

The double bind facing civil society organisations: the Swiss example

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What is happening in Switzerland, the birthplace of the International Committee of the Red Cross and a stronghold of international organisations and non-governmental organisations alike? The author calls our attention to a case which – in the shadow of the debate on the influence of companies and the neo-liberal model – could well mark an offensive against the rights of civil society organisations.

Fifty years ago, in 1972, the United Nations Conference on the Environment was held in Stockholm. Considered to be the first ever Earth Summit, it heralded the beginnings of the discussion on “sustainable development” by addressing the links between social, economic and environmental spheres. This discussion spread widely before being picked up by the anti-globalisation movement and non-governmental organisations (NGOs) on the one hand and by scientists on the other. Twenty years later, in 1992, 1,700 top researchers issued a stark warning to humankind (*World Scientists' Warning to Humanity*) – a wake-up call that would be reiterated in 2017, this time with more than 15,000 signatories –, making climate change an urgent priority. Scientists, NGOs and anti-globalisation activists thus have a long history of involvement in informing and educating civil society and raising awareness of the human and environmental challenges of development.

These actions seeking to “enlighten” civil society have met however with a certain degree of mistrust on the part of the United Nations, which created the Panel of Eminent Persons on UN-Civil society Relations¹ in 2003 with the aim of strengthening the role of civil society within the United Nations and of developing a legal framework to set guidelines for NGO practices. The reflection process it initiated has focused primarily on questioning the legitimacy of NGOs to represent civil society, a legitimacy that is contested by the political and economic worlds on the grounds that NGOs are not elected by the people. This argument appears somewhat specious in so far as the economic sector, heavily involved in discussions on various international treaties and agreements, has hardly been mandated by the ballot box any more than NGOs have.²

To address the challenges of sustainable development, in 2011 the United Nations adopted their guiding principles aimed at implementing the “Protect, Respect and Remedy” framework. These principles stress not only “the role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights”, but also “the failure [of States] to enforce existing laws that directly or indirectly regulate business respect for human rights”, nevertheless urging the latter “to carry out human rights due diligence”.³ The same year, the Organisation for Economic Co-operation and Development updated its own guiding principles for multinational business enterprises, in order “to promote positive contributions by enterprises to economic, environmental and social progress worldwide”,⁴ by drawing attention to the issue of human rights

¹ *UN News*, “Annan sets up eminent persons panel to examine UN links with civil society”, 13 February 2003, <https://news.un.org/en/story/2003/02/59112-annan-sets-eminent-persons-panel-examine-un-links-civil-society>

² Peter Niggli et André Rothenbühler, « ONG et gouvernance mondiale : une légitimité contestée », *Annuaire suisse de politique de développement*, vol. 23, n° 2, 2004, p. 25-31.

³ United Nations Human Rights Office of the High Commissioner, *Guiding principles on business and human rights. Implementing the United Nations “Protect, Respect and Remedy” framework*, 2011, United Nations, p. 1, p. 5 and p. 20, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁴ Organisation for Economic Co-operation and Development (OECD), *OECD Guidelines for Multinational Enterprises*, 2011, p. 3, https://www.oecd-ilibrary.org/fr/governance/oecd-guidelines-for-multinational-enterprises_9789264115415-en

(respecting them locally) and to the duty of due diligence. The latter is conceived as the process by which they can “identify, prevent, mitigate and account for how they address their actual and potential adverse impacts”.⁵

Grey clouds over NGOs

It is in this context that Switzerland, internationally recognised for its participatory democracy and its grassroots initiatives, entered the debate on the accountability (or otherwise) of its multinationals. A first campaign organised by a coalition of about fifty NGOs resulted in the submission of 135,285 signatures to the Swiss authorities in June 2012. This petition called for binding rules so that “Swiss-domiciled enterprises respect human rights and environmental standards throughout the world”.⁶ Besides lip service from some politicians in favour of a duty of diligence for multinationals, the petition came to nothing.

