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Controlling Resource Flows to Civil Wars: A Review and Analysis of Current Policies and Legal Instruments

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This paper was undertaken in an effort to provide a preliminary review of contemporary law and policies as they concern war economies. It is not an exhaustive survey of all relevant policy initiatives.

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Introduction

Wars need resources.¹ Resources are essential for combatants to finance conflict, procure weapons and matériel, and pay soldiers. With the reduction of foreign state sponsorship following the end of the Cold War, many combatants and would-be rebels have sought alternative sources of revenue, financing the bulk of their military operations through partnerships with networks of armed groups, arms merchants, international organized crime, and corrupt governments reaching well beyond war zones to the world's capitals and major financial centers.

The types of economic activities and resource flows that fuel civil wars are diverse. Some are licit, others clearly criminal, some are necessary to civilian welfare (which may predate conflict, or be exacerbated by it), while others are manifestly predatory. Although a number of these activities directly feed armed hostilities, most economic behavior contributes to conflict in more diffuse and indirect ways, with some also playing a vital role in the livelihoods of civilian populations. This complicated reality presents policymakers with the twofold challenge of accurately assessing the impact of discrete economic behaviors on conflict dynamics and of designing effective policy responses.

Resources indirectly sustain conflict by providing the means to fight, but as recent scholarship on civil wars has emphasized, resources may also directly contribute to conflict, whether aimed at redressing legitimate grievances, or waged purely for profit. In some cases, the control of economic activities may be the principal motivation for the initiation or perpetuation of conflict. This is not to say that wars are solely about "greed." War frequently becomes an alternative system of profit and power favoring certain groups at the expense of others, occasionally reflecting previous grievances. Nonetheless, civil wars create economic and political opportunities for combatants, war profiteers, and other entrepreneurs. The result of which has been to adversely influence the balance of incentives in favor of peace.

Large-scale criminal activity may be a principal obstacle to peace, especially where the profits generated are used to fund and bolster support for war efforts. Beyond fueling a war effort and creating personal wealth for elites, such monies are also sometimes used to fund political patronage, thereby building a political base for the profiteer and at least the appearance of political legitimacy. Additionally, the criminalization of economic relations in wartime frequently leaves lasting developmental distortions that, if left unattended, can fatally undermine subsequent efforts at postconflict reconstruction.

The curtailment of resource flows to belligerents may hold particular promise as a means of altering economic incentive structures and thus promoting conflict resolution. Many of the resources sustaining wars depend upon access to the global economy, including international markets and foreign supporters. Implied in this relationship is the critical yet unacknowledged complicity of the global North in conflicts predominantly affecting the South—from its demand for commodities ranging from oil to narcotics, to its supply of arms, aid, and remittances. Importantly, while globalization has presented combatants and their support networks with new economic opportunities, it also renders them more vulnerable to international pressure, if such can be mobilized. From this perspective, the objective of the "international community" should be to suppress profit-seeking actions committed under cover of civil wars.

This paper identifies and briefly analyzes existing national and multilateral policies, practices, and legal instruments available to combat and reduce the global flow of these resources. In particular, it seeks to draw attention to legal and regulatory frameworks that may not specifically address the role of these resource flows in armed conflict, but that may be adapted to do so. Beyond the itemization of discrete policy and regulatory initiatives, the paper provides a concise description of their background, purpose, scope, and mechanism, as well as a preliminary evaluation of their effectiveness and consequences, both intended and unintended.

¹ Unless otherwise stated, "resources" is used in the general sense to refer to finances or material goods that may be used to pay for supplies and services.

Resource Flows in Civil Wars: A General Overview

Resource flows are multidirectional—arms, commodities, and financial assets are both imported into and exported out of war zones. At the most basic level, the essential tools of warfare (arms, ammunitions, fuel, food, clothes, transport, medicine, and communications) and services (mercenaries/advisers, soldiers) are received in exchange for money, barter, or political favors. These flows are frequently multidimensional, involving a range of actors at various levels, with different capacities and operating at different scales. Some resource flows are highly localized, such as the support of villagers for a self-defense unit. Others, such as drug trafficking, are global in reach and organized through extended networks.

Combatants access resources through a variety of "war economies," according to locally available resources (e.g., oil, timber, or gems), geographical circumstances (i.e., transport opportunities, including preexisting trade networks), the behavior and capacity of the organization itself, and regional or foreign demand (facilitated by corresponding political and commercial connections to these levels of analysis).

These economic activities are not mutually exclusive: most armed groups rely on a combination of commercial partnership, covert foreign assistance, predation upon civilian populations, and diversion of relief supplies. Many activities rely on the same, or overlapping, illicit brokering and transport networks. Preexisting infrastructural networks facilitate war economies, such as international flights that provide open and clandestine diamond-trading channels between producer and transit countries in Africa to international marketplaces in Antwerp, Bangkok, Bombay, Tel Aviv, or New York.

Resource flows in war include, but are not limited to, arms trafficking; trade in natural resources, narcotics, and other licit and illicit commodities; kidnapping and trafficking in humans; misuse of official development assistance and diversion of humanitarian aid; private foreign direct investment; corruption and other forms of "white-collar crime"; and siphoning of diaspora remittances. This paper examines the following types

of economic actors and/or activities that promote armed conflict:

- **Brokering and trafficking of illicit arms.** Small arms represent the most common—and most lethal—tool of violence in today's civil wars, and one increasingly used against civilians rather than military targets. In most civil wars, these weapons are purchased on the international illegal market through private brokers and dealers who knowingly violate national and international laws (including violation of UN sanctions regimes) and procedures regulating the arms trade for commercial gain. In the context of this review, arms transfers are significant because combatants, including armed groups, pariah states, and states supplying covert assistance, utilize the same brokering networks to supply matériel and smuggle natural resources as they do to procure and deliver these weapons.
- **Organized crime.** Organized criminal groups are becoming directly involved in financing and backing armed factions through their criminal activities, at times blurring the distinction between the two. The pursuit of criminal economic activities in wartime is not a new phenomenon. Criminal groups have sought out environments where rule of law is weak; the disruption of society by war creates an ideal environment for criminal activities, including trafficking of arms, smuggling licit and illicit commodities (e.g., narcotics, tobacco, and stolen consumer goods), money laundering, and a range of other activities such as kidnapping and human trafficking. Increasingly, many of these groups are no longer content with indirectly benefiting from conflict environments, but are directly creating and maintaining conditions favorable to their own economic self-interest and protection from judicial prosecution.
- **Official corruption, money laundering, and other misuse of international financial flows (including diaspora remittances).** The international financial flows of most direct relevance to this review are those resulting from the profits of illicit activities such as trafficking in arms, narcotics, and natural

resources; smuggling of licit commodities, grand corruption, and bribery; and/or collections from legal sources, such as remittances from diaspora populations, that are channeled to combatants. Financial flows are the common denominator for nearly all forms of illicit economic activity: commodities are converted to cash, revenue is laundered, transactions are exchanged, and ill-gotten gains are hidden. These flows are facilitated by and embedded in international banking and financial infrastructure, whether formal or informal.

- **Diversion of humanitarian aid.** Humanitarian aid, or relief, constitutes a significant resource flowing to conflict areas that can be withheld or diverted by belligerents, for a variety of economic, military, and political purposes. Belligerents benefit from the protection and the resources provided to civilian populations by aid agencies (food aid is embezzled or enables states to divert money to the war effort, refugee camps become sanctuaries for belligerents, etc.).
- **Resource extraction and trade.** Many belligerents finance the bulk of their military operations through the support of businesses operating in the exploitation and trade of licit commodities, particularly natural resources. In some cases, the control of commercial activities may be a principal motivation for the initiation or perpetuation of conflict. Less developed countries dependent upon export of natural resources may be more prone to conflict, as these resources are the most amenable to taxation or extortion by belligerents. States and armed groups gain military control of economically profitable areas (e.g., mines, plantations, towns, airports) and commercial networks (both licit and illicit), which provide access to legal as well as illegal commodities (e.g., timber, drugs); belligerents extort resources by force from local populations (e.g., food, labor).
- **Production and trafficking of narcotics.** Narcotics production and trafficking have historically been among the favored sources of income for armed groups, and one of the strongest motivating forces

behind their association with, and the global expansion of, transnational criminal networks. This is one of the older, more sophisticated crime networks, which is highly responsive to market conditions (and the high profitability resulting from their regulated character), and which has access to wealth and resources on a par with major transnational corporations and governments. Many of the more recent supply and distribution systems, money-laundering mechanisms, and corruption strategies were developed from these earlier systems. Proceeds from international narcotics trafficking are a major source of financing for illegal arms trafficking by belligerent groups.

- **Private-sector activities in areas of conflict.** Businesses engaged in licit commercial operations may exacerbate conflict, regardless of their intention. They may not realize that otherwise routine business activities can have unintended consequences detrimental to the stability and security of the country in which they operate, nor may they appreciate how the revenue streams generated by the commodities they produce benefit combatants and perpetuate conflict, as noted above in the discussion of resource extraction and trade. In many instances, their negative impact may be the result of operating in a hostile environment. Nonetheless, firms are not exempt from responsibility for the implications of their practices, which may also include aggravating socioeconomic inequalities or increasing economic rents amenable to factional control, both of which may exacerbate conflict; degrading local livelihoods and access to resources, promoting discrimination, denying political participation, using slave or child labor, and using disproportionate force to protect their interests (e.g., by hiring mercenary or undisciplined public or paramilitary security forces); bankrolling belligerents by providing voluntary or coercive financial or logistical support; sustaining misgovernance by participating in the corruption and legitimization of unrepresentative and repressive authorities, and impeding peace by reducing the leverage of international institutions and populations on

authorities through the provision of politically accountable resources; and lobbying for "private" diplomacy.

