# COMPANIES IN CONFLICT SITUATIONS: ADVANCING THE RESEARCH AGENDA

## SEMINAR PROCEEDINGS
## BARCELONA, OCTOBER 2011

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INSTITUT CATALÀ INTERNACIONAL PER LA PAU

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These seminar proceedings correspond to the international conference "*The Role and Responsibilities of Companies in Conflict Situations: Advancing the Research Agenda",* organized by the International Catalan Institute for Peace, which took place in Barcelona on the 20th and the 21st October, 2011.

**The rapporteurs**

These conference proceedings have been written by Maria Prandi from the notes taken by the rapporteurs Antoni Cardesa and Matt Murphy.

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# 1. PRESENTATION



## THE INTERNATIONAL CATALAN INSTITUTE FOR PEACE

### TICA FONT

Director of the International Catalan Institute for Peace (ICIP)

Welcome everyone. I would like to present the International Catalan Institute for Peace which was created by the Parliament of Catalonia in 2007 and began its work in 2009. We are therefore still very young for there to be much awareness about our work abroad.

I just wanted to say that we are a public institute that is allocated a budget by the Government of Catalonia, but which nevertheless is politically independent. Whatever the governing party, neither our decision-making bodies nor our decisions themselves are affected. This is an important characteristic of the Institute that I wanted to share with you.

Another unique feature of the Institute is that the law itself establishes that it must work for and with three clients: the academy, civil society (especially the movement for peace) and the public administration itself. In this respect, the established four-year plan defines three lines of work and we are gathered here today for one of these lines; research, training, education and the construction of peace, in other words, action. This is another distinctive feature of a public institute, which allows it the opportunity to act in conflict situations as part of its core work. We are here today because of one of these fields of research. Specifically, the programme 'Armed Conflicts, the Law and Justice' directed by Antoni Pigrau, the person coordinating the conference for us over the next two days.

Thank you very much.

## BUSINESS INVOLVEMENT IN CONFLICT SITUATIONS AS AN EMERGING RESEARCH AGENDA

### ANTONI PIGRAU

Director of the Research Programme 'Armed Conflicts: Law and Justice' (ICIP) and Conference Director

Good morning everyone. As the Director of the ICIP has just stated, this is a young organization, which in practice only started to work at full capacity in 2009.

One of the main missions assigned to the ICIP is that regarding research for peace. The objective therefore is to make the ICIP another instrument at the service of the work started many decades ago by various organizations all over the world, these being political, religious or academic organizations or ones more directly linked to activism, especially as a reaction to the impact of the First and Second World War, but also to the endless chain of local and regional armed conflicts. Studying peace, violence and conflicts has been a way of finding methodologies to identify the root causes of violence and conflicts, their fundamental characteristics, the motivations of the various actors involved and the channels for their resolution and also to avoid their repetition.

When the ICIP was established, a great number of institutions, some of them in Spain, worked in the field of research for peace, both inside and outside of universities. The obligation of the ICIP is to find a space where its work will be useful to this common work, ensuring that it does not duplicate the work of other institutions. To this end, the ICIP has adopted programmes that guide its research activities, which include the programme *Armed Conflicts, the Law and Justice* that I currently direct. Although the programme, because of its subject, has a predominantly legal focus, the multifactorial nature of conflicts and the theoretical functionality and methodology of other scientific disciplines to deal with them should not be forgotten.

While in early years research for peace was focused on the arms race, arms control and disarmament, in recent years the focus of attention has diversified significantly, including the analysis of specific conflicts, the construction of peace after conflicts, the proliferation of weapons of mass destruction, new security threats, the relationship between peace and democracy, transitional justice, the problem of organized crime and the connection between poverty and violence.

In this context, private actors are playing an increasingly important role in the numerous spaces that international relations are creating and also regarding conflict situations. Among these actors, the ICIP has paid special attention to businesses that are involved in various ways with conflict situations and that through their actions can contribute, sometimes decisively, to either perpetuating or resolving them.

Taking into account the very wide range of possible connections between businesses and conflict situations, this conference is limited to analyzing the role and responsibilities of businesses in terms of three fields of interest: firstly, the most traditional of the connections between businesses and conflicts, the international arms market (especially regarding the sale of light and conventional weapons), secondly the supply of military and security services, which occurs within a context of a global trend towards privatization and far-reaching deregulation, which has meant that the private sector increasingly carries out duties that are traditionally reserved for the state or the international community, and thirdly we will focus on that segment of the private sector, whether national or multinational that "does business" in conflict zones, especially regarding the exploitation of and the legal or illegal trade in natural resources.

The ICIP has decided to assess the level of research being carried out in these fields from a multidisciplinary, international perspective, bringing together some of the leading researchers and institutions that work in this field.

Therefore, this meeting has two clear objectives. On the one hand, the ICIP offers us the chance to reflect upon the causes, dynamics and consequences of the participation of businesses in armed conflicts, as well as regarding the current and potential answers to this fact in view of the respective responsibilities of all the actors involved. On the other hand, the ICIP wishes to discover whether it is justified that part of its own future research activity should be focused on this field. To do this, our intention is that this will be a forum where we can exchange information about our own programmes and research projects, identify gaps, connections and synergies in our work and consider the channels through which future cooperation could be initiated and maintained.

Some people and institutions are missing from this conference. In some cases they have not been able to attend because of other commitments. In other cases, they have not been invited because of a lack of information, which is purely our fault. We are very aware of this and one of the fundamental objectives of this meeting is to correct these deficiencies, with a view to designing the most exhaustive world map regarding research into businesses in conflict situations possible, and we therefore ask you for your help in completing it.

In any case, I would like to thank all of you very sincerely for taking the time to participate in this meeting.

I cannot finish without giving thanks for the decisive role that has been played and continues to be played in the organization by Bruce Broomhall, professor in the Department of Law at the University of Quebec in Montreal, and Maria Prandi (researcher and head of the Business and Human Rights Programme at the School for Culture of Peace, the Autonomous University of Barcelona).

I would also like to thank the technical team of the ICIP for its work, especially Elena Grau, María Fanlo and Marta López. And the people who are going to be taking the minutes, Antonio Cardesa and Matt Murphy.

I hope that we will all enjoy this conference.

## OVERVIEW OF THE AGENDA

### MARIA PRANDI

Head of the Business and Human Rights Programme at the School for a Culture of Peace (Universitat Autònoma de Barcelona) and Co-organizer of the conference.

The role of companies as an actor in armed conflicts is a question that has been subject of intense study and controversy in recent decades. Indeed, much of the literature regards companies as the engine or key factor in generating and perpetuating conflicts, especially in countries where the armed groups are financed via control over the extraction and sale of natural resources. In any event, the globalization of the economy has offered new commercial opportunities to companies worldwide, which they often operate in emerging countries, yet frequently and increasingly in environments affected by conflicts or in the post-war reconstruction phase after a peace agreement has been reached. Sometimes, and over time, the contributions from this pri-

vate capital are equivalent to or higher than the aid from international donors, meaning that their role in the country's economy, at both a micro and macro level, is crucial. In these fragile settings, the orientation or direction that this injection of money takes can lay the groundwork for the consolidation of peace or to the contrary it can contribute to reviving the causes of the conflict.

Let me go briefly through the conference agenda. In the first panel we want to have a look at how business actors contribute to conflict through their participation in particular markets. What are the incentives for acting this way and how can states and the international community help to resolve conflict through policy or enforcement action directed at business actors. After the coffee-break, we will discuss about the multi-stakeholder initiatives developed by different organizations and this will include a look at the new UN 'Protect, Respect and Remedy' Framework and its related Guiding Principles in conflict zones. The third panel will deal with a major issue, the complicity, investigation and prosecution of companies and their agents. In panel four we will also have a look at the future international treaty proposals such as the UN Convention on the Trade in Conventional Weapons and the UN Convention on Private Military and Security Companies. Last, but not least, the aim of the conference is to discuss, in the last panel, the possibility of establishing a research network or any other initiative that may arise during the debates.

I must say that you are not today in Barcelona by chance but because of your many years of dedication to the study of these issues and also, and no less important, because of your personal commitment and struggle in relation to these challenges. Therefore, we would like to invite you to take the energy of your personal commitment together with your expertise in that area to help us advance in the research field, not only through academic discussion but also through creative thinking. I am sure we will have extremely interesting discussions and let us also learn, and maybe why not, unlearn together.

I would like to thank Toni Pigrau for letting me help him in the organization of the seminar. I also would like to thank Bruce for being an inspiration and, I must say, for being an extremely efficient member of the team. I also would like to stress that without the enthusiasm and help of Marta, Maria, Eugenia and Elena, the organization of the conference would have been very complicated. And thanks also to Matt Murphy and Toni Cardesa, our conference rapporteurs.

Please enjoy the conference as much as possible, as I will do myself, and thank you again for being here. We are very happy and honoured to have you on board.

# 2. CONCEPT PAPER

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## THE ROLE AND RESPONSIBILITIES OF COMPANIES IN CONFLICT SITUATIONS

BRUCE BROOMHALL
Responsible for the organization of the conference

MARIA PRANDI
Responsible for the organization of the conference and the conference proceedings

### 2.1. INTRODUCTION

The range of roles that the private sector can play in situations of armed conflict or other severe instability has received ever-growing attention in recent years. Ongoing research from a number of disciplines and perspectives provides increasing evidence of how companies from various sectors have played a significant role in conflicts around the world. This is due to several factors. First, the private sector, either domestic or multinational, is often "doing business" in conflict-affected areas. This is particularly so for sectors involved in the exploitation and trade of natural resources (that is, of so-called "conflict commodities"). Secondly, the privatization of security as part of wider global trends in privatization and deregulation has increasingly brought the private sector into situations traditionally dominated by state actors or by the international community. Thirdly, the international arms market and its supply chain, together with the financial institutions that sustain them, are very often exclusively business-driven. These factors continue to function in a climate largely characterized by impunity with respect to economic activities that promote and sustain conflict and the human rights abuses related to it.

The Institut Català Internacional per la Pau (ICIP), created by the Parliament of Catalonia in 2007, has decided to assess debates arising in this area from a multidisciplinary and international perspective by bringing together some of the main researchers in this field in order to identify gaps, overlaps and synergies in their work.

### 2.2. BUSINESS AND ARMED CONFLICT: THE CONTEXT AND THE INITIAL APPROACH

No armed conflict takes place in an economic vacuum. At a minimum, belligerents need the resources with which to arm and supply those who fight,

maintain their diplomatic and political activities, and ensure the commitment of their followers. Without minimizing the importance of other factors, economic considerations should be acknowledged as bearing upon the ability of belligerents to go to war in the first place, upon their military objectives, and upon the conditions they set for their return to peace.

Since the end of the Cold War, researchers have increasingly delved into the various means by which government forces and non-State armed groups alike finance their capacity to engage effectively in hostilities. Such financing might be direct or indirect. It may stem, for example, from government or rebel control over natural resources, diaspora remittances, the diversion of aid or loan payments, monies taxed or extorted from the civilian population, or revenues derived from domestic and foreign investment. Such revenues are then used to purchase arms and related goods and services, to hire military and security personnel (increasingly through Private Military and Security Companies - PMSCs), for personal enrichment or other purposes. In a vicious circle, a belligerent's reinforced fighting capacity is then used to ensure an increased grip on the resource streams that it relies upon. Once the perverse incentive structure of an illicit conflict economy sets in, civilian populations are frequently held hostage – or worse, deliberately targeted for abuse by the warring parties. At the same time, the belligerents and the economic networks in which they are embedded may do all they can to resist a return to peace.

Conflict economies often work in synergy with international criminal organizations and terrorist groups. They also rely on 'mainstream' financial institutions, companies and supply chains. Economists have long sought to understand such pernicious economies, while political scientists have analyzed the role that the policy environment plays. More recently, jurists have begun to assess and propose normative frameworks with a view to reinforcing the constructive role for business and markets in conflict situations, while minimizing their destructive potential.

Given the vast range of possible intersections between business and conflict situations, the present conference will limit itself to analyzing the role and responsibilities of business in relation to the **international arms market** (in particular with respect to the trade in small arms and conventional weapons), the **provision of military and security services**, and the **exploitation and trade of natural resources** that is frequently used to pay for these. Without access to arms or military and security personnel on the one hand, or to markets for natural resource exports on the other, belligerents in many situations would arguably find their ability to wage war seriously constrained. It is abundantly clear, however, that significant efforts will be needed to ensure that international law and policy have the normative, institutional and practical resources needed to prevent and respond to harmful business impacts in conflict settings.

The potential for grave abuses of human rights and the existence of clear and binding international norms applicable to conflict situations has given rise to a number of policy frameworks, codes of conduct and multi-stakeholder initiatives (MSIs) of considerable significance to business actors engaged in such settings. The broadest of these are perhaps those of the Organization for Economic Cooperation and Development and the United Nations. The OECD is currently completing an update of its *Guidelines for Multinational Enter-*

*prises*, which is now supplemented by an *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*, as well as by the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*. John Ruggie, whose mandate as UN Special Representative of the Secretary-General on Business and Human Rights will expire in mid-2011, has developed the *UN Framework on Business and Human Rights* – along with the *Guiding Principles* for its implementation. The UN Framework is centered upon the concept of 'Human Rights Due Diligence,' and sets out in detail what such a practice should comprise. Of narrower scope are the MSIs dealing with specific sectors, such as the Kimberley Process Certification Scheme for 'blood diamonds' and the Extractive Industries Transparency Initiative in relation to corruption. Regarding business relationships with military and security personnel, the *Voluntary Principles on Security and Human Rights* were established as a MSI in 2000 to ensure that companies' could meet their security needs – including through engagement with private or public security forces – within a framework that respects human rights. The 2008 *Montreux Document* and the 2010 *International Code of Conduct for Private Security Providers* aim to guide governments and companies respectively with regard to the activities of PMSCs in armed conflicts or other 'complex environments.'

A noteworthy recent development is the emerging regime for 'conflict minerals' originating in the Democratic Republic of the Congo. This regime is based on a combination of Security Council sanctions, recently-adopted United States law, OECD guidance, and action undertaken by government and industry in the Great Lakes region and elsewhere. The conflict minerals example, taken alongside other developments relating to timber and other resources, raises the question whether codes of conduct and MSIs are – or should be – becoming firmer and less voluntary as they develop. The purpose and impact of the various codes of conduct and MSIs relevant to conflict settings, as well as their possible evolution in the direction of more sophisticated forms of hybrid regulation, have yet to be assessed in a thoroughgoing manner.

In the context of conflict situations where serious violations of human rights occur, a growing focus upon the legal responsibilities of companies has led to increased research and action on the possible investigation and prosecution of business entities or their agents, particularly for crimes established under international law. This focus has been particularly strong in connection with war crimes, crimes against humanity and genocide, with respect to which direct company participation is possible (as with the war crime of pillage or the crime against humanity of forced displacement), but where complicity or other forms of extended liability are more likely to characterize a given company's engagement with State or non-State armed forces. Business vulnerability to prosecution is equally and perhaps more real with respect to violations of United Nations Security Council sanctions, corruption, money laundering, terrorism and participation in organized crime, not to mention violations of domestic criminal or regulatory law. Whatever form prosecution takes, a range of challenging issues present themselves, including the scope and applicability of extraterritorial jurisdiction, the respective roles of home and host States, the many inconsistencies between national legal frameworks, and a pervasive lack of full and regular cooperation. Although efforts to date have been sparse, inconsistent and far from uniformly successful, the turn to prosecution has arguably created considerable awareness of

the need for increased clarity and consistency in both the content of the law and its enforcement.

In a number of the areas under discussion, growing awareness of the emergence of firm international commitments applicable to business actors or to their governmental and other partners operating in conflict settings has prompted debate about the possible adoption of binding international instruments. The most advanced of these discussions concerns the UN Convention on the Trade in Conventional Weapons, for which the General Assembly has already agreed to convene a conference of plenipotentiaries in mid-2012. In the case of a proposed amendment to the Rome Statute establishing the International Criminal Court's jurisdiction over companies and other 'moral persons,' the prospects are far less certain. Two other proposals – highly relevant, but still in relatively early stages – are the proposed UN Convention on Private Military and Security Companies being developed in the context of the UN Working Group on the Use of Mercenaries, and the allusion made by John Ruggie in early 2011 to the possibility of developing an international legal instrument on the human rights responsibilities of business in conflict settings.

In each of the above areas, and others, the question of the role and (potential) contributions of researchers and institutional research programmes presents itself. The in-house research capacity of government as well as inter- and non-governmental actors – with the support of outside research – has been vital to formulating, publicizing and crafting responses to the problem of illicit business involvement in conflict situations. At the same time, academic and other independent research bodies have challenged assumptions, articulated methodologies and fundamental principles, and provided spaces for debate and disinterested reflection. In discussing and debating the current issues that arise within each of the subject-areas outlined above, the conference will seek to identify important voids that existing research activity appears to have neglected, and will seek to find out ways of creating or of building upon existing synergies in order to maximize the effective contribution of researchers and of research institutions to this rapidly-evolving field.

## 2.3. AIM OF THE CONFERENCE

Through this conference, the ICIP will give experts from around the world the opportunity to reflect upon the causes, dynamics and consequences of business involvement in armed conflict, as well as upon existing or potential responses to it in light of the respective responsibilities of all the actors concerned. Participants will also have the opportunity to exchange information about their own research programmes and projects; identify gaps, overlaps and synergies in their work; and consider avenues by which future collaboration might be initiated and sustained. Participants will include members of the Institute, researchers from Spanish and foreign universities, representatives of non-governmental organizations, and legal practitioners. The conference will be held in Barcelona on 21 and 22 October 2011. It is jointly organized by Professor Antoni Pigrau (Chair in Public International Law and International Relations, Universitat Rovira i Virgili, Tarragona), Professor Bruce Broomhall (Department of Law, University of Quebec at Montreal) and Maria Prandi (Researcher, Responsible of the Business and Human Rights Programme, School for a Culture of Peace, Universitat Autònoma de Barcelona).

