

# **CORPORATE ACCOUNTABILITY FOR GROSS HUMAN RIGHTS VIOLATIONS — AN INTERSECTORAL WORKSHOP**

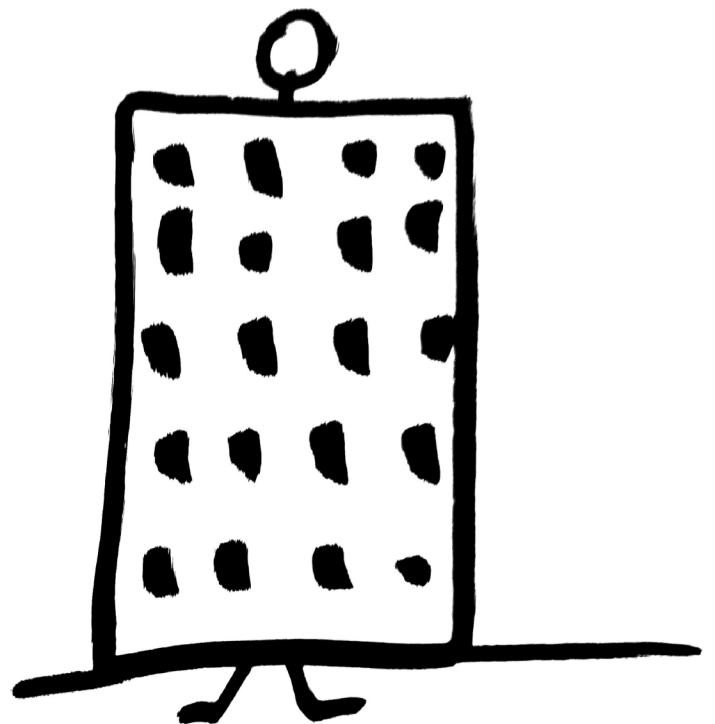
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Paris Institute for Advanced Study

17 Quai d'Anjou, 75004



**HUMAN  
RIGHTS**



**CORPORATE  
RIGHTS**

In the past 20 years, mobilizations for corporate accountability for gross human rights violations have proliferated across the globe. NGOs, trade unions, legal experts and social scientists have built transnational coalitions to raise awareness, enforce national and international legislation, boycott, and bring to courts multinational companies and their representatives accused of human rights violations.

This workshop explores how transnational social movements build such strategies in primarily four industrial sectors: spyware and digital technologies; arms, weapons, and military training industries; extractive industries; and the banking and finance sectors.

What are the specificities of these industries in respect to gross violations of human rights?

What repertoires of contentious action are used to enforce accountability in these four industrial sectors? In what ways, under what conditions, and to what extent are they effective? What challenges and constraints do they confront? How do various industries, companies, and business associations respond to these campaigns given their various financial and reputational interests and organizational cultures? To what extent, if at all, is transnational activism better suited than national/local campaigns to deal with corporate complicity in political violence? Are there different approaches to corporate accountability that fragment and even divide social movements and human rights activists according to regional and professional area of activism?

— VERY BIG

UNACCOUNT  
ABILITY

# PROGRAMME

9:00 — 9:15

## INTRODUCTION

RALUCA GROSESCU (SNSPA, RO)

SIMON LUCK (Paris Institute of Advanced Study, FR)

9:15 — 10:45

## SPYWARE, SURVEILLANCE CAPITALISM & HUMAN RIGHTS

JOHN G. DALE (George Mason University, US),

*Surveillance Capitalism and Corporate Accountability*

KHALID IBRAHIM (Gulf Centre for Human Rights, LB),

*International mechanisms to put an end to the targeted surveillance of human rights activists*

MARWA FATAFTA (Access Now, DE), *MENA Coalition to Combat Digital Surveillance*

10:45 — 11:00

## COFFEE BREAK

11:00 — 12:00

## EXTRACTIVE INDUSTRIES, ENVIRONMENT AND MAJOR INTERNATIONAL CRIMES

MARIA-ISABEL CUBIDES (Independent Expert, FR),

*Extractivist Industries, Justice and Political Mobilization*

ANNA KIEFER ((Sherpa, FR), *Sherpa's Mobilizations for Corporate Accountability in Extractive Industries*

