinion examines this issue according to the following premises: human rights violations involve civil, criminal and administrative justiciability and are closely related to the right to an effective remedy as enshrined in Art. 47 of the EU Charter of Fundamental Rights.

International standards in force are mentioned in the first part of the Legal Opinion, and are completed by a reference both to the EU and Member States action and related samples and good practices implementing UNGPs.

The Legal Opinion focuses on the terminology of ‘business’ and ‘victim’ and is articulated in 21 specific opinions to consider the relationship business-human rights in the following areas: removal of obstacles for access to remedy; empowerment of remedial mechanisms, especially in extra-territorial conditions; relevance of criminal remedy; relevance of grievance formal and informal mechanisms; greater transparency and adequate data collection; linkage between remedial mechanisms and national policies in compliance with the due diligence principle.

In the box below each opinion is compared to the Italian case, as reported in terms of contents and commitments included in the NAP; indeed an explicit reference to the EU system is referred to as follows: “The development and implementation of such a National Action Plan is fully in line with Action 18 on “Advancing on Business and Human Rights” of the EU Action Plan on Human Rights and Democracy 2015- 2019, adopted by the Council of the European Union in July 2015”.

Italian NAP: GPs 25-26\*, 27\*\*, 31\*\*\*, V. Monitoring, update and dissemination of the Plan\*\*\*\*

(1-2) Legal assistance to individual and collective claimant \*

3. Burden of proof, access to proof

4. Denial of justice and *forum necessitatis*

5. Protection of vulnerable categories (women, children, persons with disabilities, indigenous peoples)\*

*Keep adequate level of funding for legal aid and guarantee its access also to non-national and non-resident claimants, in particular irregular migrants victims of crimes perpetrated by organised criminal network, such as trafficking and smuggling and allow them to denounce crimes irrespectively of their status*

6. Human rights violation and extra-territoriality\*

*Identify eventual gaps and/or existing barriers jeopardising access to judicial remedy for victims of business-related human rights abuses especially with regard to extraterritorial violations also basing on the relation between parent company and subsidiary*

- (7-11) Facilitating access to remedy through the enhancement of international private law, environmental law, criminal law and procedure
- (12-14) Empowering remedial non-jurisdictional mechanisms<sup>\*\*</sup>; mention of the OECD national focal point<sup>\*\*</sup> within the business company
- Improve the visibility and the knowledge of interested parties about the existence of the NCP's "specific instances" procedures*
- Liaise and support the many Ombudsmen active at national and local level to raise their awareness to protect individuals against human rights abuses by business*
- (15-16) Giving a comprehensive, transparent and comparative overview of remedial mechanisms for the public, judicial professionals, victims<sup>\*\*\*</sup>; collect and make available data and information on EU business companies
17. Adopting NAPs including monitoring, assessment and mid-term review procedures<sup>\*\*\*\*</sup>
18. Promoting open ended coordination on access to remedy
19. Creating European nets to give assistance and facilitate the exchange of best practices (information and training)\*
- Activate, with the assistance of the CIDU, and also through the collaboration with the Ordine Forense, training courses for judges and lawyers on the legal implications of business and human rights*
- (20-21) Promoting the definition of due diligence obligations for business companies – as reported in the Italian NAP: “The Italian Nation Action Plan on business and human rights commits to an evaluation of due diligence legislative reform as well as analysis of obstacles to access to remedy”.

#### **b. Council of Europe: the Recommendation of the Committee of Ministers CM/Rec(2016)3 on human rights and business**

The issue business-human rights has been examined by the Council of Europe (CoE) Committee in charge for the drafting process aimed at compiling the human rights hard and soft law.

The technical debate has promoted the compilation of a Recommendation addressed to CoE Member States to prevent and remedy business human rights violations. The Recommendation was officially adopted by the CoE Committee of Ministers as CM/Rec(2016)3.

It contains specific references to UNGPs second and third pillars, calling for its implementation by Member States under a 5-year monitoring cycle. Member States are requested to review their domestic legislation and related executive measures, to disseminate the topic, to share lessons learned and good practices on an ad hoc open platform collecting information, training modules, strategies and plans of action. Moreover in compliance with the European Convention on Human Rights (and also the European Social Charter and its Protocol on collective complaints) Member States shall ensure that business companies fully respect human rights, duly inform victims about possible remedies, adequately react whenever a risk or a factual violation has been committed by a business company to be properly repressed and sanctioned.

In relation to UNGPs second pillar the Recommendation gives Member States the com-

petence to define business companies' priorities in performing their activities while fully respecting human rights and fundamental freedoms in a CoE Member State or in a third country. So far negative direct or indirect impact on the full enjoyment of human rights could be prevented as well as the mitigation of possible effects damaging individuals and groups as potential victims. The Recommendation also asks to business companies to guarantee the compliance of basic principles such as due diligence, early assessment of their activities on human rights in relation to their volume, the nature and the operational context, the transparency of the supply chain respecting the standards of business accountability, the inclusion of human rights clauses in the negotiation, adoption and implementation of trade and investment agreements, the regular dialogue with central, diplomatic and consular authorities in the Country where the business company works in order to prevent negative impact on human rights protection and to prohibit every action violating human rights such as serious labour exploitation, especially in areas at risk or affected by protracted conflicts, the promotion of information and training activities on the issue.