## 2.4. CONFERENCE PROCESS

Because of the high level of expertise present at the conference, it will be organized with a view to maximizing discussion among participants. Thus, each session will be initiated by two or three short interventions (approximately 10 minutes) aimed at sketching out the issues in a given area and provoking discussion. In order to further the conference's aim of uncovering gaps, overlaps and synergies in current work being done on the involvement and the responsibilities of business in conflict settings, information on the most relevant programs and projects of the participants and their organizations will be circulated prior to the event. The chair of each session will intervene as energetically as needed in order to keep the discussion on course.

After opening the first day of the conference with introductions, preliminary matters and a framing of the issues, participants will begin by considering the dynamics of business involvement in conflict settings in light of specific examples drawn from their own work. They will then survey, assess and critically discuss a range of voluntary, multi-stakeholder and similar regulatory approaches. More binding regulatory approaches will be considered next, including the range of possible forms that criminal prosecution might take and the various issues to which it gives rise. A rapporteur will close the first day by offering preliminary conclusions and providing questions and thoughts to stimulate discussion on the following day.

Participants will begin the second day by considering the prospects for concrete institutional action relevant to the regulation of business in conflict settings. Discussion will include the follow-up mechanism(s) established in the wake of the Ruggie mandate, as well as the possible adoption of a number of treaties or similarly binding norms.

The final session will delve into the future of participants' collective efforts on the responsibilities of business in conflict settings. The stabilization of future collaboration through the establishment of a research network, and the contours that such a network would have, will be the focus, including in light of the potential role of conference participants and of the Institute.

## 2.5. CONFERENCE OUTCOMES

Following the conclusions of the conference, a short summary of the discussions will be circulated in draft among participants for comment. The final version will be available on the ICIP website. This document will also include an abstract of the short presentations made at each session as well as information regarding the research undertaken by participants and their organizations.

In the months following the event, the organizers will remain in touch with the participants in order to further continue the discussions on the main decisions and proposals that have been raised during the conference with a view to encouraging further synergies or, eventually, other initiatives such as a research network, with a related website, proposals on shared projects and a platform for information exchange.

# 3. PRESENTATIONS AND KEY DEBATES

This part of the report summarizes the presentations and key discussions that took place during the conference. To facilitate analysis, presentations and discussions are divided by panels, in the same way as they were actually carried out.

## 3.1. PANEL 1: MODALITIES AND DYNAMICS OF CORPORATE INVOLVEMENT IN CONFLICT SITUATIONS

The first panel, with presentations by Edin Omanovic, Sarah Percy and Philippe le Billon and chaired by Achim Wennmann, discussed about how do business actors contribute to conflict through their participation in particular markets and how do such markets – and the illicit conflict economies of which they often form part – allow belligerents to generate revenue, move it offshore, and re-invest it in ways that contribute to their military, political or other goals.

### THE RESPONSIBILITIES OF BUSINESS IN RELATION TO SMALL ARMS AND CONVENTIONAL WEAPONS: THE CASE OF AIR TRANSPORT

#### EDIN OMANOVIC

Researcher, Countering Illicit Trafficking - Mechanism Assessment Project, Stockholm International Peace Research Institute (SIPRI) (Stockholm)

At the start of his presentation Edin Omanovic explained the air transport and transport agents' responsibilities in regard to trade of small arms and conventional weapons as recognized by the UN and other international bodies. Omanovic distinguished commercial entities who engage as part of normal operations (either unwittingly or knowingly) from entities related to regional power brokers or governments – often in breach of embargoes – connected to patronage and political alliances. He underlined that these companies may also be often involved in transport of cargo related to peace and humanitarian aid operations. Nevertheless, the use of shell companies makes it difficult to identify what (parent) company is actually involved in the transport of weapons. The researcher proposed to ask carriers to agree to shared corporate social responsibility standards as a means of having business actors effectively engaged taking into account the difficulty in pinpointing who is responsible and prosecute it at a national level.

## THE BUSINESS OF SECURITY SERVICES


### SARAH PERCY

University Lecturer & Tutorial Fellow in International Relations, Merton College, Oxford University (Oxford)


According to Sarah Percy, the business of security services is a quickly evolving industry moving, for example, from logistical services to the provision of training. Security companies are extremely flexible and adaptable to new markets and customers. They interact with conflicts in a variety of ways and assuming different functions. A look into the involvement of private military companies in Sierra Leone demonstrates that these companies started operating by providing mercenaries to the parties in conflict in African countries, but when public opinion became aware of it, they quickly changed for security, body guard type activities supporting regular military operations. In a similar way, the recent practice with respect to the procurement of the services of these companies in Iraq and Afghanistan is also quite relevant, as it shows that the same operator adapts to each specific conflict: the intervention of different countries implies different kinds of practices and services to be provided by private security companies. Sarah Percy mentioned as well that the Iraq war beginning in 2003 saw a boom in this 'new' industry. (1 in 10 military actors on the ground at the height of the conflict were private contractors). However, in Afghanistan local private military companies are more common than the multi-national ones present in Iraq.

In the context of the present world-wide financial crisis, military budget cuts may also oblige companies to look for new market opportunities. As there might also be fewer opportunities in the future because national governments are less willing to engage in conflicts, these companies search constantly out new opportunities (i.e. in humanitarian aid sector; security sector reconstruction). This may again change the pattern of activities in this industry soon. Moreover, the personnel, which move around between companies without much regulation/transparency, has mostly very bad human rights track records. There is evidence that some companies implement a vetting process, but many others do not. The more there are big companies with big public profiles, the better, because these are more easily controlled. Percy went on to explain finally a long-term consequence of the expansion of this industry: the personnel of these companies that has been trained for and has operated within a conflict situation often return to its country of origin and create its own private security enterprises, having a significant impact on local or regional conflicts and levels of violence and unstable governments.

## THE EXPLOITATION AND TRADE OF NATURAL RESOURCES IN THE WAR CONTINUUM


### PHILIPPE LE BILLON

Associate Professor, Department of Geography, University of British Columbia (Vancouver)


In his presentation, Philippe Le Billon addressed the relationship between armed conflicts and natural resources through three dimensions: the re-

source curse – economic and political distortions associated with resource revenues, with businesses making contributions through investments (sometimes paying little taxes, engaging in corruption, and lacking transparency); the resource conflicts – violence taking place over resource extraction (human rights abuses; environmental impacts), and the conflict resources – funding of conflicts through natural resources. He then focused on the incentives structures for companies to operate in conflict environments.

For Le Billon, companies have to obtain contracts and follow opportunities, which might imply to cooperate with totalitarian or dictatorial regimes. They also look for long-term stability given the often high sunk-costs in extractive sectors. Finally, companies have also to address price volatility issues, sometimes at the detriment of host governments and populations. In closing, Philippe Le Billon underlined that there are several initiatives that are attempting to deal with these problems – i.e. Extractive Industry Transparency Initiative; Taxation (transfer mispricing); Contract transparency; Resource governance principles (Natural Resource Charter); and broader instruments such as the Ruggie Framework. The incentives for companies to be engaged in these initiatives are the risk that conflicts could arm their operations, the effect on stock prices and the effect on commodity prices (maybe a contradiction since companies may earn more from this).

He concluded that some of these are relatively effective instruments to promote a more responsible attitude among the companies most exposed to reputational risks, yet these require independent reporting and the backing of mandatory instruments to ensure greater accountability among a broader range of companies.

## DEBATE

In the debate that followed this first presentation, questions arose relating to the way these companies operate and the difficulties for establishing a regulated and more transparent framework. A participant asked Edin Omanovic at what point does the weapon transport become illegal since a cargo may be legal when it leaves a country, but it might reach a destination where it is illegal. She added that when there is not a clear legal entity responsible for determining legality, it is difficult to ask companies to assume the responsibility. In response to the query Omanovic said that it depends very much on the countries capacity to deal with effective control measures and that there is no international authority at the moment able to deal with these regulation and capacity control issues.

During the debate, the challenge of prosecuting private and military security companies was pointed out leading to a discussion on how the nexus requirement should be interpreted by prosecutors of international crimes when acting against enterprises. It was argued that it is easier for prosecutors to act against actors that have been directly benefiting from extracting activities or exploitation of natural resources, i.e., if there is evidence e.g. of direct payments of a broker to a company. On the other hand, it was also commented that soft law is frequently the only mechanism available but it was also criticized by some participants for not being enforceable. Another debate linked transparency with accountability and showed the need to find out if transparency is really delivering more accountability, in particular in fighting financial flows.

The fact that the market for security companies is shrinking due to the less proactive policy of the US was another question raised for discussion. In that sense, a new market seems to open up for these companies in the context of the criminal policy in Latin-American countries: fight against organized crime and protection of certain groups. There is a huge demand for services outside of "conflict" (i.e. 2/3 of violent deaths come outside of conflicts) and it was underlined that regulators are regulating where the industry has been rather than where it's going – i.e. to 'non-conflict' areas.

## 3.2. PANEL 2: MULTI-STAKEHOLDER INITIATIVES, VOLUNTARY CODES AND SUPPLY-CHAIN REGULATION

The second panel, with presentations by Anne Marie Buzatu, Gérald Pachoud, Tyler Gillard and Simon Taylor and chaired by Seema Joshi, discussed about voluntary, multi-stakeholder and analogous regulatory approaches.

### THE MONTREUX DOCUMENT AND THE INTERNATIONAL CODE OF CONDUCT ON PRIVATE SECURITY SERVICE PROVIDERS (ICOC)

#### ANNE MARIE BUZATU

Coordinator, Security Programme, Geneva Centre for the Democratic Control of Armed Forces (DCAF) (Geneva)

Anne Marie Buzatu explained in her introductory comments that DCAF is a Swiss foundation located in Geneva that works on issues relating to security sector reform. Half of its funding comes from the Swiss government and the other half from members of the foundation.

Buzatu focused on three main points during her presentation. The first one, are the key challenges to be addressed. She added that there is a lack of consistent and coherent international standards on these companies. This is coupled with a lack of state responsibilities and state jurisdiction which makes it difficult to enforce international standards and to hold people accountable. Finally, she commented that self-regulation seems not to be effective. In the second part of her speech Buzatu explained that the Montreux Document is taking existing state obligations and existing international commitments to identify how to use them in regard to private military companies. It does not impose new obligations but instead sets out good practices. It is focused on areas of armed conflict and sets out good practices that may also be applied outside those areas. She underlined that it has obtained good input from private companies, but also that it is mainly a state initiative. Buzatu added that there has been significant endorsement and that the Swiss Government is trying to obtain further endorsement in different regions such as Latin America, Central Asia, and Russia. She finally explained that for 2012, at least, one regional outreach activity is foreseen in Africa.In relation to The International Code of Conduct for Private Security Service Providers (ICoC), Anne Marie Buzatu mentioned that it is a Swiss government convened, multi-stakeholder initiative that aims to both clarify international standards for the private security industry operating in complex environments and to improve oversight and accountability of these companies. It aims to set private security industry principles and standards based on international human rights and humanitarian law, as well as to improve accountability of the industry by establishing an external independent oversight mechanism. Buzatu finally explained that the initiative has 211 signatory companies (55% from Europe) from 45 States. She concluded that membership is growing fast and that there has recently been a surge of maritime security companies.

## THE UN 'PROTECT, RESPECT AND REMEDY' FRAMEWORK AND DUE DILIGENCE PRINCIPLE IN CONFLICT SITUATIONS

GÉRALD PACHOUD

Senior Advisor to the UN Assistant Secretary General for Peacebuilding Support Office and formerly Special Adviser to John Ruggie.

Gérald Pachoud addressed two questions in his presentation. The first one is how the UN Guiding Principles were developed and, the second one, is how should the due diligence principle be applied in conflict situations. In the first part, Pachoud highlighted that it is frequently commented that the Guiding Principles have no impact and are not useful, because they were not adopted as hard law. He mentioned, on the contrary, that others might say that they are quite helpful – despite not being hard law because they present a major step forward.

However, according to Pachoud, they are quite useful: Despite not being hard law, they are a normative step forward endorsed by the UN Human Rights Council. The speaker explained that it is the first time that the UNHRC gave a stronger level of appreciation to a document that the members of the Human Rights Council had not negotiated themselves. It is much more than a document developed by one expert. According to the expert it expresses the consensus of the international community. It is the hardest sort of soft law and represents a bottom line of minimum obligations.

Gérald Pachoud mentioned that, through the framework, states have been put back into the discussion: they continue being key actors and have to comply with the standards they have committed to. It puts, therefore, a policy pressure on them to comply and to deal with those companies in a proper way (principle 7). According to the speaker, there should be no state support for companies with negative impact in conflict zone, but also with those that do not engage in the framework of the due diligence principles. Therefore, the guiding principles are not comparable to the Global Compact – The guiding principles are actually much stronger and provide an authoritative platform to push forward the process. At the end of the first part of his presentation, Pachoud added that the Guidelines also integrate the need to provide for remediation (whereas the DCAF process does not).

In the second part, Pachoud underlined that in zones of conflict, with gross human rights abuses, companies should take the Principles as legal compliance. To conclude, Gérald Pachoud pointed out that the Principles will be useful to the extent that we actually use them both at the international level and, foremost, at the national level, in the different national jurisdictions. He underlined that focus on this point is extremely important.

## THE OECD DUE DILIGENCE GUIDANCE FOR CONFLICT-FREE MINERAL SUPPLY CHAINS


### TYLER GILLARD

Legal expert, Organisation for Economic Co-operation and Development (OECD)


Tyler Gillard began his presentation by highlighting the fact that the OECD companies still represent the majority share of the world's foreign direct investment worldwide. In that sense, it is an important forum to foster due diligence guidance among OECD-based multinationals.

The speaker began with a description of the OECD Guidelines for Multinational Enterprises. The Guidelines are applicable not only to companies from OECD countries, but also for those that operate in OECD countries. Therefore, they have an extraterritorial impact. The speaker explained that they constitute a body of soft law, representing a strong political commitment amongst adherents to the OECD Guidelines which set out recommendations on a range of issues surrounding responsible business conduct, such as respect for human rights, anti-corruption, taxation and disclosure issues, environmental impacts, labour rights, etc. (They have recently been updated to have a separate human rights chapter aligned with the UN Principles). According to the speaker, one of the most innovative features of the Guidelines is the machinery set up for its application: states have to set up a national contact point and there is a mechanism for parties to raise issues related to the implementation of the MNE Guidelines in specific instances, which in essence provides a quasi-complaint mechanism. Any interested stakeholder may actually bring an issue to the attention of the "National Contact Points" that adhering countries are required to set up. He concluded the first part of the presentation by saying that the specific instance procedure allows countries to provide their good offices to mediate disputes, or as a last resort, issue a non-binding declaration on the conformity of the enterprise's conduct with the OECD Guidelines for Multinational Enterprises.

Tyler Gillard explained that "specific instances" against businesses operating in the mineral sector in the DRC (among others) led the OECD to put in place a risk awareness tool in 2006 for enterprises operating in weak government zones. The Risk Awareness Tool provides a checklist of questions for companies to consider when investing in fragile states or conflict areas. Yet, despite this general tool, countries of Central Africa requested that the OECD issue due diligence guidance that outlines the responsibilities of enterprises when sourcing minerals from conflict areas. Accordingly, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas outlines due diligence expectations for companies at all points in the mineral supply chain, from the extraction of minerals, to its refinement, its integration into products and its way to the consumer. The OECD Due Diligence Guidance will therefore help companies respect human rights and avoid contributing to conflict.

The speaker explained that the OECD Due Diligence Guidance was endorsed by the Heads of State from the 11the member countries of the International Conference on the Great Lakes Region , as well as by the industry groups in-

terested in sourcing minerals from the region. He added that they have also been referenced in the draft implementing rules for the conflict minerals reporting requirement (section 1502) of the Dodd-Frank law in the US.

According to the speaker, the Due Diligence Guidance outlines the ongoing, proactive and reactive process on how companies identify and assess risks to ensure they are not contributing to conflict or serious abuses of human rights. They contain a 5-step risk based framework for due diligence, a model supply chain policy that defines precisely how companies should avoid contributing to conflict, suggested measures for risk mitigation in specific circumstances, as well as detailed "Supplements" that provide tailor-made due diligence recommendations for the supply chains of tin, tantalum, tungsten and gold. Concluding his presentation Tyler Gillard explained that there is now a pilot implementation with 90 leading companies in the world.

## EMERGING REGULATION OF DEMOCRATIC REPUBLIC OF CONGO 'CONFLICT MINERALS'

SIMON TAYLOR
Global Witness (London)

Simon Taylor made some brief introductory comments to explain that Global Witness has a particular focus on the effects that natural resources play in many conflicts (including pre and post conflict) and proposed to discuss about regulation. According to the speaker there are "dodgy deals" done without transparency. The challenge is therefore to find out all the holes where mineral wealth is leaking out and to reinforce revenue transparency as a way to address conflicts. The Publish What You Pay campaign is an example. The speaker added that the challenge remains among countries where governments have no desire to participate. For example, 1502 and 1504 (Dodd-Frank Act) and Foreign Corrupt Practices Act are being fought hard against in US now. Simon Taylor also mentioned that the American Petroleum Institute holds no longer a debate about whether/if/how regulation should be implemented, but launch now a debate about whether there should be any regulation at all. In conclusion, Simon Taylor underlined that there are some markets saying that they will adopt 1504 Dodd-Frank if others do (i.e. Shanghai would follow Europe). Taylor went on to explain that if we push this forward, these regulations could be successful, but if not these regulations could disappear.

## DEBATE

Seema Joshi opened the debate by inviting the participants to comment on the challenge of not being trapped in perpetually discussing principles without moving on to implementation. She further commented on the need to use normative initiatives to move toward regulation and asked participants how the particular initiatives mentioned above could be improved.

During the debate there was more reflection on the voluntary vs. binding instruments controversy. Some participants supported voluntary instruments while others defended strong enforcement mechanisms as the utmost rele-

vant in contexts of conflict. This led to also consider if these mechanisms are complementary or if they are competing amongst each other. A participant pointed out that complementarity is positive and that there is a body of law on corporate social responsibility emerging that should come across all the actors operating in this field.