Policies, Practices, and Institutional Responses to Resource Flows

Prior to a more in-depth analysis of how the above resource flows may fuel conflict and form part of the war economy, as well as the relevant policies and legal instruments to control these resource flows, issues common to some or all of these regulatory instruments are summarized below.

There are a variety of existing legal and policy instruments available at the national, regional, and international levels that may be used to regulate the resources that sustain and fuel civil wars. While economic sanctions and arms embargoes—increasingly rendered in their "smart" or targeted version—remain the most widely used regulatory instrument wielded in conflict zones, they are but one mechanism in a growing framework of possible responses. This framework has evolved rapidly over the last five years, though not necessarily in response to civil wars. Recent legal and regulatory initiatives—many in response to advocacy campaigns by international nongovernmental organizations (NGOs)—focus on money laundering, corruption, trafficking in small arms and light weapons, smuggling in diamonds and other natural resources, and on minimizing the negative impact of private-sector activities that may exacerbate conflict. Much of this progress has been in response to the threat posed by transnational organized crime and international terrorism.

Unfortunately, international intervention through existing regulatory instruments often takes place too late, when the impact of war has become internationally visible (massive population displacement, hunger, atrocities), when all political avenues have proven inconclusive, and when negotiated settlements of the conflict have repeatedly failed (e.g., sanctions against the Union for the Total Independence of Angola [UNITA] and against the diamonds of Sierra Leone's Revolutionary United Front [RUF]). This delay means that regulations are facing well-organized and/or

highly criminalized resource networks—some of which are politically protected by local or international authorities. Some networks also have close connections with intelligence agencies (for which they may render services), while others involve major domestic or international business interests, which are then protected by home authorities. So far, the accountability record of regulatory instruments is extremely poor, even for widely reported arms traffickers and sanctions busters such as Victor Bout, whose international judicial prosecution came only recently for "money-laundering" charges in Belgium.

The changing nature of resource flows in war economies, with the growing importance of private actors, notably organized criminal groups, in the context of globalization (which facilitates access to international markets, including arms and financial instruments), has led to a need for a new generation of regulatory instruments and partnerships between donors, private companies, enforcement agencies, NGOs, and governments. Along with an expansion of actors have arisen new regulatory instruments, marked by the importance of nonlegal instruments, many of which were the result of work by pressure groups (the UN and NGOs), and there is currently an attempt being made to transform these instruments into a legally binding framework. Several categories of regulations and institutions are involved.

Broadly speaking, the main policy approaches available to national and international actors attempting to influence resource flows in civil wars fall within the categories listed below. Within each, there are considerable variations as to the policy authority and the jurisdiction concerned, the actors and activities being targeted, and whether the respective policy initiatives were designed to combat the economic enablers of armed violence or for the general purposes of global and domestic governance. These major categories of regulatory instruments assessed in this review include:

- **Multilateral instruments.** The transnational nature—whether regional or global—of resource flows and the multiplicity of actors involved necessitate international cooperation and

assistance. Multilateral instruments may be legally binding or voluntary and may take the form of positive inducements or punitive measures. One government, a group of governments, or a multilateral organization such as the United Nations may sponsor these. In the post-Cold War context, extraterritorial regulations are, for the most part, designed multilaterally in the interest of peace, or the interests of major powers. Increasingly, multilateral instruments are designed and applied at a regional level rather than on a country-by-country basis. This category includes conditions on multilateral aid, UN instruments, including Security Council resolutions on arms embargoes and financial sanctions, expert panels, UN conventions against transnational organized crime and international terrorism, and the UN Global Compact's efforts to engage private-sector actors in issues of peace and security. The threat of prosecution by the International Criminal Court, recently ratified by the requisite number of states, may hold promise as a deterrent against violent predation and as an incentive for warlords and other actors to uphold peace accords. Key initiatives and practices have also been developed by other multilateral organizations, most notably the Organization for Economic Cooperation and Development (OECD), the European Union (EU), the Council of Europe, the Organization of American States (OAS), and African regional and subregional organizations.

- **National instruments.** These are sponsored and enacted by one government. Such state-based initiatives range from domestic legislation on customs, import/export regimes, tax codes, and business practices to the extraterritorial application of tort law (the U.S. Alien Tort Claims Act) and the imposition of unilateral sanctions. To date, the U.S. government has been the most active with respect to the use of unilateral sanctions, even seeking extraterritoriality with respect to the observation of sanctions (e.g., the Helms-Burton Act).
- **Import/export regimes, customs, and transport.** Much of the resource flows take place across international borders and in some cases reach

remote areas without land transport infrastructure. Customs and the regulation of air transport thus play a key role in a regulatory framework. However, states' customs agencies and air transport systems are generally both subject to budgetary constraints and vulnerable to corrupt practices. Many conflict areas are poorly suited to the regulation of resource flows and international assistance, in terms of both "assisting" regulatory environment (e.g., pre-shipment customs controls in the most reliable countries) and direct assistance (e.g., air traffic monitoring capacities in poor countries).

- **Normative pressure: non-legally binding principles and advocacy.** These may be enacted by a variety of actors, from businesses to intergovernmental organizations (IGOs). These principles may have a strong moral persuasiveness and may be universal in scope (e.g., the UN Declaration on Human Rights, some elements of which have been integrated into national constitutions and have thus acquired legally binding status), or may be highly specific and limited in scope (e.g., voluntary corporate codes of conduct).

In distinction from non-legally binding principles, advocacy arises as an often ad hoc response to specific situations. Campaigns are generally led by NGOs, but increasingly involve intergovernmental agencies, which previously shunned such "politicized" activities. Examples include recent campaigns on "blood diamonds" and oil exported from conflict zones.

Global Witness, Amnesty International, Human Rights Watch, as well as a number of other international advocacy NGOs have been at the forefront of investigative work, advocacy, and demands for regulatory improvements in the domain of resource flows to belligerents. Mainstream "service provider" NGOs, such as Oxfam, Save the Children Fund, and World Vision are also moving in this direction, joining organizations with a tradition of assistance and critique such as Médecins sans Frontières (MSF); they do so not without facing serious dilemmas (e.g., access to victims, security of staff). Some legitimate resource providers, such as arms producers, extractive businesses, and banks, have taken steps to recognize

their role and responsibility in the political economy of conflicts and to designate self-regulating frameworks, including codes of conduct. Many, however, remain impervious to any direct intervention in their activities, for example, through full transparency backed by independent auditing. Continued pressure by international and local NGOs on this topic will certainly move the debate further, as it is doing for the diamond industry at the moment. Campaigns are now starting on the petroleum and mineral sector as well as financial services, with the aim of instituting full transparency on all payments to governments

Existing international and regional conventions, national legislation and bilateral agreements, codes of conduct and market pressures already provide a well-developed legal and policy framework for addressing many of the resource flows that sustain armed

conflict—including suppressing money laundering, regulating the export of weapons, and targeting international organized crime. Generally, these initiatives are well developed and have the compliance of states and nonstate actors. Yet many countries, particularly those in the global South, lack adequate financial means or enforcement capacity necessary for effective implementation. Moreover, the existing regulatory framework is neither uniform in its application nor comprehensive in its reach, facilitating the ability of criminals to stay ahead of the law and confusing the efforts of legitimate actors to comply with it.

In the sections that follow, a brief overview of each of the resource flows identified above is provided, along with an examination of significant regulatory mechanisms, both legally binding and voluntary, in the international, regional, and national arenas.

Policy Responses to Illicit Arms Brokering and Trafficking²

Illicit small arms are the most common and essential instrument of initiating or carrying out armed conflict and associated predation. Their acquisition is a principal end of illicit economic behavior associated with armed conflict—a quid pro quo of commodity exploitation, narcotics trafficking, kidnapping, and other illicit economic enterprises. Small arms and light weapons are also a means of further acquisition, enabling the use of violence to maintain or extend control over other sources of revenue generation. Increasingly, these weapons are used against civilians rather than military targets. Thus arms, in their capacity as tools of violence, are more responsible for creating a cycle of violence than any other resource.

In most civil wars, secondhand weapons are bought and sold on the regional or international illegal market through government-sponsored agents or private brokers and dealers. Arms brokers and shipping agents are companies or individuals who engage in any of the following activities: buying and selling of arms; mediation in, or facilitation of, arms transfers; promotion or marketing of arms; and/or transportation of arms. Much of this activity takes place within a gray zone, not quite legal, but not yet illegal. These sources knowingly violate national and international laws (including UN sanctions regimes) and procedures regulating the arms trade for commercial gain. The globalization of trade, communications, and finance has greatly enhanced the ability of middlemen to take advantage of gaps between and within national legal systems, pushing the bounds of legality. This is compounded by weak systems of governance and law enforcement in many countries, with regard to both arms producers and recipients.

New weapons are also provided through these channels, as legal firms are either duped by, or complicit in, fraud. These channels are global in scope; for example, Eastern European countries are currently one of the major sources of arms flows into African

conflict regions. While many of these arms have a veneer of legality, abuses down the supply chain such as the forging or misusing of end-user certificates mean that arms end up in the hands of armed groups, including those subject to sanctions.