As it concerns UNGPs third pillar the Recommendation focuses on access to remedy and on remedial judicial mechanisms, in line with the CoE legal instruments in force (e.g. the European Convention on Human Rights – arts. 6 and 13 – and related Protocols; the European Social Charter and related Protocols). The need for reinforcing the judicial cooperation (completed by information and training of judicial professionals) involving institutional and non-institutional actors in the Member States and third countries is put under relevance, also in order to ensure the functioning of remedial procedures.

In the Recommendation the domestic legislation in force concerning the civil accountability of business companies is reminded apart from the territorial component. The *forum non conveniens*, the Act of State and the application of privileges and immunities or the reference to political reasons are prohibited; at the same time the primacy of international standards on domestic legislative measures as well as the individual/collective *locus standi* of the victim according to the principle of equality of arms must be guaranteed. As far as criminal accountability of business companies several CoE binding agreements are mentioned in the Recommendation to safeguard specific categories of rights or of victims; in all cases the criminal proceedings must be in compliance with basic criteria concerning the investigations, the impartiality and independence of courts, the transparency and openness of the proceedings, the full involvement of victims.

Further considerations are included in the Recommendation referring to preventive and remedial administrative mechanisms.

Apart from the longstanding judicial background of the CoE system, the Recommendation also deserves attention to non-judicial grievance mechanisms.

A final issue mentioned in the Recommendation is the special condition of individuals the most exposed to possible violations of their human rights from business companies: workers, children, indigenous peoples, human rights defenders. As for workers, business companies could violate several human rights at the domestic or international level. In relation to children, it is crucial to adopt policies countering child exploitation and empowering children for their full involvement and participation to

remedial judicial and non-judicial mechanisms. Indigenous peoples should be advised and involved for the prevention of their rights. Human rights defenders role and action should be disseminated, while ensuring their personal safety and independence from political and economic pressures.

The Italian NAP makes an explicit reference to the Recommendation (IV-B. Operational Principles – GP 3(a) (“Promote an effective implementation of the Recommendation CM/Rec(2016)3 adopted by the Committee of Ministers of the Council of Europe to Member States on business and human rights”), and there are also some aspects that remind to the Recommendation as follows.

#### UNGPs – pillar one

- review of the legislation and its implementation > IV-A. Foundational Principles
- communication on business and human rights, sharing of lessons learned and good practices as well as of NAPs > IV-A. Foundational Principles; IV-B. Operational Principles and planned measures - GPs 3(c-d)-9 and 10)

*Help disseminating respect of the UNGPs to enterprises investing abroad through an information toolkit for the diplomatic and consular network*

*Engage with other States for the establishment of a mechanism of peer review for the existing National Action Plans on Business and Human Rights*

- preventing and repressing measures > IV-B. Operational Principles and planned measures - GP 3(b)
- access to remedy > IV-B. Operational Principles and planned measures - GPs 25-26-27-28-30-31

#### UNGPs – pillar two

- respect of due diligence, prevention, transparency of business activities > C. National Priorities; IV-B. Operational Principles and planned measures - GPs 3(c-d)-4, 9 and 10

*Within the framework of the monitoring mechanism set in the Plan (see par. V) give special attention to due diligence of business enterprises owned or controlled by the State*

*Promote further and wider recourse to due diligence processes and foster exchanges of experiences with partner countries at EU and global level, and with international organizations such as the OECD, ILO, IOM and UNICEF*

- human rights clause > IV-B. Operational Principles - GP 4

*Elaborate within the CIDU the concept of a ‘human rights clause’ to be included as a requirement for competing enterprises in all public model tenders and agreements with business enterprises for the purchase of goods and provision of services, with particular focus on i) enterprises operating abroad; ii) enterprises availing themselves of foreign suppliers; iii) foreign enterprises*

- dialogue with central, diplomatic and consular authorities > IV-B. Operational Principles and planned measures - GP 3(c-d)

*Providing guidance to Italian enterprises abroad through the diplomatic and consular network for the dissemination of UNGPs and the SDGs; the Ministry of Foreign Affairs and International Cooperation will develop a strategy to implement this process along actions of advocacy, watchdog activities and match making among enterprises*

- targeted information and training > IV-B. Operational Principles and planned measures - GPs 3(c-d)-8

#### UNGPs – pillar three

- reinforcement of judicial – civil, criminal and administrative – procedures and non-judicial mechanisms in terms of access to remedy > IV-B. Operational Principles and planned measures - GPs 3(a) and (b)- 25-26-27-28-30-31

*Evaluate the introduction of relevant additional legislative measures to strengthen access to effective remedy both in civil, criminal and administrative law*

*Within the framework of the on-going parliamentary activity of reform of judicial system, raise the awareness on the following priorities: i) remedies against the excessive length of civil proceedings; ii) measures to strengthen special courts for enterprises by extending their competence to consumer protection-related claims, misleading advertising and unfair competition; iii) special court sections for human rights (especially children rights) and family issues; iv) introduction of criminal provisions against economic crimes, also committed abroad; v) verification of the possibility of introduction of the class action*

- protection of vulnerable categories (workers, children, indigenous peoples, human rights defenders) > C. National Priorities; IV-B. Operational Principles and planned measures - GP 3(c-d)