Meanwhile, human and environmental tragedies were mounting up, culminating on 24 April 2013 in the Dhakadisaster.⁷ The multinational companies concerned, which, let’s face it, would never willingly bear the responsibility of compensation, hid behind the smokescreen of their subcontractors. So the question is obvious: what are the responsibilities of multinationals concerning the working conditions imposed in often poor countries with spartan labour laws by their subcontracting firms?

In Switzerland, after the first setback in 2012, the cause was taken up by sixty-six civil society organisations who set up the *Comité d’initiative pour des multinationales responsables* (Action Committee for Responsible Businesses). In total, 120,000 signatures were submitted to the Federal Chancellery on 10 October 2016. Although the initiative enjoyed strong popular support in its first year, it was finally rejected in the ballot of 29 November 2020 by a majority of Swiss cantons while retaining the support of the citizens, though the margin of approval was small (50.7%). As a result, it was the counter-proposal put forward by the Federal Council that was applied without being really binding. It certainly introduces an obligation, for certain enterprises, to report on non-financial questions, such as “environmental issues, in particular objectives in terms of CO2 emissions, social and personnel matters, the respect of human rights and the fight against corruption”. It is true that it calls for a duty “of diligence and transparency as regards ores and metals originating in conflict zones and concerning child labour”, to quote the title of Chapter VIII of the Swiss Code of Obligations.⁸ Even so, the ordinance implementing it allows for “so many exemptions that in the end almost all multinational companies will be able to evade the provisions of the law.”⁹

Many organisations in the fields of co-operation and development aid have become involved in this debate, their work being impacted to a great extent by the way in which the multinationals act in the field. We only need to remind ourselves of the words of Congolese doctor Denis Mukwege during his Nobel Peace Prize acceptance speech in 2018:

“I come from one of the richest countries on the planet. Yet the people of my country are among the poorest of the world. [...] We love nice cars, jewellery and gadgets. I have a smartphone myself. These items contain minerals found in our country. Often mined in inhuman conditions by young children, victims of intimidation

⁵ OECD, *OECD Guidelines ...*, *op.cit.*, p. 27.

⁶ « Les multinationales suisses doivent respecter les droits humains », *Swissinfo*, 3 novembre 2011, <https://www.swissinfo.ch/fr/toute-l-actu-en-bref/les-multinationales-suisses-doivent-respecter-les-droits-humains/31493050>

⁷ The Rana Plaza, an eight-floor building in the Bangladesh capital Dhaka collapsed, killing at least 1,127 people and injuring more than 2,000. The victims were mainly garment workers, men and women working in the fashion industry for major Western brands including Mango, H&M and Benetton among others. See for example Véronique Kiesel, « Le pire accident de l’industrie textile », *Le Temps*, 11 May 2013, <https://www.letemps.ch/monde/pire-accident-lindustrie-textile>

⁸ Federal law supplementing the Swiss Civil Code (Section Five: Code of Obligations), as of 1 January 2022, https://www.fedlex.admin.ch/eli/cc/27/317_321_377/fr

⁹ Coalition pour des multinationales responsables, « Nouvelles dérogations pour les multinationales : le Conseil fédéral ignore le vote populaire », communiqué de presse, 3 décembre 2021, <https://responsabilite-multinationales.ch/actualite/nouvelles-derogations-pour-les-multinationales-le-conseil-federal-ignore-le-vote-populaire>

and sexual violence. When you drive your electric car; when you use your smart phone or admire your jewellery, take a minute to reflect on the human cost of manufacturing these objects.¹⁰

At the Swiss level, the question thus again arises of the legitimacy of NGOs working in the field of co-operation and development aid to take part in the debate on the accountability of Swiss multinational companies, in particular in view of the grants they receive from the Confederation. On the one hand, they are praised for their experience, their credibility, their know-how, the positive image they give of Switzerland; they are commended for their work informing and educating the Swiss population and for their critical dimension and their ability to provide an alternative perspective, their contribution to the development of an enlightened civil society, one that is aware of the issues. However, on the other hand, they are criticised for their political lobbying activities since their subsidies come from the Confederation and/or because they are tax-exempt on the grounds of public interest. The motions, assumptions and other inquiries addressed to the Federal Council by members of parliament, concerning the stance of NGOs, during or after the vote on the accountability of multinational businesses, raises questions on the tenuous boundaries between general and special interests, between political engagement and societal change, between informing and raising awareness.

