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# BUSINESS AND DEVELOPMENT: A TWO-WAY STREET?

## Corporations, Human Rights and the Accountability Challenge

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*The increasing emphasis on the role of business in development often pays inadequate attention to the lack of effective means of accountability for corporate entities whose activities may contribute to violations of human rights. Within an international law and human rights framework, this article considers the right to development and the place of corporate actors in the development process, as highlighted in the Millennium Development Goals. It analyses various attempts at regulating business activities, including voluntary mechanisms and proposed United Nations norms applicable to transnational corporations. The article also explores established and emerging means of accountability which might be applied to corporate conduct which is contrary to established norms of human rights and international humanitarian law. It proposes that business participation in the development process must be a two-way street, with businesses being subject to duties and binding obligations when being granted access to markets, labour and resources.*

## Introduction

When the South African Truth and Reconciliation Commission issued its final report in March 2003, it pointed a finger at the role of the business sector and of multinational corporations (MNCs) in maintaining the apartheid system and in various associated human rights violations.<sup>1</sup> The Commission's limited attempt to make the business sector contribute to the reparations process and the South African government's poor record regarding payment of compensation have seen the victims of those human rights abuses take the initiative and attempt to pursue their claims by way of litigation in the United States of America. Dr Alex Boraine, who was Vice-chairman of the Truth and Reconciliation Commission, felt that this lawsuit by the Khulumani victims group was not the right way to proceed: "This could damage investment and new jobs just when we need business to come here. I have enormous sympathy for victims but we don't want to scare away the international business community."<sup>2</sup> The South African government is similarly opposed to the damages claim and its stance serves to highlight the paradoxical role of business in development, particularly in the context of a transition from conflict to peace: corporate entities are on the one hand condemned and criticised for contributing to human rights abuses and perpetuating conflict, yet on the other hand are feted as vital actors in the development process.

This somewhat privileged position of business and MNCs has meant that regulation of their activities has all too often proved elusive. The international law of human rights is struggling to put in place meaningful legal regulation of corporate entities, partly because this actor does not fit easily within the traditional international law paradigm, which has been concerned with the conduct of states. The past century has witnessed a spectacular rise in both the prominence and power of the corporate entity and a large number of multinational corporations now exert more influence and control greater wealth than many of the world's sovereign nations.<sup>3</sup> This near-unrivalled power is deployed primarily for the purpose of maximising profits and increasing markets and is often accompanied by a negative impact on human rights, governance and the environment.<sup>4</sup> During times of conflict, corporate actors have at times been involved in supplying funds and arms to warring parties, the forced relocation of populations, and even the use of slave labour. Any countenancing of a role for business in development must address the regulation of multinational companies to ensure

that their practices do not lead to violations of fundamental human rights. Through the prism of international law and human rights, this article considers the place of corporate actors in the development process and the various attempts at regulation and accountability for conduct which violates human rights and the rules of international humanitarian law.

## **The right to development and the role of business**

The linkages between development and human rights were recognised and endorsed by the United Nations in the 1986 Declaration on the Right to Development.<sup>5</sup> The instrument describes development as “a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”.<sup>6</sup> The Declaration was an attempt by the United Nations to move away from a strictly economic understanding of development and to view it as a human right, the realisation of which would require national and international cooperation. The Declaration defines the right to development as “an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”.<sup>7</sup>

The imprecise language of the Declaration and differing ideological positions have meant the scope and content of the right to development have often been the subject of divisive debate.<sup>8</sup> That being said, the 1993 Vienna Declaration on Human Rights reaffirmed the right to development as “a universal and inalienable right and an integral part of fundamental human rights”.<sup>9</sup> Since the adoption of the 1986 Declaration various United Nations working groups and experts have worked to clarify the meaning of the right to development and to explore means for its realisation. In the latest report of the Human Rights Council’s working group on the right to development, Arjun Sengupta, the working group’s chairperson, asserted that the right to development is “now accepted as a composite human right involving corresponding obligations for duty-bearers for its phased realization”.<sup>10</sup>