*Encourage companies in the dissemination of anti-discrimination culture by: i) promoting corporate policies and best practices on inclusivity and Diversity Management also via the institutional support to the adhesion, implementation and assessment of the Carta per le Pari Opportunità e l'Uguaglianza sul Lavoro (corporate voluntary initiative launched by Assolombarda in 2009 - which participates in the European Diversity Charter Platform promoted by the EU Commission GD Justice - with the aim of disseminating in Member States a movement to tackle prejudices and enhance talents in diversity); ii) promoting bodies (such as the Osservatorio Aziendale and the Disability Manager) that will have the aim of promoting the inclusion of workers with disabilities within the workplace, as foreseen in the draft of the II Program of Action on Disability; iii) increasing the awareness within the workplace on the serious issue of sexual abuse and domestic violence; iv) providing incentives for corporate training on inclusion, diversity management, gender balance and gender mainstreaming with specific focus on women empowerment and LGBTI rights*

### **c. The role and mandate of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises**

The process aimed at elaborating UNGPs, led by the OHCHR and carried out through extensive consultations from 2005 to 2009, has been completed to operationalise the so called «*Protect, Respect and Remedy*» Framework through the establishment of a new Special Procedure, covering the former mandate of the Special Representative of the Secretary-General on the issue of transnational corporations and other business enterprises with regard to human rights.

The Special Rapporteur created by HRC Resolution 2005/69 of April 20 2005, whose mandate was confirmed and expanded by HRC Resolution 8/7 of June 18 2008, has the following tasks: draft factual recommendations to States to be committed to protect human rights from violations entailing direct or indirect accountability of transnational corporations; contribute for the definition of the corporate social responsibility principle and support companies to implement and respect it, also encouraging the exchange of good practices and regular consultation; draft recommendations at the national, regional and international level to facilitate the access to remedy for victims, especially for vulnerable categories (i.e. women and children); work closely with UN and other multi-stakeholders systems, such as the Global Compact, launched in 2000 by the UNSG to promote and implement 10 Voluntary Principles on human rights, business, labour rights, environmental protection, countering criminality and corruption.



Similarly the mandate of the UN Working Group on business and human rights was defined by HRC Resolution 17/4 of June 16 2011. It is composed of five independent experts according to an equal geographic ratio for a 3 year-cycle with the purpose to disseminate and promote the implementation of UNGPs at the national, regional and international level, drafting recommendations, carrying out visits in Member States, providing for appropriate technical advice, involving all competent UN offices and bodies. The Working Group has also been charged with the establishment and the organization of an annual meeting on business and human rights to debate over criticalities and challenges of UNGPs implementation in relation to specific sectors, geographical areas, potential victims' protection. This task has led to the definition of common criteria for the so called annual Forum on Business and Human Rights, open to all relevant stakeholders for two days and put under the leadership of a President appointed by HRC members and observers and supported by the Working Group for the identification of key-issues and the drafting of concluding observations to strengthen the «*Protect, Respect and Remedy*» Framework.

The *Forum* has been formally established by HRC Resolution 17/4, recalling for its operational transparency and participatory flexibility. The main aim is to facilitate the Working Group in disseminating UNGPs to the public and improving their knowledge from experts, and to provide for technical assistance for their improved implementation by all national and international concerned stakeholders.

Furthermore the *Forum* has been opened to representatives from the UN and other intergovernmental regional organizations, NHRIs, business companies, NGOs, trade unions, the academia and the press.

Recently the Working Group has released two relevant reports respectively on SMEs opportunities to implement UNGPs and to best practices and lessons learned to enhance the transnational cooperation among States in adopting legislative and operational measures to rule business and human rights.

In the first report SME is defined according to common criteria in order to assess its capacity to prevent and manage possible violations of human rights in relation to UNGPs. Some of SME's key elements are: dimension (not more than 250 employees), legal status, the field of action, the availability of financial resources, the potentiality of its investments in human personnel and its economic impact.

In the most part of SMEs informal and low-quality labour is recorded, jointly with discriminatory practices and lack of minimum social protection standards out of any technical periodic monitoring – adopting the due diligence approach to prevent human rights violations. So far SMEs are recommended to: identify and assess risks, adopt preventing and mitigating measures, evaluate their operational effectiveness and informing about it, providing for access to remedies from victims.

The nexus with UNGPs is crucial: SMEs could successfully counteract discriminatory practices regarding minorities and vulnerable categories due to their very local approach and internal organization; moreover they show great flexibility to react to local trade needs whenever properly assisted in planning their medium and long term strategies along the entire supply chain and in adopting positive and low-cost reputational advertising. This approach should be maintained also when the SME is part of a multinational corporation system, whose task is to advise it providing a business-to

business methodology in compliance with UNGPs.

On a more general note SMEs should be assisted by: States, trade unions, business associations and networks, intergovernmental organizations.

In the view of SMEs States must have a wide leading competence and assistance, ensuring the respect of human rights in the domestic legislation and controlling public companies, securing financial support, promoting awareness and training on UNGPs by involving SMEs in the determination of priorities, strategies and business planning in compliance with international human rights law. Trade unions and business associations are essential for SMEs to increase their human rights standards in relation to UNGPs. Finally intergovernmental organizations are recommended to support States and business companies – SMEs included – to ensure the respect of human rights standards through the collection and exchange of information on global and regional best practices as well as consultative and training opportunities to reinforce SMEs capabilities and assess their compliance with UNGPs.

In the last section of the report targeted recommendations are addressed to all concerned actors – in particular SMEs – which could be compared with the contents and commitments included in the Italian NAP.