In the context of this review, arms transfers are also significant because combatants and states that provide foreign assistance utilize the same brokering networks to smuggle natural resources and other “conflict commodities” and to covertly supply matériel as they do to procure and transfer these weapons. These networks rely on the use of underregulated and undermonitored air and sea freight industries, using chartered vessels and “flags of convenience,” as well as on overwhelmed customs officials and nonstandardized regimes. These issues are dealt with in a separate section in this review. Brokering and trafficking networks link the illicit flow of revenue-generating resources out of and of arms and matériel into conflict zones. As such, they are a critical nexus (along with financial flows and money laundering) not only of conflict-sustaining illicit trade, but also of wider criminal activity carried out under cover of war.

Recent Progress in Regulations

Much attention has been recently devoted to small arms and light weapons (including land mines). In this regard, new policies are currently being developed on manufacturing, export regulation, weapon transfer and registration, and import bans. The majority of initiatives focus on the establishment of criteria governing arms export controls, and therefore on the transfer of new weapons from producer countries to recipient countries.

In the existing conditions in many developing countries, effective action to control arms flows and availability requires determined, comprehensive, and coordinated action at not only the local and national levels but also at the regional level. Moreover, the effectiveness of action on light arms proliferation and illicit arms trafficking at the regional level would be reinforced through cooperation with regional organi-

² The legal sale by governments of arms to combatants—principally other states—is an area of concern for the proliferation of small arms and light weapons, but one not addressed in the scope of this review.

zations, the EU, and its member states, and with the wider international community.

There are many well-intentioned initiatives on the international, regional, national, and NGO advocacy levels; however, a number of key problems regarding implementation, compliance, and enforcement remain. Effective and cohesive ways to curb the motives of transit networks, to control diversion of legal transfers by corrupt states, as well as purchases by both armed groups and civilians, have yet to be developed.

Several key recent initiatives are examined below.

International

Within the UN system, there have been gradual moves to establish stricter standards for the national regulation of small arms and light weapons, though this process has been slowed by governments opposed to the establishment of common standards to enhance compliance with international human rights and humanitarian law. With regard to brokering and shipping agents, progress is more likely to be seen among groups of like-minded states and intergovernmental bodies.

- The UN Register of Conventional Arms (effective 1992). The register includes data on international arms transfers as well as information provided by member states on military holdings, procurement through national production, and relevant policies. It has been estimated that the register, in which almost all major producers, exporters, and importers participate regularly, captures well over 95 percent of the global trade in the seven categories of armaments on which information is exchanged: battle tanks, armored vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile launchers. Small arms and light weapons are not included. Nonetheless, the register is a dynamic instrument, the scope of which may be expanded. It is regarded as an important step in the

promotion of international openness and transparency in military matters. Participation is not universal, but compliance does appear to be improving among the 149 member governments. There is not, however, a proven link between the registry and decreased arms trafficking in the specified categories.

- The UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects [A/RES/54/54 V] (July 2001). This conference is most likely to be directly applicable to issues of civil conflict. The document contains some useful norms, principles, and commitments, and encourages international and regional cooperation and assistance programs. However, the program of action that emerged from this conference is not as far-reaching as many had hoped. A joint project of Saferworld, International Alert, and BASIC recommended, at a minimum, inclusion of the following issues (among others) in order to ensure the future development of a far-reaching program of action: preventing diversion of arms to illicit destinations (information exchange); ensuring traceability (initiation of negotiations on a international instrument to identify and trace small arms); controlling arms brokers (information exchange and launch of international process on controlling arms brokering and transport agents); and strengthening controls on legal manufacture and transfer (i.e., development of strict regional or national criteria against which to judge export licenses).³
- UN Security Council arms embargoes and sanctions regimes (ongoing). The UN has maintained mandatory arms embargoes against five states (Iraq, Liberia, Libya, Somalia, and the Federal Republic of Yugoslavia [FRY]) and three nonstate entities (UNITA in Angola, the former Forces Armées Rwandaises [FAR], and the RUF in Sierra Leone). Arms brokers and shipping agents have been able to circumvent most UN mandatory and voluntary arms embargoes with relative ease.

³ BASIC, International Alert, and Saferworld, "Biting the Bullet: Ensuring a Framework for an Effective International Action Programme on Small Arms and Light Weapons," via <http://www.saferworld.co.uk/btb2ndproof.pdf>, (October 5, 2002).

Monitoring and verification by law enforcement has been very weak. In order to increase member state compliance with the sanctions regimes, the UN created several ad hoc "monitoring missions" and "expert panels" to investigate arms flows in violation of such embargoes. While these commissions, in their capacity to "name and shame" violators, have been an important step forward, with the exception of sanctions against Liberia, there has been little secondary enforcement at either a state or nonstate (i.e., individual) level. The future of the panels is currently being debated, with several alternative "permanent mechanisms" having been tabled. At question is whether any permanent mechanism will be subservient to the Security Council and the interests of its members, above all the Permanent Five (P-5).

- The UN Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components, and Ammunition [A/AC.254/4/Add.2/Rev.5] is intended to supplement the UN Convention Against Transnational Organized Crime. The protocol should establish definitions of illegal versus legal trade in firearms, as well as internationally recognized standards and provisions regarding the marking, registration, and traceability of firearms. As it does not focus on state-to-state transactions and stresses strengthening laws and enforcement, it may not adequately address the transfer of small arms by governments to conflict zones.

Regional

Regional efforts do not address the global nature of sources of small arms and light weapons, nor the dimensions of transnational networks beyond their boundaries. The European Union has been active in addressing supply-side issues of illicit export of small arms within the EU, and is working in cooperation with major recipient regions. Among African subregional organizations, the South African Development

Community (SADC) has taken the most significant steps to control the proliferation of small arms by using a bottom-up approach that may soon be applied in an African action program. Additional principles, declarations, and draft programs of action of varying success have been adopted or are under consideration by the Organization for Security and Cooperation in Europe (OSCE), the Organization of African Unity (OAU)/African Union, Mercosur, and the Great Lakes and Horn regions of Africa.

- The OAS Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Material (1998) is to date the only international treaty established to control small arms. Implementation is based on the model regulations of the Inter-American Drug Abuse Control Commission, which target nonstate criminals (drug cartels and terrorists) rather than repressive governments, and exclude government-to-government transfers. Nonetheless, the convention made important progress on harmonizing license procedures, has introduced a requirement for firearms to be marked at the time of manufacture, and requires all participants to exchange information on a broad definition of activities, including dealers, importers, and exporters. It is widely regarded as a model for negotiations on international small arms control.
- The SADC has endorsed the Southern Africa Action Programme on Light Arms and Illicit Arms Trafficking (1998), laying out a program to tackle illicit trafficking, increase regional cooperation, remove and destroy surplus weapons, and strengthen controls on civilian possession and tracing of arms transfers. Working in partnership with the EU, this initiative is unique in providing a framework for region-to-region assistance to tackle the spread of small arms.⁴
- The renewable three-year Economic Community of West African States (ECOWAS) Moratorium on the

⁴ Andrew McLean and Elizabeth Clegg, "Towards Implementation of the Southern Africa Regional Action Programme on Light Arms and Illicit Trafficking," seminar report, September 8–9, 1999, Pretoria, South Africa, Institute for Security Studies and Saferworld, 1999.

Exportation, Importation, and Manufacture of Light Weapons (1998) was the first of its kind by any regional organization. It was followed in 1999 by a code of conduct spelling out the concrete actions to be taken by member states in order to implement the moratorium. The moratorium is a voluntary commitment, in essence a confidence-building measure aimed at tackling the widespread instability in the West African region. While in principle the moratorium should contribute to conflict prevention and peacebuilding in the region, there are doubts about the capacity of either ECOWAS or the implementing UNDP Programme for the Coordination and Assistance for Security and Development (PCASED) to fulfill its mandate. This is due in part to continued regional conflict in West Africa (notably Sierra Leone/Liberia/Guinea), the lack of national political will and commitment in implementing the moratorium (evidenced by the implication of many regional governments in sanctions busting), and inherent institutional weaknesses within ECOWAS and PCASED.⁵

- The Wassenaar Agreement (1996) was the first global multilateral arrangement on export controls for the UN register's seven categories of convention weapons. Unlike the UN register, it does include voluntary export controls on small arms and light weapons. It fails to encourage joint action to prevent the proliferation of small arms in the context of human rights and humanitarian law abuses, nor does it specifically mention third-country arms brokering and trafficking.
- The EU Code of Conduct on Arms (1998), based on eight common criteria for export controls, is the only international framework on small arms attempting to incorporate all relevant aspects of international law. Exports that might be used for internal repression and external aggression, that jeopardize regional stability, or that undermine economic and social development should be

refused. Member states must inform each other when they deny an export, and if another EU country then wants to take up the same deal, it must first consult with the refusing country. The success of the code is reviewed annually. Several weaknesses have been identified, including the following: it is not legally binding, it uses ambiguous language ("take into account"), it lacks of mandatory parliamentary scrutiny, it lacks of public reporting on arms export, it fails to include third-country arms brokering in EU export laws, and it has inadequate multilateral consultation on denial of export licensing to prevent "undercutting."

- The EU Joint Action on Small Arms and Light Weapons (1998) enables financial and technical assistance to be provided to third countries for projects aimed at combating the spread and accumulation of small arms. The joint action contains specific provisions on control of international brokering and shipping. Under the joint action, the EU-SADC action program was established.

National Legislation

According to a 1999 study by DFAIT (Canada), only five states—Germany, Sweden, the Netherlands, Luxembourg, and the United States—have measures that deal explicitly with arms brokering.

