

ESEMINAR SUMMARY

Centre for Security Governance

No. 5 | March 2016

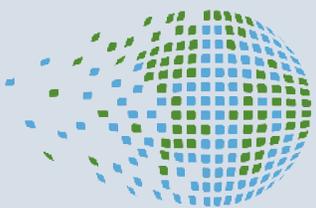
CSG eSeminars
assemble leading
experts and practitioners to discuss global
security issues and
challenges in an open
and interactive virtual
space.

CONTEMPORARY DEBATES ON PEACEBUILDING AND
STATEBUILDING: NEW CHALLENGES, SHARP DIVISIONS



Untapped Resources: The Extractive Industry in Conflict-Affected Countries

On March 25, 2015, the Centre for Security Governance (CSG), in cooperation with the Balsillie School of International Affairs (BSIA) and Wilfrid Laurier University's (WLU's) Department of Global Studies, hosted the second in a series of eight online seminars focusing on the theme of "Contemporary Debates on Peacebuilding and Statebuilding." The eSeminar brought together a group of experts – scholars, researchers and practitioners – to examine issues related to the extractive industry in conflict-affected countries. It explored the linkages between resource extraction and peacebuilding processes in conflict-affected and fragile states, and engaged a variety of key actors, including private sector businesses, governmental actors and local communities, as well as international organizations. The event considered different strategies to effectively manage and balance the competing demands and goals of these stakeholders.



Centre for
**Security
Governance**

The panellists addressed key questions on the governance of natural resource extraction in conflict-affected and fragile states, highlighting some of the more important challenges surrounding the issue:

- How is it possible to include local communities and indigenous peoples in decision-making processes with the extractive industry in conflict-affected and fragile states?
- What role can the extractive industry play in supporting peacebuilding processes in conflict-affected and fragile states?
- How, and where, can we find solutions, remedies and, ultimately, justice for victims of human rights violations associated with “tapping” natural resources, particularly regarding mining operations, in conflict-affected and fragile states?
- How do you harmonize human rights norms with the interests of the extractive industry in conflict-affected and fragile states?
- How can better governance and regulation of the extractive sector be achieved in peacebuilding contexts? How can we reconcile the implementation gap between international standards (UN, OECD) and actual practices on the ground?

About the eSeminar Series

The Centre for Security Governance eSeminars are a series of virtual meetings that bring together experts and practitioners from around the world to discuss security sector reform (SSR) and related themes, issues, and case studies. The eSeminars are open to the public, and includes an eSeminar Summary report and eSeminar Videos. For information on upcoming eSeminars, please visit <http://www.secgovcentre.org/events>.

Series Editor: Mark Sedra

Report Author: Antoine Vandemoortele

Copy Editor: Jennifer Goyder

About the CSG

The Centre for Security Governance (CSG) is a non-profit, non-partisan think tank dedicated to the study of security and governance transitions in fragile, failed and conflict-affected states. Based in Canada, the CSG maintains a global, multi-disciplinary network of researchers, practitioners and academics engaged in the international peace and security field.

Centre for Security Governance

Tel: +1 226 241 8744

Email: info@secgovcentre.org

Web: www.secgovcentre.org

SSR/RC: www.ssrresourcecentre.org

Copyright © 2016, Centre for Security Governance

The opinions expressed in this paper are those of the author(s) and do not necessarily reflect the views of The Centre for Security Governance or its Board of Directors. This work was carried out with the support of the Centre for Security Governance, Kitchener, Ontario, Canada (www.secgovcentre.org). This work is licensed under a Creative Commons Attribution – Non-commercial – No Derivatives License. To view this license, visit (www.creativecommons.org/licenses/by-nc-nd/3.0/).

Introduction

Dr. Andrew Thompson, adjunct assistant professor of political science at the University of Waterloo, moderated the eSeminar and introduced the topic by focusing on key linkages between peacebuilding, conflict and the extractive industry. He focused on three themes in his remarks, which emerged in the presentations of all of the panellists: the link between the international legal context and practices on the ground; the relationship between indigenous communities and the extractive industry; and potential strategies to address adverse impacts and challenges created by the presence of extractive industry operations in peacebuilding contexts.

