



Negotiations on human rights:

UN negotiations and their impact in a turbulent world

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I would like to thank UNITAR and ADN Group for the invitation to speak for this first World Negotiation Day. I feel humbled to address this distinguished audience in the Council Chamber of the Palais des Nations as we will shortly mark hundred years of multilateralism since the establishment of the League of Nations. I have been a negotiator for the European Union in the United Nations, notably in the UN Human Rights Council, for a number of years, and joined recently the Graduate Institute's Global Governance Centre. I will speak in a personal capacity.

As I started to prepare this speech on negotiations on human rights, I had three vivid flashbacks:

The first dates back to September 2001 when I landed in Tunis for an Amnesty International mission. Billboards at the airport welcomed visitors: "Tunisie, terre de sérénité", Tunisia, land of serenity. The following night, after a working session with human rights lawyer Radhia Nasraoui, we were stopped by the traffic police. This was far from a routine check. One of the men in plainclothes admits that he is from the "police politique", the political police. A negotiation starts, but ends as we are forcefully pushed into an unmarked car. A remarkably well-orchestrated mini-

¹ <https://worldnegoday.com/schedule/>



kidnapping leaves us, shortly after, stripped of our belongings on the outskirts of Tunis. Our negotiation was not successful, but the apparent attempt to intimidate us also failed as we decided to remain in Tunis to continue our week-long program. The following day, we observe the trial in absentia of human rights defender Moncef Marzouki – a decade before the turn in history in 2011 where he is elected President succeeding President Ben Ali.

The second flashback took me back to February 2004. A successful negotiation with Saif al-Islam al-Qaddafi in a prestigious hotel in London had paved the way for his father, Muammar al-Qaddafi, to grant us access for the first Amnesty International visit to Libya since 1989. In Tripoli, we embark in further negotiations seeking to gain safe access to prisoners. The negotiation is difficult, but we are ultimately allowed access to the notorious Abu Salim prison and to almost all prisoners on our lists. We cannot meet others, such as Jaballah Matar, which fuels the suspicion that they were killed. A few hours before our flight back to London, we receive a call that Muammar al-Qaddafi wants to meet us. There is no negotiation on the location and time as we are flown in a private jet from Tripoli to Sirte, kept waiting overnight and finally escorted to his tent for an in-depth discussion on Libya's overall human right policies and on specific cases.

Finally, my mind is taken back to September 2008, during my posting with the European Commission in Jerusalem. I am on a field visit near the West Bank village of Ni'lin with a small group of Palestinian villagers. We are approached by a jeep seemingly of Israel's "Border Police". We are ordered to leave the area. There is no room for negotiation. As we complied with the order and were walking away from the vehicle, a gas canister was fired and hit the face of one of the Palestinian members of the group, 'Ahed Khawaja. As I speak, 'Ahed continues to suffer from loss of vision.

It is against this backdrop of negotiating in concrete situations and of witnessing the price paid by so many human rights defenders and others who struggle to promote and protect human rights worldwide that I entered the world of negotiations in the United Nations in Geneva. In the course of my negotiations in some 25 regular



sessions of the Human Rights Council, in addition to Special Sessions and several Intergovernmental Working Groups, I faced regularly the following question: what impact do the United Nations negotiations have in the real world?

UN negotiations table, a “bubble” plugged in to aspirations in the “real world”

When I first arrived in Geneva and embarked upon negotiations in the UN Human Rights Council, I was warned that UN negotiations are conducted in a “bubble”, disconnected from the real world. I have indeed come across diplomats who negotiate language on human rights as if they were negotiating some mundane or routine issue. As often, I also worked alongside diplomats from across the world who are fully aware that the issues at stake are directly linked to matters of life and death, sometimes amidst reports of genocide and crimes against humanity, with survivors fleeing to seek refuge. Many diplomats are mindful of the impact the negotiations can have and at times take the risk to stretch instructions from capitals to test creative solutions and find ways out of the deadlock.

In the course of several negotiations, I was also told how negotiations at the United Nations are negatively impacted by the rising tensions and conflicts in our turbulent world. In other words, UN negotiations fail – and fail to have an impact - because the world is divided, because of “politics”. As a strong believer in multilateralism and the power of negotiation to reach common ground, I have constantly countered this argument. Precisely because of the rising tension, the UN as an inter-governmental body provides the space where diplomats engage in negotiations to find solutions that are acceptable to all. This may sound naive, but I prefer it to cynicism. And it works. I have witnessed first-hand that, even on the most sensitive issues where the stakes are at their highest, listening and building trust can lead to win-win-(win) outcomes.

My experience of negotiations on human rights at the UN brings to mind two distinct questions: are human rights negotiable? how do UN negotiations address specific situations or issues?



UN negotiations set the human rights normative framework

The human rights normative framework as we know it today is the result of intense negotiations, and compromise. This was the case for the Universal Declaration of Human Rights (1948) and subsequent international human rights treaties and norms covering civil, political, economic, social and cultural rights.