Although the “financing of political campaigns and lobbying activities with Confederation funds is prohibited in Switzerland”,¹¹ the temptation to muzzle NGOs on the pretext that they are funded by the Confederation is great. Indeed on 4 December 2020, the Federal Council decided to no longer allow NGOs receiving contributions from the Confederation to use these grants for information and education purposes in Switzerland. Many NGOs saw this as retaliatory action following their commitment in favour of responsible business. The Christian communities’ grassroots movement in Switzerland criticised this double-dealing in an open letter to the Federal Councillor at the head of the Federal Department of Foreign Affairs (to which the Swiss Agency for Development and Co-operation [SDC] belongs):

“We are outraged that a country which always boasts of being a democracy, should muzzle charities committed to a fairer world. How can there be any commitment to the transformation of the social and ecological systems without seeking to bring about in-depth change to personal and political awareness through education and training?”¹²

This decision is in effect all the more disconcerting for actors in the voluntary sector given that the SDC Guidelines themselves emphasise the fact that “co-operation with NGOs well-rooted in Swiss society also leads to a better understanding of the foreign policy activity”¹³ of the Swiss State, while the 2020-2023 Foreign Policy Strategy stresses the importance of involving all stakeholders at national level in the interests of greater effectiveness.¹⁴

Civil society organisations undermined

In a globalised world, promoting electric cars or digital technology in the Global North while ignoring the social and environmental conditions in regions where the required minerals are mined in the Global South gives the

¹⁰ Dr Denis Mukwege Foundation, « Discours du lauréat du Prix Nobel de la Paix 2018 Denis Mukwege », Oslo, 10 décembre 2018, <https://www.mukwegefoundation.org/discours-prix-nobel-de-la-paix-2018-denis-mukwege>

¹¹ Opinion of the Federal Council of 24 February 2021, in reply to question 20.4436, entitled “Support given to aid organisations taking part in campaigns prior to votes”, <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20204501>

¹² Mouvement des Communautés Chrétiennes de Base en Suisse, « Lettre ouverte à Monsieur le Conseiller fédéral Ignazio Cassis. Muselière pour les Œuvres d’entraide », 30 décembre 2020, <https://www.cathkathcatt.ch/f/wp-content/uploads/sites/3/2021/01/Lettre-ouverte-a-Ignazio-Cassis.pdf>

¹³ DDC, *Directives de la DDC pour la collaboration avec les ONG suisses*, Éditions de la DDC, 2019, p. 7, <https://www.ge.ch/document/directives-ddc-collaboration-ong-suisses>

¹⁴ Département fédéral des affaires étrangères, *Stratégie de politique extérieure 2020-2023*, Éditions du DFAE, 2020, p. 40, <https://www.eda.admin.ch/eda/fr/dfae/dfae/publikationen/alle-publikationen.html/content/publikationen/fr/eda/schweizer-aussenpolitik/Aussenpolitische-Strategie-2020-2023.html>

measure of what is at stake, revealing how threats and even “SLAPP suits”¹⁵ filed against NGOs are on the rise. These same tactics were behind the legal action a Canadian mining company brought against a small Quebec publisher and one of its authors regarding a publication criticising the practices of Canadian oil and mining companies worldwide.¹⁶

The urge to limit the influence of NGOs in the public debate is effectively part of a more serious trend seen in the increasing difficulty of exchanging opposing or contradictory views in a calm and respectful manner. The exponential development of hate speech, fake news and conspiracy theories – in particular on social media –, the debasement of science and the critical and rational analysis behind it and the suppression of the greater interest in favour of the claims of particularly active minority groups discrediting all opposition compromises the very possibility of public debate. This trend reveals at least four aspects of the modern world which explain the temptation to sideline critical NGOs, a temptation which is not the prerogative of governments.