Tyler Gillard explained that if you make companies responsible for the process they will be more willing to engage, rather than if they are made responsible for the result. In that sense, the due diligence principle is an obligation of process, not necessarily of result. Gérald Pachoud added that to move forward it could be useful to get rid of the role of 'voluntary' initiatives and move to robust enforcement mechanism. According to Pachoud, we need to look into the end, and not so much the means. The best mechanisms in this sense are robust voluntary mechanisms and state jurisdiction. By improving states capacities in this field, it would be possible to increase accountability. If national administrations are empowered to control compliance with certain standards, it is better than if it is made through international treaty compliance control. More on the role of national authorities, another participant added that because instruments like the UN Principles can become a source of national laws, it is important that they are first consistent. In that sense, DRC has already passed an administrative law based on the OECD Guidelines and Rwanda is considering it as well.

During the debate, a participant asked a noteworthy question concerning the definition of "what's" a conflict. He also commented that focusing on 'conflict zones' can take attention away from other important issues. With respect to the definition of conflict zone and high risk area in the OECD guidelines, another participant asked for clarification about the scope of application. In response to this question, Tyler Gillard explained that it is an expansive definition. There is a natural scoping exercise: the more conflict there is in one area, the more difficult due diligence will become: so, scoping will emerge from this natural exercise of application. In any case, it is the responsibility of companies to make their best estimate of the degree of conflict in a situation.

Other contributions paid special attention to the role of reporting and implementation mechanisms considering that we are reaching the limits of what regulations can do through transparency. A participant pointed out what kind of implementation mechanisms for reporting and follow-up could be set up and how would the work. Gillard mentioned a pilot project that involves 90 companies and which includes some required reports that will be revealed in the next few months. On the other hand, Anne Marie Buzatu explained a system of information gathering that could be applied to a specific company or to a particular area of operation.

As a final point, it was underlined that there is a danger of seeing the role of the private sector as 'negative' when it may provide the only way to sustainably move out of the conflict situation. The speaker explained that we need instruments that do not make it too difficult for those companies to invest and to engage in the reconstruction. In this sense, we need to create a legal framework to engage these companies in the investment and reconstruction.

## 3.3. PANEL 3: COMPLICITY, INVESTIGATION AND PROSECUTION OF BUSINESSES AND THEIR AGENTS

The third panel, with presentations by Mark Whaley, Celia Wells, Mark Taylor; Sandra Cossart and Peter Weiss and chaired by Anita Ramasastry, discussed what criminal or similar sanctions might be brought to bear on corporations and their agents when they participate in illicit conflict economies and what are the strengths and weaknesses of the various sub-regimes that might apply (war crimes such as pillage, crimes against humanity, corruption, money laundering, Chapter VII sanctions, etc.). It was also discussed to what extent, if at all, does criminal jurisdiction transcend the 'host state'/'home state' debate that is so divisive in the human rights area.

## ICC / NATIONAL COLLABORATION IN REPRESSING THE FINANCIAL ASPECTS OF INTERNATIONAL CRIME

### MARK WHALEY

Investigator, Financial Investigation Unit, Office of the Prosecutor, International Criminal Court (The Hague)

Mark Whaley started his presentation by explaining that the ICC's financial investigation unit (FIU) has two aims: investigate financial footprints to identify the crime and possible links between individuals; identify and secure assets in order to ensure their responsibility (for victims). Its mandate is not much different from that of similar units within states, except perhaps for the nature and gravity of the crimes they investigate.

In the first part of his speech, Mark Whaley explained that national financial institutions have to report suspicious financial activities by individuals, such as money laundering. All the information is gathered in a database on a country basis. Nevertheless, at the moment such data is beyond the reach of organizations that are not law enforcement officials or agencies, such as the ICC.

The speaker underlined that in an ideal world of responsible states, it would be possible for the ICC to access that database, but it is not the case. This data would be very useful to the ICC's FIU work. On the contrary, in the context of internal prosecutions, there are not barriers to access. The information is gathered by each state national financial intelligence unit and states may access these data according to Egmon. Mark Whaley commented that the problem is that the ICC cannot accede to Egmon. This central organization (Egmon) for financial crimes coordinates activities and only shares data with law enforcement agencies across countries. Finally, Whaley noted that a short term solution is to enter into short-term MoUs with particular states, but this is not a scalable and sustainable solution.

# CORPORATE CRIMINAL RESPONSIBILITY FROM A COMMON LAW PERSPECTIVE

CELIA WELLS
Professor and Head, School of Law, University of Bristol (Bristol)

The basic scheme of Celia Wells' presentation dealt with the need to concentrate on domestic levels and to approach the corporate crime through national jurisdictions. She divided her presentation into three key points. The first part highlighted some of the difficulties of prosecution and how is liability to be established whenever a corporation is involved in criminal acts: Who to prosecute? The company (which entity); the directors; specific managers? Who has jurisdiction? Having subsidiaries allows parent companies to (legally) wash their hands of problems at subsidiary level. She concluded in the difficulty to identify who to focus on.

In the second part, Celia Wells highlighted that corporations are a problematic actor from a criminal law perspective. In that context, common law systems have approached criminal corporate responsibilities from a very pragmatic way. A number of responsibility attribution schemes have been developed in common law countries. According to Wells, we can distinguish two basic models: the Vicarious (strict) model where the corporation is held responsible for anything an employee does (US & UK); and the Identification model where the corporation is held responsible only for the actions of the directors that can be attributed to the company (Wales). However, Wells underlined that there is no one model of attribution that is generally accepted.

In the third part of her presentation, the speaker noted that, so far, the drive towards greater criminal corporate responsibilities has come through the OECD Anti-Bribery Convention and other international instruments against bribery. According to the OECD guidelines, states should not require liability of individuals as a precondition for the establishment of criminal corporate responsibilities. According to Wells, the standard of criminal corporate responsibilities should be flexible and reflect a wide variety of corporate structures and governance systems. Under these guidelines, a key role is attributed to the so-called 'senior officer' – director or employee that is responsible for the activity of the corporation in any specific area. The corporation is responsible if the senior officer breaks the law or if evidence is found that he knew that someone in the company is committing a crime and did nothing about it (extended model of identification).

To conclude, Celia Wells noted that, in Australia, the notion of 'organizational culture' is also applied, meaning that the company is held responsible if the investigations reveal the existence of a 'corporate culture' that tolerated or encouraged bribery or any criminal activity. According to Wells, the UK 2010 Anti-Bribery Act establishes a very broad model of criminal responsibility attribution: the company is held liable for the acts of its employees, as long as it does not prove or show that the company acted in due diligence and that the employee's acts contravened the corporations' policies and instructions. The 2010 Anti-Bribery Act also foresees a very broad jurisdictional base for its enforcement and it is more flexible in terms of 'proof of intention'.

## IDENTIFYING THE TOOLS FOR EFFECTIVE PROSECUTION

### MARK TAYLOR

Deputy Managing Director, Fafo Institute for Applied International Studies (Oslo)

Mark Taylor started his presentation by pointing out that states have differing rule on whether/how businesses can be prosecuted and that prosecutors are not aware of what laws apply to companies operating in a transnational context. He then alluded to the challenges to the existing international and national legal frameworks highlighting that there is not an international law that explicitly addresses corporate crime abroad, as there is not a legal definition of "unacceptable corporate practices". In countries with civil law systems, courts generally do not have jurisdiction to prosecute on a personal basis for crimes committed by their nationals abroad. To conclude the first part of his presentation, he noted that there is a diversity of corporate liability schemes in different national legal frameworkAccording to Taylor, a legal reform agenda should be put forward: to identify a set of universal acts and activities that should be criminalized (violent and predatory crimes); to substitute spatial indicators that are unhelpful (i.e. conflict zones; spheres of influence); to identify particular acts and activities that are illegal; to identify a common approach to business culpability (e.g. as has been done in anti-corruption law) and to develop extra-territorial jurisdiction.

Taylor added the need to foster an obligation of due diligence by companies on how they operate in conflict areas – as under the UK law (by accident) and to set up a strict liability for companies dealing in conflict goods – question of substantive prohibition (i.e. what's the problem that should be criminalized). The speaker concluded that what is implied in the reform proposals is a legal reform agenda: the potential for uptake of the due diligence obligation – creating mandatory due diligence guidelines at the national level across the different countries.

## ADDRESSING CONFLICT-ZONE ABUSES OUTSIDE THE HOST STATE

### SANDRA COSSART

Head, CSR Program at Association Sherpa (Paris)

Sandra Cossart started her presentation with a noteworthy remark: the need to look outside of the host state. The host state is always part of the conflict, is frequently involved in violations of human rights and is frequently not willing to provide judicial access, nor compensation and relief to victims. On the contrary, the responsibility of home state (the state where the accused is domiciled) is usually part of key issues or part of the solution. Sandra Cossart noted that there often are procedural obstacles to the application of this doctrine – e.g. in France you need a final decision of the local court in the conflict zone against an individual, before being able to prosecute a company for complicity with convicted persons.

The speaker continued her presentation by giving some examples of cases brought before courts by SHERPA in which corporate complicity for crimes against humanity was invoked. In relation to the case of TOTAL in Burma she mentioned that there was a complicity in unlawful confinement (victims were forced into labour) according to the definition of "unlawful confinement" in French legislation. She explained that the case was closed with a settlement establishing a compensation fund. Cossart noted that there can be no complicity of crime for companies such as TOTAL, because it is difficult to prove the concurring intention to kill people by the company.

In relation to the case of DLH, Cossart explained that the company purchased significant quantities, directly benefiting Taylor's Regime. The company should have known about the illegal origin of the timber according to the available public information. DLH was accused of acquiring illegal goods, under the French criminal law, and the competence of French courts was established because the timber was held by the French subsidiary of DLH. At the time of writing, the Court decision was still pending.

In relation to AMESYS, the SHERPA lawyer mentioned that FIDH and LDH had filed a criminal complaint in October 2011 concerning the responsibility of the company Amesys, a subsidiary of Bull, in relation to acts of torture perpetrated in Libya. This complaint concerns the provision, since 2007, of communication surveillance equipment to Gaddafi's regime, intended to keep the Libyan population under surveillance. She underlined that this agreement was made with the authorization of the French government. However, in SHERPA's view, it will be difficult to prove the moral guilt of the company in this case for the same reasons as in the previous cases.

To conclude, Sandra Cossart noted that FIDH is also pushing for the Brussels I Regulation – conflict of jurisdiction regulation – allowing better access to court for victims.

## CORPORATE COMPLICITY IN THE US COURTS: RECENT ATCA DEVELOPMENTS

### PETER WEISS

Vice-President, Center for Constitutional Rights (New York)

At the beginning of the presentation, Peter Weiss, explained that the modern corporation dates back to the 18th century and it is based on a limited liability for the shareholders. At present, limited liability is not only meant in financial terms, but it is interpreted in much broader sense and has therefore much wider implications. The speaker underlined that there is a strong asymmetry between the huge size of companies and being domiciled in one location. In the US, where the companies are incorporated by the states, Delaware –one of the smallest states– is home for over 850,000 companies.

Peter Weiss' first suggestion was to recover the proposal to create a system of global or regional incorporation, where the incorporator may exercise the oversight that is lacking at present. His second suggestion was to establish the "death penalty" for corporations that commit heinous crimes. Since the US Supreme Court has decided that corporations are persons, this proposal

should be possible. In the US, efforts have been made to revoke corporate charters. None has been successful so far, but this is a kind of "death penalty". The speaker also suggested that an alternative for government could also be to force a company to be taken over by another willing company, meant to be more responsible.

The speaker noted a third suggestion which lies on the Alien Tort Claims Act (ATCA) and the "education" of the US Supreme Court. He explained that in the nineteen eighties, the Alien Tort Claims Act was rediscovered in a case against a Paraguayan torturer found in the US. The ATCA allows aliens to be sued in US for acts committed in other countries. Later, the ATCA was turned against the acts of companies abroad. The reach of this act has been extended to corporations committing crimes abroad (i.e. Unocal in Burma; Shell in Nigeria). In that context, he invited the participants to sign on to Amicus Briefs that will be submitted to the Supreme Court in relation to the Shell case. According to the speaker, the principle of universal jurisdiction should be reinforced as a means to see CEOs of multinational corporations standing before a court. Several countries have recognized this principle, but few have actually enforced it.

Returning to the morning's discussion, Peter Weiss highlighted the importance of dropping "soft law" from our vocabulary as it implies non-enforceable normative provisions. In his view, the term "soft law" should be substituted by terms such as "customary law", or at least "emerging law". Maybe corporate criminal cases should be lead not on the basis of soft law, but on the basis of customary law. He concluded by saying that it would be useful to keep a database of the cases around the world where cases have been won on the basis of customary (soft) law.

## DEBATE

Several noteworthy questions were raised for discussion. The first referred to the possibility of exploring all possible legal proceedings, including the extra-territorial jurisdiction and the ICC, although many different countries have lowered their extra-territorial jurisdiction because of political pressure. A participant noted, for example, that Belgium not only amended its universal jurisdiction act because it feared to prosecute specific persons, but because Rumsfeld threatened with moving NATO to another country when Belgium considered prosecuting US generals for human rights crimes. Celia Wells commented that there is a lot of pressure from NGOs pushing on three main issues – transparency and reporting; responsibilities of parent companies for subsidiaries; access to justice (trying to open possibility of class action suits in Europe). In that sense, in the Netherlands, there is the possibility of suing both the parent company and its subsidiary.

In that context, a participant asked about the possibility to use the ICC regime for human rights in order to extend criminal responsibility to corporations. In answer to the question Mark Whaley noted that an updating mandate of ICC would then need to be done. If able to act against particular industry sectors (i.e. aviation), it might be possible to prevent certain criminal acts. Another participant added that this would certainly have a preventative effect. These comments made another panelist ask if the ICC has the potential capacity to pursue persons linked to corporations for grave crimes

(e.g. in Africa). This would mean that in the war crime of pillage, the responsibilities of individuals linked to companies in relation to the crime should be established. Mark Whaley answered that it is also a matter of resources and policy: the ICC is going after the most responsible suspects and it already has long lists (i.e. 20+ persons). It goes after those were it is feasible at the international level, whereas other less significant cases are candidates for national courts. In the example of the air companies: it is unlikely that an airline manager would be seen as high enough, so that his prosecution would certainly not be a priority for the ICC, given its limited resources. In the discussion that followed several speakers comment on the possibility of a binding international law establishing that corporations are liable to be sued for grievous human rights abuses under international law.

The second main suggestion was the creation of one single institution (at the global or regional level) to monitor all financial institutions. Another speaker added that it would be very useful to have a single entity to oversee these regulations as rules and regulations are very different across countries (even in the EU). But this was disputed by another participant who argued why would national states give up the benefits of incorporating companies. It is difficult that nation states give up the privilege of having corporations domiciled in their state.

In response to a query about mechanisms for assets being forfeited even when they were not linked to the initial crime, Celia Wells said that asset forfeiture is more effective than trying to get a prosecution but Peter Weiss added that it is an extremely long procedure (e.g. first payments in Marcos case were made after 25 years of litigation). Mark Taylor added that asset forfeiture when individual not related to the crime has worked in war crimes cases and should be able to work in other arenas. Another participant proposed to put limits on using money gained from criminal activity (e.g. denying visas to travel) and to create mechanism to automatically transfer evidence to appropriate body so they can seize the asset(s). It was then commented that visa denial has been used (US is leading), but has been used sparingly. In that sense, Celia Wells mentioned that the OECD requires members to have criminal penalties or effective civil penalties for corporations.

At the end of the debate a participant pointed out that a strategy of framing cases in terms of crimes that are easier to prosecute vs. crimes that are more difficult to prosecute would be useful. Sandra Cossart explained that Sherpa takes a practical (legal) approach in order to try to win for its clients. This is not done from a philosophical basis, but from a practical one.

## 3.4. PRELIMINARY CONCLUSIONS

### ANDREW CLAPHAM

Andrew Clapham divided his presentation into three parts. The first, referred to companies, the second to States and the third to the role of individuals. In relation to companies, Clapham noticed that there are two cross cutting issues: primary obligation vs. secondary obligation (or complicity) and legal obligations and non-legal obligations. Clapham added that companies have obligations in every legal order and also in the international legal order, as a

general principle of law. The speaker noticed that some US courts have suggested that you need to have "intent" or "purpose" to be accused of complicity but this is difficult to demonstrate. On the contrary, Clapham stated that in international criminal law you usually just need to show "knowledge" of the problem.

Regarding the other speaker's claim that there is no substantive law, Clapham noted the draft treaty on crimes against humanity that would require states to prosecute crimes against humanity committed by any person (including legal persons – i.e. corporations). Concerning corporate accountability, Clapham mentioned the 1998 missed opportunity to introduce the notion of "legal person" into the Rome Statute on the instance of France which was finally dismissed. Another barrier to accountability is that many states cannot conceive how a corporation could commit a criminal act (i.e. Venezuela would have to change its constitution). When considering this issue it is also important to take into account that some constitutional definitions of criminal responsibility refers only to physical or natural persons, not to legal persons. In sum, the speaker underlined that the obstacles are huge, so it is better to pursue this idea through national or European courts than through a new universal treaty. In that sense, he outlined the idea to keep track on cases (database).

In relation to private military companies transforming into humanitarian organizations, the speaker noticed that they are a "moving target". Indeed Montreux was designed when private military companies were fighting wars, but if companies are not fighting a war, then there is a serious gap. Therefore, there is a need to focus more on the company rather than on the context of armed conflict. Another problematic notion raised by Clapham is that of "conflict area", which is not even defined in international humanitarian law. The definition of "armed groups" is a further problem. "Conflict" is a very subjective notion. If we are fixed on "conflict", some governments will slip away by saying there is not a conflict (i.e. FARC terrorists; Chechen terrorists). Andrew Clapham noticed finally that he was shocked by the OECD Guideline and its idea that a non-state entity was defined by whether or not the Security Council had determined that the group was a non-state entity (i.e. – very difficult to have all such groups named by security council).