- General recommendation on UNGP 8: dissemination of human rights standards, strategies of States and business companies in respect of SMEs, targeted training > IV.-B. Operational Principles and planned measures - GP 8

*Development - with the assistance of CIDU - of training activities on business and human rights for competent government and public officials through the predisposition of e-learning scheme and ad hoc seminars which will be tailored on the specific competences of each department/ministry*

- Recommendations to States: information on UNGPs for their implementation by SMEs; strengthening UNGPs in financial assistance to SMEs along the supply chain; SMEs involvement in drafting NAPs; coherent and comprehensive cooperative action to reinforce SMEs capabilities for human rights protection
- > III. Government's expectation towards business; IV.-B. Operational Principles and planned measures - GPs 1-2-4-5-6
- Recommendations to SMEs: acknowledgement of international standards and operational tools to protect human rights; active involvement in training on UNGPs > IV.-B. Operational Principles and planned measures - GP 3(c-d)

*Support and promote the initiatives adopted by the enterprises associations on human rights, such as the recent European project "Global Industrial Relations, Transnational Company Agreements and Corporate Social Responsibility" led by Confindustria, jointly with the German and French business confederations and the Training Centre of the ILO in Turin. The project, that deals with the respect for human rights at global level, focuses on the available instrument for enterprises for a sustainable management of the global supply chain*

- Recommendations to multinational corporations: strengthening UNGPs in codes of conduct and partnerships clauses with SMEs; targeted leading and training support to SMEs in implementing the UNGPs > IV.-B. Operational Principles and planned measures - GP 9
- Recommendations to business associations: enhanced human rights protection and related support to this scope through UNGPs dissemination and incentives for fair SMEs

- Recommendations to intergovernmental organizations/UN: promote the dialogue with SMEs on UNGPs to identify their relevance and to clarify their contents, to facilitate their participation, to provide for a targeted assistance to SMEs in Developing Countries, to propose targeted training > IV.-B. Operational Principles and planned measures - GP 10
- Recommendations to academia, trade unions, NGOs: stress SMEs relevant role in implementing UNGPs, supporting them in the compilation of information and training tools to collect data and best practices and to adopt programmes reinforcing their capabilities to respect human rights > IV.-B. Operational Principles and planned measures - GP 3(c-d)

*With specific regard to the “OECD Guidelines for Multinational Enterprises”, the Government is committed to:*

*Produce effective guidance for companies (with special focus on SMEs) including at sector level and disseminate Guidance tools developed by the OECD, EU and other international organisations*

*Promote and encourage leading multi-stakeholder initiatives involving both big companies and SMEs for exchange and common action on BHR*

*Promote the culture of Human Rights protection in business action through analysis, cooperation with universities, training activities*

The second report of the Working Group on best practices and transnational cooperation among States to ensure the implementation of legislation on business and human rights is focused on the violation of criminal and administrative laws and related investigation and persecution of physical and legal offenders, according to UNGPs 2 and 26.

The Working Group takes into account a large case-law involving international criminal responsibility of States, if compared to similar situations concerning business companies: this preliminary consideration is based on practical difficulties in collecting and admitting charges related to business companies as physical or legal offenders.

Also the investigation and persecution of the business company is based on the political will of States and on their legislative framework in force, which should provide for an effective access to remedy, mutual judicial cooperation and assistance, specific competence of national bodies and professionalism of judicial and non-judicial officials working in and for regional and global networks. In comparison with bilateral and multilateral cooperation, informal models are also relevant due to their rapid response and flexibility, low costs, participation of civil society.

Assumed a case-law scarcity, in the report some lessons learned are mentioned to be considered as a good example in specific sectors such as countering human trafficking, environmental crime, money laundering and corruption: these transnational phenomena require a cooperative approach and proper mechanisms to monitor, for example, the involvement of business companies in illegal toxic waste movements or endangered animals and plants trade.

The last section of the report, that contains some recommendations to States for a systematic and improved effectiveness of cooperation in relation to human rights violations within the criminal international and national law framework, could be compared with the contents and the commitments of the Italian NAP as follows.

- Legislation prohibiting business conducts violating human rights and providing for business accountability; adhesion to international legal instruments promoting cooperative approach > IV.-A. Foundational Principles – GP2; IV.-B. Operational Principles and planned measures - GPs 3(a), 25-26

*Conduct a comprehensive study of the Law 231/2001 in order to evaluate potential extension of the scope and application of the administrative liability of legal entities*

*Strengthen the role of the legality rating - primary competence of the Italian Competition Authority – with the aim of taking it into consideration in the elaboration of the ‘rating d’impresa’ - primary competence of the National Anticorruption Authority – with the aim of promoting the respect for human rights in all economic activities*

- Creation of central bodies, composed of trained personnel (also online); collaboration with investigation units; creation of joint investigation teams > IV.-B. Operational Principles and planned measures - GPs 25-26
- Promotion of informal cooperation to collect data and perform formal investigations and repression; collaboration with regional and international informal networks to improve transnational cooperation > IV.B. IV.-B. Operational Principles and planned measures - GPs 3(a), 4-5-6

*Strengthen the role of labour inspections for tackling and controlling the emersion of irregular work and caporalato*

*Strengthen the implementation of socially responsible public procurement rules by adopting a comprehensive framework of reference for bidders coordinated by A.N.AC and covering: anticorruption, non-financial disclosure, supply chain, environment, labour, equal opportunities and non-discrimination*

