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National University of Political Studies and Public Administration

## PANEL SESSION

*European Engagements with Corporate Accountability in Global Perspective.*

*A New Utopia?*

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This panel examined different European engagements with corporate accountability for major international crimes, such as envisioned and promoted by European institutions, national governments, transnational NGOs and business communities. It aimed to understand the way in which the criminalization of corporate involvement in major international crimes is constructed as a global cause by different actors who take part in the process. It investigated both ex ante dimensions – that is, attempts to regulate businesses behaviour and codify their criminal liability - and ex post dimensions, such as strategic litigation aimed at establishing legal precedents, and creating a new body of jurisprudence. By focusing on a variety of business industries - including private military and security firms, digital or extractive industries - and on diverse state and non-state actors, the panel underlined conflicting visions of corporate accountability at a European level. Firstly, it emphasized how European institutions and governments half-heartedly committed to strong corporate responsibility, often in contrast to call for regulation coming from the civil society. Secondly, it showed how transnational streams of political, economic and symbolic power perpetuate long-term inequalities between the Global North and the Global South at different levels, including in the activity of transitional NGOs.

Discussant: **Leigh Payne (Oxford University)**.

**Andru Chiorean (SNSPA)**, *Deflating Corporate Impunity? The EU and NGOs' Involvement in the Current International Initiatives Aimed at Codifying Corporate Criminal Liability*

Over the last decades, the idea of corporate liability in international criminal law has mobilised international actors ranging from academic communities, transnational advocacy networks of NGOs, media, trade unions, states and international bodies to business associations and trade unions. Currently, however, the mainstream international engagement with business and human rights claims to have moved beyond the ‘voluntary versus mandatory’ frame and mainly focuses on the (asymmetrical) implementation of the non-binding UN Guiding Principles. The European

Union, a vocal opponent of a binding international treaty regarding human rights and obligations of businesses since the early discussions of the matter, has lately ramped up its rhetoric towards a wholesale rejection of any structural regulatory provisions. In this paper, I discuss the EU's involvement with the ongoing debates at the UN, but also the development of its own non-binding instruments such as the European National Action Plan for implementing the Guiding Principles and National Action Plans. I link this discussion to the involvement of Western mainstream human rights NGOs, to show how their encounters and (non)mobilisation contribute to the establishment and enforcement of the polycentric and experimentalist model in human rights governance, at the expense of a regulation in the form of a binding treaty.

**Ruxandra Ivan (SNSPA), *Hard Politics Need Soft Law: EU's Use of Private Military and Security Companies in Its Migration Policy and the Politics of Non-Accountability***

This paper draws on the recent literature in EU studies tackling the extensive use of private military and security companies in different areas of the EU migration policy, such as externalization of borders, offshore detention, forced returns, surveillance, data collection, or Frontex. While the contribution of PMSCs to the edification of a “fortress Europe” has been documented, little research has been conducted on the link between these practices and EU's position in different international fora that attempt to regulate the military and security industry, particularly in its aspects related to accountability for human rights violations. The paper attempts to fill this gap in the literature, through an empirical survey of the participation and positions of EU representatives in the UN Intergovernmental Working Groups on the creation of an international regulatory framework for the PMSCs on the one hand, and of the process of emergence of EU regulations for PMSCs on the other hand. The overview of these processes shows the reluctance of EU institutions to engage in regulating this field. Although some of the existing legislation (such as the public procurement directives) touch upon the activity of PMSCs, the industry as such is not yet regulated at EU level, despite a call from the European Parliament in this direction. The official position of EU institutions is reluctant to the creation of an international binding instrument and favors a soft law approach at international level, despite warnings from NGOs, academia and even the EP on the dangers associated with this approach.