The impact of these past negotiations is remarkable. Human rights are now universally recognized, and in a sense, non-negotiable. As a body of law, it is a grid against which compliance can be measured. As a set of standards, it provides an aspirational benchmark, a compass for dignity and justice that is needed, more than ever, to navigate the challenges individuals and communities face worldwide, particularly acute in authoritarian regimes and conflict situations, but also in democratic societies.

International human rights law is also a compass as we face global challenges such as climate change. Like me, you followed the UN Climate Action Summit in New York this week. Greta Thunberg and 15 other young people filed a complaint about climate change with the UN Committee on the Rights of the Child arguing that governments are violating children's rights under the UN Convention on the Rights of the Child: a powerful signal reaffirming the relevance of the Convention as we mark its 30th anniversary, and the role of UN Treaty Bodies to monitor compliance.

Discussions and negotiations in the UN around the normative framework continue. I have participated in lively debates and heated negotiations in inter-governmental processes on whether it is necessary or not to establish new legally binding instruments. In the UN Human Rights Council alone, this ranges from a possible legally binding instrument on the right to development to a possible convention or additional protocol(s) to the International Convention on the Elimination of All Forms of Racial Discrimination, to a legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

In most, if not all negotiations, we can see similar arguments dividing proponents and opponents of new legally binding norms. Proponents emphasize that the existing body of law contains gaps that need to be filled. Opponents insist that many of the current protection gaps could be addressed, in practice, if existing legally binding norms were properly implemented. The two positions are at times reconciled in the position of those underlining that more must to be done to implement the existing obligations without waiting, while not excluding negotiations around new legally binding norms.

Already back in 1986, a UN General Assembly resolution set guidelines for the negotiation on normative human rights standards². One could read this resolution as an invitation to ensure that new instruments are elaborated to have a tangible impact.

UN negotiations address specific country situations and thematic issues

If the existing normative framework is somehow non-negotiable, how human rights standards and norms are implemented in practice is the subject of heated debate and negotiation at the Human Rights Council and beyond.

Indeed, the UN human rights architecture itself is born out of intense negotiations as we saw in the run-up to the establishment of the UN Human Rights Council in 2006 by way of UN General Assembly resolution 60/251 and the subsequent negotiation of the "Institution-building package". While the architecture is firmly in

²Resolution A/RES/41/120 provides that: "*such instrument should:*

- a) Be consistent with the existing body of international human rights law;*
- b) Be of fundamental character and derive from the inherent dignity and worth of the human person;*
- c) Be sufficiently precise to give rise to identifiable and practical rights and obligations;*
- d) Provide, where appropriate, realistic and effective implementation machinery, including reporting systems;*
- e) Attract broad international support."* <http://www.worldlii.org/int/other/UNGA/1986/215.pdf>



place, negotiations and discussions have been held in recent years to improve the Council's efficiency and effectiveness.

Every regular session of the Human Rights Council – three times a year, with occasional additional Special Sessions – comes with negotiations behind the scene and at formal consultations to address specific country situations and thematic issues. The negotiation comes in different stages: circulation of a “zero draft” to “co-sponsors” and then to all States; informal consultations with all States and other stakeholders usually combined with parallel negotiations in side rooms or corridors; “tabling” of the resolution and possible REV. versions; diplomatic efforts in Geneva and in capitals to build coalitions of support. All this leading to action on the resolution by the 47 States voting members of the Council. Action on the most challenging resolutions are at times deferred to allow more time for further negotiations, creating much uncertainty until the “voting screen” is displayed in room XX with the verdict of the number of “yes”, “no” and “abstentions”. Resolutions are rarely defeated but can pass with, or without a vote, with or without a battle of amendments.

Much could be said about the limitations of the Council as well as the need to better connect the Council's work to negotiations in the General Assembly's Third Committee. But, the amount of energy deployed by States to quash initiatives is in itself recognition of the Council's scrutiny role. Powerful States, or States supported by powerful allies, can evade the scrutiny – at least for some time -, when other States cave in to pressure, fueling the perception that the Council is selective. There is even more at stake in a negotiation when it can lead to specific resources to address a particular situation such as:

- the Special Procedures, independent experts with mandates to report and advise from a thematic or country-specific perspective;
- investigation/fact-finding mechanisms such as a UN Independent Commission of Inquiry, a UN Independent International Fact-Finding Mission or even an Accountability Mechanism.



I believe that UN negotiations on human rights can have an impact. But they could have greater results if all States saw the benefit of engagement and cooperation, and if structural issues were addressed, including the following.

Firstly, strengthening the human rights pillar within the UN putting it on a par with the two other UN pillars of peace and security, and of development. The interconnectedness of these pillars, often with human rights factors at the heart of crises or acting as early warning for deteriorating situations, is evidence of the need to strengthen the implementation of past UN resolutions or recommendations of human rights bodies and mechanisms.

Secondly, human rights can no longer be compartmentalized within the Human Rights Council or the General Assembly's Third Committee, but need to be fully integrated in the deliberations of the UN Security Council, coupled with strengthening of other parts of the UN human rights machinery: Treaty Bodies, the Office of the High Commissioner for Human Rights. At the heart of this is returning to the Human Right up Front initiative to ensure that protecting human rights is at the center of all UN action and understood to be the responsibility of all UN personnel.