The challenges surrounding the management and governance of “untapped resources” in conflict-affected countries were addressed by the panellists using a variety of case studies and perspectives.

Tara Scurr, Amnesty International Canada’s business and human rights campaigner, focused on business and human rights, specifically on Amnesty’s work and recent report on Canadian mining in Guatemala.

Dr. Terry Mitchell, associate professor of community psychology at WLU and director of Laurier’s Indigenous Rights and Social Justice Research Group, centred her presentation on

linking peace, indigenous peoples, human rights and the extractive industry.

Finally, Bernard Taylor, executive director of Partnership Africa Canada (PAC), discussed the peacebuilding-extractive industry nexus by exploring the issue of conflict diamonds and minerals, and in particular the Kimberley Process.

Each panellist’s contribution added to a broader understanding of what a participant called “the possibilities of peace” and provided the background for a lively and stimulating discussion period on three core themes: governance and regulation, business and human rights, and consultation and dialogue.

Summary of Presentations

Speaker 1 – Tara Scurr

Tara Scurr focused her presentation on the business, human rights and extractive industry nexus, highlighting some of the key findings from the research and advocacy that Amnesty International, and more specifically AI Canada, has been conducting on economic globalization and human rights. Scurr focused the second part of her presentation on the Guatemala case given her view that it is “emblematic of what we find in other contexts as well.”

Amnesty’s work on business, human rights and the extractive sector started in the 1990s, with

a focus on the Shell case in the Niger Delta. AI Canada has been carrying out research on corporate accountability, business and human rights for a decade. Scurr mentioned that the “overriding reason for that focus” is that between two-thirds and three-quarters of financial capital for the extractive industry is raised in Canada, and that over 50 percent of mining corporations are headquartered in Canada.

Given these statistics, Scurr explained that AI Canada has conducted work to look at human rights violations in the extractive industry. The initial findings were that a majority of these violations were related to Canadian mines, so the organization established a “human rights standards and mining” working group to assess the scale of this problem in depth, particularly in Central and Latin America. The research and work focuses both on documenting human rights violations and finding remedies and justice for the victims and communities.

A key overarching theme of Scurr’s presentation was the implementation gap between international standards on human rights and local practices within the extractive sector. Scurr first highlighted the *UN Guiding Principles on Business and Human Rights*. This document provides guidance for companies and states on corporate activity, creating a framework for the state’s duty to protect human rights and companies’ corporate responsibility to respect human rights. This is a positive step forward and “many companies have mentioned this docu-

ment in their policies.” However, such practices do not reflect the full implementation of these standards. For example, Scurr mentioned four ongoing civil lawsuits against Canadian companies, including two related to Guatemala, for failure to “establish their duty to care for the communities around their operations on the ground.” The extent of this implementation gap, and the “lack of progress on the ground,” can be found around three core issues. In the remainder of her presentation, Scurr focused on the Guatemala case and (i) the weak regulatory structure for human rights, (ii) the lack of meaningful consultation between communities and companies, and (iii) the uneven application of the law linked to a culture of impunity.

In 2011, AI Canada launched its first research mission to assess the impacts on human rights, and in particular on indigenous rights, of the extractive industry in Guatemala. A key finding was that “opposition to mining is widespread and persistent, and engendered a high level of conflict.” For example, in the last 10 years, a number of consultations were carried out by communities under the Municipal Act¹ — where over one million citizens participated. They were asked the question: “do you support mining in your community?” Close to 99 percent of respondents said “no”. This highlights a key issue: the lack of dialogue, and particularly the lack of meaningful consultation, about the risks and benefits of mining. Even though companies sometimes organize community meetings, these are meant more to promote the

benefits associated with a mining operation (schools, roads, jobs) rather than engage with community concerns, especially those related to long-term environmental impacts and the effects on livelihoods (farming and agriculture). As Scurr mentioned, “this is clearly not the appropriate level of information needed to make an informed decision about supporting or not” these mining operations.