The Millennium Development Goals, in many ways the centrepiece of the United Nations' development effort, recognise but ultimately sideline the human rights aspect of development. The Millennium Declaration itself states that the Member States of the United Nations "are committed to making the right to development a reality for everyone and to freeing the entire human race from want".<sup>11</sup> Despite this pronouncement, alongside previous and parallel efforts to emphasise the interrelationship between development and human rights, the Goals themselves avoid using the language of human rights. The Goals set a number of clear and specific time-bound targets with regard to poverty and hunger, education, gender equality, child mortality, health and environmental sustainability. In terms of achieving them, Goal 8 provides a role for business, calling for the development of "a global partnership for development". A specific role is identified for the private sector, particularly pharmaceutical companies, on the basis of a trading and financial system that must be "open, rule-based, predictable [and] non-discriminatory".<sup>12</sup> There has been criticism from a human rights perspective of the central role given to free trade and private sector cooperation as the means of achieving development.<sup>13</sup> Nevertheless, the belief that business has an indispensable part to play in development has become something of a common refrain at the United Nations level.

The then United Nations Secretary-General, Kofi-Annan, convened the Commission on the Private Sector and Development in 2003. The Commission's report heaped praise on the ability of the private sector to contribute to development.<sup>14</sup> The sector, the Commission felt, "has tremendous potential to contribute to development through its knowledge, expertise, resources and relationships".<sup>15</sup> The report urged developing countries to facilitate the operation of the private sector through reform, strengthening the rule of law and formalising the economy, in order to "unleash" its development potential. Similar sentiments were expressed in a 2004 Security Council debate on the role of business in conflict prevention and peacemaking.<sup>16</sup> The President of the Council, Mr Pleuger from Germany convened the debate and spoke of "the huge potential that the private sector can provide in any development or reconstruction strategy".<sup>17</sup> Another participant in the debate, Ms Rasi, President of the Economic and Social Council, claimed that it was "widely accepted that the private sector has a primary responsibility in building economic and social well-being" and that it is "essential as a development partner".<sup>18</sup> The United Kingdom representative talked of the private sector's

“crucial role in promoting global economic prosperity and sustainable development”.<sup>19</sup> The comments of the USA’s representative, Mr Siv, reveal the endurance of a largely economic view of development: “Businesses are valuable development partners, providing crucial investment and employment opportunities.... [T]he private sector is the engine of economic growth, which in turn reduces poverty and creates jobs.”<sup>20</sup>

Various participants in the debate emphasised the partnership language of Millennium Development Goal 8. Mr Gaspar Martines, the representative of Angola, contended:

There is general agreement on the need for a new partnership to strengthen efforts to mobilize increased resources to achieve agreed international development goals, including those contained in the Millennium Declaration.... We welcome the efforts undertaken by the United Nations to promote global partnerships and we encourage good corporate citizenship in the belief that the resources required for African development, especially for those countries emerging from conflict situations, cannot be met by domestic sources alone, nor from official development assistance.<sup>21</sup>

He argued that internationally agreed development goals simply could not be achieved without international community support, “with the international private sector playing a decisive role”.<sup>22</sup> Also taking part in the debate was Heinrich von Pierer, President and CEO of Siemens. He highlighted the potential role of a public/private partnership in areas such as education, whereby development aid and programmes so provided could focus on “ensuring long-term benefits and stability”.<sup>23</sup>

The comments of the Secretary-General sounded a note of caution on the role of business and private companies in a post-conflict environment. Viewing their contribution as a potentially double-edged sword, Kofi Annan said that businesses “can either help a country turn its back on conflict or exacerbate the tensions that fuelled conflict in the first place”.<sup>24</sup> Of particular relevance to this article were his comments regarding the regulation of corporate activities. War-afflicted states or “failed states”, he said, do not have the capacity to regulate activities that are driven by profit but which fuel conflict. Moreover, “enforcement and monitoring measures aimed at cracking down on such activities often lack teeth, if they exist at all”.<sup>25</sup>

The Secretary-General asserted that we need to find “the proper balance between inducement and enforcement”.<sup>26</sup> The following section considers the nascent attempts at regulation of business activities in light of existing human rights standards under international law.