In the second part of his presentation, Andrew Clapham stated that we do not think enough about States' compliance. There is too much focus on States operating in times of armed conflict, rather than on States obligations under human rights law where the panoply of situations is much wider. Finally, in the third part of his presentation he referred to the different rules of attribution (director, employee, subsidiary) whose actions would trigger the responsibility of the corporation. Andrew Clapham highlighted that in Rome, this was one of the biggest problems in the debates on the criminal responsibility of corporations. To conclude Clapham drew attention to the idea of identifying a "corporate culture" which has a huge potential. Exemplary cases of a few CEOs being prosecuted would also be helpful. Yet, much more than having many individuals being prosecuted, what it is needed is the impression that CEOs can be prosecuted. According to the speaker, it is this feeling that would enable a deterrent effect.

## 3.5. PANEL 4: FUTURE INTERNATIONAL AND TREATY-LAW RESPONSES

The fourth panel, with presentations by Brian Wood, José Luis Gómez del Prado and Carlos López, and chaired by Bruce Broomhall discussed about the existing or potential institutional vehicles for advancing the effective regulation of business in conflict settings and the prospects for adopting a UN Arms Trade Treaty, a UN Convention on Private Military and Security Companies and the post-Ruggie UN engagement in relation to corporate human rights obligations.

### THE UN CONVENTION ON THE TRADE IN CONVENTIONAL WEAPONS

#### BRIAN WOOD

Research and Policy Manager for Military, Security and Police Transfers, Amnesty International (London)

In his introductory remarks, Brian Wood built on the previous day debate focusing on the three markets mentioned: weapons, security enterprises, and corporate responsibility. He pointed out that the treaty is about the trade and transfer of conventional weapons. It is not a weapon ban treaty. According to the speaker, governments (custom authorities), the industry (factories) and the carriers and freighter companies are all involved in this issue. A network of manufacturers, brokers, shippers, freighters, etc., work together across countries to deliver weapons. There are therefore state agencies and private actors involved. He noticed that there is a document trail involved in the trade procedure, which makes the trade operation legal or illegal. Customs authorities, port authorities, state departments are the different bodies that authorize the trade. He ended his introduction by saying that the arms trade and transfer thereof can be a fairly complicated issue. He added that the arms industry is becoming more and more technology dependent and, therefore, it becomes more and more interdependent: different components are manufactured in different countries and put together in a second one, before being exported to another.

Wood continued his presentation by saying that there are several "politically" binding instruments. In 2006, the UN General Assembly agreed to set a process in motion. The decision to support an arms trade treaty was the result of the trade-off between British trade unions and the Labour party during the Iraq crisis. Union Leaders in the UK demanded this arms trade treaty in exchange for reducing pressure around legality of US/UK invasion of Iraq. Quickly over 100 states joined support (153 said 'yes', US said 'no', several States abstained). He added that Egypt does not want small arms to be included and the US does not want ammunition included. Others do not want things like tear gas or rubber bullets to be covered, but as it has been seen recently in uprisings in Middle East, these also are used to oppress. He finally commented that the Bush administration was initially opposing the initiative but that the Obama administration would potentially join the initiative, if based on consensus.

The speaker went on to state that what followed this initial step was the submission of different proposals by states. Egypt does not want small weapons

included under the treaty while the US does not want ammunition, tear-gas or rubber-bullets included. For its part, Amnesty International (AI) wants a broad coverage of weapons and parts. AI would propose a treaty on all weapons (and parts) used for force (would include tear-gas) and a universal jurisdiction for blatant violations of arms embargoes.

He added that the heart of the treaty is about risk assessment: to what extent is the envisaged arms operation putting at risk committing violations of international law, international humanitarian and criminal law, terrorist acts, international organized crime, etc. Therefore, the whole idea of the treaty is a case-by-case consideration. He underlined that it is not about creating a "black list" but rather about preventative approach. He explained that if there is a substantial risk, the government should deny or suspend the license or authorization. Transfers and trade are in the treaty, so this would affect direct transfers from one government to another (i.e. US transfers to Colombia). This makes for a very complex treaty with enormous challenges: the treaty is also not clear about what constitutes a crime.

With regard to control mechanisms, Brian Wood explained that one of the real difficulties is that there are so many bodies of law applying to this issue. According to Wood, there should be compliance mechanisms in place but governments are resisting it. AI proposed an annual reporting to increase transparency but states are not willing to participate in this process. AI also proposed minimum standards for licensing for end-use certificates but governments resist it. Wood added that there is a tiny secretariat with little funding. Dispute resolution will include annual meetings of States and there would be a review process after 5 years.

Concluding his presentation, Brian Wood, announced that there will be talks in February and a big conference in July. Realistically speaking, he underlined that the treaty will be very basic but that we will be able to build on this basis.

## THE NEED FOR A UN CONVENTION ON PRIVATE MILITARY AND SECURITY COMPANIES

### JOSÉ LUIS GÓMEZ DEL PRADO

Chairperson, United Nations Working Group on the Use of Mercenaries (Geneva)

José Luis Gómez del Prado explained that since the fall of the Berlin wall which has had as one of the consequences the globalization of the economy, competition for natural resources, political instability, armed conflicts and crisis situations in many third world countries. It has also seen the privatization of military and security activities, considered until very recently as inherently state functions, and that most of the past unlawful mercenary activities are now performed by legally private military and security companies. As the mercenaries, employees of private military and security companies operate in theaters of armed conflict, post conflict or situations of insecurity. The new industry that has developed is transnational in nature and has literally exploded with the privatization of war in the Afghan and Iraqi conflicts, where private contractors have outnumbered that of militaries.

He pointed out that the UN Working Group on the use of mercenaries has considered a large number of allegations of human rights violations committed by employees of these companies. In the cluster of human rights violations allegedly perpetrated by employees of PMSC which the Working Group has examined one can find summary executions; acts of torture; cases of arbitrary detention; trafficking of persons; serious health damages caused by their activities; as well as attempts against the right of self-determination. It also appears that PMSCs, in their search for profit, neglect security and do not provide their employees with their basic rights, and often put their staff in situations of danger and vulnerability. In some cases PMSC have violated UN Security Council arms embargos. With the entry into force of the UN Convention on the use of mercenaries the international community has criminalized the activities of mercenaries and established the criteria of what a "mercenary" is under international law. Such a definition, which is already difficult to apply to mercenaries, is impossible to apply to employees of legally established private military and security companies (PMSC).

Gómez del Prado underlined that despite the fact that governments, multinational companies and international organizations are increasingly contracting PMSC there is no international binding instrument regulating their activities. In this connection, he referred to the book One Nation Under Contract by Allison Stanger. This book explains how, between 1963 and 2006, the number of US government employees responsible for controlling outsourced activities did not grow, while the military budget increased by many billions. The lack of transparency and control of the budget going to the private sector has been a source of concern of the US Congress regarding the lack of accountability and corruption.

He said that the UN Working Group has found out that there is a regulatory legal vacuum covering the activities of PMSC and lack of common standards for the registration, licensing of these companies as well as for the vetting and training of their staff and the safekeeping of weapons. Although there are norms of international humanitarian and human rights law that could apply in some situations in practice they have not been implemented.

Contrary to the "dogs of war" mercenaries of the past, private military and security companies are legally registered and the definition used in international instruments, such as the one contained in Additional Protocol I to the Geneva Conventions and the one in the UN Convention on mercenaries, cannot normally apply to personnel of PMSCs. In 2010, the UN Working Group on the use of mercenaries had elaborated a draft convention to regulate and monitor the activities of PMSC. And the UN Human Rights Council had created an Intergovernmental working group to consider the possibility of elaborating an international regulatory framework for PMSC.

The proposed UN draft convention, among other things, would:

- Reaffirm the State responsibility regarding the activities of PMSC
- Identify "inherently" state functions for which the state takes direct responsibility and cannot be delegated or contracted out, in order to ensure that states preserve their sovereignty and do not abdicate their responsibility towards their citizens and other states.
- Cover not only international armed conflicts but any other situation where PMSC operate.

– Extend responsibility to intergovernmental organizations, such as UN or NATO.
– Require state parties to establish jurisdiction for the offences established by the convention.
– Establish a national regime of regulation and oversight over the activities in its territory of PMSCs and their personnel comprising: (i) a register or governmental body; (ii) a national licensing system of import/export of military and security services.
– Create an International Committee on the Regulation, Oversight and Monitoring of PMSCs.

## POST-RUGGIE ENGAGEMENT ON CORPORATE RESPONSIBILITY WITHIN THE UN SYSTEM


### CARLOS LÓPEZ

Senior Legal Advisor for International Economic Relations, International Commission of Jurists (Geneva)


Carlos López began his presentation by making a reference to Professor Paul Collier's central argument on extractive industries and CSR in a conference in Yale University 2009: Collier strongly argued that legal liability and sanctions can actually play a crucial role in bringing corporate activities into line with social and environmental standards, in particular in Africa. López noted that, interestingly, Professor Collier is not a jurist or lawyer, but a prestigious Professor of Economics and Director of the Centre for the Study of African Economies (Oxford University).

According to López, there are a number of reasons why we need to pursue a global agenda rather than just an agenda of implementation at the national level. Firstly, a number of issues have not been dealt with properly yet and there is a need for greater guidance or standards. One of these is the issue of complicity. Enforcement and remedies are others. Secondly, as Ruggie himself has suggested, there are situations that merit special treatment. One of them is the volume of gross human rights abuses that occur mainly, but not only, in conflict situations. Thirdly, the process of building an international architecture to bring more balance to globalisation necessitates a set of international instruments that complement or reinforce each other.

With regard to the most pressing issues, López stressed that more and better (stronger) instruments are needed to help redress the imbalance of power and accountability that results from globalisation. According to the speaker, possible instruments will have to address the following challenges. In the first place, the challenges of ensuring effective remedies for those whose rights have been affected by business activity. Research by the ICJ and other organisations shows that national legal systems offer a diversity of avenues of a judicial and administrative nature with great potential that needs to be exploited but also containing significant obstacles and inconsistencies. Many of the problems arise from political interference and others from lack of capacity in both the State institutions and the affected persons and their representatives. International principles and guidelines on how to develop national legal systems and institutions to maximise their effective work in the protection of human rights against interference from economic actors can

play an important role in improving effectiveness and overcoming existing procedural obstacles. Finally, the need for these effective remedies is especially acute in situations of conflict or where States are unable or unwilling to protect rights.

López explained that there is need for more regulation of businesses and other legal entities with a view to preventing the occurrence of abuses, especially situations where there is complicity from business. One way to deal with these situations is to enact some form of mandatory "due diligence" requirements for business that operate abroad through business partners or other relationships. The kind of due diligence that is appropriate and feasible in the circumstances is something that needs more debate and clarification. What "due diligence" means in the context of minerals originating in areas of conflict may not be applied to "child labour". According to López, another way to deal with the complicity issue is the possible imposition of a "duty of care" on parent companies in respect to their subsidiaries and other business partners. The clarification of the concept of "duty of care" and its potential role beyond the application of tort law is something that would also deserve urgent attention. He explained that, closely related to this proposition, is the proposal to enact some form of "vicarious liability" for parent companies in respect to subsidiaries under their control. Again, this form of strict liability has to be carefully assessed. In all events, it is evident for Carlos López that the question of "complicity" with human rights abuses committed abroad has not yet received a satisfactory response and we continue in our search for a workable solution.

In the third part of his presentation, López underlined that a clearer formulation of human rights responsibilities for enterprises seems to be desirable, and perhaps necessary. Business activity can affect virtually all human rights and, therefore, it is useless and misguided to establish a catalogue of rights that business needs to respect. Many businesses would prefer a "catalogue" rather than having to look through the complex and numerous human rights instruments for something relevant. However, given the experience of the failed UN Sub-Commission "Norms", which tried to establish a "catalogue", any new attempt will have to take a substantially different approach.

Regarding possible avenues and institutional opportunities, López mentioned that most of the issues outlined above can only be tackled through multilateral agreements and related arrangements. To pursue corporations jurisdiction by jurisdiction is useful, but ultimately not an answer as they can migrate to friendlier jurisdictions. In the current situation, there is a Working Group on Business and Human Rights, made up of five independent experts and appointed by the Council. Its mandate is fundamentally limited to the promotion of the implementation of the Ruggie Guiding Principles. However, there is one exception: the Working Group on Business and Human Rights has the mandate to "continue to explore options and make recommendations at national, regional and international levels for enhancing access to effective remedies" including in conflict areas. This work should become central for this working group: carrying out studies, holding consultations and ultimately presenting proposals to the Human Rights Council. In this task, the Working Group should build on the standards developed through the work of the United Nations human rights treaty-bodies and regional human rights courts. The discussion and proposals on "due diligence" and "duty of care" above hinge on the still unresolved question of

"corporate complicity", for which the international community and individual States have still to find an answer. López still believes that the possible expansion of the ICC jurisdiction needs careful consideration which, to date, it has not yet received.

The most promising avenue in this area seems to work towards non-voluntary standards possibly in the form of a treaty. This treaty shall contain flexible obligations and follow the structure of the UN Convention against Corruption- as suggested by John Ruggie- requiring States to impose legal liability on legal entities (including corporations) for a number of selected offences, including situations of complicity with offences committed abroad. Such liability could be criminal, administrative, civil or other form of liability with sufficient deterrent effect. The same instrument should provide for international cooperation for investigation and, if appropriate, prosecution and/or other proper judicial or administrative action. According to the speaker, the treaty has to focus on a number of offences catalogued as serious human rights abuses, including torture, forced disappearance, war crimes, crimes against humanity, etc. Carlos López proposed to assess the extent to which this will overlap with the new proposal of a Convention on Crimes against humanity. It should not focus on conflict situations but on the kind of offences that are likely to occur mainly, but not only, in conflict situations. At the same time, he highlighted that the new international instrument should also make provisions for a strong verification and monitoring mechanism, similar to that as per the OECD anti-corruption convention. This treaty may also contain some provisions on the prevention side, perhaps requiring member states to enact some form of due diligence requirements, but the scope and content of this term must be firstly defined more clearly.

Finally, the speaker underlined that serious consideration that should be given to a possible instrument in the form of a declaration, which outlines, through an inter-governmental process, with broad-based consultation of stakeholders, more specifically the kind of human rights responsibilities that businesses have. At present, business' responsibilities are defined in terms of a broad responsibility to "avoid harm or to contribute to harm" and a process of so-called "human rights due diligence". Portrayed as a non-legal concept, the failure to adhere to these standards of responsibility does not entail legal consequences but at most reputational damage. Carlos López also alluded to the fact that beyond the Human Rights Council, there is a need to work more with the human rights treaty-bodies, covering both substance of standards and monitoring. For López, there is also room and interest for introducing one or several model laws. This needs to be attached to a resolution or a declaration of another instrument. There is currently before the US Congress a Bill titled Civilian Extra-territorial Jurisdiction Act- CEJA that has a fair chance of being passed into law. Some experts may propose this bill as a model to be followed.

## DEBATE

With regard to these presentations, the contributions and debate referred mainly to the lack of transparency and monitoring regarding the arms trade and the challenges around the convention on security companies and the conceptual definitions around it.

A speaker started the debate by pointing out that usually the relationship between the manufacturer of arms and the State is very close. Arms exports are indeed an instrument of foreign policy states. In France and England, governments allowed companies to export arms to Egypt. Those were transferred to the rebels in Libya although there was an arms embargo. On the contrary, in July Chinese and Russian companies had also offered arms to Qaddafi through Algeria. The speaker added that it is difficult to regulate something that is a key element of the State's power in foreign policy. For strategic reasons, States want to have the ability to go around the rules/controls on arms trade. The speaker noticed that more control and transparency of information is therefore needed. Secrecy remains, in this context, despite the existing legal provisions. He mentioned that in Spain, for example, meetings about these activities are held in private and it is not possible to know what goes on there. Even in the EU, countries like Germany, UK, Belgium, and Poland refuse to provide information. To end her intervention, the speaker underlined that there are also different interpretations regarding the criteria for "systematic violation of human rights" in the countries to which arms are exported. The speaker asked the audience about how could the interpretations of the criteria be somehow regulated. She also asked about what monitoring mechanisms would exist in the event of EU countries violating this rule.

Brian Wood went on to explain that the treaty emerges through a complex process (cultural, political, other factors at play). Governments complain that if they do not supply arms, someone else would do it. So, for Wood the idea is to get a global regime established. He also underlined that transparency is essential and even the possibility of denying licenses. He reminded the audience that the key aim of the treaty is where there is risk of arms being traded to a user who will commit serious human rights and IHL crimes, they will not be authorized. The trick is whether the monitoring and regulation will be rigorous and transparent enough. He finally ended his intervention by saying that this public debate in the UN could also be taken into local parliaments by civil society: the review of these issues needs to take place publicly in front of parliaments rather than in secret.

Regarding the convention on security companies, another speaker pointed out that the differential element of the draft convention is that it incorporates a new approach in Public International Law: how states host their coercive power. The participant underlined that it sets the limits to outsourcing the State's coercive power: the principle of legality, licensing system, companies have to respect IHL, states must define and punish crimes committed by these companies, etc. Control is a duty of the States but there are two interests in tension - small states, victims of this situation and large states, "ideators" and exporters of this model. The latter have no interest to regulate it internationally. The speaker finally explained that since the conventional method is still somewhat difficult, the proposal is to try to build a general principle formed from the internal practices of states.

Regarding the state's coercive power as defined in the convention, a participant questioned how the use of force applies to States that are experiencing revolution (i.e. Libya, Egypt, etc.). He pointed out that if you are giving states the exclusive use of force, you are maybe outlawing revolution. The speaker asked for clarification regarding the application of the concept to revolutionary situations of people trying to overthrow governments. Gómez del Prado

answered that there is no flexibility within the focus of the working group because of its mandate. He stated that the aim was to regulate the functions that should only belong to the State and to determine what can, and what cannot, be outsourced. He mentioned that in states like Sierra Leone, Liberia, Libya etc., the State has used mercenaries from other countries to counteract democratic movement of the country's own citizens. According to Gómez del Prado this is something that is new in the international arena. He insisted in the need for a binding instrument arguing that private military companies are used more and more by US State department. Another speaker added that mercenaries are a very good source to step down a rebellion because they do not have a relation with the rebelling people. One of the great difficulties of such a treaty is the very definition of mercenary – profit motive is very difficult to define and prove. There were good reasons to monopolize the power by state in the 19th century: one of the big questions is that we are taking steps back giving access to the exercise of power to private actors. On the same line of argument another speaker stated that some opposition groups may want to use a private military company to overthrow a government. He brought up the example of the rebels in Libya which should have had the opportunity to use this type of military force. He asked if whether limiting this could also limit the possibility of revolution.