A second key challenge in Guatemala is the weakness of the country’s regulatory regime for the extractive industry. While most companies meet Guatemala’s minimal national standards, they do not comply with internationally established guidelines and best practices. As the *UN Guiding Principles* report highlights, “meeting the letter of the law is not enough when there is inadequate national regulation.”²

Finally, companies are left on their own to manage complex consultation processes in a post-war context and to self-regulate their operations. This results in serious human rights violations, widespread impunity and an uneven application of the law. Impunity in Guatemala is so persistent that no work of fiction could adequately depict the “horrifying” human rights situation on the ground that has persisted for 40 years. The nature of this problem was depicted by former Guatemalan President Oscar Berger’s response to criticisms over the government’s handling of public protests against mining companies: “we have to protect the investors.”

Speaker 2 – Dr. Terry Mitchell

Terry Mitchell’s presentation focused on linking peace, indigenous peoples, human rights and the extractive industry, and began with a fundamental question: is peace possible? Mitchell argued that it is possible to think about a variety of ways to advance peace. In particular, her presentation discussed this issue through an indigenous people’s framework, and how to achieve peace and coexistence between settlers and indigenous populations in contexts where grave human rights violations related to resource extraction regularly occur.

She first mentioned that this is “an exceptional moment in history” where the bad and the good coexist in parallel in the resource extraction sector. On one hand, there are increasing human rights violations engendered by the global corporate economy, while on the other hand, there is the significant development of a global human rights regime “for indigenous peoples, by indigenous peoples.” A key illustration of this regime is the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP).³ According to Mitchell, attention should be directed at reinforcing this regime and strengthening the voice of local indigenous communities in regard to natural resources.

She argued for the need to transform the classic development framework and to adopt a self-determined sustainable development approach that “requires the participation and

legitimacy of indigenous communities and the control of what happens on their land.” Shaping development this way would protect communities from the industry, and the ecological and political challenges that have come through the extractive industry. This development approach should be based on the principles of free and prior informed consent, and respect and protection, as laid out in the UN declaration.

Mitchell discussed what is most needed to advance peace in areas where indigenous communities and extractive industries coexist: not only indigenous leadership, corporate social responsibility and the UN declaration, but also “a transnational global governance mechanism to ensure that there is compliance with UNDRIP” — not only as an aspirational document, but as a practical mechanism to positively impact local indigenous communities. This can only be achieved when all stakeholders — governments, the business sector and local communities — “work together side by side.”

She concluded by going back to her opening query on the possibilities of peace: how can we increase peace and prosperity through alternative business and governance models and the establishment of better consultation processes? Mitchell described the need for new directions for policy, action and research to build and develop indigenous rights frameworks that can drive dialogue with the various stakeholders within the extractive industry.

Speaker 3 – Bernard Taylor

Bernard Taylor approached the question of conflict and the extractive industry from a “slightly different angle,” highlighting in particular the role played by minerals and natural resources in generating, exacerbating and sustaining conflicts — the so-called conflict minerals. His presentation focused on local, regional and international regulation of conflict resources.

He first presented the work of PAC, a policy, research and advocacy organization founded 30 years ago. In the 1990s, PAC started addressing the issue of conflicts in Africa, and the role of natural resources trading as a driver of these conflicts. It was one of the first organizations “to point towards the problem of conflict diamonds,” highlighted by its work on the conflict diamond trade in Sierra Leone. PAC subsequently collaborated in developing the Kimberley Process Certification Scheme (KPCS), which “imposes extensive requirements on its members to enable them to certify shipments of rough diamonds as ‘conflict-free’ and prevent conflict diamonds from entering the legitimate trade.”⁴

PAC is currently involved in a number of projects related to conflict minerals: it is working in West Africa to develop and implement a regional approach to conflict diamonds; it is operating in the Great Lakes Region to design and implement a system to regulate conflict min-

erals (the “3Ts + Gold” framework)⁵ through global certification mechanisms; and is implementing projects addressing gender issues and conflict resources in multiple settings. PAC is also pursuing global advocacy work focusing on issues of transparency in the extractive sector, including a call for mandatory disclosures of origin for companies in the extractive sector.