- The United States introduced a law on international arms brokering in 1998 under the Arms Export Control Act and the International Traffic in Arms Regulations. This legislation is the most far reaching of any national law, encompassing the activities of both U.S. citizens abroad and foreign citizens within the United States, requiring prior licensing authority for any transaction intermediary, and authorizing postdelivery verification. Nonetheless, the process lacks sufficient transparency regarding the identity of authorized

⁵ Angela Ndinga Mvumba and Comfort Ero, "Small Arms and Light Weapons in West Africa: Constraints and Options," paper presented at International Peace Academy conference *Towards a Pax West Africana: Building Peace in a Troubled Sub-Region*, Abuja, September 27–29, 2001.

brokers. The UK and Canada are considering changes to bring brokering activities more clearly within the scope of their laws.⁶

- In July 2002, the UK government passed the Export Control Act. The act is a significant step forward in trying to prevent the transfer of arms by UK companies and citizens into conflict or

human rights crisis zones. For the first time, all persons in the UK who brokered the transfer of arms from one overseas destination to another will require a license for their activities. However, as Saferworld has noted, "full extra-territorial controls on conventional weapons will only be imposed for deals involving transfers of equipment to embargoed destinations."⁷

⁶ Brian Wood and Johan Peleman, *The Arms Fixers*, A Joint Report by BASIC, NISAT and PRIO, Basic Research Report 99.3; PRIO report 3/00, (Oslo: International Peace Research Institute, 1999), chap. 9.

⁷ Saferworld, <http://www.saferworld.co.uk/bill.htm> (August 29, 2002).

Policy Responses to Transnational Organized Crime

As local armed groups become more entrenched, they tend to exhaust available local resources and begin seeking external markets and participation in additional high-income-producing activities. This in turn may motivate joint ventures with other international criminal organizations. The Kosovo Liberation Army (KLA), for example, has extensive links to organized crime; its funders got rich smuggling weapons, narcotics, and illegal immigrants following the collapse of communism in Yugoslavia and Albania. Other armed groups, like the Liberation Tigers of Tamil Eelam (LTTE), have developed their own sophisticated transnational criminal networks in order to sustain their conflicts. Consequently, the political and economic activities in which combatants engage bridge the divide between the military and criminal spheres. Illicit flows in arms, narcotics, and human trafficking from conflict or postconflict zones are increasingly indicating these trends.

Organized criminal groups have considerably increased the complexity and extent of their activities and present a significant threat to the economies and governance of states. These activities include drug trafficking, smuggling of illegal aliens, illicit trafficking in narcotics, natural resources, and other commodities, massive financial and bank fraud, arms smuggling, kidnapping, potential involvement in the theft and sale of nuclear matériel, political intimidation, and corruption, and have been accompanied by a corresponding expansion of illicit markets and informal economies. Globalization—the opening up of international trade and communication—has facilitated this increased activity, and has fostered changes in operative practice among organized criminal groups that make their activities both more successful and more difficult to stop.

One of the major advantages of transnational crime networks is their fluid ability to restructure their organization at any time as well as their access to sophisticated technology and weaponry. Criminal organizations are not monolithic, but act as networks, pursuing the same types of joint ventures and strategic

alliances as do legitimate global businesses. Many of the local and international crime groups operate with legitimate covers, as well as with the cell-like organization of successful terrorist groups. The diffuse and dynamic nature of transnational criminal activities makes them difficult to identify and counter. The rapidly expanding cooperative link between armed groups and organized crime networks exacerbates this insecurity.

Organized criminal groups not only profit from the opportunities created by war, including the breakdown of law and order, but through this profiteering are able to grow in breadth, depth, size, and influence. They extend their reach, entrench themselves in government, and essentially usurp government authority in an endemic cycle of criminality and destabilization. As a result of their success, countries emerging from conflict may have an added challenge in reestablishing the rule of law and effective governance.

Summary of the Current Regulatory Environment

Initiatives seeking to combat organized criminal organizations tend to address specific and important aspects of their behavior, such as financial crimes, including corruption and money laundering, narcotics and arms trafficking. These aspects are addressed separately in this document. At the same time, there is an emerging set of national, regional, and international regulatory efforts that, while inclusive of the aforementioned activities, are more comprehensive in their approach, or are intended to facilitate coordination of law enforcement across jurisdictions. At present, international cooperation between police organizations and, indeed, national law enforcement systems, remains inadequate.

As the U.S. International Crime Control Strategy points out, "Police and judicial systems in many developing countries are ill-prepared to combat sophisticated criminal organizations because they lack adequate resources, have limited investigative authorities, or are plagued by corruption. Many countries have outdated or nonexistent laws to address corruption, money laundering, financial and high-tech crimes, intellectual property violations, corrupt business practices, or [trafficking in humans]. Moreover, many governments

have been slow to recognize the threat posed by criminal activities and increasingly powerful organized crime groups."⁸ Countries and multilateral organizations with available resources need to assist developing countries in improving their legal infrastructure and law enforcement capabilities, and encourage information sharing and cross-border coordination.

Several of the most recent and comprehensive international and national regulatory regimes are examined below.

Recent Progress in Regulations

International

Over the last twenty years there has been a growing preoccupation with transnational crime. The UN has studied the subject at a number of important meetings, and at the Ministerial Conference on Transnational Organized Crime (1994).

- The cooperative relationship between international organized crime networks and local armed groups in all areas of illicit crime and the related increase in official corruption have been recognized in UN sessions leading to the 1994 Naples Political Declaration and Global Action Plan Against Organized Transnational Crime [UN 49/159], and the 2000 UN Convention Against Transnational Organized Crime [A/55/383]. The convention, which is the first legally binding UN treaty on organized crime, is a comprehensive and coordinated attempt made to address the issue of and the links between corruption and crime. It requires member states to add four criminal offenses to their domestic laws—participation in an organized criminal group, money laundering, corruption, and obstruction of justice. However, the principal problem remains enforcement on a global level.⁹

- Interpol has the potential to play a critical role in combating transnational organized crime. Investigations of transnational criminal organizations are much more complicated than investigations of traditional crime groups operating in one area or country. Interpol's role is to facilitate the exchange of not only investigative data but also law enforcement-related technology and forensic methods. It has an efficient, secure, and reliable telecommunications system that links each of the Interpol national central bureaus by e-mail and gives automated access to a central database of information on international crime and criminals. Another important initiative has been the creation of an analytical criminal intelligence unit to extract and analyze data from the organization's centralized database.¹⁰ The International Criminal Police Organization (ICPO)-Interpol General Assembly has called on member countries to concentrate their investigative resources in identifying, tracing, and seizing the assets of criminal enterprises. These resolutions have also called on member countries to increase the exchange of information in this field and encourage governments to adopt laws and regulations that would allow access, by police, to financial records of criminal organizations and the confiscation of proceeds gained by criminal activity.¹¹ Interpol is supported by bureaus at the subregional and national level and works closely with regional organizations of police chiefs.

Regional

This section highlights several policies and practices aiming to coordinate law enforcement across multiple national jurisdictions.

- Interpol's subregional bureaus (SRBs) are increasingly the mechanism through which Interpol services are offered. Africa currently has three

⁸ The 1998 U.S. International Crime Control Strategy, <http://www.fas.org/irp/offdocs/iccs/iccstoc.html> (January 9, 2002).

⁹ UN Convention Against Transnational Organized Crime (2000), <http://undcp.org/palermo/convmain.html> (January 9, 2002).

¹⁰ Raymond E. Kendall, "Responding to Transnational Crime," in Phil Williams and Dimitri Vlassis, eds., *Combating Transnational Crime: Concepts, Activities and Responses*, (Portland: Frank Cass, 2001)

¹¹ Interpol, <http://www.interpol.int/public/financialcrime/fopac/default.asp> (January 14, 2002).

Interpol SRBs: east (Nairobi), west (Abidjan), and south (Harare). South America, Central American, and Central Asia are pursuing this approach. The success of a SRB is contingent upon the degree to which it is situated within a regional structure comprising a committee of chiefs of police, subcommittees (e.g., legislation, training, and operational activities), and the SRB as secretariat to that regional structure. This model has proved particularly successful in South Africa. The success of the SRBs is additionally a function of financing, which is shared between member countries in the region.

- The Agreement on Cooperation and Mutual Assistance in the Field of Crime Combating was signed by the twelve SADC countries (excluding the Democratic Republic of Congo [DRC] and Seychelles) in the Southern African Regional Police Chiefs Cooperation Organization in 1997. The agreement "allows police officers of the region to enter countries of other parties with the authority to do so, for the purpose of police investigations, seizure of exhibits, tracing and questioning of witnesses."¹² The agreement has reduced mistrust regarding information sharing between national police forces, facilitating the exchange of criminal intelligence and enabling the conducting of joint police operations for the first time.
- The European Union has adopted a broad range of conventions and action plans to combat organized crime, the centerpiece of which is the EU Action Plan Against Organised Crime (1997). The plan seeks to ensure effective implementation of the various international instruments to combat money laundering, and to ensure the maximum level of cooperation and two-way information exchange between member states' national financial and fiscal institutions and their law enforcement and judicial authorities. The action plan was augmented in 1998 by the "Falcone" program (Council Joint Action 98/245/JHA of March 19, 1998), which established a system of exchanges, training, and cooperation for those tasked with combat organized crime, "including judges, prosecutors, members of police, customs and other law enforcement departments of Member States, civil servants, public tax authorities, authorities responsible for the supervision of financial establishments and public procurements, representatives from professional circles who may be involved in the implementation of some of the recommendations of the Action Plan, academics and researchers."¹³
- The Council of Europe has likewise adopted a range of strategies to combat organized crime and corruption—some in conjunction with the EU. The European Committee on Crime Problems created a Group of Specialists on criminal law and criminological aspects of organized crime (PC-S-CO) in 2000. In addition to "best practices," this group prepares analyses of the characteristics, activities, resources, methods, geographical coverage, influence, and trends of organized criminal groups operating in Europe. These reports complement the Europol reports at the pan-European level. The studies also contain guidelines to help member states implement the specific measures they describe.¹⁴ The council's Octopus Programme helps central and eastern Europe countries to adopt European standards relevant to the fight against corruption, organized, crime and money laundering. The Octopus Programme "complements other activities of the Council of Europe in the field of standard setting (conventions and recommendations on corruption, money laundering, organised crime and cooperation in criminal matters), monitoring and evaluation (GRECO for corruption and PC-R-EV for money laundering) and technical cooperation (Programme Against Corruption and Organised Crime in Southeastern Europe—PACO)."¹⁵

¹² Frank Msutu, "Responses to Organised Crime in SADC: Interpol and SARPCCO," in Charles Goredema, ed., *Organized Crime in Southern Africa: Assessing Legislation*, ISS Monograph Series no. 56, June 2001.