## **Regulating corporate activity: human rights and humanitarian law**

The attempts by the United Nations and other organisations to regulate corporate activities which impact on human rights have involved a mix of voluntary guidelines, codes of conduct and draft legal instruments. Something of a schism has developed between those who favour the corporate social responsibility model of self-regulation and voluntary codes, and those who favour binding legal documents with rigorous enforcement mechanisms. The former approach is encapsulated in the United Nations Global Compact<sup>27</sup> and in the Organisation for Economic Cooperation and Development’s *Guidelines for Multinational Enterprises*.<sup>28</sup> The USA has expressed its support for the voluntary approach of the Global Compact, which lays down ten principles in the areas of human rights, labour standards, the environment and anti-corruption.<sup>29</sup> The representative of Pakistan expressed a more critical view at the 2004 Security Council debate:

The majority view is that such voluntary codes, though noble, do not contribute strong incentives for compliance to offset the financial incentives for noncompliance and the lack of rigorous enforcement of such codes. Pakistan shares the view that voluntary codes adopted by business, though valuable, are often not sufficient. We therefore support the view that the activities of business could be governed by a more effective framework that not only creates responsibilities and rights, but that also ensures corporate responsibility and accountability, including respect for the legal rights not only of business, but also of the citizens and communities that are involved. Such a framework could be based on the principles and purposes of the Charter and respect for international humanitarian law.<sup>30</sup>

Seeking to place human rights obligations directly on business entities, described as “non-state actors” in international law parlance, has come up against the traditional state-centred focus of international law and the central tenet of human rights that such rights are held by individuals and groups against the state. The primary responsibility for ensuring human rights has lain with the state, although that obligation also extends to ensuring human rights are not violated in the private sphere.<sup>31</sup> An interesting development in the area of corporate regulation has been the Kimberly Process Certification Scheme for rough diamonds, a “soft law” mechanism which seeks to ensure that governments and diamond traders do not deal in conflict diamonds.<sup>32</sup> A far more ambitious and expansive attempt at legal regulation of corporate activities are the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights.<sup>33</sup> Although not yet possessing the binding authority of an international treaty, the Draft Norms are undoubtedly a major development in terms of seeking to regulate corporate activity at the United Nations level.

The Draft Norms do not seek to undermine the primary responsibility of the state for promoting, ensuring and protecting human rights, including ensuring that transnational corporations and other business enterprises respect human rights.<sup>34</sup> This approach is exemplified in the case against Nigeria before the African Commission for Human Rights, where the Commission placed the ultimate blame with the state for the destructive activities of the Shell Corporation in Ogoniland.<sup>35</sup> With regard to such business entities themselves, the Draft Norms state that:

Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.<sup>36</sup>

The instrument sets out particular obligations of business entities with regard to workers’ rights, health and safety, exploitation of children and environmental protection. It proposes several avenues for implementation: incorporation of the norms in internal rules, periodic reporting, monitoring and verification by the United Nations.<sup>37</sup> In many ways, the proposed means of enforcement simply replicate those used to monitor human rights compliance by

states and seem to underestimate the sheer numbers and complexity of business entities whose activities compromise human rights. John Ruggie, the United Nations Special Representative on business and human rights, has highlighted the pitfalls of replicating the same range of states' human rights duties as for corporations.<sup>38</sup> That being said, widespread adoption and effective implementation of the Draft Norms would help ensure that business participation in development is not a one-way street, with corporate entities accruing entitlements and benefits without proper regulation and responsibilities.

Within the sphere of armed conflict, which is governed primarily by the humanitarian law of the 1949 Geneva Conventions, the regulation of corporate actors is similarly lacking. Having simply not been envisaged when these laws were devised, we have only one direct reference to corporations, prohibiting the misuse of the Red Cross symbol by "individuals, societies, firms or companies either public or private".<sup>39</sup> Unlike human rights law, it is worth noting that international humanitarian law not only binds states, but also creates legal obligations for non-state actors, such as rebel groups and national liberation movements. In November 2006, in recognition of the growing influence of corporate activity on conflict-related abuses, the International Committee of the Red Cross produced a report entitled *Business and International Humanitarian Law*. The report states:

International humanitarian law does not just bind States, organized armed groups and soldiers – it binds all actors whose activities are closely linked to an armed conflict. Consequently, although States and organized armed groups bear the greatest responsibility for implementing international humanitarian law, a business enterprise carrying out activities that are closely linked to an armed conflict must also respect applicable rules of international humanitarian law.<sup>40</sup>

Beyond this basic, yet welcome premise, the challenge remains of using a branch of international law that was not developed with corporate entities in mind to regulate the activities of these uniquely complex and powerful bodies. A further question arises when businesses have been found to act contrary to human rights or humanitarian law to the extent that such actions may be viewed as criminal. The Draft Norms propose that:

Transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law.<sup>41</sup>

Recent developments have shown that in response to such crimes, there are several avenues of accountability which may be pursued.