12:00 — 13:00

## LUNCH

13:15 — 14:45

## **ARMS, WEAPONS, AND MILITARY TRAINING INDUSTRIES**

RUXANDRA IVAN (SNSPA, RO), *Private Security Firms and Diluted State Responsibility for Gross Human Rights Violations*

LAURA DUARTE REYES (European Centre for Constitutional and Human Rights, DE), *Corporate Accountability in Action: Strategic Human Rights Litigation on Arms Trade Exports*

AYMERIC ELLUIN (Amnesty International, FR), *Weapons Exports: the Accountability of the Defence Industry and its Implementing*

14:45 — 15:00

## **COFFEE BREAK**

15:00 — 16:00

## **BANKING SECTOR: WHAT GUILT, WHAT ACCOUNTABILITY**

JUAN PABLO BOHOSLAVSKI (Universidad Nacional de Río Negro, AR), *Why is holding financial accomplices accountable so hard?*

BUSISIWE KAMOLANE (Centre for Applied Legal Studies, ZA), *Holding Financiers Accountable for Human Rights Violations* (online)

**SOUTH** **NORTH**

**INHABITANTS**

**INCOME**

16:00 — 16:15

**COFFEE BREAK**

16:15 — 17:30

**DIFFERENT APPROACHES TO CORPORATE ACCOUNTABILITY**

SOPHIE GROBSON (University of Nanterre, FR), *UN Treaty on Business and Human Rights: For Whom and For What?*

SABINE MICHALOWSKI (University of Essex, UK), *Corporate Accountability in Colombia and its International Dimensions*

RALUCA GROSESCU (SNSPA, RO), *Liberal, Neo-Marxist, and Indigenous Approaches to Corporate Accountability*

17:30 — 18:30

**ROUNDTABLE**

Moderator JOHN DALE (George Mason University, US)

Participants ALL PRESENTERS, JERNEJ LETNAR ČERNIČ (Graduate School of Government and European Studies, SI) & HENRY RAMMELT (SNSPA, RO)

18:30

**COCKTAIL**

This workshop is part of the ERC-Consolidator project Transnational Advocacy Networks and Corporate Accountability for Major International Crimes.

This project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement No. 101002993 — CORPACCOUNT). The project is implemented by the National University of Political Science and Public Administration (SNSPA, RO). We thank the Paris Institute for Advanced Study for generously hosting the event.

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## REGISTRATION

To register for the event, please write to MIRCEA VÂLCEANU at [corpaccount@politice.ro](mailto:corpaccount@politice.ro) until 05.07.2022 at the latest.



INSTITUT D'ÉTUDES  
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National University of Political Studies and Public Administration

**Workshop report**  
**Corporate Accountability for Gross Human Rights Violations**  
**An Intersectoral Workshop**  
**Paris Institute for Advanced Studies, July 07, 2022**

**Dr. Henry Rammelt, SNSPA, Bucharest**  
**Report of 10 September 2022**

International scholars, activists, and human rights lawyers met on July 07, 2022 at the Paris Institute for Advanced Studies (PIAS) to discuss mobilizations for corporate accountability. The intersectoral workshop “**Corporate accountability for gross human rights violations**”, organized by SNSPA Bucharest and the PIAS, with the support of the European Research Council (ERC), provided a platform for identifying some of the most pressing issues related to the way transnational corporations violate human rights and how states and NGOs can address such transgressions. In particular, the participants discussed strategies of corporate accountability developed and deployed by transnational social movements, advocacy networks, and other stakeholders. Advancing new tools and methods to hold corporations accountable for their contribution to gross human rights violations was identified as one of the priority areas of action.

