



THE *JUS POST BELLUM* PROJECT

An NWO-funded Vidi project of the Grotius Centre for International Legal Studies
at the University of Leiden

CALL FOR PAPERS

Property and Investment in Contemporary Jus Post Bellum: Clarifying Norms, Principles and Practices

June 12 – 13, 2014, The Hague, Netherlands

Allocation and protection of property are fundamental challenges in many situations of transition from conflict to peace.¹ Societal choices regarding property in this context involve complex legal and policy choices regarding the protection and implementation of individual rights (e.g. housing and property rights), the preservation of global public goods (e.g., culturally significant property), conditions for socio-economic reform and access to justice (e.g. administrative or judicial claims procedures). Some of these areas, such as ‘Housing and Property Restitution for Refugees and Displaced Persons’² or the protection of cultural property³ have received significant attention in research, practice and specific situations. Other aspects, such as investment in conflict and post-conflict environments have been mostly treated from a situation-specific perspective. In current practice, these issues are typically part of Rule of Law or Transitional Justice discourse. But they are treated in isolation from each other, or from the perspective of particular bodies of law (e.g. human rights, international humanitarian law, international economic law) or conflict situations. This seminar takes a different perspective. It seeks to review policies and practices relating to the protection of property from the angle of multiple frameworks/bodies of law and their mutual interaction. The aim of the seminar is to bring together academics, policy-makers and practitioners from different disciplines to (i) review the feasibility of contemporary principles, guidelines and practices applicable in the transition from armed conflict to peace, and (ii) to identify macro-norms and practices that should guide processes of transition and interaction of different legal regimes in the *jus post bellum* context.

It will focus specifically on three main areas: (i) Housing, land and property of displaced persons, (ii) protection of culturally significant property, and (iii) investment. It will investigate how property and investment rights can be reconciled with other rights in the context of *jus post bellum*; and what approaches law are most likely to produce a just and sustainable peace.

¹ See e.g. United Nations Interagency Framework Team for Preventive Action, *Land and Conflict: Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict*, (2012), at http://www.un.org/en/events/environmentconflictday/pdf/GN_Land_Consultation.pdf

² See e.g. Commission on Human Rights, *Principles on housing and property restitution for refugees and displaced persons*, UN Doc., E/CN.4/Sub.2/2005/17 28 June 2005 (‘Pinheiro Principles’), at <http://www.unhcr.org/50f94d849.html>.

³ See e.g. A.M. Carstens; “The International Legal Protection of World Heritage Sites during Armed Conflict” TDM 5 (2013), at <http://www.transnational-dispute-management.com/article.asp?key=1996>; The Protection of Cultural Heritage in Conflict, British Institute of International and Comparative Law, 24 April 2013, at http://www.biicl.org/files/6429_cultural_heritage_in_conflict_-_biicl_seminar_report_-_24_april_2013.pdf

This seminar is the second of two seminars planned for 11 – 13 June 2014. [The first seminar relates to environment and *jus post bellum*.](#) The main aim of these seminars is to create guidelines for law and policy for property and the environment in the transition from armed conflict to peace (*jus post bellum*). Discussants are encouraged to connect these with other, overarching issues, such as the role of international interventions, local ownership, the right to self-determination, and addressing root causes of conflict. The guidelines will be backed by substantive research papers submitted via this call for papers for presentations at the seminar.

We are seeking submissions of academic research papers, built on critical review or identification of identifiable guidelines and practices, for presentation at the seminar. Submissions should include an abstract of no more than 300 words and be accompanied by a CV. Please indicate for which seminar the abstract is intended. Submissions must be written in English and sent to j.m.iverson@cdh.leidenuniv.nl and j.s.easterday@cdh.leidenuniv.nl no later than 27 January 2014. Selected participants will be informed 22 February 2014. Final papers should be submitted by 16 May 2014.