¹³ European Union Council Joint Action 98/245/JHA, http://europa.eu.int/comm/justice_home/project/falcone_en.htm (January 14, 2002).

¹⁴ Council of Europe, <http://www.legal.coe.int/economiccrime/default.asp?fd=organisedcrime&fn=introe.htm>.

¹⁵ Council of Europe, <http://www.legal.coe.int/economiccrime/default.asp?fd=octopus&fn=octopus2001e.htm>.

- Europol, the European Union law enforcement organization that handles criminal intelligence, was created under the 1992 Maastricht Treaty. It began limited counternarcotics operations in 1994, but only commenced full operations in 1999. It is intended to contribute to the EU's law enforcement action against organized crime and criminal organizations operating in two or more member states by improving the effectiveness and cooperation between the relevant competent authorities (e.g., via information sharing, technical support, and crime analysis). It includes a European Police Chiefs Operational Task Force, and a centralized computer database to facilitate information sharing and coordination. Its mandate is limited, but in 2000 its competence in money laundering was widened to include all relevant activities, regardless of the type of offense from which the laundered proceeds originate, rather than merely those activities associated with its jurisdiction.¹⁶
- Canada's Bill C-24 (2002) contains aggressive new measures to fight organized crime. Its provisions include the significant step of criminalizing participation in organized crime as the offense, not simply belonging to the organized group; improving the protection of people who play a role in the justice system, such as jurors or witnesses, from intimidation; protecting law enforcement officers from criminal liability when they commit certain acts that would otherwise be considered illegal (regarded as an essential tool when investigating and infiltrating criminal organizations); and granting law enforcement broader powers for electronic surveillance, financial reporting, parole delay, and seizure of profit from or property used in a crime. There is domestic concern regarding erosion of civil liberties.¹⁷
- The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act) (2001), enacted in response to the terrorist events of September 11, 2001, includes numerous provisions aimed at preventing the ability of terrorist organizations to function, including authorization for U.S. customs officers to search international mail for monetary instruments, drugs, and weapons; strengthening of immigration laws to exclude international criminals from the United States; expanding authority on asset seizure; and criminalizing additional activities, providing longer statutes of limitations, and facilitating temporary transfer of persons in U.S. government custody for purposes of testifying abroad. While this comprehensive legislation provides new tools for law enforcement, intelligence, and regulators, many civil liberties groups have expressed concern that the law upsets the traditional system of checks and balances between the executive, legislative, and judiciary branches of the federal government by consolidating vast new powers in the former. Likewise, there is concern

National

National strategies face an inherent inadequacy for responding to challenges that cross multiple borders and involve multiple jurisdictions. The lack of capacity of many states is such that their individual actions are inconsequential, making multilateral and bilateral agreements a necessity. The range of criminal activities requires coordination across immigration, customs, financial services, and legal enforcement of a wide array of criminal legislation. Nonetheless, there are a number of steps that national governments can and have taken in order to meet the challenges posed by transnational organized crime: intensifying the activities of law enforcement agencies abroad, safeguarding borders through enhanced inspection, detection, and monitoring, and denying international criminals safe havens by cooperating with foreign law enforcement agencies and negotiating strong extradition agreements.

¹⁶ Europol, "The European Police Office—Fact Sheet," <http://www.europol.eu.int/content.htm?facts/en.htm> (January 14, 2002).

¹⁷ Government of Canada, "Organized Crime Legislation Comes Into Force," press release, January 2, 2002, via <http://www.sgc.gc.ca/releases/e20020102.htm> (January 9, 2002).

that these powers jeopardize political freedoms in the name of national security.¹⁸

- U.S. Presidential Decision Directive 42 (1995) ordered the Departments of Justice, State, and Treasury, the Coast Guard, the National Security Council, the intelligence community, and other federal agencies to increase and integrate their efforts against international crime syndicates and money laundering. In response, the International Crime Control Strategy (1998) was created to provide "a framework for integrating all facets of the federal government's response to international crime. One of the eight goals of the Strategy is to counter financial crime. . . . Other objectives include seizing assets of international criminals through aggressive use of forfeiture laws and enhancing bilateral and multilateral cooperation against all financial crime by working with foreign governments to establish or update enforcement tools and standards."¹⁹
- The UK National Crime Squad (NCS) was launched in April 1998 to combat national and transnational serious and organized crime. The work of the NCS is focused on six objectives set by the Home Secretary and the NCS Service Authority: organized crime, illegal drugs, intelligence, integrity, partnerships, and support to forces. The crime squad differs from police forces in that it proactively targets those responsible for serious criminal offenses regionally, nationally, and internationally, rather than reactively investigating crimes.²⁰

¹⁸ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. no. 107-56. For criticism, see for example, Nancy Chang, "The USA PATRIOT Act: What's So Patriotic About Trampling on the Bill of Rights?" Center for Constitutional Rights, http://www.ccr-ny.org/whatsnew/usa_patriot_act.asp (June 3, 2002).

¹⁹ International Crime Control Strategy – June 1998, via <http://www.fas.org/irp/offdocs/iccs/iccstoc.html> (June 3, 2002)

²⁰ National Crime Squad, http://www.nationalcrimesquad.police.uk/04_about/main_opening_frame.html (January 14, 2002).

Policy Responses to Illicit Financial Flows and Financial Crimes

The proceeds from illicit trafficking in arms, narcotics, humans, natural resources, and other commodities; kidnapping; corruption and other forms of "white-collar crime"; and diversion of humanitarian aid and siphoning of diaspora remittances play a critical, if sometimes indirect, role in sustaining armed conflict and undermining postconflict economic recovery. By providing a means to launder and transfer the billions of dollars these enterprises generate for combatants and criminal organizations, the mostly unregulated international financial system facilitates these transactions, which often bridge the divide between not quite legal and manifestly illegal, further complicating attempts at regulation.

Severing or restricting the financial transactions between combatants and their support network may be a significant means of denying them the ability to replenish arms and matériel and pay soldiers, thereby disabling their ability to prolong civil wars and provide a disincentive for disrupting peace initiatives.

Armed groups may not necessarily seek financial gain as an end in itself; at the most fundamental level, these financial flows represent the profits of activities undertaken to finance combatant activities, including the procurement of needed arms, matériel, and services.

This section is primarily concerned with money laundering, or the process of legitimizing profits from local and global illegal activities by disguising the funds' illegal origin. It also examines financial flows from corruption and diaspora remittances, both of which may themselves be laundered.

I. Money Laundering

It is estimated that U.S.\$1–\$1.5 trillion in illicit profits are laundered through global banking and nonbanking institutions every year.²¹ Once laundered, these funds

can be used within the legal or open economy. Beyond curtailing the means of openly profiting from illegal activities, tracking these cash flows is an important means of successfully prosecuting criminals and/or armed groups and an opportunity to correct the distortion that these transactions have on legitimate trade flows, government economic data, and international financial stability.

Many illicit financial transactions occur through legitimate international financial institutions, most often without, but at times with the knowledge if not complicity of these banking institutions. Several countries, notably in the Caribbean and the South Pacific, have used lax financial regulations and the promise of offshore havens as a means of boosting their economies. Although nontransparent regulations are sometimes legal, they facilitate money laundering and therefore attract those with illegitimate purposes—particularly when combined with an unwillingness or refusal to cooperate with regulatory or law enforcement officials from other jurisdictions. While the international financial system offers the potential for regulation and control, many transactions occur outside regulated financial institutions through currency exchange houses and money remittance businesses, including casinos and Internet gaming. Parallel financial systems and informal networks offer another means of laundering funds. Hawala, an example of this type of system, is believed to transfer billions of dollars outside regulated systems despite being illegal in most countries, and has no permanent transactions records, further complicating regulation.

Parallel economies, where money is exchanged outside legitimate institutions, are flexible and very responsive to change. They are also extremely heterogeneous, reflecting different local circumstances and the linkages between a variety of actors and intermediaries.

Combatants and those with whom they do business often use the same laundering agents as do organized criminal networks and narcotics traffickers. Thus,

²¹ Trifin J. Roule, "Stepping Up the Pressure on the Money Launderers," *Janes Intelligence Review*, August 2001, p. 10.

targeting these laundering agents reduces the available channels for combatants and their business partners to launder funds, making such transactions more difficult.