Taylor used the remainder of his presentation to highlight issues of cross-border regulation of conflict minerals in the Great Lakes Region of Africa (Burundi, Rwanda, Uganda, Democratic Republic of the Congo). Efforts to establish a regulatory regime have been advanced by the Dodd-Franks legislation in the US Congress (2010) and the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (2013), which seek to help companies source minerals responsibly. PAC helped develop mechanisms to certify minerals, with positive impacts. Given that the price of certified minerals from artisanal mining is higher than from areas where armed groups manage the trade, there is an economic incentive to adopt this system. Such models could thus be used to promote ways out of conflict and to generate incentives for local communities to self-regulate in order to comply with international standards and guidelines on conflict resources.

Discussion Questions

Following the presentations, the panellists joined the audience in a lively discussion on peacebuilding, conflict and the extractive industry. Three overarching themes framed the Q&A period: governance and (self) regulation, human rights (violations), and the need for dialogue and consultation between the different stakeholders involved in these resource extraction projects. The next section provides a summary of the main elements and takeaways from this discussion, highlighting key questions and answers from the audience and the panellists.

Issues and Themes

Theme 1 – Governance

The implementation gap between standards and legal regulatory frameworks for the extractive industry and actual practices on the ground in areas where resource extraction operations are ongoing framed the debate on governance.

First, the panellists were asked about self-regulatory practices adopted by the private sector:

- What efforts are currently in place to improve human rights standards and practices?
- How would the panellists rate the efforts of global mining companies in advancing corporate social responsibility (CSR) policies?

This led to a discussion on the kinds of practices already in place, as well as the need to develop new best practices. For example, Terry Mitchell argued that arrangements providing financial benefits to local communities can generate funding for self-governance of education, employment and healthcare for indigenous populations. Accordingly, a good practice would be to foster self-determined development, where “individual communities are working with corporations to develop agreements that are based on active participation” and consensus on the kind of development that local communities want. This could be facilitated by revenue-sharing mechanisms. Tara Scurr discussed the resistance of local communities to certain CSR policies and how such companies’ practices are seen as an attempt to buy a licence to operate through the funding of schools and healthcare infrastructure. As such, CSR approaches can be construed as both a good and bad practice in such situations.

Recent efforts at self-regulation can also be found in the work of the Network for Business Sustainability, which produced a series of guidelines and reports for companies about best practices and strategies to manage resource extraction operations, ranging from dealing with indigenous communities to private security providers and relationships with the government.⁶

A second aspect of the discussion period that dealt with the governance and regulation issue

focused on the effectiveness of international frameworks and approaches. Bernard Taylor discussed the record of the Kimberley Process. He argued that companies played a positive role, notably De Beers, because it was in its interest to do so and broadly fit within its business plan. The international regulatory system for “conflict diamonds” is perhaps “75–80 per cent” adequate, given that it covers the majority of diamonds traded in the world. There are still loopholes and trading happening outside this system, but the Kimberley Process has significantly improved the regulation of conflict diamonds in the last decade.

Another example discussed was the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.⁷ It is a voluntary guidance developed in the OECD, an outgrowth of a dialogue between civil society and the private sector. One impact of this document is that end-user companies purchasing minerals are applying pressure on their suppliers to make sure that their product has been sourced in a responsible way (i.e., from certified mining operations). According to Bernard Taylor, such practices by private companies clearly have an impact on the ground in the Great Lakes Region, notably in eastern DRC.

Theme 2 – The need for a more meaningful dialogue between stakeholders

A bridge between the “need for dialogue” and governance debates during the eSeminar can be found in Mitchell’s discussion on how to foster self-governance within (indigenous) communities through meaningful dialogue and consultation. She highlighted the need to find agreement between these communities and companies to enhance and create local governance mechanisms.