## **Accountability of corporate actors: tribulations and trials**

Although much remains to be done regarding the legal regulation of the conduct of corporations, there have been some positive developments in the post-conflict environment which have seen corporations, or at least individual officers, called to account for conduct breaching human rights and humanitarian law. It is important to differentiate between the responsibility of a corporation as a distinct legal entity and that of individual persons who work for it or direct its activities. The criminal responsibility of individuals for corporate activity has a basis in existing international law, but the international criminal responsibility of legal entities has not yet materialised, despite the presence of such a concept in several domestic jurisdictions.

Trials in the aftermath of the Second World War established that corporate officers could be criminally liable where the activities of the company contribute to violations of international law. The Zyklon B case saw two German industrialists found guilty of complicity in the murder of civilians by supplying the poison gas used for extermination.<sup>42</sup> A judge in the I.G Farben case commented that the Farben company, as a matter of corporate policy, “willingly cooperated in the slave labor programme, including utilisation of forced foreign workers, prisoners of war and concentration camp inmates”.<sup>43</sup> The International Committee of the Red Cross (ICRC) has warned that:

A significant risk of criminal liability ... exists for those who commit grave breaches of international humanitarian law, including where business enterprises or their representatives commit or knowingly assist violations carried out by others, such as contractors, subsidiaries or clients.<sup>44</sup>

The rules of criminal liability set out in the Rome Statute of the International Criminal Court state that criminal responsibility attaches to those who aid and abet crimes in the court's jurisdiction (genocide, crimes against humanity and war crimes), as well as anyone who "contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose". Undoubtedly, corporate officers and directors are within the scope of the jurisdiction of the International Criminal Court. The Prosecutor of the Court, Luis Moreno Ocampo, has expressed an intention to investigate the financial aspects of alleged atrocities in the Democratic Republic of Congo, seeing this as being "crucial to prevent future crimes and for the prosecution of crimes already committed".<sup>45</sup>

Although individual corporate officers may be liable to criminal prosecution, corporate entities themselves are outside the sphere of accountability provided by international criminal law. It had been proposed during the creation of the International Criminal Court that it should have jurisdiction over both natural *and* legal persons, but this proposal was dropped because the Court would already have jurisdiction over the individuals operating such corporations and because the concept of corporate criminal responsibility was not accepted in every domestic jurisdiction.<sup>46</sup> During the drafting of the Rome Statute, the representative of the USA had rightly pointed out that the criminal liability of corporations would be important from the perspective of reparations for victims.

Although post-conflict *criminal* processes have yet to bring corporations to book for their contribution to wartime abuses, a promising form of accountability has evolved in recent years in the form of truth-telling processes, including the South African Truth and Reconciliation Commission mentioned above. These Commissions have at times highlighted the role of multinational companies and the business sector and have called for reparations where they were complicit in human rights abuses. The South African Truth and Reconciliation

Commission held that the business sector had been “central to the economy that had maintained the South African state during the apartheid years”.<sup>47</sup> It found that there had been varying degrees of engagement by the corporate sector, ranging from directly shaping government policies or engaging in repressive activities to benefiting from operating in a society structured on racial discrimination with low wages and a denial of basic workers’ rights. The Commission named specific corporations, such as the Swiss bank Credit Suisse and the USA mining company, Anglo-American Corporation, who profited from human rights violations.<sup>48</sup>

The Commission for Reception, Truth and Reconciliation in East Timor recommended that “Indonesian business companies, including State Owned Enterprises, and other international and multinational corporations and businesses who profited from war and benefited from the occupation” should contribute to the proposed reparation scheme.<sup>49</sup> The broad scope of a truth-seeking process has allowed these bodies to shine a light where other accountability mechanisms have thus far neglected to do so.

Finally, one needs to consider the numerous civil claims against multinational corporations being taken in domestic courts, such as those against IBM and various Swiss Banks for their role in the Holocaust. The Alien Torts Claim Act in the USA has been a vehicle for such litigation against companies like Exxon Mobil, Unocal and Barclays, but has yielded mixed and largely limited results to date, often in the form of out-of-court settlements.<sup>50</sup> In June 2009, Royal Dutch Shell settled out of court a lawsuit filed in the USA for \$15.5 million by relatives of Ken Saro-Wiwa and other Ogoni activists. The impetus for such claims has often come from the declarations by Truth and Reconciliation Commissions and the dissatisfaction of victims with the lack of tangible reparations to accompany the clear statements of corporate wrongdoing. The difficulties in bringing corporate actors to book and making them liable for compensation using civil, criminal or other accountability processes are unquestionably tied to the privileged position that has been endowed upon them as engines of economic growth and “vital partners” in the development process.