Summary of the Current Regulatory Environment

The regulation of illicit financial flows and financial crimes is already a high priority among international and national legislators in the fight against transnational criminal organizations and narcotics cartels. As the Global Corruption Report 2001 observes:

"Since 1999, pressure to control money laundering has come from all quarters, including international agencies; regulators (the main thrust of regulatory efforts has been to stop dirty money entering the banking system, and to make sure it is traceable if it does); prosecutors, acting as the world's financial policemen; and private sector multinationals acting voluntarily, influenced by concerns about reputation risk and the desire to avoid tough regulatory and criminal powers."²²

International legal frameworks to combat money laundering are supplemented by peer review, including mutual legal assistance and proceeds of crime confiscation, which is intended to ensure greater compliance and consistent standards.²³ Although international and national legislation and policies targeting financial crimes are highly evolved, their evolution is not equal across all states or regions. At the enforcement level, banks have been required—on a voluntary basis, but promoted by heavy fines in the United States—to set up software able to screen transfers and detect targets. This move has yet to reach a global level, especially among offshore banks, but also among European and Asian banks.

Measures to combat international terrorism offer yet another regulatory framework for the control of finances sustaining civil war. The utility of these instruments as a means of conflict resolution and prevention has been less tested, though targeted financial sanctions and asset seizures applied against several rebel groups and governments have met with mixed results.

International

The international regime against money laundering, comprising global and regional conventions, has been instrumental in shaping criminalization at a national level.

- The UN Convention Against Transnational Organized Crime (2000) (discussed above), under Article 6, requests member states to enact legislation covering the laundering or concealment of money or other proceeds of crime, including "any form of property which is the proceed of crime...and any form of transfer or conversion of the property for the purpose of concealing its true origin." Simple acquisition or possession is also included, if the person in possession knows that the property is the proceeds of crime. Under Article 8, corruption must be criminalized where there is a link to transnational organized crime. These links include offering, giving, soliciting, and accepting any form of bribe, undue advantage, or other inducement, where the proposed recipient is a public official and the purpose of the bribe relates to his or her official functions."²⁵
- Following September 11, 2001, efforts to combat international terrorism—particularly the suppression of financing—have received renewed interest on the part of the international community. The UN International Convention for the Suppression

²² Michael Levi, "Money Laundering: Private Banking Becomes Less Private," in Robin Hodess, ed., *Global Corruption Report 2001*, (Berlin: Transparency International, 2001), p. 206.

²³ *Ibid.*, pp. 208–209.

²⁴ UN Convention Against Transnational Organized Crime (2000), art. 6, via <http://undcp.org/palermo/convmain.html> (April 12, 2002).

²⁵ *Ibid.*, art. 8.

of the Financing of Terrorism (December 9, 1999)²⁶ provides a key multilateral legal instrument, as it requires states to criminalize the provision or collection of funds for acts defined as offenses by previous antiterrorism conventions. In addition, states are required to provide legal assistance with investigations and extradition regardless of their bank secrecy laws. Subscribing states must cooperate with one another in investigations and extraditions when these offenses are committed. The convention may have applications for the control of financing for civil wars, especially from diasporas located in OECD countries.

- The Egmont Group of Financial Intelligence Units (FIUs) is an forum for the specialized government agencies of currently fifty-eight countries for dealing with the problem of money laundering. FIUs, which serve an intermediary between the private and governmental sectors, have centralized transaction disclosure systems and enable the rapid exchange of information between financial institutions and law enforcement within or between jurisdictions. Egmont was established for FIUs to improve support to their respective national anti-money-laundering programs through information sharing, improving the expertise of staff, and improving communication among FIUs, through a secure website. The group is organized into a series of working groups, the chairs of which are responsible for its overall management. Overwhelmed by the growth in the membership, there is currently a proposal to formalize a "coordination committee."²⁷
- The 1988 UN Convention Against Illicit Traffic in Narcotic and Psychotropic Substances (the 1988 Vienna Convention), examined in greater detail below in the section on narcotics, together with the recent UN Convention on Organized Crime, is the most global instrument. It called on states to establish or strengthen regional and subregional enforcement mechanisms and made the laundering of drug proceeds an international criminal offense.

Like the Convention on Organized Crime, it is binding under international law for ratifying countries (unlike the Financial Action Task Force on Money Laundering [FATF]), but deals only in part with money laundering, though specifically with legal and criminal enforcement.

- UN-imposed sanction regimes, as noted above in the section on illicit small arms, have become an important tool for promoting international peace and security. Yet their application has suffered from poor design, inadequate compliance, monitoring, and enforcement, unintended humanitarian consequences, and economic damage to third states, while their results have even proved counterproductive. These experiences have resulted in a solid empirical base from which to draw lessons of what has and has not worked. In response, the concept of "targeted sanctions" was developed. Targeted financial sanctions use of financial institutions and instruments, including asset freezes, blocking of financial transactions, or financial services, to apply coercive pressure on government officials, elites who support them, or members of non-government entities in an effort to change or restrict their behavior. Building on the Interlaken Process, the Swiss Government, the UN, and the Watson Institute recently completed "a manual for drafting Security Council resolutions imposing targeted financial sanctions, and a guide for States in establishing the legal and administrative machinery and procedures to implement targeted financial sanctions at the national level."²⁸

Regional

Major regional initiatives to combat money laundering have been initiated in East and South Africa, South America and the Caribbean, and the Asia-Pacific region. Regional cooperation is significantly advanced in the Europe Union, in part due to strides made under the auspices of European integration, and in the Americas, where early progress against narcotics

²⁶ UN International Convention for the Suppression of the Financing of Terrorism (1999), via <http://www.un.org/law/cod/finterr.htm>.

²⁷ OECD, via http://www1.oecd.org/fatf/pdf/eginfo-web_en.pdf.

²⁸ Swiss Confederation, UN Secretariat, and Watson Institute for International Studies, "Targeted Financial Sanctions: A Manual for Design and Implementation," Brown University, 2001.

measures has developed into a strong regional system complemented by participation in international regimes.

- The Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Other Serious Offenses, of the Organization of American States/Inter-American Drug Abuse Control Commission (OAS/CICAD) (as amended in Washington, D.C., October 1998),²⁹ deal with both legal/criminal and financial/preventive matters.³⁰ The 1998 amendments bring the regulations in line with, and in some case surpass, the forty recommendations of the FATF (see below). There is no capacity to monitor compliance with the regulations by member states.
- The Council of Europe's Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds of Crime (the "Strasbourg Convention" of 1990, entry into force 1993) aims to "facilitate international cooperation and mutual assistance in investigating crime and tracking down, seizing and confiscating the proceeds thereof. The Convention is intended to assist States in attaining a similar degree of efficiency even in the absence of full legislative harmony. Parties undertake in particular: to criminalise the laundering of the proceeds of crime and to confiscate instrumentalities and proceeds (or equivalent property value). The Convention provides for: forms of investigative assistance (for example, assistance in procuring evidence, transfer of information to another State without a request, adoption of common investigative techniques, lifting of bank secrecy, etc.); provisional measures: freezing of bank accounts, seizure of property to prevent its removal; measures to confiscate the proceeds of crime: enforcement by the requested State of a confiscation order made abroad, institution by the requested State, of domestic proceedings leading to confiscation at the request of another State."³¹
- In 1989, in response to the growing threat of narcotics, the Group of Seven (G-7) nations created the FATF, an intergovernmental body that combats money laundering through the development and promotion of national legislative and regulatory reforms. In 1996 the G-7 expanded the FATF's mandate to include all serious crimes and to include countries outside the OECD. Today the FATF comprises twenty-nine countries and has issued forty recommendations on accounting standards, mandatory reporting of suspicious or large financial transactions, elimination of anonymous accounts, and the like. The FATF was long faulted for failing to censure countries that routinely permitted—if not encouraged—the laundering of illicit profits through their domestic financial institutions. The influence of the FATF, initially a body limited to the most developed countries, is increasingly global in nature. In 2000 the FATF issued a "blacklist" of fifteen "noncooperative" countries that were inadequately combating money laundering. In 2001 the FATF took the unprecedented step of demanding that Russia, the Philippines, and Nauru pass money-laundering legislation or face sanctions, including delaying the processing of international financial transactions, and withholding International Monetary Fund (IMF) and World Bank loans.
- The Caribbean Financial Action Task Force (CFATF) was established in order to develop a common approach among Caribbean and Central American states to the laundering of drug-trafficking proceeds. The CFATF formulated nineteen recommendations, which have specific relevance to the region and complement the forty recommendations of the FATF.³² The main objective of the CFATF is to achieve effective implementation of and compliance with its recommendations to prevent and control money laundering. The secretariat monitors and encourages implementation of the Kingston Ministerial Declaration (1992),

²⁹ Organization of American States/Inter-American Drug Abuse Control Commission (OAS/CICAD), http://www.cicad.oas.org/en/legal_development/legal-regulations-money.pdf (January 14, 2002).

³⁰ International Monetary Fund, <http://www.imf.org/external/np/ml/2001/eng/042601.pdf> (January 14, 2002).

³¹ Council of Europe, <http://conventions.coe.int/treaty/en/cadreprincipal.htm> (January 14, 2002).

³² Caribbean Financial Action Task Force, <http://www.cfatf.org/eng> (January 15, 2002).

which affirmed commitment to implement the forty FATF and nineteen CFATF recommendations, the OAS model regulations, and the 1988 UN convention.

- As part of the implementation of the 1997 EU Action Plan Against Organised Crime, on December 3, 1998, "the Council adopted a joint Action on money laundering and the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime. This joint Action sets out a framework for an enhanced action against money laundering through different means. These included a common EU approach towards reservations under the Strasbourg Convention, possibilities for identification and tracing of proceeds in national law when requested by another member state, preparation of user-friendly guides for practitioners, the possibility of satisfying foreign requests in an alternative way when its not possible to execute these in the manner as requested, minimisation of the risk of assets being dissipated and training in relation to best practice for all practitioners, including the judiciary."³³

National

Combating money laundering, as with organized crime in general, requires simultaneous action at different levels. National legislation and practices against money laundering are a critical—if not fundamental—link if such action is to be effective.