- Technical and financial assistance to States lacking of transnational investigation mechanisms > IV.-B. Operational Principles and planned measures - GPs 9-10
- Participatory approach of civil society in cooperation activities
- Human rights protection in investigation and repression activities > IV.-B. Operational Principles and planned measures - GPs 25-26

*Identify eventual gaps and/or existing barriers jeopardising access to judicial remedy for victims of business-related human rights abuses especially with regard to extraterritorial violations also basing on the relation between parent company and subsidiary*

#### **d. A complementary perspective on the nexus business-human rights: the UN Intergovernmental Open-ended Working Group on multinational enterprises and other business enterprises on human rights**

In addition to the aforementioned Working Group, the HRC has created the Intergovernmental Open-ended Working Group on multinational enterprises and other business enterprises on human rights by Resolution 26/9 of June 26 2014, with the task to draft an international binding legal instrument to rule multinational enterprises activities in respect of human rights protection.

This Working Group has been convened in the last three years to debate on several issues for the improvement of UNGPs implementation, as a precondition for the definition of substantive and formal contents of a binding legal instrument on business and human rights.

On a general note the UNGPs demand for an enhanced complementarity between States and business companies to protect human rights, according to a preventing and

judicial and non-judicial remedial approach at the national, regional and international level, in compliance with international human rights law and its domestic adoption. This approach also entails the establishment of proper civil and criminal (also administrative) cooperation mechanisms to ensure independent, effective and sustainable access to remedy for victims.

IV-A. Foundational Principles – GPs 1-2; IV-B. Operational Principles and planned measures - GPs 10, 25-26

*Within the framework of the on-going parliamentary activity of reform of judicial system, raise the awareness on the following priorities: i) remedies against the excessive length of civil proceedings; ii) measures to strengthen special courts for enterprises by extending their competence to consumer protection-related claims, misleading advertising and unfair competition; iii) special court sections for human rights (especially children rights) and family issues; iv) introduction of criminal provisions against economic crimes, also committed abroad; v) verification of the possibility of introduction of the class action*

To reinforce the aforementioned approach, a direct obligation for business companies to prevent, mitigate and remedy human rights violations along the supply chain is required, through the negotiation of trade and investment agreements providing for ex ante and ex post evaluation on human rights protection.

III. Government's expectation towards business; IV-B. Operational Principles and planned measures - GPs 6-9

*Advocate for a system of 'human rights credits' in international trade through the proposal of introduction of a 'special duty' for goods imported from countries and/or produced by enterprises not complying with human rights fundamental standards*

The process aimed at drafting a binding legal instrument on business and human rights is strictly connected with UNGPs, so far strengthening the legislative and judicial basic common principles and criteria undertaken by States and business companies at the national, regional and global level.

**e. The technical contribution of the UN *Treaty Bodies*: the General Comment No. 24 of the UN Committee on economic, social and cultural rights on obligation of States in the context of business activities**

The UN Committee on economic, social and cultural rights has the mandate to monitor the enjoyment of these rights in the UN Contracting Parties of the International Covenant on Economic, Social and Cultural Rights.

If the respect and implementation of the Covenant rests on the States, the Committee has deserved special attention also to possible omissions depending upon human rights violations by business actors.

Both public and private business companies could improve at the national and international level the enjoyment of economic, social and cultural rights, that is facilitating the exercise of several individual and collective rights such as the right to health, food, water, housing, social security, work and related labour conditions, creation of trade unions to defend labour rights. But they could also violate human rights standards: this calls for ad hoc domestic preventive and remedial measures in line with UNGPs.

Against this background the UN Committee has provided for an interpretation of the Covenant by the adoption of its General Comment No. 24 to identify key obligations of States in the context of economic, social and cultural rights violations committed by business companies under domestic jurisdiction.

In the General Comment the first obligation of States is to respect the principle of non-discrimination (formal or informal, multiple) in the business context, preventing any compression of the economic, social and cultural rights of specific categories: women, children, persons with disabilities, indigenous peoples, ethnic and religious minorities, workers in specific sectors, migrant workers.

Other obligations refer to the nexus business-human rights as formulated in UNGPs and impacting on business companies activities under State input, control, authorization and replacement, recognition.

At the national level and preventively States have the duty to respect economic, social and cultural rights at risk when they let the business interests prevail or carry out countering policies. Along these circumstances States become part of international trade or investment agreements without any preliminary assessment about the legal impact on economic, social and cultural rights or the inclusion of ad hoc clauses for the creation of measures or dispute resolution mechanisms following human rights violations. The obligation to protect is interpreted as a preventive inducing means in order to: adopt legislative and administrative measures; promote training to rule public or private business companies activities; repress and sanction business offenders and protect victims accessing to remedies. States have a further obligation to implement every measure to ensure the full enjoyment of economic, social and cultural rights involving business companies to this scope.

The Committee foresees also special extra-territorial obligations, taking into consideration the increasing volume of multinational corporations business, the development of supply chains, larger public-private partnerships. In general terms all business companies that are located in a Country or under its jurisdiction and that work also abroad are bound to protect economic, social and cultural rights as enshrined in the Covenant, in the UN Charter, in the international case-law and in the HRC norms. So far the State has the duty to respect, protect and achieve the full enjoyment of economic, social and cultural rights as follows: no potential or factual compression of these rights, prevention and repression of business activities violating human rights along the supply chain; facilitated access to remedy and transnational cooperation; joint legislative, political and operational interventions of States and business companies to ensure the enjoyment of economic, social and cultural rights.