I. Housing, land and property of refugees and displaced persons

Allocation of housing and property rights is one of the preconditions for reintegration and return of displaced persons. The right to return of displaced persons may conflict with acquired rights or obstacles to restitution or compensation (e.g., lack of public record). The seminar will seek to review and identify practices in relation to property allocation based on dilemmas and experiences in different contexts (e.g., Bosnia, Kosovo, Iraq, Colombia). The seminar will deal with some of the following questions:

- How do the rights of refugees or internally displaced persons interact with the need for certainty over land ownership? How can property rights be guaranteed in post-conflict situations with weak (or non-existent) state institutions? What is the interplay between property rights and reconciliation? Does this depend on the description or characterization of the conflict (for example, as about agrarian reform, ethnicity, political reform, etc.)?
- What guidance can be drawn from existing legislative frameworks, principles (e.g., ‘Pinheiro Principles’) and case-law? What are their critiques? To what extent is it possible to formulate a global policy on land and property rights in peace operations? How should these issues be addressed in peace agreements or conflict resolution initiatives?
- What value should be attached to the choice between ‘restitution’ and ‘compensation’? Can customary international law principles on the protection of aliens provide guidance in this context? What factors help determine whether executive or judicial forms of redress are most effective in achieving a just and sustainable peace? What role should international actors have in such reparations?
- What lessons can be learned from existing claims commissions and proceedings? To what extent can they be transposed to other contexts?

II. Culturally Significant Property

The preservation of culturally significant property has been at the heart of attention in a range of contemporary conflicts (e.g., Iraq, Afghanistan, Libya). It has long tradition in the law of armed conflict⁴, and has been subject to criminalization. It is at the same time linked to transitional justice

⁴ See, e.g. 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 1954 *Protocol for the Protection of Cultural Property in the Event of Armed Conflict*, 1999 *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*.

strategies, such as memorialization or reconciliation. The direction of the law on culturally significant property and its nexus to peacebuilding merit further investigation. The seminar is expected to focus on the following questions:

- What is the importance of protecting culturally significant property, during conflict and at its end, in achieving a just and sustainable peace? What roles can culturally significant property play in creating a just and sustainable peace? (E.g. reconciliation, memorialization, tourism).
- Are the existing legal frameworks for the protection of cultural property adequate, or are additional protections needed? How should violations be remedied? Is it helpful to focus on individual criminal responsibility? To what extent should attacks on cultural property trigger international responsibility, or response schemes under R2P?
- What implications may the protection of global heritage and public goods under *jus post bellum* have even before armed conflict has formally ended?
- What role can repair of such property play? What procedures are best suited to provide remedies?

III. Investment

Investment lawyers, particularly those focused on foreign investment, are usually not focused on the transition to peace, except with respect to the possibility of nationalization under a new regime. Investment, however, is usually critical to producing a robust post-conflict economy. Conversely, a sustainable peace is usually essential for the success of long-term investing. This confluence of private and public international law bears further investigation. The seminar is expected to focus on the following questions:

- What is the importance of protecting investments, during conflict and at its end, in achieving a just and sustainable peace? How should investments be treated by peacebuilders? Should there be investment in certain areas (e.g., infrastructure, natural resources, land development) before others (e.g., technology, finance, agriculture)? How can investments fit into larger peacebuilding programs and goals?
- What are the legitimate expectations of investors in the context of the transition from armed conflict to peace? How can they be protected, and to what degree should they be protected?
- What special considerations should be incorporated into corporate social responsibility policy in the context of the transition to peace? Should corporations bear responsibility for the impact of their investment on the transition to peace?
- How might investments be targeted to ensuring sustainable peace, and what are good practices at the state and private levels to ensure investments do not lead to a resurgence of conflict?
- How should the promotion and protection of foreign investments in situations of armed conflict and transitions to peace be regulated by various legal frameworks, such as international investment law, international human rights, or domestic property laws (e.g., community property or customary law principles)? Are these frameworks mutually exclusive, and what would be the result in the case of competing norms? Can *jus post bellum* provide guidance in resolving normative incoherence in these areas? If so, how?