- The United States, as the first country to criminalize money laundering, has been instrumental. The National Money Laundering Strategy for 1999 (based on the Money Laundering and Financial Crimes Strategy Act of 1998) calls for "(1) designating high-risk money laundering zones at which to direct coordinated law enforcement efforts; (2) rules requiring the scrutiny of

suspicious activities in a range of financial institutions, from money transmitters to broker-dealers and casinos; (3) submission of the Administration's Money Laundering Act of 1999, to bolster the domestic and international crimes—from arms trafficking to public corruption and fraud—subject to U.S. money laundering prosecutions; (4) a 90-day review of measures that would restrict the use of correspondent accounts in the United States by certain offshore or other institutions that pose money laundering risks; and (5) intensified pressure on nations that lack adequate counter-money laundering controls to adopt them."³⁴ Additionally, it calls for establishment of supervisory and regulatory actions (e.g., increased reporting, and external and internal auditing) in response to specified jurisdictions that fail to make progress in implementing effective international money-laundering standards.

- In 1999 the United States and the United Kingdom issued financial advisories concerning the failure of Antigua and Barbuda to seriously address the problem of money laundering and to adequately supervise financial institutions within their jurisdictions. Inadequate legislation threatened to "create a 'haven' whose existence [would] undermine international efforts of the United States and other nations to counter money laundering and other criminal activity." The U.S. advised financial institutions to give "enhanced scrutiny to all financial transactions routed into or out of Antigua and Barbuda." The issuance of these advisories demonstrated that the United States, the UK, and other nations will take tough, concrete action against noncompliant governments.³⁵
- The new Swiss anti-money-laundering law (1998) is considered one of the most stringent in the world. The law, which applies to banks and financial intermediaries alike, mandates the exchange of information with the government

³³ Johan Vlogaert, "Fighting Economic Crime—Action Taken in the European Union," *Journal of Financial Crime*, vol. 9, no. 1 (September 2001), pp. 22–25.

³⁴ U.S. Department of State, International Narcotics Control Strategy Report 1999, Washington, D.C., March 2000, p. 39, via <http://www.icresource.com/WGNS/WGNSDOC/PDFWGNS/MoneyLaunderi%C9gStudyUSState.pdf> (September 3, 2002).

³⁵ *Ibid.*, p. 1.

when potentially criminal or otherwise suspicious transactions are detected. Violation of the obligation carries a fine and/or penal and administrative sanctions. Financial institutions must register either with a recognized self-regulatory organization or with a special federal government control office. The law has been difficult to implement due to the volume of assets held by Swiss financial institutions and a possible lack of cooperation from financial intermediaries. Additional problems include the lack of a well-defined notion of "founded suspicions"; the omission of certain categories of financial agent, including traders in primary goods; problems with mutual legal assistance between states; understaffing; and issues of cantonal vs. federal jurisdiction for money laundering (soon to be addressed through judicial reform).³⁶

Codes of Conduct

- In 2000, eleven international private banks, representing one-third the world's private banking funds, agreed, with the participation of Transparency International, to the Wolfsberg Principles. These voluntary principles, initiated in response to reputational damage over accusations of money laundering, commit the banks to a common global standard for their private banking operations, including customer "due diligence," identifying the source of funds, monitoring, and voluntary reporting of potentially illegitimate transactions to responsible authorities. Banks are also required to establish an "adequately staffed and independent department responsible for the prevention of money laundering."³⁷ Assets may be blocked subject to local laws and regulations. Critics of the principles argue that they do not adequately address existing questionable accounts. Other banks have expressed an interest in committing to the principles. Reputational concerns provide a strong incentive for compliance.³⁸

- The Bank for International Settlements (BIS), which is owned by the world's major central banks, established in 1988 the Basle Committee on Banking Regulations and Supervisory Practices to prevent the criminal use of the banking system for the purpose of money laundering. The BIS encourages industry self-regulation, but recognizes that it is not itself sufficient. It has recommended "special attention" to nonresident customers channeling funds through offshore accounts. Nonetheless, clear guidelines on identifying money laundering remain underdeveloped.

II. Corruption

The most common form of corruption is bribery and illicit benefits to government officials—though private individuals may also be involved—from legitimate and/or criminal sources. Depending upon its character, corruption is not necessarily destabilizing nor clearly illegal, and in fact is an integral part of many relatively stable political systems.

In other cases, corruption may destabilize national legal systems, promote economic mismanagement, deter foreign investment, and undermine political legitimacy. Over time, it may lead to "the radical privatization of the state, the criminalization of the behavior of power-holders, and even the transformation of factional struggle . . . into armed conflict."³⁹ Group exclusion from benefits of corruption networks, sudden changes in the distribution system, or failure to observe the rules of reciprocity can be strong incentives for rival elites to capture benefits through force. Lack of transparency and accountability in the use of taxes, multilateral assistance, or other forms of state revenue can contribute to the general population's lack of confidence in government, and hence its legitimacy. The expression of marginalized groups' grievances can take a violent turn as corruption erodes and undermines public faith in the state and the efficacy of its institutions of conflict management,

³⁶ Global Corruption Report 2001, p. 207.

³⁷ Wolfsberg Anti-Money Laundering Principles, via http://www.transparency.org/.../2000/wolfsberg_principles.html (April 7, 2002).

³⁸ Global Corruption Report 2001, p. 211.

³⁹ Jean-François Bayart, Stephen Ellis and Beatrice Hibou, *Criminalization of the State in Africa*, (Oxford: James Currey and Bloomington: Indiana University Press, 1999), p. xiv.

reduces the rate of economic growth and investment, and aggravates inequalities.

Corruption facilitates the commission of other forms of illicit activity, including money laundering, narcotics and arms trade, and the establishment of illegal and legal "front" ventures engaged in these activities. As such, it is often essential to the ability of armed groups to receive uninterrupted income and resource flows from illicit sources. The existence of state corruption can also make a country more vulnerable to infiltration by armed groups with an illicit socioeconomic agenda by facilitating a link between the local trafficking practiced by these groups and the transnational legitimate corporations and organized crime networks that provide access to international markets and additional illicit resources.

Corruption also facilitates the continued growth of transnational crime and international criminal organizations. By offering bribes to political actors, organized crime groups operate major transport networks dependent on the aid of corrupted state security forces—police and military—as well as customs and immigration officials. As many of these individuals are poorly paid in their official jobs, the incentive to participate is huge. Through cooperation between corrupt government officials and police, large criminal syndicates and local armed groups have the capacity to strongly influence or even "capture" entire governments in developing countries or conflict zones. Beneficiaries of corruption may seek to prolong war if peace threatens their vested interests.

Countries emerging from war are more vulnerable to the corruption practiced by armed groups and international counterparts. Peace accords may inadvertently institutionalize corrupt economic and political processes that emerged during conflict. Public perception of conflict-sourced corruption in such countries tends to delegitimize formation of new governments in the eyes of the public, and can substantially impair the ability—or will—of a democratic government to maintain the rule of law.

Summary of the Current Regulatory Environment

Corruption has gained an increasing place on the international agenda in the past five years. Intergovernmental agencies, national governments, multilateral corporations, and civil society organizations have begun working together to combat its influence in business and political spheres. Companies are slowly beginning to take a more active stance against corruption in the countries where they do business, establishing "corporate integrity pacts" through which they agree to abide by common voluntary rules and guidelines. These efforts are supported by Transparency International, which seeks to increase government and corporate accountability and has raised the profile of government complicity through both its annual Corruption Perceptions Index (initiated in 1995), which ranks nations according to the perceived levels of corruption in each country's public service and government, and its more recent Bribe Payers Perceptions Index (initiated in 1999), which ranks countries by the degree to which their corporations are perceived to pay bribes abroad.

International

- The UN Declaration Against Corruption and Bribery in International Commercial Transactions (1996) calls on member states to agree to criminalize bribery, prohibit tax deductions for bribers, and encourage the development of business codes of conduct.

Regional

- The Council of Europe's 1999 Criminal Law Convention on Corruption is the most ambitious anticorruption treaty to date addressing supply and demand sides of corruption as well as criminalizing trafficking in influence (that is, using positions of power to facilitate or expedite transactions, contracts, licensing, etc.) and setting explicit standards for corporate criminal liability. The Council of Europe protocol known as the Group of States Against Corruption (GRECO) promotes the

implementation of legal and policy measures to combat corruption through mutual evaluation by member states and has been adopted by the U.S. government.⁴⁰

- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (signed 1997) entered into force on February 15, 1999.⁴¹ The convention obliges "states that are parties to make it a crime under their national laws for their citizens or commercial enterprises to bribe foreign public officials in the conduct of international business. It requires that states have laws that prohibit the activities of those who offer, promise, or pay a bribe to secure a commercial advantage."⁴² The convention is a "supply side" agreement that seeks to eliminate the payment, not the receipt, of bribes. Transparency International regards the convention as a turning point in the international fight against corruption, but one that depends on effective ratification and implementation. Transparency International has published reports on the status of the convention in several signatories.⁴³ By May 2000 it had been ratified by only twenty of the thirty-four signatories and no prosecutions had been made.⁴⁴
- In 1996 the OAS adopted the first international convention targeting corruption, the Inter-American Convention Against Corruption, which entered into force March 20, 1997. This convention is more encompassing than the U.S. Foreign Corrupt Practices Act (see below), and the OECD convention. Demanding signatories to criminalize bribery, it targets public officials (the demand side of bribery) as well as multinationals (the supply side) and provides for international cooperation in

the gathering of evidence, extradition, and asset seizure. The convention has been endorsed by Transparency International and the Inter-American Bar Association.