The Committee refers also to the State obligation to establish proper judicial and non-judicial remedial systems and mechanisms in favour of individual and collective victims, promoting appropriate dissemination and training. This action should ensure

the accomplishment of basic principles at the core of the remedial approach: independence, procedural simplification, promptness, transparency, collection and sharing of charges, admissibility of individual and collective complaints, financial sustainability, non-adoption of the *forum non conveniens* doctrine. Moreover the potential violation of economic, social and cultural rights by business companies demand for the creation of remedial/judicial and non-judicial mechanisms covering criminal, civil and administrative law in compliance with international legal standards.

In the last section of the General Comment the Committee stresses the relevance of the NAPs as a voluntary exercise of States beside the periodic reporting about the domestic implementation of the Covenant.

The main contents of the General Comment are examined in relation to the Italian NAP commitments as follows.

- Principle of non-discrimination > I. Statement of commitment; II.-C. Background and context-National Priorities
- National obligations > IV.-A. Foundational Principles and planned measures – GPs 1-2; IV.-B. Operational Principles and planned measures - GPs 3-4-5-6
  - Conduct a comprehensive overview and monitoring of the implementation in the domestic legal framework of legally binding international and regional human rights instruments and soft law standards, with particular focus on human rights and business*
  - Promote awareness raising and information campaigns on the topic of the relationship between economic activities and human rights, through educational programmes and activities for the youth; in particular, in line with the recently enacted School Reform, education and training programmes on these issues will represent a structural component of all the initiatives of the “School-Work Alternation Project” and will be agreed with Ministry of Education, school staff representatives and students*
  - Proactively support the NAP implementation by the private sector through the full development of the human rights dimension by engaging in an on-going dialogue with businesses, trade unions, non-governmental organizations, and representatives of civil society*
  - Conduct a systematic review of the existing legal framework for contrasting all illegal forms of labour and labour exploitation in the agriculture, construction, manufacturing and services sectors*
- Extra-territorial obligations > III. Government’s expectations towards business; IV.-B. Operational Principles and planned measures - GPs 25-26
  - Identify eventual gaps and/or existing barriers jeopardising access to judicial remedy for victims of business-related human rights abuses especially with regard to extraterritorial violations also basing on the relation between parent company and subsidiary*
- Remedial mechanisms > IV.-B. Operational Principles and planned measures - GPs 25-26-27; 28-31

#### **f. The linkage between human rights defenders and business as reported by the UN Special Rapporteur on human rights defenders**

Among the UN Special Procedures established by HRC resolution, the UN Special Rapporteur on human rights defenders has promoted an interesting debate over business and human rights.

In its recent report submitted to the UNGA in 2015 the Special Rapporteur gives an overview about the critical relationship between human rights defenders and business in relation to human rights violations – particularly in the environmental context.

Apart from a partial international definition of human rights defenders, the only reference to introduce this special category of actors is contained in the UNGA Declaration adopted by Resolution 53/144 of December 9 1998, titled “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”: its Art. 1 mentions the individual or collective element to identify the human rights defender as the actor who promotes and fights for the protection and the enjoyment of human rights and fundamental freedoms at the national and international level.

The Special Rapporteur refers to the defender within a predetermined vulnerable context where multiple political, economic and social factors impact negatively on its role, personal dignity and freedom of movement, freedom of expression and opinion through communication channels. At the same time each attitude or action putting the defender at risk often goes unpunished.

The Special Rapporteur also reports an alarming aspect about human rights defenders working to detect the respect of corporate social responsibility principles by business companies: the complicity between States and business companies for partially ensuring high legal standards, so far letting business activities unpunished when they violate human rights. The Special Rapporteur has adopted specific recommendations on this point that are addressed to States (asking for an effective protection of human rights defenders and for facilitating their advice in the compilation of NAPs and in cooperative interventions) and to business companies (to encourage human rights defenders activities and to protect their freedom of expression and assembly).

In another recent report the Special Rapporteur examines the environmental human rights defenders conditions in relation to business.

In his view environmental human rights defenders need for specific legal and institutional safeguards, jointly with the respect and support from business companies.

For this reason the Special Rapporteur assigns to States the obligation to protect directly environmental human rights defenders as representatives of the civil society, being further empowered as actors within the 2030 Agenda for Sustainable Development. They have the right to life, personal liberty and security, freedom of expression, freedom of peaceful assembly, right to privacy, as enshrined in the Universal Declaration of Human Rights, the International Covenant on civil and political rights and in the abovementioned 1989 Declaration. In other terms States have the duty to respect these rights as well as to act in order to prevent and repress all violations of human rights of environmental defenders, facilitating their access to remedy and compensation.

At the same time the Special Rapporteur assigns to States the obligation to protect indirectly when the violation has been committed by public or private business companies in relation to UNGPs. He stresses the need for an enhanced domestic legislation and real participation of environmental human rights defenders to joint planning and decision-making processes to ensure the full protection of their human rights.



Whenever the violation has been already recorded, the environmental human rights defenders safeguard and the support in accessing remedial judicial and non-judicial mechanisms should be granted: this is crucial especially when they are not familiar with remedies or have difficulties in accessing due to the blurring legal nature of the violation and the related accountability on business companies/multinational corporations.