## Conclusion

The relationship between business and development as it stands can be viewed as something of a one-way process, whereby businesses engage in profit-making exercises in developing countries, availing of cheap resources and labour, but without having to make any long-term commitment to a country's development needs and without being subjected to any significant mechanism which would ensure that corporate activities are in accordance with established human rights standards. Proponents of the role of business in development often adopt a purely economic understanding of development, but even then, the creation of employment and income is at times accompanied by the denial of traditional means of livelihood, conflict over resources and a weakening of human rights protection. Frequently, developing countries engage in a race to the bottom in order to attract foreign direct investment and to accommodate the demands of multinational corporations. International law and human rights can provide a meaningful counterbalance to the one-way nature of the process to date.

There are several key points to the framing of development in terms of human rights: it puts human beings and their internationally protected rights at the centre of the process, encourages empowerment and participation, pays particular heed to vulnerable groups and, critically, insists on accountability of the various participants in the process.<sup>51</sup> In the context of the Millennium Development Goals, the United Nations High Commissioner for Human Rights has stated that:

The *raison d'être* of the rights-based approach is *accountability*. While States are the primary duty-bearers under human rights law, other dutybearers—including the donor community, intergovernmental organizations, international NGOs, transnational corporations and others whose actions have a bearing on the enjoyment of human rights in any country—must be answerable for the observance of human rights.<sup>52</sup>

This article has demonstrated some of the various attempts to regulate corporate activity and to hold businesses to account when their conduct breaches international humanitarian law and human rights. Civil society has been to the forefront in harnessing the persuasive force of the various voluntary codes of conduct to

pressure business entities whose activities breach human rights. Truth commissions, civil litigation and criminal processes are playing an emerging role in corporate accountability and such developments add to the movement towards establishing binding legal standards for businesses. The continued occurrence of human rights violations attributable to corporate conduct reinforces the view that binding legal restraints and adequate accountability mechanisms for corporate activity are essential if business and development are to be a two-way street.

## Endnotes

- <sup>1</sup> *Report of the South African Truth and Reconciliation Commission*, Volume 6, Section 2, Chapter 5, “Reparations and the Business Sector”
- <sup>2</sup> Ian Evans (2008), “Multinationals face damages claim from victims of apartheid,” *The Observer*, 18 May
- <sup>3</sup> See Joel Bakan (2005), *The Corporation*, London: Constable
- <sup>4</sup> See generally Daniel Aguirre (2008), *The Human Right to Development in a Globalized World*, Aldershot: Ashgate
- <sup>5</sup> Declaration on the Right to Development, adopted by UNGA Resolution 41/128, 4 December 1986
- <sup>6</sup> *Ibid.*, Preamble
- <sup>7</sup> *Ibid.*, Article 1
- <sup>8</sup> See for example Allan Rosas, “The right to development”, 119 in Asbjorn Eide, Krause, Catarina and Rosas, Allan (Editors, 2001), *Economic, Social and Cultural Rights*, Dordrecht: Martinus Nijhoff, 2001, 2<sup>nd</sup> edn; Sengupta, Arjun (2002), “On the theory and practice of the right to development”, *Human Rights Quarterly*, 24.4, 837
- <sup>9</sup> Vienna Declaration and Programme of Action, World Conference on Human Rights, 25 June 1993, paragraph 10.
- <sup>10</sup> Human Rights Council, *Report of the Working Group of the Right to Development on its Ninth Session*, 10 September 2008, UN Doc. A/HRC/9/17, p.3
- <sup>11</sup> United Nations Millennium Declaration, adopted by UNGA Resolution 55/2, 18 September 2000, paragraph 11
- <sup>12</sup> See Target 2: Develop further an open, rule-based, predictable, non-discriminatory trading and financial system; Target 4: In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries; Target 5: In cooperation with the private sector, make available benefits of new technologies, especially information and communications.
- <sup>13</sup> Su-Ming Khoo (2005), “The Millennium Development Goals: a critical discussion”, *Trócaire Development Review*, pp.48-9
- <sup>14</sup> United Nations Commission on the Private Sector and Development (2004), *Unleashing Entrepreneurship: Making Business work for the Poor*, New York: UNDP
- <sup>15</sup> *ibid.*, p 41
- <sup>16</sup> Security Council, 4943<sup>rd</sup> Meeting, Agenda: “The role of business in conflict prevention, peacekeeping and post-conflict peace-building”, 15 April 2004, S/PV.4943