A first aspect relates to the weakness of democracies which, in the name of freedom of expression, let into the public arena those whose violent actions or behaviour quash any chance for debate. By considering that all opinions are of equal value, democracies find themselves at a loss in the face of hate speech, whatever its origin. As a result, scientifically proven arguments are now considered less valid than abuse, insults and foul language.

A second aspect concerns the desecration of human rights. By discrediting their universality on the pretext that human rights are merely the expression of imperialist thinking, it becomes counter-intuitive to attempt to impose them in the economic sphere alone. At this level, the prevailing logic is to overlook the fact that the corpus of human rights represents a project for the whole of humanity, engaging each and every one in a duty to save every other human from poverty, homelessness, torture, indignity and other scourges.

A third aspect involves the place economics holds in the world. Social -sciences and the humanities are often accused of applying an ideological interpretation while, on the contrary, economics gives the impression of speaking with a single voice, as if there were only one direction possible. This is particularly true in -Switzerland where any initiative is carefully scrutinised for its economic risks for the country. Thus any debate soon focuses on financial aspects, with any point of view likely to threaten company profits being rapidly discredited. In light of this, the question of respecting human rights, notably wherever we may be (in the name of all belonging to the same human community) proves in fact to vary from place to place or to be practised in different ways.

A fourth and final aspect regards the fear of discredit and disrepute which narrows the scope of public debate. Business enterprises, as much as NGOs, have become particularly mindful of their image. Moralism, which is active in contemporary Western societies and turns any deviation from the prevailing view into an error of moral judgement, eradicates any attempt at debate, lest an idea be misrepresented, or a misunderstanding or simple difference of opinion and perspective arise. Political institutions, business enterprises and civil society organisations (dependent on donations and/or state subsidies) are equally extremely careful about public relations, their representatives being committed to delivering only particularly sanitised messages, thus undermining any spirit of contradiction and criticism, although these are essential in public debate.

Of course, and by way of conclusion, Switzerland is not Nicaragua or Russia, countries which, among others, have in recent years banned many NGOs from their territories.

Certainly Switzerland continues to acknowledge the importance of NGOs – if only because they provide services to the public, at home and abroad, at a low cost for the community. Nevertheless, the issue of public debate, involving all the forces concerned, is rekindled as much by the lure of extremism, nationalism and/or individualism as by the dominance of -political-economic discourse. And yet public debate free from any purely

¹⁵ So called “SLAPP or Strategic Lawsuits against Public Participation” are “legal cases brought [by business enterprises] with the intention of silencing or intimidating acts of public participation, including advocacy, activism, and reporting in the public interest”, see Greenpeace, *Sued into silence: how the rich and powerful use legal tactics to shut critics up*, 2020, <https://storage.googleapis.com/planet4-eu-unit-stateless/2020/07/20200722-SLAPPs-Sued-into-Silence.pdf> [Editor’s note].

¹⁶ Alain Deneault, Delphine Abadie et William Sacher, *Noir Canada. Pillage, Corruption et Criminalité en Afrique*, Écosociété, 2008. L’ouvrage remettait en cause le Canada et les pratiques des sociétés minières en Afrique à partir de données publiques. Voir également Christophe Boltanski, *Minerais de sang. Les esclaves du monde moderne*, Grasset & Fasquelle, 2012.

polemical intent is crucial in the age of social media which tends to restrict each of us to the vision of the world that suits us and to downplay the challenges which are increasingly interwoven and complex.

Translated from the French by Fay Guerry

Biography

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