In the final section of the report the Special Rapporteur makes relevant recommendations to concerned actors while aiming to aware the public opinion about the role of environmental human rights defenders and stigmatizing violations of their rights by States and business companies.

States are recommended to adopt a human rights based approach for the economic development, strengthening the participation of non-institutional stakeholders to the compilation of strategies and NAPs on business and human rights. They are further requested to ensure the functioning of investigation and remedial mechanisms to punish the offenders violating environmental defenders human rights.

Business companies are recommended to respect national legal obligations – soft laws and ethical international norms – promoting the dialogue with environmental human rights defenders, granting them access to data and information, avoiding any conduct and actions putting the defenders at risk, and providing for the establishment and functioning of non-judicial remedial mechanisms.

The considerations of the Special Rapporteur could be compared with the contents and commitments of the Italian NAP as follows.

- Human rights defenders/Obligations of States and business companies > IV-A. Foundational Principles – GP 1; IV-B. Operational Principles and planned measures - GPs 27; V. Update, monitoring and dissemination of the Plan

*Strengthen mutual cooperation and support to trade union organizations, human rights defenders, non-governmental organizations and civil society, in consideration of their essential role in the promotion and protection of human rights*

*Liaise and support the many Ombudsmen active at national and local level to raise their awareness to protect individuals against human rights abuses by business*

- 2030 Agenda for Sustainable Development > IV-B. Operational Principles and planned measures - GPs 3(c-d), 10

*Strengthen human rights protection and promotion of low-carbon, ecologically sound technologies through climate change international cooperation in line with the OECD Guidelines, the BHR Framework and the Agenda 2030 on Sustainable Development*

- Access to environmental information > IV-B. Operational Principles and planned measures - GPs 27

*Continue ensuring effective implementation of the Aarhus Convention*

**g. Some new ideas on the nexus business-human rights: the analytical tools and guidelines of the UN High Commissioner for Human Rights**

In comparison with soft legislative instruments adopted in the European regional systems, the UN Machinery in Geneva has deserved special attention to business and human rights through the lens of the UN Office of the High Commissioner for Human Rights. Indeed the Office has released relevant guidelines for a better understanding and implementation of UNGPs by States and business companies in terms of preventing and repressing approaches safeguarding the protection of human rights.

Among these documents the Standards of conduct for business to countering discrimination against LGBTI (Lesbian, Gay, Bi, Trans, & Intersex) people are worth of mentioning. The Standards are addressed to all public or private business companies, according to their dimension and structure, field of work, geographical position.

The full local acknowledgement and reception of human rights standards is a precondition for non-discriminatory business activities against LGBTI people and it must be completed by reinforcing domestic legislations, defining and adopting policies and strategies to prevent and repress any form of multiple discrimination against LGBTI people, promoting participatory processes by involving LGBTI people in decision-making.

Within the Standards framework States and business companies have different but complementary roles. The latter must respect the 'do not harm' and due diligence principles, providing respectively for the protection of human rights and LGBTI rights and for the identification, prevention, mitigation and management of possible or factual negative impacts on the enjoyment of LGBTI rights; they must also provide for accessible, transparent and participatory remedial mechanisms in favour of LGBTI people as victims.

Moreover the discrimination should be contended in three main areas: the social context, the workplace, the trade system.

In the first business companies are invited to promote the protection of human rights clearly, directly and transparently in public events and to dialogue with States to define safeguarding measures in order to encourage the involvement of LGBTI people to adopt best practices to counter and manage violations and to discuss with trade unions to achieve the protection of human rights standards, particularly concerning LGBTI people.

At the workplace the key goal of the implementation of the principle of non-discrimination is the equal treatment of workers apart from sexual orientation, gender identity and sexual preferences. It means that employment, position, remuneration, training and professional career do not refer to gender identity; furthermore, in order to avoiding any discriminatory, serious or violent case towards LGBTI people, business companies should adopt adequate informative and training solutions addressed to human resources as well as sanctions upon offenders. The Standards highlight also the protection of privacy of employees, included LGBTI people, as it concerns personal identity, and the access to basic services. Several relevant parameters should be ensured at the workplace such as wellbeing, dialogue and professional relationships, to achieve best results. To this scope business companies must perform the following tasks: provide for claiming (eventually anonymous) procedures for the violation of LGBTI rights committed by peers or partner companies; ensure non-discriminatory producing practices against LGBTI people; protect LGBTI workers if the business

company is located in a Country where they are at risk of their personal safety; adopt a business approach that is inclusive and respectful of diversity in order to ensure the protection of LGBTI rights in business strategies and professional codes of conduct, monitoring activities, creation of ad hoc professional networks, work opportunities and business leadership.

Within the trade system business companies are requested to carry out positive and helpful relationships with an high number of stakeholders to protect LGBTI rights. According to a proper business approach they should preserve and improve the relation with customers: indeed the consumers/LGBTI people attitude has a strong positive or negative impact on business reputation and its potential and factual production. This further occurs throughout the entire supply chain: in all cases human rights and LGBTI rights protection must be ensured. At the same time this business approach is relevant for actual and potential investors: they could influence business companies strategies, safety at the workplace, career opportunities for LGBTI people. Finally the dialogue between States and business companies is relevant: the latter should require that States adopt legislative measures targeted to protect LGBTI workers.

Comparing the Standards and the contents and commitments of the Italian NAP the following points emerge.