**1) Introduction and Context**

The role of corporations in human rights abuses has been well documented and widely discussed, ranging from alliances between paramilitaries, private security firms, and corporations, through the role of foreign direct investment (FDI) and private investments in keeping authoritarian regimes afloat, to corporations’ direct use of forced labor, attacks against trade union activists and protesters, and complicity to torture. Despite the striking need for holding such corporations accountable, **corporate impunity** remains a general rule. The corporate veil is hard to be pierced, as the opacity of corporate structures, their transnational character, and the lack of efficient sanctioning mechanisms, complicate access to justice. Societal stakeholders struggling to hold

corporations accountable are confronted with a multitude of obstacles. Corporate structures seem to be engineered in a way that excuse the parent company from crimes committed by their subsidiaries, hence, engineered to evade responsibility. The fact that most corporations are parented in the Global North, while operating in the Global South, creates additional legal and political challenges. Also, governments and authorities in countries of the Global North contribute to fueling wars through (oftentimes illegal) proliferation of weapons, and other hard- and software, that are used to wage or sustain war, to repress oppositional forces, and to pursue human rights and labor activists.

Most of the human rights abuses by corporations cannot be understood from a case-by-case point of view, but require a **systemic analysis** of the conditions in which corporations are active. Three interrelated conditions that set the framework for corporate operations stand out:

- **Globalization:** Corporate impunity strongly results from the transnational character of corporations that increase the burden for liability and access to the courts. Little interest can be observed for creating an international framework for holding corporations accountable. Corporations further pressure governments to comply to their demands. The increasing complicity between corporations and states, not limited to the military industrial complex, warrants the critical role civil society, epistemic communities, and radical activism play in generating the socio-political will to construct alternatives and to provide (punctual) relief.
- **Financialization:** Corporations often benefit from financial constructs to hide illicit profits, their support for oppressive governments, security spending etc. At the same time, the global financial markets make it easier for corporations to relocate their operations and, hence, pressure governments for compliance to their demands. Holding corporations accountable for human rights abuses, therefore, also requires rethinking functions and operations of the current economic system.
- **Digitalization:** Harvesting information, mass and targeted surveillance, and repression cannot any longer be attributed to purely economic or political interests; rather we witness the emergence of a techno-industrial complex that blurs the lines between politics and economy. Workshop participants sustain, therefore, that human rights in the digital era need to be considered as digital rights, and the dominant role ICT corporations play requires to be put under scrutiny.

Workshop participants discussed **different approaches** and tactics of corporate accountability in this context for different economic sectors:

- **Multidimensional / multilevel strategies:** Involving local actors and victims in accountability campaigns; community led approaches to document human rights violations and building reparation programs.
- Using, adapting, and reinterpreting existing legislation for criminalizing corporate offenses that cannot currently be prosecuted under more grave accusations in specific jurisdictions. Examples include to file criminal cases for sequestration rather than forced labor; or for



concealment of information rather than more severe offenses, violation of embargos and export restrictions rather than direct complicity in crimes. However, new due diligence laws, such as the one adopted in France in 2017 have started to allow the criminalization of multinational companies for terrorist funding and direct complicity in the commission of crimes against humanity (e.g. the Lafarge case in France).

- Complaints to relevant national and international authorities other than courts: Reaching out to the Ombudsman, OCDE national contact points, UN institutions, or the respective auditing institutions for the misuse of funds.
- Putting pressure on governments, international organizations, and corporations through boycotting, public awareness campaigns, or collaborative efforts of epistemic communities.

The combination of multiple methods of engagement (such as litigation, public pressure, lobbying efforts, public protests, boycotts etc.) seems to be particularly promising. Also, the critical role of the (global) civil society and the transnationalization of accountability efforts stand out.

## 2) Workshop proceedings

**John G. Dale's** (George Mason University, US) presentation started from a critique of Shoshana Zuboff's (2019) bestseller *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. He argued that the concept developed by Zuboff neglects the role societal stakeholders play in shaping the very framework in which they operate. In particular, he criticizes that (global) civil society is not adequately taken into account. Further, he introduces two concepts that allow the surveillance capitalism approach to gain a more dynamic dimension: "Digital Democratization" a process through which a more equal distribution of resources and power is generated and "Digital Authoritarianization", a process that amplifies the unequal distribution of power and resources.

**Khalid Ibrahim's** (Gulf Center for Human Rights, LB) presentation focused on the media-power nexus in countries in the MENA region. While traditional media is already owned by those in power, new, digital media, becomes increasingly a tool for repression and opinion modelling used by oppressive governments: the "Digital Authoritarianization" paradigm underlined by John Dale,. Western states legitimize these governments through economic negotiations and cultural events. He insists that there are no local remedies to human rights abuses but only transnational ones: international jurisdiction and cross-regional solidarity.