However, this might be a difficult endeavour, as Scurr illustrated with the Guatemala case, where even such meaningful dialogue has proven very difficult to foster. For example, she mentioned a case in which a farmer who raised concerns about the impact to his livelihood of mining operations due to soil contamination and water usage was brushed aside by the mining company with references to the jobs that the mine would create. This did not meet the standard of a “thorough and meaningful dialogue” where all parties involved are considered equal partners and are sensitive to the perspectives of all parties in the interest of finding mutually beneficial compromises.

An interesting contradiction to note is the difference between perceptions of who mostly benefit from these projects. Mining companies often promote, as Scurr illustrated, that mining operations will create jobs and the construction of infrastructure for local communities.

However, recent research on mining operations in Mali highlights that a key alleged benefit might not actually work out as intended. International Alert’s report (2015) finds that mining operations are associated with “increased school dropout rates — as the appeal of mining jobs lures young people away from education.”⁸ This clearly shows that better dialogue and debates must happen on the ground to integrate mining operations as part of local sustainable development approaches.

Theme 3 – Human rights

A third overarching theme of both the presentations and discussion period was the challenge of protecting human rights. This was most evident in Scurr’s description of the situation of human rights defenders in Guatemala. Evidence from Amnesty’s report on mining in the country has shown that in 2013, a “total of 657 incidents of aggression against defenders” in the country occurred, an increase of “46 per cent in comparison with 2012.”⁹

In trying to look at best practices by the extractive industry to improve peacebuilding, Bernard Taylor reiterated the idea that the OECD guidance document on conflict minerals can be seen as mechanism that involve a variety of stakeholders, including private companies. The idea being that where interests align for private companies and communities, there might be ways to limit the industry’s negative impacts on human rights in conflict-affected countries.

Looking at the impact of the extractive industry on indigenous communities, Mitchell discussed the question of potential tangible impacts on human rights of the UNDRIP. She first mentioned that in Bolivia, the declaration has been “embedded within the constitution,” making this international standard a domestic standard as well. Other South American countries are also looking at ratifying the document, hence making it a legal document at the country level. In Canada, this declaration has been a “symbol of hope” and has provided indigenous communities the opportunity to go forward to claim their rights. A third concrete example can be seen in the role played by United Nations Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz in holding governments accountable by being a witness in countries where she travels. Overall, the UNDRIP has given momentum to these struggles and has become a focal point for discussion and dialogue and a source of unified, tangible efforts around the world. She also argued that the next step is the implementation of this declaration at the domestic level.

Finally, all three themes can be linked to a key question asked by a participant, CSG Senior Fellow Dr. Timothy Donais, on “how to balance resource extraction with actual contributions to peacebuilding, including on human security, good governance and human rights.” Mitchell reiterated that partnerships between corporations and indigenous communities with free and prior informed consent can provide “tremendous benefits for communities” and thus make a significant contri-

bution to building peace. As shown throughout the eSeminar, this perspective might be easier said than done, but it does provide a springboard to include issues of resource extraction in a sustainable peacebuilding framework.

Conclusion

The eSeminar highlighted the complexity of advancing peacebuilding processes in countries and communities featuring significance extractive industry activity. While the panellists addressed several key dimensions, including conflict minerals, business and human rights, and the rights and needs of indigenous peoples, there is a long list of additional key themes that still need to be discussed. For example, a topic that was not explicitly addressed in the discussion was the link between (private) security governance and the extractive sector. Other topics for further discussion include: issues of post-conflict security: rebel governance; security sector reform; private security providers; and violence and mining.¹⁰ However, given the format of this eSeminar, the debates focused mostly on human rights, governance and local (indigenous) communities.

Starting from a variety of perspectives and case studies, the panellists shared similar views and discussed three key areas of action where remedies and solutions can greatly increase the benefits of resource extraction for local sustainable development and peacebuilding: better governance and regulation mechanisms; inclusive and meaningful consultation between private com-

panies and local communities (and particularly indigenous peoples); and upholding human rights standards and the fight against impunity.