Thirdly, breaking the silos between the different worlds of negotiations. Geneva for instance is a world center of negotiation, yet different worlds of negotiations co-exist and rarely interconnect: human rights, trade, intellectual property, disarmament, labor standards, health and the list is not exhaustive. In my new capacity with the Graduate Institute's Global Governance Center, I am planning to explore the potential to establish an international negotiation platform where negotiators from international organisations, governments, business and civil society could interact – virtually or physically – to leverage each other's experience in negotiation as a technique and potentially to contribute to identifying common ground in ways to address global issues.



The negotiation table: the UN, States and...other critical stakeholders

I would like to end today with some thoughts about who is at the table for UN negotiations on human rights? Are all the necessary actors there to ensure maximum impact? It has become unavoidable to address these questions if we want to make concrete progress in addressing our global challenges.

The UN was established in a world largely perceived as State-centric. Our world has changed and so has the balance of power between States and non-State actors. In the human rights arena, two critical actors have slowly gained prominence. They are civil society and business. While the role of civil society in the promotion and protection of human rights is now widely recognized, it remains more controversial in some quarters to acknowledge the positive role that business can, and needs to, play. In some ways, this is understandable, when we hear of allegations of a powerful “corporate lobby” negatively impacting upon public policies or the direct, or indirect, involvement of some companies in human rights abuses, sometimes with government complicity.

I would argue though that in today’s world, business companies can, and should, be invited to the negotiating table, including with a view to uphold their responsibility to respect human rights. I have been inspired by the methodology used by Professor John Ruggie, as UN Secretary General’s Special Representative on “human rights and transnational corporations and other business enterprises”, when he engaged and negotiated not only with States, but also with civil society and business in the elaboration of the UN Guiding Principles on Business Human Rights allowing for their adoption by consensus in the Human Rights Council in 2011. Eight years on, the yearly UN Forum on Business and Human Rights has allowed for a continued engagement between States, civil society and business, to check on progress and challenges under the three pillars: the “State duty to protect”, the “Responsibility to respect” and “Access to remedy”.



This year, we also celebrate the 100th anniversary of the International Labour Organization (ILO), the only tripartite UN agency. In the very structure of the ILO, workers and employers have an equal voice with governments: this is meant to ensure that the views of social partners are closely reflected in ILO labour standards and policies. Similar formats could potentially be explored to address other global issues.

More broadly, when populist political leaders question and undermine multilateralism, we should not underestimate the calls by business in support of multilateralism and seeking to positively shape the agenda. Among other examples, we could mention the initiative launched by several business organisations (USCIB in partnership with the IOE and the ICC) in May 2019 with an “All In Roundtable on Inclusive Multilateralism, SDGs and Business” and, separately, Brad Smith, the President of Microsoft, advocating for a “Geneva Digital Convention”.

In most instances, the UN plays an important role as convener. The UN Secretary-General opted for a multi-stakeholder format, the High-level Panel on Digital Cooperation, to advance dialogue on how we can work better together to realize the potential of digital technologies for advancing human well-being while mitigating the risks. The final report, “The Age of Digital Interdependence” includes recommendations including to “Protect human rights and human agency”³. OHCHR has embarked on a B-Tech project and consultations with all stakeholders using the UN Guiding Principles on Business and Human Rights to inform efforts to identify, prevent, mitigate and remedy human rights harm related to digital technologies⁴.

Outside the UN, promising initiatives result of intense discussions and negotiations among a variety of stakeholders, recognizing the need to have diverse players working together to deliver concrete results, in other words: impact. We can mention the International Code of Conduct Association for Security Service Providers⁵. I have also witnessed the power of collective action in the Mega-

³ <https://www.un.org/en/pdfs/DigitalCooperation-report-for%20web.pdf>

⁴ https://www.ohchr.org/Documents/Issues/B-Tech/B-Tech_Scoping_paper.pdf

⁵ <https://icoca.ch/>



Sporting Event platform rallying sporting bodies, business companies, broadcasters, civil society, trade unions, States, regional organisations and the UN (OHCHR, ILO, UNESCO, UNICEF) under the leadership of Mary Robinson, leading to the establishment of a Centre for Sport and Human Rights in Geneva⁶.

Finally, we see signs – admittedly still limited - where both business and civil society hold States to account for their human rights obligations. For example, the initiative by eight companies and investors, on the occasion of the 70th anniversary of the Universal Declaration of Human Rights stating that “The protection of civic freedoms and respect for the rule of law are vitally important for both civil society and business”⁷.

UN negotiations will take a different turn when States – from leaders to negotiators - become exposed to mainstream joint pressure from business and civil society to uphold human rights to address the challenges of our turbulent world. This will require courage, incremental and bold steps, to echo the powerful call by Nobel Peace Prize Laureate Kailash Satyarthi at the 2018 UN Forum on Business and Human Rights: "I see a change maker inside each one of you".

⁶ <https://www.sporhumanrights.org/>

⁷ https://www.business-humanrights.org/sites/default/files/Statement_Public_v2.pdf