**Marwa Fatafta** (Access Now, DE) reported on the activities of the "digital attack helpline" that provides support (forensic and preventive) to activists. In her presentation she advanced the idea of strengthening the *MENA Surveillance Coalition* to combat mass surveillance, and enforce such coalitions at a global level. Across the globe, companies and governments that massively surveil

their employees, political opponents or populations at large are not exceptions or “rotten apples”; such practices became a generalized normality.

**Maria Isabel Cubides** (Independent Expert, FR) presented a multi-dimensional approach of co-constructed accountability strategies, such as envisioned by various members of the International Federation of Human Rights. The key aspect underlined by her presentation was the need to learn from the communities that are affected by corporate abuses, notably in the extractive field. Strategies of corporate accountability cannot be imposed from the Global North, but they have to rely on an active exchange process that involves the affected communities in the Global South and pursues mutual capacity building. Integrating the traditional knowledge, the cosmovisions, and scientific expertise of indigenous people in pro-accountability strategies is essential for combatting corporate abuse and balancing the power inequalities between the Global North and the Global South.

**Anna Kiefer** (Sherpa, FR) provided evidence of successful lawsuits against major transnational corporations in France. French law provides possibilities to sue French corporations for their dealings in other countries. In particular, general, companies cannot hide, anymore, behind their artificial separation between parent and subsidiary, and criminal liability can be transferred in specific cases even after the absorption of one company by another. However, there are number of limitations, such as the opacity of corporate structures, the fact that companies can, despite court orders, refuse to disclose information, the burden of proof remains in the NGOs’ or victims’ side, and there are limitations regarding the extraterritorial application for French criminal law.

**Ruxandra Ivan** (SNSPA, RO) presented her ongoing research project on private military and security firms. These companies shed doubt on the very function of the state, notably regarding the monopoly of violence. Ruxandra questioned the legitimacy of such companies and provided evidence of the lack of political will to regulate these firms. While international experts advocate for regulation, UN member states are reluctant to do so. Overall, sharp global divisions and diverging (geo-)political interests can be observed.

**Laura Duarte Reyes** (European Center for Constitutional and Human Rights, DE) reported on ECCHR’s activities to curb arms trade to war zones and to fight for the application of the Arms Trade Treaty. EU governments and companies allegedly continue exporting arms to the Saudi lead coalition for the war in Yemen despite legal prohibition provisions. Amongst others, ECCHR filed a court case against various European weapons companies for complicity in the bombardment civilian targets.

**Aymeric Elluin** (Amnesty International, FR) presented AI’s contribution to fight arms trade and export. He insists on the necessity to rebalance the relationship between civil society organizations (CSO) in the Global North and Global South. Only through CSO pressure will corporations and governments change their business practices and legal norms. The Arms Trade Treaty of 2014 serves as an example on how influential global CSO can be in shaping international regimes.

**Busisiwe Kamolane** (Centre for Applied Legal Studies, ZA) explored the relationship between the banking sector and the South African Apartheid regime. A complex web of transactions facilitated illegal funding of the regime, and thereby, allowed the continuation of oppression and violence. Different private banks in Europe, such as KBL and KBC, allegedly financed the apartheid government's repressive policies despite a ban following the Sharpeville massacre of 1960. Both European and OCDE authorities were reluctant – based on different legal arguments - to investigate the involvement of such banks in illegal transactions. Busisiwe concluded that financing states is never politically neutral.

**Juan Pablo Bohoslavski** (CONICET, AR) provided evidence on the effect of foreign debt and FDI on authoritarian regimes. There is a clear correlation between foreign debt and the longevity of authoritarian regimes. Notably private financiers contribute to maintain these regimes and enable them to keep their power. Money is not considered to be a lethal commodity, as found, for instance, by US courts in law suits against banks involved in funding the Apartheid regime.