**Henry Rammelt (SNSPA), *The Struggle to Hold Corporations Accountable: Transnational Divisions and European TANs in the Field of Corporate Accountability***

The paper analyses the position and function of European Transnational Advocacy Networks (TANs) active in the field of corporate accountability (CA). For doing so, it will map and describe the organizational field, and disentangle the relationship between their structure, their ideological and discursive underpinnings, and their network positions and the way they attempt to hold corporations accountable. Although scholarship on TANs has been constantly growing, TANs active in the field of CA have, so far, received little attention. This is surprising as corporate impunity is widely acknowledged, warranting the question on what contribution the main non-government actors in the struggle for CA actually have on legislation and international regimes. Little is known about transnational streams of power, capital, and discourses from the Global North to the Global South in the field of CA. In the framework of the CORPACCOUNT project, we've collected data on over 100 TANs active in the field of CA. The data was gathered following Action Organization Analysis (Kousis, Giugni & Lahusen, 2018) methodology, and analysed through

organizational and network analysis. Hence, both organizational opportunity structures of networks and interactions between these networks, notably flows of money, ideas, and know-how, have been analysed. The paper provides evidence on the role TANs headquartered in Europe play for the international struggle for CA. It concludes that European TANs, in all their diversity, strongly influence CA initiatives around the world, and therefore have the capacity to promote a certain vision on CA.

**Raluca Grosescu (SNSPA), *European NGOs and Corporate Accountability for Major International Crimes. Strategic Litigations for What and for Whom?***

In the last two decades, various European NGOs have initiated “strategic litigations” against multinational companies accused of gross human rights violations committed in the Global South. These judicial initiatives pursue goals that are broader than those of the immediate parties, including testing the reinterpretation of existing laws, creating legal precedents, changing legislation, or rising awareness on corporate abuses. However, most cases brought until present to European courts have been dismissed or victims decided to settle. This paper examines the efforts of two European leading NGOs that run strategic litigations – Sherpa (France) and the European Centre for Constitutional and Human Rights (Germany) - to fight corporate impunity and defend victims of economic crimes. It particularly focuses on the selection of the cases and the goals and results of litigations, such as envisioned by both the two NGOs and the victims they represent. The paper argues that strategic litigations against multinational corporations are important for moving forward the European political and legal debates in terms of corporate accountability. However, such litigations often reveal conflicts between legal experts from the Global North and victims from the Global South. Given that strategic litigations entail a process of pick-up / drop-off law cases according to a different rationale than the victims’ interests, such legal endeavors pose, on one hand, the problem of victims’ instrumentalization by the “strategic litigations” industry; and, on the other hand the failure of creating legal precedents and enhance long-term accountability due to victims’ decisions to settle and obtain financial reparations.

**John Dale (George Mason University, US), *Corporate Accountability, Surveillance Capitalism, and Liberal Democracy’s Digital Transformation: Europe’s Ambivalent Transnational Engagement as State Regulator, Market Participant, and Civil Society***

States increasingly turn to private firms to enhance their cyber intelligence and surveillance capabilities. While China leads the way in deploying AI surveillance technology globally, liberal democracies in Europe (e.g., Germany, Italy, the Netherlands, and Spain) also have been racing ahead to install automated border controls, predictive policing, smart “safe” cities, and facial recognition systems – mostly supplied by Chinese and U.S. tech companies. Despite the Europe’s regulatory stance on Chinese and US practices of digital authoritarianism (state surveillance and surveillance capitalism, respectively), it has yet to demonstrate in practice an alternative democratic model for digital transformation. This paper draws on an original database combining: court documents filed by corporate and state plaintiffs against surveillance tech firms alleging human rights violations; academic research on Chinese development finance and shareholder alliances investing in European surveillance technology investment schemes promoting development in Southeast Asia; reports from investigative journalists; and open-source databases compiled by non-partisan think tanks and NGO researchers. Part I identifies European legal strategies for curbing human rights practices of irresponsible perpetrators within the surveillance

technology industry. Part II analyzes conceptions and discourses of digital authoritarianism shaping policy proposals within which these legal strategies are situated. Part III offers an original conception of digital authoritarianism, highlighting shortcomings of these proposals to create conceptual space for transnational practices of surveillance capitalism within this industry. Part IV critiques Zuboff's (2019) theory of surveillance capitalism, demonstrating need for attention to the range of collective agency within Big Tech platforms developing transnational strategies of corporate accountability.

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