The debate ended with a comment on the role of the ICC. A participant raised a question regarding the real obstacles to extend the jurisdiction of the ICC to include companies as legal persons. In relation to that topic, another participant added that the idea of corporate criminal liability was well established in the civil code (e.g. in Italy and other countries). Another participant mentioned that one of the reasons not to include "corporate criminal liability" in the Rome Code was the NGOs lack of agreement on a definition.

## 3.6. PANEL 5: PROJECTS AND WAYS FORWARD

The fifth panel with presentations by Antoni Pigrau, Larissa van den Herik and Gilles Carbonnier, and chaired by Andrew Clapham focused on results and conclusions from the conference: how might participants, through their research efforts (and particularly their shared efforts), fill any major gaps or respond to any priority needs that have been identified in the preceding discussions and what role could play ICIP from a research perspective.

### ANTONI PIGRAU

Research Programme Director, 'Armed Conflicts: Law and Justice' (ICIP) and Professor of Public International Law, Universitat Rovira i Virgili (Tarragona)

Antoni Pigrau introduced his speech by giving a brief overview of the key themes and actors involved over the past two days discussions. Pigrau went on to explain that weapons production is not a priority at the moment. Instead arms embargos, transfer channels and the arms treaty are focusing the current research efforts. The impacts of the private and military security companies are one of the main research areas as well as the link between conflicts and natural resources. Regarding the latter there is a need for a broader integration of an environmental approach at a global scale. Pigrau commented that some highlights are necessary regarding the positive contribution of companies to conflict transformation and peace-building. Finally, the speaker mentioned the discussions about accountability where there is a huge research activity around the voluntary/binding debate and the territorial/extraterritorial jurisdiction dichotomy. In any case, Antoni Pigrau underlined that there are overlaps in almost every research field and that the ICIP is willing to focus part of its future research activity on the core research areas discussed at the conference. To end his introductory remarks, he stated that he thought there was space for more integration of the research on the basis that there are many isolated researchers working on these themes (rather than teams or research groups in Universities).

The second part of his speech was focused on making some proposals for the follow-up of the conference. He explained that the ICIP was making the following four proposals: 1) to coordinate the publication of a joint book resulting from what was discussed in the conference; 2) to create a network of researchers and/or groups to channel information and direct others on what activities are taking place within the network. Perhaps also announce opportunities to apply for funding and new projects. It should be an international and multidisciplinary research network where "conflict" should be understood in a wider sense. In order to organize the works, it would be necessary to define the functions of the network and it would also be useful to identify the research done so far as well as other persons and research centers that should be involved; 3) to set up a web-page where work is shared that is a portal to make work visible and keep the network in contact and 4) the Institute could establish another meeting in 2012 to allow the group to consider and adopt proposals and/or agreements on ideas discussed here.

## LARISSA VAN DEN HERIK

Associate Professor of Public International Law, Leiden University (Leiden)

Larissa van den Herik started her presentation by saying that research should focus on using what we have - which are the co-existing initiatives. She insisted that we need to know how these initiatives coincide and how we could facilitate cross-fertilization. She insisted in the need to avoid fragmentation and isolation: the new plans for future research should focus on the interplay between regimes and specifying existing standards.

In relation to the interface between regimes, van den Herik referred, for example, to fact finding. She underlined the complexities of fact finding undertaken by many different fact-finding teams working in parallel (e.g. national prosecutors and international prosecutors, journalists, NGOs, UN). She wondered how we could streamline this, what the synergies could be and if the different mandates would allow information sharing. Van den Herik proposed to focus part of the future research on analyzing to what extent fact-finders can cooperate and what the limits are. She ended the first part of her presentation by saying that research could also look at the coexistence of hard law mechanisms (international criminal law) with other fields of international law. For example, how weapons embargos can influence the definition of war crimes.

In the second part of her speech, the speaker also mentioned that research could also specify existing standards, for example, regarding accomplice liability (Complicity). While this is established well enough in the abstract sense, the concept needs to be established more with examples from case law (context specific specification of existing standards).

As a third proposal, Van den Herik also mentioned to bring together the academia and the prosecutors. For example, national prosecutors need to be informed about how to construe corporate liability in corporate crimes (opportunity for more collaboration between academia and prosecutors). According to her, bringing together multidisciplinary gatherings like this one is the best way to concretize the various standards we have. In closing, Larissa van den Herik underlined that emphasis should be on international criminal law – but not only on hard law, also on its rhetorical effect.

## GILLES CARBONNIER

Professor of Development Studies and Deputy Director, Centre on Conflict, Development and Peacebuilding, Graduate Institute of International and Development Studies (Geneva)

At the start of his presentation, Gilles Carbonnier, proposed to base the future research agenda on the research areas where we have spaces for “coincidences” and joint work – and where research outputs might be transferred to the policy world. Carbonnier went on to explain that it could be useful to understand how voluntary regimes evolve overtime to influence the key issues that we want to attack and when do these start to have teeth and work more broadly at the international level. He suggested also analyzing how do regulations and market incentives play out in this framework.

In the second part of his presentation, Carbonnier focused on future research topics on companies in conflict situations, understanding that conflict goes much beyond "armed conflict" and should be applied to "conflictual contexts". He mentioned the relevance of taking into account social/environmental conflicts (sometimes involving indigenous people or land property regimes). In that context, he pointed out that during the conference we had not discussed sustainability and access to environmental resources which is today a critical point. The speaker also noticed the need to promote investments and decent jobs in conflict and post-conflict environments and see what good can companies do. The role of domestic business community in peace-building and conflict situations deserves indeed a better understanding and further research while maintaining criminal law pressure. In relation to civil liability and corporate law, Gilles Carbonnier suggested looking at the critical ingredients of the capacity of the company to manage throughout the management cycle the due diligence (How should top executives integrate it and how should they be made accountable and liable). To end this part of the presentation, he underlined the need to have more research on Asian state owned companies in conflict areas vs. private MNCs.

Finally, Carbonnier noticed the need to more field-based evidence on country cases in order to understand the issues, the need to identify those researchers/centers in emerging countries or weak states with whom we could collaborate and we could integrate them better in our work. Speaking on organizational issues, the speaker proposed to have sub-thematic groups. An umbrella web-site could bring most substantive issues from sub-groups to the attention of the entire group.

## DEBATE

Andrew Clapham opened the debate by stressing that the use of the term "coincidences" to describe the participant's work is better than "overlap". With regard to the name of the network, it was suggested to call it "Companies, conflict and human rights" as human rights are what bind the research network and the participants together. In general terms, more research work on conflict is needed but also on other violent situations.

In relation to the proposal of engaging through thematic groups it was suggested to work on different critical issues:

- The complementarities regarding the coexistence of self-regulatory and binding instruments (and the real impact of each of them) as well as the positive and negative aspects of law;
- The issue of due diligence (i.e. comprised of people from management studies, law, and supply chains);
- The positive incentives and structures that could be created to foster sustainability (determining optimal equilibrium in a post conflict scenario - local development: consultation with local population – requires political and social development of societies concerned);
- National private security companies and their role in post-conflict situations;
- Risk assessment and how it could become a legal obligation in different treaties;
- The question of complicity from a multi-disciplinary point of view;

– The role of financial flows in fuelling conflicts and the need to bring together the academic community and foreign policy officials to perform case studies on a world scale. (Also, the need to sensitize academia on these issues as well as governments, policy makers and other actors).

Other speakers suggested:

– The ICC extension of the mandate needs further reflection;
– It is also necessary to do more research on hybrid law (between soft & hard);
– To draw up a map of the mechanisms that exist and a comparison of them;
– To explore the concept of "sustainable contracts" (how purchasing policies of companies contribute (or not) to conflict);
– More thought is needed on how companies use sustainable development language to avoid being held responsible (fair washing) and how elements of corruption or environmental crimes can complement prosecuting for human rights abuses that involve companies;
– It was recognized the relevance of studying more in-depth the methodology of fact-finding: what methods are there; how can they be shared; what public policy frameworks are out there or which ones could be put in place;
– The link between human rights and environment (environmental conflicts);
– Regarding the different actors involved around the research topics, it was also suggested to analyze the possibilities and the limits of public-private partnerships as well as the role investors can play as important agents for the limitation of bad practices in conflict zones.

Other speakers proposed to study the link between corruption and human rights as a research stream that could be focused on by a sub-group where top executives, compliance officers, country risk managers, professional associations and prosecutors would be seated at the table.

Finally, several participants suggested to keep work focused on law and policy – but keeping in mind the way other forms influence this (i.e. markets) and keep attention on other networks focusing on different levels (e.g. Micro-Con network focusing on micro economic role in conflict situations or the European Center for Constitutional and Human Rights).

With regard to the methodology there was consensus about working through a multidisciplinary approach and, eventually, include other disciplines (sociology, anthropology, etc). In relation to the possibility of having companies involved in the discussions, a participant disagreed by saying that it was good not to have companies during this conference because they often restrict the type of conversations between participants. It was also stressed the need to arrive to business schools students and to teach them on complex issues such as complicity. Finally, a participant insisted in the need to think about technological possibilities (i.e. use of drones and cyber-technologies to control arms trade as it is done in the food of pharmaceutical industries through high-tech tracking systems).

Finally, Malena Bengtsson asked the participants to send the information on the network and its research agenda to the Business and human rights re-

search center in order to spread its aims and activities on the internet (www.businessandhumanrights.org). Vincent Bernard announced a new ICRC publication on business and conflict to be issued in 2012. He made an invitation for proposals on the following topics: definition of the problem, legal developments in a dynamic way (how law is evolving from soft to hard law), how business can play an important role in population's capacity to cope with humanitarian crises and how humanitarian actors interact with business actors on the field.

## CLOSING REMARKS

With regard to these comments, Bruce Broomhall underlined that there is room for a network. It should be specifically focused on the needs of the researchers that are part of the network – should be a research network. The issue of money flows with respect to conflict – emerging tools regarding money laundering; repatriation of assets; forfeiture of assets, etc. – should be brought into this work.

Finally, Antoni Pigrau suggested the participants to send a manuscript for the publication within six months and announced that the ICIP would bring its support to the network as an umbrella. He suggested forming a working group among those in attendance to discuss more concretely how to organize the sub-themes and to try to complete the work within the period of a year.

# 4. ANNEXES



## ANNEX 1: CONFERENCE AGENDA

**EMPRESES EN CONTEXTOS DE CONFLICTE**

Barcelona, 20 i 21 d'octubre de 2011

INSTITUT CATALÀ INTERNACIONAL PER LA PAU

### CONFERÈNCIA INTERNACIONAL DE RECERCA

**El paper i les responsabilitats de les empreses en situacions de conflicte: Avançant en l'agenda de recerca**

Aquesta conferència reuneix experts de primer ordre amb la finalitat de reflexionar sobre les causes, les dinàmiques i les conseqüències de la implicació de les empreses en contextos de conflicte. Els participants avaluaran els debats en aquest àmbit des d'una perspectiva multidisciplinària i internacional, en base a les seves pròpies investigacions. La discussió se centrarà, en particular, en els mercats internacionals d'armes convencionals, els serveis de seguretat i militars privats, com també en diversos recursos naturals (o "matèries primeres conflictives"). Els participants intercanviaran també informació sobre la seva pròpia recerca; identificaran buits, coincidències i sinèrgies en la seva feina, i consideraran una possible col·laboració futura.

### INTERNATIONAL RESEARCH CONFERENCE

**The Role and Responsibilities of Companies in Conflict Situations: Advancing the Research Agenda**

This conference brings leading experts together to reflect upon the causes, dynamics and consequences of business involvement in conflict situations. Participants will assess debates in this area from a multidisciplinary and international perspective, in light of their own research. Discussion will focus in particular on the international markets in conventional arms, private military and security services, as well as in certain natural resources (or 'conflict commodities'). Participants will also exchange information about their own research; identify gaps, overlaps and synergies in their work; and consider possible future collaboration.

### CONFERENCIA INTERNACIONAL DE INVESTIGACIÓN

**El papel y las responsabilidades de las empresas en situaciones de conflicto: Avanzando en la agenda de investigación**

Esta conferencia reúne a expertos de primer orden con la finalidad de reflexionar sobre las causas, las dinámicas y las consecuencias de la implicación de las empresas en contextos de conflicto. Los participantes evaluarán los debates en este ámbito desde una perspectiva multidisciplinar e internacional, sobre la base de sus propias investigaciones. La discusión se centrará, en particular, en los mercados internacionales de armas convencionales, los servicios de seguridad y militares privados, así como sobre diversos recursos naturales. Los participantes intercambiarán también información sobre su propia investigación; identificarán vacíos, coincidencias y sinergias en su trabajo, y considerarán una posible colaboración futura.

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## PROGRAMA

EMPRESES EN CONTEXTOS DE CONFLICTE

### DIJOUS, 20 D'OCTUBRE DE 2011

**8.30 h** · Acreditacions

**9 h** · BENVINGUDA

- *Benvinguda*
  ***Tica Font***, Directora de l'Institut Català Internacional per la Pau (ICIP)
- *Presentació de la conferència: La implicació empresarial en situacions de conflicte com a agenda de recerca emergent*
  ***Antoni Pigrau***, Director del programa de recerca, "Conflictes Armats: Dret i Justícia", (ICIP) i Professor de Dret Internacional Públic de la Universitat Rovira i Virgili (Tarragona)
- *Resum de l'agenda*
  ***Maria Prandi***, Responsable del Programa d'Empresa i Drets Humans, Escola de Cultura de Pau, Universitat Autònoma de Barcelona

**9.15 h** · Panell 1

MODALITATS I DINÀMIQUES DE LA IMPLICACIÓ EMPRESARIAL EN SITUACIONS DE CONFLICTE

- *Les responsabilitats de les empreses en relació a les armes convencionales: el cas del transport aeri*
  ***Edin Omanovic***, Investigador, Stockholm International Peace Research Institute, SIPRI (Estocolm)
- *El negoci dels serveis de seguretat*
  ***Sarah Percy***, Professora de Relacions Internacionals, Merton College, Oxford University (Oxford)
- *L'explotació i el comerç de recursos naturals en el continuum de la Guerra*
  ***Philippe Le Billon***, Professor associat, Departament de Geografia, University of British Columbia (Vancouver)

Moderador: ***Achim Wennmann***, Investigador, Centre on Conflict, Development and Peacebuilding (CCDP) i Coordinador Executiu de Geneva Peacebuilding Platform (Ginebra)

**11 h** · Cafè

**11.30 h** · Panell 2

INICIATIVES "MULTI-STAKEHOLDER", CODIS VOLUNTARIS I REGULACIÓ DE LA CADENA DE SUBMINISTRAMENT

- *El Document de Montreux i el Codi de Conducta sobre Empreses Militars i de Seguretat Privades*
  ***Anne Marie Buzatu***, Coordinadora, Programa de Seguretat, Geneva Centre for the Democratic Control of Armed Forces (DCAF) (Ginebra)
- *El marc de Nacions Unides "Protegeix, Respecta i Remeia" i el principi de diligència deguda en situacions de conflicte*
  ***Gerald Pachoud***, Asessor senior de l'Assistent del Secretari General per a l'Oficina de Suport a la Consolidació de la Pau (Nova York)
- *Guia de l'OCDE sobre diligència deguda per a cadenes de subministrament de minerals desvinculades de conflictes*
  ***Tyler Gillard***, Expert legal, Organització per a la Cooperació i el Desenvolupament Econòmic (OCDE)
- *Regulació emergent dels "minerals de conflicte" a la RD Congo*
  ***Gavin Hayman***, Director, Global Witness (Londres)

Moderadora: ***Seema Joshi***, Directora d'Empresa i Drets Humans, Amnistia Internacional (Londres)

**13.30 h** · Dinar

**15 h** · Panell 3

COMPLICITAT, INVESTIGACIÓ I PROCESSAMENT DE LES EMPRESES I DELS SEUS AGENTS

- *CPI, Col·laboració nacional en el control dels aspects financers del crim internacional*
  ***Mark Whaley***, Investigador, Unitat d'Investigació Financera, Oficina del Fiscal, Cort Penal Internacional (La Haia)
- *Responsabilitat penal corporativa des de la perspectiva del Common Law*
  ***Celia Wells***, Professora i Directora, School of Law, University of Bristol (Bristol)
- *Identificant les eines per a un processament efectiu*
  ***Mark Taylor***, Subdirector, Fafo Institute for Applied International Studies (Oslo)
- *Fent front als abusos en zones en conflicte des de l'exterior de l'Estat d'acollida*
  ***Sandra Cossart***, Responsable del programa de RSE, Association Sherpa (Paris)
- *La complicitat de les empreses en els tribunals nord-americans: recents desenvolupaments de l'ATCA*
  ***Peter Weiss***, Vicepresident, Center for Constitutional Rights (Nova York)

Moderadora: ***Anita Ramasastry***, Professora de Dret D. Wayne & Anne Gittinger, University of Washington School of Law (Seattle)

**17.15 h** · CONCLUSIONS PRELIMINARS

- ***Andrew Clapham***, Professor de Dret Internacional, Graduate Institute of International and Development Studies i Director de la Geneva Academy of International Humanitarian Law and Human Rights (Ginebra)

**20 h** · Sopar

### DIVENDRES, 21 D'OCTUBRE DE 2011

**9 h** · Panell 4

FUTURES RESPOSTES INTERNACIONALS I TRACTATS

- *La Convenció de Nacions Unides sobre el Comerç d'Armes Convencionals*
  ***Brian Wood***, Responsable de Política i Investigació (Military, Security and Police Transfers), Amnistia Internacional (Londres)
- *La Convenció de Nacions Unides sobre Empreses Militars i de Seguretat Privades*
  ***José Luis Gómez del Prado***, President, United Nations Working Group on the Use of Mercenaries (Ginebra)
- *El compromís al voltant de la responsabilitat corporativa en el sistema de Nacions Unides després de Ruggie*
  ***Carlos López***, Asesor legal senior per a les Relacions Econòmiques Internacionals, International Commission of Jurists (Ginebra)