**Sabine Michalowski** (University of Essex, UK) discussed the limits and opportunities of domestic jurisdictions in pursuing transitional justice drawing on examples of the Columbian post-conflict justice system. She provided evidence of the problems post-conflict societies are confronted with in terms of balancing justice and reconciliation. Despite numerous legal and political obstacles in achieving post-conflict justice, Colombia was among the pioneers of investigating the responsibility of economic actors in gross human rights violations during internal violent conflicts.

**Raluca Grosescu** (SNSPA, RO) analyzed various ideological strands of corporate accountability activism, such as liberal, neo-Marxist and indigenous approaches. Focusing on different Latin American – North American transnational advocacy networks and different repertoires of contentious actions (civil and criminal litigations and boycotts) she demonstrated how Latin American neo-Marxist and indigenous visions are translated in and finally reduced to a North American liberal vocabulary.

### 3) Conclusions

Given the form and scale of contemporary multinational corporations, their frequent disrespect for human rights international law, labor codes, and environmental protection, and a quasi-absence of binding regulations, workshop participants identified transnational accountability campaigns as an important means of forcing companies' hands. The participants pointed out that there is **no local solution to an overwhelmingly global problem**. Rather, (transnational) civil society reemerges as one of the few actors that has both the potential and the interest to stimulate public debate, to put pressure on national governments and international organizations, to provide (trial ready) evidence of corporate behavior, and to give local communities a voice. In the long run, this could lead to the creation of new international regimes or the expansion of existing ones, and, consequently, to normative pressure and international socialization of domestic and transnational actors (involving national governments, subsidiaries, corporations). In the short and medium term,

transnational civil society can mitigate the lack of access to the court in national contexts by trialing companies in (selected) countries of the Global North for their actions in countries of the Global South. Notably transnational awareness or selective purchasing campaigns have the potential to change a state's or company's behavior through concerns for its own reputation. However, it is worth pointing out that corporations are better placed to model and influence public discourse than civil society organizations.

However, inequalities between Global North and Global South coalitions' members should be taken into account, as well as potential dilutions of radical discourses into more liberal, conformist ones. This topic of particular importance will be addressed in the next workshops and conferences organized within the CORPACCOUNT Project.

Many other **questions remain** to be answered:

- 1) The current legal situation of human rights abuses by corporations and their de-facto impunity sheds doubts on the possibility to have Western liberal legal traditions and laws to inform and shape an efficient framework for holding corporations accountable. How to develop new legal frameworks governing transnational corporations? Is it possible or advisable to import existing legal models? If so from where?
- 2) Multinational companies play an important veto power. Neoliberal politics and economics give them margins to control the meaning and application of human rights. How to mobilize against and succeed to reframe the current dominant neoliberal politics that facilitate corporate human rights violations?
- 3) Currently, social movements and human rights groups are fragmented along geographic, ideological, and professional dividing lines. So, what role do geography and ideology play? Is it possible to develop a framework that bridges different legal traditions with different legal requirements?
- 4) While there are many NGOs, social movements, business groups & associations and other global stakeholders involved in the struggle to hold corporations accountable, little research has been done on their activities, leaving aside in a comparative manner. What are the relations between these different actors? What is the role ideology, geography, and action repertoires play in their agenda?

In order to answer such questions, the ERC project "CORPACCOUNT", of which the workshop was part, will investigate mobilizations and counter-mobilizations for holding multinational corporations and their representatives accountable for complicity in major international crimes. **CORPACCOUNT will focus** on four particular, but compatible research areas: the contributions of NGO coalitions and business associations in attempts to criminalize corporate complicity; criminal and civil litigations; divestment campaigns, selective purchasing laws, and efforts to

prohibit business with dictatorships; boycotts that seek to mobilize consumers to pressure companies to address their misconduct. Following the example of the workshop, the project will continue to pursue a multi-stakeholder approach that involves activists, lawyers, and scholars from around the world.

This workshop was organized by the National University of Political Science and Public Administration (Bucharest) in collaboration with the Paris Institute for Advanced Studies, as part of the ERC-Consolidator project *Transnational Advocacy Networks and Corporate Accountability for Major International Crimes*. This project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (Grant Agreement No. 101002993 — CORPACCOUNT).