- <sup>17</sup> *ibid.*, p.2
- <sup>18</sup> *ibid.*, pp.9-10
- <sup>19</sup> *ibid.*, p.25
- <sup>20</sup> *ibid.*, p.18
- <sup>21</sup> *ibid.*, p.20
- <sup>22</sup> *ibid.*
- <sup>23</sup> *ibid.*, pp.7-8
- <sup>24</sup> *ibid.*, p.3
- <sup>25</sup> *ibid.*
- <sup>26</sup> *ibid.*, p.4
- <sup>27</sup> See <http://www.unglobalcompact.org/>
- <sup>28</sup> See <http://www.oecd.org/daf/investment/guidelines>
- <sup>29</sup> Security Council, 4943<sup>rd</sup> Meeting, Agenda, *op.cit.*, p.19
- <sup>30</sup> *ibid.*, p.23, Mr Akram. See also the comments of Mr Isakov, representative of the Russian Federation: “But it is clear that voluntary self-restraint measures based on purely ethical standards and universally recognized principles are not in themselves a panacea. It is therefore important to be guided at the same time by existing international legal principles and norms”, *ibid.*, p.25.
- <sup>31</sup> See for example Andrew Clapham (1993), *Human Rights in the Private Sphere*, Oxford, Clarendon Press.
- <sup>32</sup> See <http://www.kimberleyprocess.com/>
- <sup>33</sup> E/CN.4/Sub.2/2003/12 (2003)
- <sup>34</sup> Draft Norms, paragraph 1
- <sup>35</sup> *The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria*, African Commission on Human and Peoples’ Rights, Comm. No. 155/96 (2001)
- <sup>36</sup> Draft Norms, paragraph 1
- <sup>37</sup> *ibid.*, paragraphs 15-19
- <sup>38</sup> Ruggie, John Gerard (2007), “Business and Human Rights: The Evolving International Agenda,” Corporate Social Responsibility Initiative, Working Paper No. 31, Cambridge, MA: John F. Kennedy School of Government, Harvard University, pp.11-13
- <sup>39</sup> First Geneva Convention of 1949, Article 53
- <sup>40</sup> International Committee of the Red Cross (2006), *Business and International Humanitarian Law*, Geneva, p.14
- <sup>41</sup> Draft Norms, paragraph 3
- <sup>42</sup> Trial of Bruno Tesch and two others, British Military Court, Hamburg, 8 March 1945
- <sup>43</sup> Herbert, J. (1948), United States v. Carl Krauch et al, United States Military Tribunal, Nuremberg, 14 August 1947-29 July 1948, p.62
- <sup>44</sup> International Committee of the Red Cross (2006), *op.cit.*, p.15; see also International Commission of Jurists (2008), *Final Report of the Expert Legal Panel on Corporate Complicity in International Crimes*, September.
- <sup>45</sup> Press release, “The Prosecutor on the co-operation with Congo and other states regarding the situation in Ituri”, DRC, ICC-OTP-20030926-37 (2003)
- <sup>46</sup> See generally Joanna Kyriakakis (2008), “Corporations and the International Criminal Court: the complementarity objection stripped bare”, 19, *Criminal Law Forum* 1, p.115.

- <sup>47</sup> *Report of the South African Truth and Reconciliation Commission* (2003), Volume 6, Section 2, Chapter 5, “Reparations and the business sector”, p.140
- <sup>48</sup> *ibid.*, pp.144, 151-55
- <sup>49</sup> *Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (2006), Part 11: “Reparations”, p.42
- <sup>50</sup> See for example International Center of Transitional Justice (2008), *A Matter of Complicity? Exxon Mobil on Trial for its Role in Human Rights Violations in Aceh*.
- <sup>51</sup> See Patrick Twomey (2007), “Human rights-based approaches to development: towards accountability”, 45, in Baderin and McCorquodale (Editors), *Economic, Social and Cultural Rights in Action*
- <sup>52</sup> Office of the High Commissioner for Human Rights (2008), *Claiming the Millennium Development Goals: A Human Rights Approach*, New York/Geneva: United Nations, p.15