Moderador: ***Bruce Broomhall***, Professor, Departament de Dret, University of Quebec (Montreal)

**11 h** · Cafè

**11.30 h** · Panell 5

PROJECTES I FUTURS ESCENARIS A DESENVOLUPAR

- ***Larissa Van den Herik***, Professora Associada de Dret Internacional Públic, Leiden University (Leiden)
- ***Gilles Carbonnier***, Professor d'Estudis de Desenvolupament i Subdirector, Centre on Conflict, Development and Peacebuilding, Graduate Institute of International and Development Studies (Ginebra)
- ***Antoni Pigrau***, Director del programa de recerca "Conflictes Armats: Dret i Justícia", (ICIP) i Professor de Dret Internacional Públic de la Universitat Rovira i Virgili (Tarragona)

Moderador i conclusions finals: ***Andrew Clapham***

**13.30 h** · REFLEXIONS FINALS I CLAUSURA

- ***Rafael Grasa***, President, Institut Català Internacional per la Pau

**13.45 h** · Copa de cava

## PROGRAM

COMPANIES IN CONFLICT SITUATIONS

### THURSDAY 20 OCTOBER 2011

**8.30 a.m.** · Registration

**9 a.m.** · WELCOME AND OPENING REMARKS

- *Welcome*
  ***Tica Font*,** Director of the International Catalan Institute for Peace (ICIP)
- *Opening Address: Business Involvement in Conflict Situations as an Emerging Research Agenda*
  ***Antoni Pigrau*,** Research Programme Director, 'Armed Conflicts: Law and Justice' (ICIP) and Professor of Public International Law, Universitat Rovira i Virgili (Tarragona)
- *Overview of the Agenda*
  ***Maria Prandi*,** Head, Business and Human Rights Programme, School for a Culture of Peace, Universitat Autònoma de Barcelona (Barcelona)

**9.15** · Panel 1
MODALITIES AND DYNAMICS OF CORPORATE INVOLVEMENT IN CONFLICT SITUATIONS

- *The Responsibilities of Business in Relation to Small Arms and Conventional Weapons: The Case of Air Transport*
  ***Edin Omanovic*,** Researcher, Stockholm International Peace Research Institute, SIPRI (Stockholm)
- *The Business of Security Services*
  ***Sarah Percy***, University Lecturer & Tutorial Fellow in International Relations, Merton College, Oxford University (Oxford)
- *The Exploitation and Trade of Natural Resources in the War Continuum*
  ***Philippe Le Billon***, Associate Professor, Department of Geography, University of British Columbia (Vancouver)

Moderator: ***Achim Wennmann*,** Researcher, Centre on Conflict, Development and Peacebuilding (CCDP) and Executive Coordinator of the Geneva Peacebuilding Platform (Geneva)

**11 a.m.** · Coffee

**11.30 a.m.** · Panel 2
MULTI-STAKEHOLDER INITIATIVES, VOLUNTARY CODES AND SUPPLY-CHAIN REGULATION

- *The Montreux Document and the Code of Conduct on PMSCs*
  ***Anne Marie Buzatu***, Coordinator, Security Programme, Geneva Centre for the Democratic Control of Armed Forces (DCAF) (Geneva)
- *The UN 'Protect, Respect and Remedy' Framework and Due Diligence Principle in Conflict Situations*
  ***Gerald Pachoud*,** Senior Advisor to the Assistant Secretary General for Peacebuilding Support Office (New York)
- *The OECD due diligence guidance for conflict-free mineral supply chains*
  ***Tyler Gillard*,** Legal expert, Organisation for Economic Co-operation and Development (OECD)
- *Emerging Regulation of DRC 'Conflict Minerals'*
  ***Gavin Hayman*,** Director, Global Witness (London)

Moderator: ***Seema Joshi***, Head of Business and Human Rights, Amnesty International (London)

**1.30 p.m.** · Lunch

**3 p.m.** · Panel 3
COMPLICITY, INVESTIGATION AND PROSECUTION OF BUSINESSES AND THEIR AGENTS

- *ICC / National Collaboration in Repressing the Financial Aspects of International Crime*
  ***Mark Whaley*,** Investigator, Financial Investigation Unit, Office of the Prosecutor, International Criminal Court (The Hague)
- *Corporate Criminal Responsibility from a Common Law Perspective*
  ***Celia Wells*,** Professor and Head, School of Law, University of Bristol (Bristol)
- *Identifying the Tools for Effective Prosecution*
  ***Mark Taylor*,** Deputy Managing Director, Fafo Institute for Applied International Studies (Oslo)
- *Addressing Conflict-Zone Abuses outside the Host State*
  ***Sandra Cossart*,** Head of CSR Program, Association Sherpa (Paris)
- *Corporate Complicity in the US Courts: Recent ATCA Developments*
  ***Peter Weiss*,** Vice-President, Center for Constitutional Rights (New York)

Moderator: ***Anita Ramasastry*,** D. Wayne & Anne Gittinger Professor of Law, University of Washington School of Law (Seattle)

**5.15 p.m.** · PRELIMINARY CONCLUSIONS

- ***Andrew Clapham*,** Professor of International Law, Graduate Institute of International and Development Studies and Director of the Geneva Academy of International Humanitarian Law and Human Rights (Geneva)

**8 p.m.** · Conference Dinner

### FRIDAY 21 OCTOBER 2011

**9 a.m.** · Panel 4
FUTURE INTERNATIONAL AND TREATY-LAW RESPONSES

- *The UN Convention on the Trade in Conventional Weapons*
  ***Brian Wood*,** Research and Policy Manager for Military, Security and Police Transfers, Amnesty International (London)
- *The UN Convention on Private Military and Security Companies*
  ***José Luis Gómez del Prado*,** Chairperson, United Nations Working Group on the Use of Mercenaries (Geneva)
- *Post-Ruggie Engagement on Corporate Responsibility within the UN System*
  ***Carlos López***, Senior Legal Advisor for International Economic Relations, International Commission of Jurists (Geneva)

Moderator: ***Bruce Broomhall*,** Professor, Department of Law, University of Quebec at Montreal (Montreal)

**11 a.m.** · Coffee

**11.30 a.m.** · Panel 5
PROJECTS AND WAYS FORWARD

- ***Larissa Van den Herik***, Associate Professor of Public International Law, Leiden University (Leiden)
- ***Gilles Carbonnier*,** Professor of Development Studies and Deputy Director, Centre on Conflict, Development and Peacebuilding, Graduate Institute of International and Development Studies (Geneva)
- ***Antoni Pigrau*,** Research Programme Director, 'Armed Conflicts: Law and Justice' (ICIP) and Professor of Public International Law, Universitat Rovira i Virgili (Tarragona)

Moderator and Concluding Remarks: ***Andrew Clapham***

**1.30 p.m.** · CLOSE

- ***Rafael Grasa*,** President, International Catalan Institute for Peace (ICIP)

**1.45 p.m.** · A glass of champagne will be served

## PROGRAMA

**EMPRESAS EN CONTEXTOS DE CONFLICTO**

### JUEVES, 20 DE OCTUBRE DE 2011

**8.30 h** · Acreditaciones

**9 h** · BIENVENIDA

- *Bienvenida*
  ***Tica Font***, directora del Instituto Catalán Internacional para la Paz (ICIP)
- *Presentación de la conferencia: la implicación empresarial en contextos de conflicto como agenda de investigación emergente*
  ***Antoni Pigrau***, director del programa de investigación 'Conflictos Armados: Derecho y Justicia' (ICIP) y Profesor de Derecho Internacional Público de la Universitat Rovira i Virgili (Tarragona)
- *Resumen de la agenda*
  ***Maria Prandi***, reponsable del Programa de Empresa y Derechos Humanos, Escuela de Cultura de Paz, Universidad Autónoma de Barcelona

**9.15 h** · Panel 1
MODALIDADES Y DINÁMICAS DE LA IMPLICACIÓN EMPRESARIAL EN SITUACIONES DE CONFLICTO

- *Las responsabilidades de la empresa con relación a las armas convencionales: el caso del transporte aéreo*
  ***Edin Omanovic***, investigador, Stockholm International Peace Research Institute, SIPRI (Estocolmo)
- *El negocio de los servicios de seguridad*
  ***Sarah Percy***, profesora e investigadora en Relaciones Internacionales, Merton College, Oxford University (Oxford)
- *La explotación y el comercio de los recursos naturales en el continuum de la Guerra*
  ***Philippe Le Billon***, profesor Asociado, Departamento de Geografía, University of British Columbia (Vancouver)

Moderador: ***Achim Wennmann***, investigador, Centre on Conflict, Development and Peacebuilding (CCDP) y Coordinador ejecutivo de Geneva Peacebuilding Platform (Ginebra)

**11 h** · Café

**11.30 h** · Panel 2
INICIATIVAS MULTI-STAKEHOLDER, CÓDIGOS VOLUNTARIOS Y REGULACIÓN DE LA CADENA DE SUMINISTRO

- *El Documento de Montreux y el Código de Conducta sobre Empresas Militares y de Seguridad Privadas*
  ***Anne Marie Buzatu***, coordinadora, Programa de Seguridad, Geneva Centre for the Democratic Control of Armed Forces (DCAF) (Ginebra)
- *El marco "Proteger, respetar y reparar" y la diligencia debida en situaciones de conflicto*
  ***Gerald Pachoud***, Asesor senior del Asistente del Secretario General para la Oficina de Apoyo para la Consolidación de la Paz (Nueva York)
- *Guía de la OCDE sobre diligencia debida para cadenas de suministro de minerales desvinculadas de conflictos*
  ***Tyler Gillard***, Experto legal, Organización para la Cooperación y el Desarrollo Económico (OCDE)
- *Regulación emergente de los "minerales de conflicto" en RD Congo*
  ***Gavin Hayman***, director, Global Witness (Londres)

Moderadora: ***Seema Joshi***, directora de Empresa y Derechos Humanos, Amnistía Internacional (Londres)

**13.30 h** · Almuerzo

**15 h** · Panel 3
COMPLICIDAD, INVESTIGACIÓN Y PROCESAMIENTO DE LAS EMPRESAS Y SUS AGENTES

- *CPI, La colaboración nacional en el control de los aspectos financieros del crimen internacional*
  ***Mark Whaley***, investigador, Unidad de Investigación Financiera, Oficina del Fiscal, International Criminal Court (La Haya)
- *Responsabilidad penal corporativa desde la perspectiva del Common Law*
  ***Celia Wells***, profesora y Directora, School of Law, University of Bristol (Bristol)
- *Identificando las herramientas para un procesamiento efectivo*
  ***Mark Taylor***, subdirector, Fafo Institute for Applied International Studies (Oslo)
- *Haciendo frente a los abusos en zonas de conflicto desde el exterior del Estado de acogida*
  ***Sandra Cossart***, Responsable del programa de RSE, Association Sherpa (Paris)
- *La complicidad de las empresas en los tribunals estadounidenses: Recientes desarrollos del ATCA*
  ***Peter Weiss***, vice-Presidente, Center for Constitutional Rights (Nueva York)

Moderadora: ***Anita Ramasastry***, profesora de Derecho D. Wayne & Anne Gittinger, University of Washington School of Law (Seattle)

**17.15 h** · CONCLUSIONES PRELIMINARES

- ***Andrew Clapham***, profesor de Derecho Internacional Público, Graduate Institute of International and Development Studies y Director de la Geneva Academy of International Humanitarian Law and Human Rights (Ginebra)

**20 h** · Cena

### VIERNES, 21 DE OCTUBRE DE 2011

**9 h** · Panel 4
FUTURAS RESPUESTAS INTERNACIONALES Y TRATADOS

- *La Convención de Naciones Unidas sobre el Comercio de Armas Convencionales*
  ***Brian Wood***, Responsable de Política e Investigación (Military, Security and Police Transfers), Amnesty International (Londres)
- *La Convención de Naciones Unidas sobre Empresas Militares y de Seguridad Privadas*
  ***José Luis Gómez del Prado***, Presidente, United Nations Working Group on the Use of Mercenaries (Ginebra)
- *El compromiso alrededor de la responsabilidad corporativa en el sistema de Naciones Unidas después de Ruggie*
  ***Carlos López***, Asesor legal senior para las relaciones económicas internacionales , International Commission of Jurists (Ginebra)

Moderador: ***Bruce Broomhall***, Profesor, Departamento de Derecho, University of Quebec (Montreal)

**11 h** · Café

**11.30 h** · Panel 5
PROYECTOS Y DESARROLLOS FUTUROS

- ***Larissa Van den Herik***, Profesora Asociada de Derecho Internacional Público, Leiden University (Leiden)
- ***Gilles Carbonnier***, Profesor de Estudios de Desarrollo y Sub-Director, Centre on Conflict, Development and Peacebuilding, Graduate Institute of International and Development Studies (Ginebra)
- ***Antoni Pigrau***, Director del programa de investigación 'Conflictos Armados: Derecho y Justicia' (ICIP) y Profesor de Derecho Internacional Público de la Universitat Rovira i Virgili (Tarragona)

Moderador y conclusiones finales: ***Andrew Clapham***

**13.30 h** · REFLEXIONES FINALES Y CLAUSURA

- ***Rafael Grasa***, Presidente del Instituto Catalán Internacional para la Paz (ICIP)

**13.45** · Copa de cava

EMPRESES EN CONTEXTOS DE CONFLICTE

Barcelona, 20 i 21 d'octubre de 2011

INSTITUT CATALÀ INTERNACIONAL PER LA PAU

## SHORT BIOGRAPHIES OF PARTICIPANTS

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| **Malena Bengtsson** | Malena Bengtsson works as a researcher at the Business & Human Rights Resource Centre in London which is the only non-profit organization drawing attention to the human rights impacts (positive & negative) of over 5000 companies worldwide. Her main areas of research are business, conflict & peace, business & children, environment & human rights, serious abuses of core human rights by companies and business & human rights in Western Europe. Before joining the Resource Centre, Malena completed a traineeship at the European Court of Human Rights and did an internship at the Permanent Swedish Delegation to the OSCE. She has also worked with law firms in Sweden and the UK, specializing in family and immigration law. Malena has a Masters in Human Rights and Intellectual Property from the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (Sweden), and a Masters of Laws from Lund University. |
| **Vincent Bernard** | Vincent Bernard became Editor-in-Chief of the International Review in October 2010. A graduate of Strasburg's Political Sciences Institute, he holds a Masters degree in political sciences, an LL.M in international law (Law faculty in Strasburg and King's College London) and a Masters in international public law from the Geneva Graduate Institute of International Studies. Vincent Bernard won the IHL Jean Pictet competition as part of the Graduate Institute team in 1995. After lecturing on international law and IHL at the University of Marmara in Istanbul for two years, he joined the ICRC as a lawyer at the Dakar regional delegation. Afterwards, Vincent Bernard worked as communication delegate in charge of the integration and promotion of the law in Nairobi and later as communication coordinator in Jerusalem. At headquarters, he was head of sector for Africa until 2006, when he became head of the field communication set-up. |
| **David Bondia** | David Bondia is Professor of public international law at the Universitat de Barcelona. He is also Director of the Institut de Drets Humans de Catalunya (Human Rights Institute of Catalonia). His main research areas are the international protection of human rights, the International Criminal Court and the Legal status of unilateral acts from States and international sanctions. |
| **William Bourdon** | William Bourdon is a French Lawyer, Member of the Paris Bar since 1980. William Bourdon focuses his practice on human rights, business criminal Law, international public law, international criminal law, business law, media law. He served as legal adviser in numerous major lawsuits including: the Burmese victims of forced labor in a lawsuit against the French oil company Total regarding its activities in Myanmar; the civil parties in a lawsuit against Reverend Wenceslas Munyeshyka, a Rwandan national; French-Chilian families in a lawsuit against General Augusto Pinochet, in October 1998; Algerian families in a lawsuit against General Khaled Nezzar; Tunisian families in a lawsuit against alleged Tunisian torturers, in October 2001. From 1995 to 2000, William Bourdon was Secretary-General of the Fédération Internationale des Droits de l'Homme (Human Rights International Federation). In 2001, William Bourdon founded SHERPA, an NGO that aims at fighting economic crimes. He has written several articles and books on the topics of human rights, international justice. His latest book is entitled *Face aux crimes du marché - Quelles armes juridiques pour les citoyens?* (Facing Economic crimes - What legal tools for citizens?, 2009). |
| **Bruce Broomhall** | Bruce Broomhall is a professor of law at the University of Quebec at Montreal (UQAM). He primarily teaches international and transnational criminal law, and conducts research on a range of issues related to transitional justice, universal jurisdiction, international peace and security, illegal economies of war, the responsibility of business actors in conflict settings, and children in the international justice process. Prior to this, Dr. Broomhall was Senior Legal Officer for International Justice at the Open Society Justice Initiative (Budapest), where he worked to promote the ratification of the Rome Statute of the International Criminal Court, the documentation of international crimes and the advancement of the contemporary system of international justice by coordinating advocacy, training, research and other types of collaboration in Cambodia, the Caucasus, Colombia and the Democratic Republic of the Congo. He is currently pursuing research on resource conflicts under international law. This research will lead to the publication of a monograph in 2012, entitled *Resource Conflicts: Commerce, Conflict and Rights*. |