- LGBTI rights > I. Statement of commitment; IV-B. Operational Principles and planned measures – GP 3 (c-d)

*Encourage companies in the dissemination of anti-discrimination culture by: iii) increasing the awareness within the workplace on the serious issue of sexual abuse and domestic violence; iv) providing incentives for corporate training on inclusion, diversity management, gender balance and gender mainstreaming with specific focus on women empowerment and LGBTI rights*



Bruno Ceccobelli, *In Sogno Veritas*, 1991,  
Farnesina Art Collection.

## Conclusions

*The relationship between economy and human rights is one of the most relevant and sensitive contemporary issues. The UN 2030 Agenda for Sustainable Development has made all people progressively aware about the pivotal role of a real economic governance to face the new global challenges of human rights, strongly connected with the environmental and social ones. The involvement of the private sector indeed is increasingly perceived as a moral and factual need for a fruitful dialogue with all concerned stakeholders working in the field of human rights such as Governments and international institutions, civil society, academia, trade unions, human rights defenders and so on. Moving from the UN Global Compact a large amount of initiatives have been promoted to make business companies more committed within their communities in a concrete and extensive manner – the so called corporate social responsibility. But the 2011 UN Guiding Principles on Business and Human Rights could be intended to go far beyond this: they have supported the idea to include the human rights culture in the economic field. And even if they are voluntary, their impact should not be underestimated: they are a fundamental tool to deal with the core challenges of our contemporary global world.*

*To this scope the Interministerial Committee for Human Rights (CIDU) has worked for the adoption of the NAP on Business and Human Rights, to make the UN Guiding Principles a reality also in our Country and, at the same time, to give our contribution for strengthening human rights through the new interactive relationships with the economic and business actors. In its first part the NAP clearly refers to the 2030 Agenda and it encompasses among its priorities – in line with the key principles of the 2030 Agenda of 'leaving no one behind' – the protection of vulnerable categories and decent work, as commitments yet awarded at the international level. In addition the philosophical approach of the NAP is based on an open dialogue with all the stakeholders and it is preserved in the actual mid-term review – as unique process that the CIDU is carrying out for its completion at the end of 2018.*

*This publication is intended to further contribute in a process whereas the CIDU is strongly committed to push for a cultural and social development of human rights in Italy and in the international scenario. It also aims at being an useful tool for all those ones who are interested in approaching to the topic of business and human rights and at representing a best practice for the concrete involvement of an higher number of citizens. Human rights are concentric circles: they touch upon all individual and collective dimensions and places where they are implemented such as Municipalities, Regions, Countries and our world. Due to the cultural component of this process, we've chosen to interact with Italian artists whose cultural products are part of the Farnesina Art Collection referring to economic and social issues: we appreciated very much their collaboration in this project. We are totally aware that to protect and promote human rights the dialogue and cooperation are not only crucial but essential.*

Min. Plen. Fabrizio Petri, President of the Interministerial Committee for Human Rights - Italian Ministry of Foreign Affairs and International Cooperation

## Basic documents

- UN Guiding Principles on Business and Human Rights, [www.ohchr.org/.../Guiding-PrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/.../Guiding-PrinciplesBusinessHR_EN.pdf)
- National Action Plan on Business and Human Rights 2016-2021, [http://www.cidu.esteri.it/resource/2016/12/49118\\_f\\_PANBHRITAFINALE15122016.pdf](http://www.cidu.esteri.it/resource/2016/12/49118_f_PANBHRITAFINALE15122016.pdf)
- Legal Opinion of the European Union Agency for Fundamental Rights 'Improving access to remedy in the area of business and human rights at the EU level, [http://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-opinion-01-2017-business-human-rights\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-opinion-01-2017-business-human-rights_en.pdf)
- Recommendation CM/Rec(2016)3 of the Committee of Ministers to Member States (2016) on human rights and business, <https://edoc.coe.int/en/fundamental-freedoms/7302-human-rights-and-business-recommendation-cmrec20163-of-the-committee-of-ministers-to-member-states.html>
- HRC Resolution 8/7, June 18 2008, [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_8\\_7.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf)
- HRC Resolution 17/4, June 16 2011, <https://business-humanrights.org/sites/default/files/media/documents/un-human-rights-council-resolution-re-human-rights-transnational-corps-eng-6-jul-2011.pdf>
- Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises implementing the Guiding Principles by small and medium-sized enterprises, A/HRC/35/32, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/098/73/PDF/G1709873.pdf?OpenElement>
- Study of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Best practices and how to improve on the effectiveness of cross-border cooperation between States with respect to law enforcement on the issue of business and human rights, A/HRC/35/33, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/100/07/PDF/G1710007.pdf?OpenElement>
- HRC Resolution 26/9, June 26 2014, <https://www.ihrb.org/pdf/G1408252.pdf>
- ICESCR, General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f24&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f24&Lang=en)
- UNGA Resolution A/RES/53/144, December 9 1998, <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.
- Report of the Special Rapporteur on the situation of human rights defenders, A/70/217, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/217](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/217)
- Report of the Special Rapporteur on the situation of human rights defenders, A/71/281, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/247/09/PDF/N1624709.pdf?OpenElement>
- Standards of Conduct for Business, Tackling Discrimination against Lesbian, Gay, Bi, Trans, & Intersex People, <https://www.unfe.org/wp-content/uploads/2017/09/UN-Standards-of-Conduct.pdf>





Piero Sadun, *CAT. IV N. 10*, 1972,  
Farnesina Art Collection.