Making peace possible through better management of resource extraction and of the extractive industry will undoubtedly be a difficult task. It is nonetheless needed to address some of the most pressing issues local communities and governments face in fragile and conflict-affected countries. By highlighting some good practices to move forward and address some of these challenges, the panellists provided hope for the future of local communities to bring about sustainable solutions for their self-determined development.

Notes

¹ The Municipal Code, decree 12-2002 of Congress, details the roles and competencies of municipalities in Guatemala. It also provides a tool to provide “Referendum at the Request of Residents” and, as such, to facilitate consultations for local community development.

² United Nations, *Guiding Principles on Business and Human Rights* (2011).

³ United Nations, *United Nations Declaration on the Rights of Indigenous Peoples* (2007).

⁴ The KPCS was started in 2000 to stop the trade in conflict diamonds and entered into force in 2003.

⁵ The 3Ts and Gold framework refers to two supplements to the OECD guidance document on conflict minerals. The supplements include specific recommendations on the supply chains for, respectively, tin, tantalum and tungsten (3Ts) and gold. See OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (OECD Publishing, 2013).

⁶ The Network for Business Sustainability is a non-profit established in 2005 as a network of international academic experts and business leaders to produce research on important sustainability issues, including on the extractive industry. See Lindsay McIvor and Stephanie Bertels, “Start Here Quick Sheet: Indigenous Peoples and Mining,” *The Network for Business Sustainability*, 2014.

⁷ OECD (2013).

⁸ François Lenfant and Massaran Traoré, “‘The mountain gave birth to a mouse’: The socio-economic impact of mining in the Kayes region of Mali” (London: International Alert, 2015).

⁹ Amnesty International, *Mining in Guatemala: Rights at Risk* (London: Amnesty International, 2014).

¹⁰ Angelika Rettberg, “Gold, oil and the lure of violence: the private sector and post-conflict risks in Colombia,” (Oslo: The Norwegian Peacebuilding Resource Centre, 2015).

About the Presenters

Tara Scurr is Amnesty International Canada's Business and Human Rights campaigner. Her first visit to Guatemala in 1993 introduced her to men and women fighting for respect for their basic human rights. In 2006, she joined Amnesty's BHR team and in 2011 participated in a research mission to Guatemala to investigate the impact of extractives industries on Indigenous peoples.

Dr. Terry Mitchell is an associate professor of Community Psychology at Wilfrid Laurier University. She completed her doctoral degree at OISE, at the University of Toronto based on her field work with two First Nation communities on the impacts of residential schools. She is currently the director of the Laurier Indigenous Rights and Social Justice Research Group and past director, and current board member of the Laurier Centre for Community Research Learning and Action. Her research focuses on colonial trauma, indigenous rights, and governance issues.

Bernard Taylor is the Executive Director of Partnership Africa Canada (PAC). He has worked with NGOs in Ethiopia, Burkina Faso, Mali, Senegal and the UK. He joined PAC when it managed a \$75M project fund for Africa. He has wide experience in project management, as well as with multistakeholder processes related to natural resource governance and conflict. He has overseen PAC's support for the Kimberley Process, the International Conference on the Great Lakes Region and Publish What You Pay.

Additional Information

Archived video of the event is available online at: <http://www.spreecast.com/events/eseminar-extractives-and-conflict>

Supported by



Event Organizers

The Centre for Security Governance (CSG) is a non-profit, non-partisan think tank devoted to the study of security and justice issues in fragile and conflict-affected states. It is a registered charity located in Kitchener, Ontario.

The Balsillie School of International Affairs (BSIA) is an institute for advanced research, education, and outreach in the fields of global governance and international public policy. Founded in 2007 by philanthropist Jim Balsillie, BSIA is an equal collaboration among the Centre for International Governance Innovation (CIGI), the University of Waterloo and Wilfrid Laurier University.

The Wilfrid Laurier University Department of Global Studies offers interdisciplinary program combining real-world activism and engagement with critical thinking about the challenges and opportunities of globalization.