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| **Anne-Marie Buzatu** | Anne-Marie Buzatu leads DCAF's Privatisation of Security Programme (a centre for Security, Development and the Rule of Law). Her current area of focus is on the regulation and accountability of private military and security companies (PMSCs). Current projects ongoing conceptual and practical support to the Swiss Department of Foreign Affairs to support the International Code of Conduct for Private Security Service Providers (ICoC) and to raise awareness of the Montreux Document on private military and security companies. Before coming to DCAF, Ms. Buzatu practiced human rights law and worked with human rights and humanitarian organisations on rule of law and employment rights issues. She is a member of the Texas Bar and began her career working in private international commercial law. She holds a Bachelors of Arts from the University of Texas in Austin, a Juris Doctor in international law and alternative dispute resolution (ADR) from a joint program with Tulane University and Paris II Panthéon-Assass, and an LL.M from the Académie de droit humanitaire et droits humains in Geneva, Switzerland. |
| **Mar Campins** | Mar Campins is Professor of public international law (European Community Law) at the Department of International Law and Economics of the Universitat de Barcelona (UB). Her main fields of teaching and research are international environmental law and European Union environmental law, as well as public international law and institutional European community law. She was visiting professor at the University of Puerto Rico (1998), Nova Southeastern University, Florida (2001), Facultad Latinoamericana de Ciencias Sociales, FLACSO Argentina (2002-2006), and Université de Montreal (2009-2010). She has participated (as a coordinator and as a researcher) in several research projects concerning international law, European law and Environmental law issues, and author of books and articles in these fields. She is member of a UB's High Quality Consolidated Research Working and of the UB's Water Research Institute. She is also member of the Centre d'Estudis de Dret Ambiental de Tarragona 'Alcalde Pere Lloret' at the Universitat Rovira i Virgili, and external collaborator at Centre de Recherche du Droit Public at the University of Montreal. |
| **Alicia Campos** | Alicia Campos is a Ramon y Cajal researcher at the Department of Political Sciences and International Relations, Universidad Autónoma de Madrid (UAM). She primarily teaches in the Master's program on International Relations and African Studies, law and political science and the Doctoral Program at the Law Faculty. She is member of the Group on African Studies (UAM) and member of the European network AEGIS regarding African Studies. Alicia Campos holds a degree in law and political science from the UAM. Her doctoral thesis (2000) dealt with the decolonization of Equatorial Guinea. Her thesis was published as *De colonia a estado: Guinea Ecuatorial 1955-1968*, Centro de Estudios Políticos y Constitucionales, Madrid, 2002 and as an article in the Journal of African History, "The Decolonisation of Equatorial Guinea: the Relevance of the International Factor", LSE, 2003. During 2000-2001 she was a visiting researcher at the Centre of International Studies at the University of Cambridge and between 2001 and 2004 she was a researcher at the International Law Department of the Faculty of Social Sciences and Law at the Universidad Carlos III. In 2005 she joined again the UAM through a research contract. She has made several short stays for research in Africa and Europe. She has focused on several topics such as decolonization, the colonial law in equatorial Africa, development cooperation and democratization processes in Africa. |
| **Gilles Carbonnier** | Gilles Carbonnier is Professor of development economics at the Graduate Institute of International and Development Studies in Geneva. He is editor-in-chief of the International Development Policy series and deputy director of the Centre on Conflict, Development and Peacebuilding. His research focuses on energy and development, the governance of extractive resources, international cooperation and humanitarian action, and the political economy of war and peacebuilding. He is member of Guilé Foundation's Engagement Team on corporate responsibility and the UN Global Compact. From 1999 to 2006, he was the economic adviser of the ICRC. Before that, he was a Swiss negotiator in the Uruguay Round under the GATT/WTO. He was also in charge of aid-for-trade policies and programs, in conjunction with multilateral organizations such as UNCTAD and the World Bank. Some of his publications include: Carbonnier, G. (guest ed. 2011), Special issue on *The Governance of Extractive Resources, Global Governance*, Vol. 17, No. 2. Carbonnier, G. (2010) *Extractive Industries in Fragile States and the Role of Market Incentives and Regulation. The Economics of Peace and Security Journal*, 5 (2): 30-37. Carbonnier, G. (2009), *Private sector*, in V. Chetail, ed., *Peacebuilding and Post-conflict Reconstruction: a Practical and Bilingual Lexicon*, pp. 245-255. Oxford: Oxford University Press. |
| **Andrew Clapham** | Andrew Clapham is Director of the Geneva Academy of International Humanitarian Law and Human Rights. His current research relates to the role of non-state actors in international law and related questions in human rights and humanitarian law. He is Professor of Public International Law at the Graduate Institute of International Development Studies, which he joined in 1997. He has worked as Special Adviser on Corporate Responsibility to UN High Commissioner for Human Rights Mary Robinson and Adviser on International Humanitarian Law to Sergio Vieira de Mello, Special Representative of the UN Secretary-General in Iraq. His publications include: *Realizing the Right to Health* (ed. with Mary Robinson) (Rüffer and Rub, 2009), *Human Rights: A Very Short Introduction* (Oxford University Press 2007), *Human Rights Obligations of Non-State Actors* (Oxford University Press 2006), and *International Human Rights Lexicon*, with Susan Marks (Oxford University Press 2005). He is currently finishing a 7th edition of *Brierly's Law of Nations*. |

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| **Sandra Cossart** | Sandra Cossart is Head of CSR Program at Sherpa. She is a lawyer and she is also graduated from the IEP (Paris) and the College of Europe (Bruges). After spending eight years in London where she worked for the Business and Human Rights Resource Center, she joined SHERPA in 2010. Sandra Cossart also has an extensive experience in several international organizations. |
| **Tica Font** | Tica Font graduated in physics at Valencia University. After completing her studies, she moved to Barcelona, where she actively participated in the campaign against Spain joining NATO. She has worked for peace ever since. She founded the Centre d'Estudis per la Pau J.M. Delàs and was the vice-president of the NGO Justícia i Pau. She was also the president of the Catalan Federation of NGOs for Peace and, in March 2009, she became the Director of the International Catalan Institute for Peace (ICIP). Tica Font is an expert on economic aspects of defence matters, arms trade, defence budget, military industry, etc. She collaborates on many research projects and publications about these topics, such as: *Atlas del militarismo en España 2009, El comercio de armas español* (2009) and *Informe 2009, exportaciones de Material de Defensa 1999-2008* (2011). |
| **Júlia Gifrà** | Júlia Gifrà is lecturer on public international law at the Universitat Rovira i Virgili. She holds law degree and a Master in International Studies from the Universitat Pompeu Fabra. She received her Ph.D. (cum laude) in law at the University Pompeu Fabra. She wrote her thesis on DR Congo and Peace Operations. From 2004, she is the coordinator of the Summer Courses on Human Rights at the Collège Universitaire Henry Dunant (Geneva). Since 2004 she has been associate lecturer in public international law at Universitat Autònoma de Barcelona. Between 2004 and 2009 she was lecturer in Human rights and Peacekeeping at the Escuela de Prevención y Seguridad Integral. |
| **Tyler Gillard** | Tyler Gillard is a legal expert at the OECD Investment Division. He joined the OECD in 2009 to help draft and coordinate the multi-stakeholder negotiations for the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. He now assists with the OECD's work on implementation of the Due Diligence Guidance and the development of the Supplement on Gold. Before joining the OECD, Tyler was a fellow in international law at Columbia Law School, where he worked on responsible business conduct, international investment law and human rights and transparency in primary extractive contracts. Tyler has also worked with Human Rights Watch's China desk and, for a number of years, on locally-driven public-private development projects throughout India. Tyler received his LL.M from Columbia Law School and his LL.B from the School of Oriental and African Studies, University of London. |
| **José Luis Gómez del Prado** | José Luis Gómez del Prado is Member of the UN Working Group on the Use of Mercenaries, serving in his personal capacity as a human rights independent expert (2005-2011). He has chaired the Group at several sessions and presented a number of reports to the UN Human Rights Council and the General Assembly. Field missions in Chile, Ecuador, Equatorial Guinea, Fiji, Honduras, Iraq, Peru, South Africa, the United Kingdom and the United States of America. He has chaired the UN Regional Consultation for Latin American and Caribbean States, held in Panama (2007) and the one for Western European and other States held in Geneva (2010), and participated at the UN Regional Consultations held in: Moscow (2008), Bangkok (2009) and Addis Ababa (2010). He is also member of the Advisory Group of the Geneva Centre for Democratic Control of Armed Forces (DCAF) Private Security Regulation Net and member of the UN Advisory Group of the Voluntary Fund for the I International Decade of the World's Indigenous Peoples. He is the author of numerous articles and monographs. Most recent articles are: "Privatising security and war", in Forced Migration Review, Refugee Studies Centre, University of Oxford, Issue 37, March 2011; "A United Nations Instrument to Regulate and Monitor Private Military and Security Companies", in *Notre Dame Journal of International, Comparative and Human Rights Law*, Vol. I, Number 1, Spring 2011. |
| **Alfons González** | Alfons González is lecturer in public international law and international relations at the Universitat Rovira i Virgili. He is visiting professor at the Official Master in European Integration and the Official Master in International Relations and Security and Defence of the Univeritat Autònoma de Barcelona and postgraduate teaching in various management and local law courses at the School of Public Administration of Catalonia. His research areas include law and institutions of the European Union, European foreign and security policy, local entities and Europe, the European environmental law and teaching innovation in the legal field with more than 40 publications on these areas. Currently he is involved as an active researcher of the Research Group on Planning, Citizenship and Sustainability (environmental law, immigration and local government) of the URV and of the Observatory of European Foreign Policy CIDOB / IUEE of the UAB. Alfons González is B.A. in Law, Universitat Autònoma de Barcelona -UAB- (June, 1991); Master in "Comparative law", UAB (September 1993); Ph.D. in Law, Universitat Rovira i Virgili -URV- (May 2003). |

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| **Rafael Grasa** | Rafael Grasa is the President of the International Catalan Institute for Peace (ICIP) and Professor of international relations at the Universitat Autònoma de Barcelona (UAB). He also teaches at the Barcelona Institute for International Studies (IBEI) and regularly gives guest lectures on conflict resolution and development cooperation at various other universities in Spain and Latin America. He also coordinates ICIP´s research programme on 'Human Security, Conflict Transformation, and Peace Investigation' and has been President of the Catalan Federation of Development NGOs, member of the Spanish Council for Cooperation Development, and the Catalan Council for the Promotion of Peace. His latest book is entitled *Cincuenta años de evolución de la investigación para la paz: tendencias y propuestas para observar, investigar y actuar* (2010). |
| **Sonia Güell** | Sonia Güell is, since January 2006, Associate Professor at the Department of International Law and International Relations at the Pompeu Fabra University. Her last publications are: *La privatización del uso de la fuerza armada. Política y derecho ante el fenómeno de las "Empresas militares y de serguridad privadas* (coord.), J.M. Bosch: Barcelona (2009) and *Conflictos armados internos y aplicabilidad del derecho internacional humanitario*, Madrid: Dykinson (2005). |
| **Gavin Hayman** | Gavin Hayman is Director of the NGO Global Witness. This organisation has run pioneering campaigns against natural resource-related conflict and corruption and associated environmental and human rights abuses. From Cambodia to Congo, Sierra Leone to Angola, it has exposed the brutality and injustice that results from the fight to access and control natural resource wealth, and have sought to bring the perpetrators of this corruption and conflict to book. He has contributed substantially to Global Witness' work on oil, gas and mining and the linkages between natural resources and conflict. He previously worked at the Royal Institute of International Affairs in London. |
| **Esther Hennchen** | Esther Hennchen holds an undergraduate degree in Business Administration from the University of Gutenberg, a Master in Development Cooperation from London Business School, and is currently a PhD candidate at ESADE Business School - Universidad de Ramon Llull, Barcelona. She has also participated in numerous postgraduate courses on development management and human rights. As an expert in development and international cooperation, she has also worked for various not-for-profit organisations, including UNICEF and Intermón Oxfam, and international organisations such as the World Bank, in addition to participating in various consulting projects in her areas of expertise. |
| **Seema Joshi** | Seema Joshi is Head of Business and Human Rights at Amnesty International (London). She has professional experience with areas including international and national law, natural resources, conflict and human rights. Through her work with Global Witness, Seema participated in a secondment to the UN Special Representative on Business & Human Rights, where she focused on the home state role in minimizing corporate related human rights abuses in conflict zones. Previously, Seema worked for the UN Development Programme in Thailand, where she managed an environmental governance initiative for Asia Pacific that sought to improve access rights for the poor. Seema has also worked as a civil litigation lawyer in Canada for a number of years. Seema holds a Master's in International Law from the London School of Economics. She also holds a Bachelor of Laws and Bachelor of Arts from a Canadian university. In 1999, she was admitted as a Barrister and Solicitor to the Law Society of Alberta, Canada. |
| **Philippe Le Billon** | Philippe Le Billon is an Associate Professor at the University of British Columbia (Canada) with the Department of Geography and the Liu Institute for Global Issues. Before joining UBC, he was a Research Associate with the Overseas Development Institute (ODI) and the International Institute for Strategic Studies (IISS). His research interests relate to geographies of violence, political ecology of primary commodities, and linkages between environment, development and security. He has published widely on the links between natural resources and armed conflicts, but also on the political economy of war, armed conflicts and corruption, as well as 'natural' disaster and armed conflicts. He is the author of *Fuelling War: Natural Resources and Armed Conflicts* (IISS/Routledge, 2005) and *Wars of Plunder: Conflicts, Profits and the Politics of Resources* (Hurst/Columbia UP, 2012), co-author of *Oil* (Polity, 2012), and editor of *The Geopolitics of Resource Wars* (Cass, 2005). His current research focuses on transnational rule making for primary commodity governance, the politics of commodity price volatility, and linkages between environmental and energy security. |
| **Carlos López** | Carlos López is Senior Legal Advisor at the International Commission of Jurists. He coordinates the ICJ work on corporate legal accountability. He is also in charge of writing *amicus curiae* to courts in the context of legal proceedings against corporations as well as the coordination and promotion of legal actions against corporations carried out by the ICJ network of sections and affiliates. He was member of the team of investigators that supported Justice Goldstone, Hina Jilani, Christine Chinkin and Crnel Travers in the investigation of human rights and humanitarian law violations committed by all parties in the context of the Israeli military operations in the Gaza Strip. He has worked for the OHCHR in Geneva and in other countries. He received his PhD on International Relations/International Law at the Graduate Institute of International Studies (Geneva). |

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| **Olga Martin-Ortega** | Olga Martin-Ortega is currently Senior Research Fellow at the Centre on Human Rights in Conflict (CHRC), University of East London (UK). She holds a Law degree from the University of Seville (Spain). She received her Ph.D. (cum laude) in International Human Rights Law at the University of Jaen (Spain). Before joining the Centre on Human Rights in Conflict she was a lecturer at Napier University, (Edinburgh), and the University of Jaen. She is member of the Research Ethics Committee at the University of Jaen. She is currently Visiting Honorary Fellow at the Centre for Childhood (University of the Highlands). She regularly teaches in the areas of business and human rights and post-conflict reconstruction, including permanent master courses at the University of East London, Open University of Catalunya and Universidad Pontificia Católica de Peru. She has participated and is currently participating in numerous research projects including "The responsibility of Spanish Transnational Corporations in the field of human rights" (Ministerio de Educación y Ciencia, led by the University of Seville), "Building a Just and Durable Peace by Piece" (EU VII FP, led by the University of Lund), "Peacebuilding as Transitional Justice" (US Institute for Peace, led by the CHRC), and "Peacebuilding in post-conflict countries in Africa" (British Academy, led by the CHRC). She is currently leading the research project "The role of hybrid courts in the institutional and substantive development of international criminal justice", a study of the War Crimes Chamber of the State Court of Bosnia and Herzegovina, (British Academy). |
| **Edin Omanovic** | Edin Omanovic works at Stockholm International Peace Research Institute (SIPRI). He has been a researcher with SIPRI's EthicalCargo project since 2009. The project aims to work with the humanitarian aid community to limit its exposure to aviation companies that may be involved in the transportation of destabilizing commodities. His research focuses on the illicit trade of small arms and light weapons (SALW) and the role of transportation actors in conflict zones. He is currently implementing a EU Council Decision project under the authority of Catherine Ashton, High Representative of the European Union for Foreign Affairs and Security Policy. The project will strengthen the ability of UN, EU, AU and OSCE member states, agencies, committees and crisis response missions to monitor the activities of air cargo companies involved in the illicit trafficking of SALW via air. Prior to his current research, Edin received his MA (Hons) from the University of Glasgow where he specialized in EU security policy before joining a legal inquiry in the UK. |
| **Gérald Pachoud** | Gérald Pachoud is a Senior Adviser to the Assistant Secretary-General at the Peacebuilding Support Office of United Nations. His main role is to advise the ASG and formulate strategy with respect to the role of the private sector in peacebuilding. From 2005 to 2011, he served as Special Adviser to Professor John Ruggie during his mandate as United Nations Secretary General's Special Representative where he has been closely involved in the development and drafting of the UN Guiding Principles for Business and Human Rights. Gerald is currently on leave from the Swiss department of foreign affairs, where he initiated and led the program on business and human security. His other prior work experience included the Swiss ministry of economic affairs, the Swiss mission to the UN in Geneva, and an international management firm. He has a B.A. in international relations and a M.A. in international law from the University of Geneva and the Graduate Institute of International Studies and was a research fellow with the Kennedy School of Government at Harvard University. |
| **Sarah Percy** | Sarah Percy is University Lecturer and Tutorial Fellow in International Relations at Merton College, Oxford, and in the Department of Politics and International Relations. In January 2012 she will take up a Chair in International Relations at the University of Western Australia. Sarah has published extensively on private military and security companies and mercenaries. Her publications include *Mercenaries: the History of a Norm in International Relations* (OUP: 2007); *Regulating the Private Security Industry* (Adelphi Paper, 2006); and numerous articles about private force injournals including *International Organization, Civil Wars, International Journal*, and in various edited volumes. Sarah is also interested in other types of violent non-state actor and is working on a large project about piracy. At Oxford Sarah has been on the Steering Committee of the Oxford Programme on the Changing Character of War and coordinated Merton College's Global Directions Group. |
| **Antoni Pigrau** | Antoni Pigrau is the Director of the 'Armed Conflicts: Law and Justice Research Programme' at the International Catalan Institute for Peace (ICIP) and member of the Board of Governors of the institute. He is Professor of public international law and international relations and currently teaches at the Faculty of Legal Sciences of at the Universitat Rovira i Virgili (URV) in Tarragona, where he has served as both Vice-President and Secretary General. He collaborates with the Permanent Peoples' Tribunal, is the Spanish correspondent for the Yearbook of International Humanitarian Law, is the Director of the Tarragona Centre for Environmental Law Studies (CEDAT) and is Editor-in-Chief of the *Revista Catalana de Dret Ambiental*, coedited by URV and the Generalitat de Catalunya. Antoni Pigrau is also author of a variety of works on the topics of environmental law, international humanitarian law, criminal international law and liability for environmental damages. |

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| **Maria Prandi** | Maria Prandi is Head of the Business and Human Rights at the School for a Culture of Peace at Universitat Autònoma de Barcelona (UAB) and researcher and associated lecturer at the Institute for Social Innovation at ESADE Business School (Universitat Ramon Llull). She is member of the UN GC Expert Group on Responsible Business and Investment in High-Risk Areas. She has worked in the field of human rights as a consultant and participated at the former UN Commission on Human Rights and Sub-commission (Geneva). She has done field research in Nepal, Morocco, Colombia and Mexico. She is currently a Ph.D. Candidate in International Relations at the UAB. She holds a Master in International Relations (with Honours) and a Postgraduate Diploma on Culture of Peace (UAB). She is currently conducting her research in two different fields: the dilemmas that transitional justice is confronting in many post-conflict contexts and the role of business in relation to the three UN pillars: human rights, development and peace-building. Her last main publications include *Can companies contribute to the MDG? Keys to understand and act* (2009), *A Practical Handbook on Business and Human Rights* (2009) and *CSR in conflict and post-conflict environments* (2010). She is also co-editor of the book *Transitional Justice and Human Rights: Managing the Past* (2010) and co-author of the yearbook *Alert! Report on Conflicts, Human Rights and Peacebuilding*, since its first edition in 2002. |
| **Anita Ramasastry** | Anita Ramasastry joined the Faculty of Law at the University of Washington in 1996. Her research interests include commercial law, banking and payments systems, law and development and comparative law. In 1998-99, she served as a special attorney and advisor to a special claims resolution tribunal in Zurich, Switzerland, established to resolve claims to World War II-era bank accounts. She has been a visiting professor and Atlantic Fellow in Public Policy at the Centre for Commercial Law Studies, Queen Mary Westfield College, and University of London. Professor Ramasastry served as a visiting scholar at the British Financial Services Authority. During the fall of 2001, she was a fellow at the Berkman Center for Internet & Society at Harvard Law School. She has been a consultant and advisor to the US Agency for International Development, the European Bank for Reconstruction and Development, the U.S. Department of Commerce Commercial Law Development Program, the European Commission, Global Witness and the Open Society Institute. She has been an advisor to the International Commission of Jurists Expert Panel on Corporate Complicity and has participated in several expert consultations convened by the UN Secretary General's Special Representative on Business and Human Rights. She is also the project leader for the Commerce, Crime and Conflict project coordinated by the Fafo Institute for Applied International Studies in Norway. |
| **Marta Requejo** | Marta Requejo obtained her law degree from the University of Santiago after spending a year at the University of Le Mans (France) as an Erasmus student. She holds a Doctorate (European Doctorate, 1992) from Santiago de Compostela University. Her primary teaching and research interests are conflict of laws and international litigation. She has been visiting professor in Paris (Paris-Panthéon), Madrid (Complutense University) and Salamanca, as well as visitor for researching purposes at the Max Planck Institute on Foreign and Private International Law (Hamburg, Germany), the Institut Suisse de Droit Comparé (Lausanne, Switzerland), the Paris-Pantheon University, and the BIICL (London). She has published four monographs: "Ley local y forma de los actos en el Derecho internacional privado español", 418 pp; "Proceso en el extranjero y medidas antiproceso (antisuit injunctions)", 282 pp; "La cesión de créditos en el comercio internacional", 281 pp; "Violaciones graves de derechos humanos y responsabilidad civil", 369 pp. She is also author of several articles printed in collective works, and numerous papers in law journals, mainly Spanish ones, like the *Revista Española de Derecho Internacional* or *Diario La Ley*, but also in foreign magazines like *The European Legal Forum* or *Era Forum*. She belongs to the Group of research De Conflictu Legum; She is member of different academic organizations, such as the Asociación Española de Profesores de DI, Relaciones Internacionales y Derecho Internacional Privado, the BIICL, and the ESIL, where she has just launched a proposition to create a group of interests called "International Business and Human Rights". She is editor of the website www.conflictoflaws.net |
| **Josep Maria Royo** | Josep Maria Royo has been, since 2000, a researcher at the Conflict and Peacebuilding Programme at The School for a Culture of Peace and lectures on peace and conflict subjects at several universities in Spain. He has given technical support to the Spanish Farewell to Arms Campaign led by Amnesty International, Greenpeace, Doctors Without Borders, Intermón OXFAM and 13 other NGOs. His expertise includes conflict and peacebuilding in Africa and his work is focused on sub-Saharan Africa, specially the regions of Great Lakes and the Horn of Africa. His areas of interest include non-state armed actors, armed conflicts and peace processes. He has conducted field work in Djibouti, Kenya, Burundi, Uganda, DR Congo and Rwanda. He attended some sessions of the Somali National Peace and Reconciliation Conference organized by the regional organization IGAD held in Kenya between 2002 and 2004. Since its first edition in 2002, he has been co-author of *Alert! Report on conflicts, human rights and peacebuilding*, and has written book chapters, reports and articles on the Great Lakes Region and the Horn of Africa, among others. He is a member of the NGO Advisory Council Lliga dels Drets dels Pobles for its campaigns on DR Congo. He also participates in the Network for DR Congo (a Catalan NGO) and cooperates with MSF-Spain in the analysis of the Central Africa context. He holds a Master in International Relations (with honours), a Postgraduate Diploma in Peace Culture, and a BA in Political Science specialized in International Relations by the Universitat Autònoma de Barcelona, as well as several specialization courses on Mediterranean and African Affairs. He is currently working on a Ph.D. dissertation about non-state armed groups in Africa. |

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| **Jaume Saura** | Jaume Saura is associate Professor of public international law at the University of Barcelona and President of the Human Rights Institute of Catalonia. He was regional coordinator of the European Union Electoral Unit in Palestine (1995/96), attached to the head of Mission of the Catalan delegation to the 2005 presidential election. His research has been focused on the area of the international protection of human rights, the Law of the Sea, Protection of the Environment and the legal analysis of the international conflicts (Palestine, Western Sahara, East Timor, etc.). Jaume Saure has been visiting professor at Loyola Law School Los Angeles (2003, 2005, 2007). He has been International Election Observer in South Africa, Palestine, Bosnia-Herzegovina, Togo, East Timor, Peru and Guatemala. He was formerly Deputy Director of the Center for International Studies University of Barcelona (2000-2007). |
| **Mark Taylor** | Mark Taylor is a researcher and analyst with twenty years experience in policy wonkery, journalism, research and investigation of various sorts. As a researcher at the Fafo Institute for Applied International Studies in Oslo, Mark conducts research into regulatory and policy responses to violence and conflict, in particular the ways in which law is applied to non-state actors (armed groups, warlords, business). Mark also represents Fafo as a founding member of the Center for American Progress' Just Jobs Network. In addition to his work at Fafo, Mark is a Senior Advisor to Global Witness, London, in their Ending Impunity campaign. He is an occasional contributor to Al Jazeera English Television on international law, a contributor to *DOX Magazine* and a Visiting Research Fellow at the Centre for International Policy Studies, University of Ottawa (in 2011). Mark is a former radio journalist and Managing Director at the Fafo Institute and has worked as a human rights advocate and analyst for non-governmental organisations and the United Nations. He holds a B.A. (honours) in Religious Studies from McGill University, in Montreal and an LL.M (cum laude) in Public International Law from Leiden University, The Netherlands (1996), where has just started a mid-career PhD in public international law. |
| **Harald Tollan** | Harald Tollan is Senior Advisor in the Multilateral Bank and Finance Section of the Norwegian Ministry of Foreign Affairs. He is primarily engaged in issues of global finance, and in particular related to illicit capital flows and development. Tollan chaired the International Task Force on the Development Impact of Illicit Financial Flows, set up under the Leading Group on Solidarity Levies to fund Development, which helped bring illicit financial flows on to the international development agenda. He is involved in various initiatives connected to tax evasion, anti-money laundering, fighting organised crime, asset recovery and capacity building. Tollan is an economist by profession and has worked on international issues for 15 years in the Norwegian Ministry of Justice, the Norwegian Agency for Development Cooperation and the Ministry of Foreign Affairs – including a posting to Mozambique. |
| **Helena Torroja** | Helena Torroja is professor of public international law at the University of Barcelona, Law School. She holds a PhD in Law (public international law), University of Barcelona, 2001. Since 1993, she primarily teaches international human rights law, international humanitarian law and public international law and international relations at the University of Barcelona. She is visiting professor of International Human Rights Law, University of Puerto Rico (2006, 2008, 2011). She is head of Studies and Director of the Course on Acces to the Spanish Diplomatic Career at the Center of International Studies (Spanish Ministry of Foreign Affairs-University of Barcelona- La Caixa). She is member of the Spanish Academic Experts Network from the working group on the use of Mercenaries, 2009 (see A/HRC/15/25, para. 59). She collaborates with the WG on the use of Mercenaries since 2007. |
| **Larissa Van den Herik** | Larissa van den Herik is a Professor of public international law and Editor in Chief of the LeidenJournal of international law. She is member of the Advisory Committee on Public International Law to the Government. Her research areas are international criminal law and the law on peace and security, with a specific focus on pillage and the illegal exploitation of natural resources, corporate criminal responsibility, genocide, terrorism and UN sanctions. She has published, *inter alia*, in the *Journal of International Criminal Justice*, *International Criminal Law Review*, and *Criminal Law Forum*. She is co-editor of collections of essays in the field of international criminal law, *Future Perspectives on International Criminal Justice*, T.M.C. Asser Press - Cambridge University Press, 2009 and *Fragmentation and Diversification of International Criminal Law*, Martinus Nijhoff, 2011, forthcoming. |

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| **Peter Weiss** | Peter Weiss has led a double life as an intellectual property lawyer (now retired) and a constitutional, international and human rights lawyer (now active). He was born in Vienna in 1925 and obtained his J.D. from Yale Law School in 1952. He has been active with the Center for Constitutional Rights (CCR) since 1968 and currently serves as one of its cooperating attorneys and Vice Presidents. He was the lead attorney in the Filartiga case which established, in 1980, the right to sue foreign persons and entities in US courts for gross human rights violations. He has worked with colleagues at CCR in litigation seeking to hold multinational corporations accountable for such violations. He was involved in the creation of the European Center for Constitutional and Human Rights (ECCHR) in Berlin and serves on its Advisory Board. Corporate accountability is one of ECCHR's main priorities. He is a former president and current co-president of the International Association of Lawyers Against Nuclear Arms and president of its US affiliate, the Lawyers Committee on Nuclear Policy. He was counsel to the government of Malaysia in the nuclear weapons case argued before the International Court of Justice in 1995. He has taught and lectured on international law and written numerous articles, including *The Future of Universal Jurisdiction in International Prosecution of Human Rights Crimes*, Springer 2006, and "Taking the Law Seriously: The Imperative Need for a Nuclear Weapons Convention", in *Fordham International Law Journal*, April 2011. |
| **Celia Wells** | Celia Wells is Head of the Law School and Professor of criminal law at University of Bristol. Celia's research is mainly in criminal law with a particular specialism in corporate criminal liability. She has provided expert advice on corporate criminal responsibility to a number of national and international bodies including: OECD Bribery Convention Working Group; Specialist Adviser to the House of Commons Select Committee Inquiry into the Draft Corporate Manslaughter Bill (2005); the International Commission of Jurists' Expert Legal Panel on Corporate Complicity in International Crimes (2006); and as expert witness to the Parliamentary Joint Scrutiny Committee on the draft Bribery Bill 2009, resulting in a sharpening of the corporate offence (now Bribery Act 2010. s. 7). Her recent publications are: "Corporate Crime: Opening the Eyes of the Sentry", *Legal Studies*, 30, (pp. 370-390), 2010 and "Corporate Criminal Liability in England and Wales: Past, Present and Future", in M. Pieth, R. Ivory (Ed.), "Corporate Criminal Liability", (pp. 91-112), *Springer Science and Business Media* B.V, 2011. |
| **Achim Wennmann** | Achim Wennmann is Researcher at the Centre on Conflict, Development and Peacebuilding (CCDP) of the Graduate Institute of International and Development Studies in Geneva, and Executive Coordinator of the Geneva Peacebuilding Platform. His current research relates to conflict analysis, war-to-peace transitions, peacebuilding, and state fragility. He has specific expertise on the economic dimensions of these topics and has published widely on conflict economies, the financing of armed groups, economic issues and instruments in peace mediation, and hybrid political orders. Dr. Wennmann is author of *The Political Economy of Peacemaking* (London: Routledge, 2011), and co-editor (with Mats Berdal) of *Ending Wars, Consolidating Peace: Economic Perspectives* (London IISS and Routledge, 2010). Dr. Wennmann has also been consultant for the OECD International Network on Conflict and Fragility's work stream on international assistance to peace processes. With regards to business in peace processes, Dr. Wennmann published "Peace Processes, Business, and New Futures After War" in Berdal and Wennmann, *Ending Wars, Consolidating Peace*, "The Private Sector as a Strategic Partner in Peace Processes" (submitted to Négociation), as well as practical guidance notes for peace mediators on private sector investment and income sharing from natural resources. He analyzed the role of extractive industries in peace processes in *Breaking the Conflict Trap? Addressing Natural Resources in Peace Processes* (Global Governance, Vol. 17, No.2, 2011). |
| **Marc Whaley** | Marc Whaley works at the International Criminal Court and is Head of the Financial Investigation Unit (FIU). The institution's main research areas are war crimes and genocide related issues that fall within the Courts jurisdiction and the Rome Statute. He spent his initial career as a Detective at New Scotland Yard, principally as a Financial Investigator. He has worked in the fields of organized crime, money laundering and latterly in the field of terrorist finance. The FIU, in conjunction with other sections of the Investigation Division, are embarking on research and the collection / analysis of data related to the pre cursor actors that support and allow offences within our jurisdiction to take place. This research relates to the cross situational commonalities that exist in our investigations and include aviation, financial institutions, mineral "middlemen", end users and other industries and service providers who are not complicit in the actual offences but provide the framework for the offenders to flourish. |
| **Brian Wood** | Brian Wood is Amnesty International Research and Policy Manager for Military, Security and Police Transfers. Wood co-authored *The Arms Fixers*, a book detailing the methods used to traffic arm and has written numerous reports on the human rights impact of the largely unregulated arms trade. Wood has also served as an expert witness to the UN on arms embargo violations. |

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# 5. ACKNOWLEDGEMENTS



The conference "*The Role and Responsibilities of Companies in Conflict Situations: Advancing the Research Agenda",* which took place in Barcelona on 20 and 21 October 2011**,** was organized by ICIP and directed by Antoni Pigrau.

Bruce Broomhall, Professor at the Department of Law of the University of Quebec at Montreal (Montreal) and Maria Prandi, Head of the Business and Human Rights Programme at the School for a Culture of Peace (Universitat Autònoma de Barcelona) were responsible for the contents, participants and methodology of the conference.

The conference logistical committee was made up of Marta López, who is responsible for the logistical organization of ICIP events and activities, Maria Fanlo, Eugènia Riera, and Elena Grau.

The ICIP and organizers would like to thank everyone who contributed to making this conference a success. Particular thanks go to the speakers and moderators of the conference, for their interesting contributions to the debate, and to Antoni Cardesa and Matt Murphy, whose notes have formed the basis for these conference proceedings.

## ABOUT THE INTERNATIONAL CATALAN INSTITUTE FOR PEACE (ICIP)

At the end of 2007 the Parliament of Catalonia passed the "Law for the Promotion of Peace" resulting in the creation of the International Catalan Institute for Peace (ICIP). Parliament chose, at the request of civil society and after a long period of deliberation and consensus building, to create a public organization, which would be institutional by nature, but also independent of government and private entities. It would maintain its own legal individuality with full capacity to work both in public and private sectors. In addition, the ICIP would be a public entity, with full autonomy. The Institution is thus independent with the capacity to act in a manner, which is both accountable to Parliament, to the Catalan Government, to civil society as well as to all of its patrons.

The law which produced the ICIP states that it must provide services for and respond to citizens, the peace movement, universities, the academic world in general and public administrations, through the collaboration and organization of activities such as research, teaching, transfer of knowledge, dissemination of ideas and awareness and intervention in the field. It should do so, with conviction and by mandate, seeking synergies, collaborations, practicing the principle of subsidiarity and avoiding redundancies and duplications.

In order to achieve these goals, the ICIP developed a Strategic Plan, 2009-2012, which, was submitted to the Consell Català del Foment de la Pau and Parliament of Catalonia as an open proposition.

The principle purpose of the ICIP is to promote a culture of peace in Catalonia as well as throughout the world, to endorse peaceful solutions and conflict resolutions and to endow Catalonia with an active role as an agent of peace. The ICIP, seeking consistency between ends and means, is governed by the principles which promote peace, democracy, justice, equality and equity in relationships between individuals, peoples, cultures, nations and states. It holds the aim of working for human security, disarmament, the prevention and peaceful resolution of conflicts and social tensions, and strengthening the roots of peace and coexistence, peace building and advocacy of human rights.

## DOCUMENTS ICIP

**7/2011**

Polarization and Conflict in Latin America
MAY 2011

**7/2011**

Polarització i Conflictes a Amèrica Llatina
MAIG 2011

**7/2011**

Polarización y Conflictos en América Latina
MAYO 2011

**6/2011**

La Pau en Moviment
OCTUBRE 2010

**6/2011**

La Paz en Movimiento
OCTUBRE 2010

**5/2011**

Pau, Conflicte i Seguretat a l'Àfrica
NOVEMBRE 2010

**4/2010**

Condicions per a la consolidació de la Pau a Costa d'Ivori
SETEMBRE 2010

**4/2010**

Conditions pour la consolidation de la paix en Côte d'Ivoire
SEPTEMBRE 2010

**3/2010**

Measuring peace. Initiatives, limitations and proposals
MARCH 2010

**3/2010**

Midiendo la paz. Iniciativas, limitaciones y propuestas
MARZO 2010

**2/2010**

The Barcelona Forum on Decentralized Governance and Conflict Prevention
6-8 JULY 2009

**1/2010**

Jornades del Moviment per la Pau
13 i 14 DE NOVEMBRE DE 2009

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