National

- The U.S. Foreign Corrupt Practices Act (FCPA), passed in 1977, prohibits U.S. individuals or companies from making corrupt payments to foreign officials in order to obtain or keep business ("facilitation payments"). Since 1998 the FCPA has also applied to "foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States." After adoption of the FCPA, U.S. companies voiced concern that "they were operating at a disadvantage compared to foreign companies who routinely paid bribes and, in some countries, were permitted to deduct the cost of such bribes as business expenses on their taxes." In response, the U.S. government began negotiations within the OECD for major trading partners to enact legislation similar to the FCPA. This led in 1997 to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The United States ratified this convention and enacted implementing legislation in 1998.⁴⁵

III. Diaspora and Migrant Remittances

Diaspora populations are often an important part of the parallel economy in areas where there are influential external political networks. Remittances can be a positive and indeed vital source of revenue for developing countries when used for subsistence, state

⁴⁰ Council of Europe, <http://www.legal.coe.int/economiccrime/default.asp?fd=general&fn=Inse.htm>.

⁴¹ OECD Online, <http://www1.oecd.org/daf/nocorruption/20nov1e.htm>.

⁴² OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions Fact Sheet, released by the Bureau of Economic and Business Affairs, U.S. Department of State, March 1, 2000.

⁴³ Australia, Germany, Hungary, Mexico, Slovakia, Spain, Switzerland, and the United Kingdom. Available at <http://www.transparency.org/activities/oecd.html> (January 11, 2002).

⁴⁴ Jane Nelson, *The Business of Peace: The Private Sector as a Partner in Conflict Prevention and Resolution*, (London: Prince of Wales Business Leaders Forum, International Alert, and Council on Economic Priorities, 2000), p. 102.

⁴⁵ Foreign Corrupt Practices Act Antibribery Provisions, <http://www.usdoj.gov/criminal/fraud/fcpa/dojdocb.htm>.

building, and potential modernization, but they can also lead to a decline in stability and fuel armed conflict when used to finance the acquisition of arms and matériel for belligerents. The scale of diaspora and migrant support to armed groups has greatly increased since the end of the Cold War, due in large part to globalization: patterns of population flows, access to communication technology, the reach of mass media, and more affordable transportation.⁴⁶

Many armed groups have established sophisticated transnational operations in diaspora population centers, engaging in fundraising and propaganda. Although contributions may be coerced in some cases, armed groups also receive voluntary contributions, and operate an array of fronts and sympathetic organizations, including nonprofit cultural, religious, and other community and social service organizations. As these support networks become more sophisticated, certain groups, such as the Liberation Tigers of Tamil Eelam, have expanded to include legitimate businesses, financial flows from which are more difficult to track and criminalize. As a result of such activities, many armed groups are financially independent, no longer having to rely on foreign state sponsorship in order to prosecute their violent causes.

Summary of the Current Regulatory Environment

Unfortunately, the regulation of fundraising activities and related illicit financial flows from diaspora and migrant communities to combatants is difficult. The open societies of the global North, where most diaspora and migrant populations are located, make them more susceptible to penetration by rebel organizations and impede their ability to effectively respond. As governments criminalize financial transfers from the formal sector, these transactions are going underground through use of Hawala systems and by concealing funds in otherwise legitimate businesses. As armed groups become outlawed, their operations are easily shifted to new front organizations, requiring constant vigilance on the part of governments. Many governments lack adequate resources to track armed groups whose operations do not directly pose a threat to their

national interest, providing greater leeway for these operations to continue uninterrupted.

While national and multilateral regulatory efforts do not specifically address the relationship between diaspora and migrant remittances, multilateral conventions on illicit financial transactions and money laundering either do not address informal transactions or are quickly outdated as armed groups shift to new and increasingly complex methods of circumventing regulators. Nonetheless, when a host state cracks down on an armed group and its support network, it may persuade sympathizers that aligning themselves with the group and engaging in criminal acts on its behalf will not go unpunished, and are not worth the potential costs. If safe to do so, these sympathizers may even turn against the group.

Prior to September 11, 2001, many host countries had hitherto adopted a lax attitude toward overseas support networks, permitting their operations provided the groups did not violate the laws of the host state. Following September 11, there is greater awareness by the United States, Canada, and the European Union, as hosts of these populations, of the need for criminalizing not the armed and terrorist groups, but their individual members. Nonetheless, many outlawed groups have been able to continue their overseas support operations through as-yet-unrecognized front and sympathetic organizations.

The terrorist attacks of September 11 have also encouraged greater attention toward suspect financial transactions and informal transfer services. Alleged use of Somalia as a training ground by Al-Qaeda prompted the United States to freeze funds from Al-Barakaat, Somalia's largest financial transfer company. Such remittances comprise the largest source of income to Somalis; the recent U.S. action has cut this flow by half, disproportionately affecting civilians. But while this underscores the problems of using a blanket approach to target a small percentage of transfers, it is also likely that alternative Hawala channels will fill the void, demonstrating the challenge faced by regulators attempting to design effective responses.

⁴⁶ Rohan Gunaratna, "Nature, Amount, and Quality of Diaspora and Migrant Support for the Liberation Tigers of Tamil Eelam and Their Impact on the Sri Lankan Conflict," International Peace Academy, unpublished draft.

- The UN International Convention for the Suppression of the Financing of Terrorism (1999) applies to the provision or collection of funds used or intended to carry out acts that "cause death or serious bodily injury to any person not involved in armed conflict." Involvement or complicity in the collection of such funds is an offense whether or not the funds are actually used to carry out the proscribed acts. The convention requires state parties "to take appropriate measures, in accordance with its domestic legal principles, for the detection and freezing, seizure or forfeiture of any funds used or allocated for the purposes of committing" such acts.⁴⁷ Because of its wide definition of "terrorism," this convention applies to murders or physical violence perpetrated against noncombatants during war, though arguably only by nonstate actors, not acts committed by the state.
- In December 2001 the U.S. Treasury Department and Interpol announced their intention to establish an international terrorist financing database. "The Interpol database would consolidate international and national lists of terrorist financiers and make it available to police around the world to prevent the flow of funds to terrorist groups and to assist in criminal investigations."⁴⁸

⁴⁷ UN International Convention for the Suppression of the Financing of Terrorism (1999), <http://untreaty.un.org/english/tersumen.htm#4> (February 27, 2002).

⁴⁸ Interpol, <http://www.interpol.int/public/icpo/pressreleases/pr2001/pr200137.asp> (February 27, 2002).

Policy Responses to Humanitarian Aid Diversion⁴⁹

Humanitarian aid, including food and nonfood items, constitutes a significant resource flow to areas affected by civil wars. While many international economic activities may stop as a result of conflict, the international community generally attempts to provide assistance to populations in distress through the work of governmental, intergovernmental, and nongovernmental agencies.

Yet humanitarian aid may also sustain conflict, both directly as an instrument of war (denial or manipulation of aid), and indirectly by increasing the availability of resources to prosecute conflicts, especially when few alternative sources of revenue exist. This latter category includes "taxation (for example, import licenses, visas, transport charges), extortion, protection rackets, dual-currency exchange, economic activities (for example, rents, salaries, local purchases, etc.), black-market profiteering, funding of NGOs as fronts for warlords, and through fungibility (i.e., 'the substitution of international aid for local public welfare responsibilities, thus freeing resources for combat and often leading local populations to shift from productive activity to pursuing aid and in the process become more dependent and politically compliant')." ⁵⁰ Aid convoys may be looted; vehicles, radio equipment, and local trained staff hijacked; and access agreements, airstrips, and cease-fires misused.

Summary of Current Policies and Practices Concerning Humanitarian Aid Diversion

The "regulation" of aid diversion by belligerents aims to minimize their gains from relief operations. (This aspect is part of a general debate over whether aid to civilians in conflict areas is doing more harm than

good.) Rather than being subject to discrete governmental or intergovernmental regulations, aid diversion is addressed through the individual policies and practices of donor and humanitarian agencies. In recent years, relief agencies have strived to regulate their conduct in order to minimize the negative impacts of their actions, most notably that of providing resources to belligerents "at their doorstep."

International humanitarian law provides an evolved legal framework governing access to victims and the denial of relief. The denial of relief can constitute a war crime, a crime against humanity, or genocide. Under international humanitarian law, the denial of humanitarian assistance during armed conflicts can constitute a war crime if it is exercised against protected persons (i.e., civilians, prisoners, and prisoners of war) through: (a) willful killing or murder; (b) torture, inhumane treatment, willfully causing great suffering or serious injury to body or health; or (c) starvation. Even beyond the context of an armed conflict, international law provides a regulatory framework to address the denial of humanitarian aid in relation to crimes against humanity (acts committed against any civilian population in a widespread or systematic manner, as well as based on a policy of a state, an organization, or a group) and genocide.⁵¹ The International Criminal Court will be an appropriate institution to prosecute and provide judgment on some of these matters. In the context of the political economy of civil wars, regulation regarding denial of aid may be one means of addressing attempts to maintain a situation of food scarcity in order to set artificially high prices in turn to extort local populations, as well as other predatory activities (e.g., looting of relief convoys, whether conducted for political, military, or commercial purposes).

Combating the diversion of aid, however, is not specifically addressed by national or international regulatory

⁴⁹ See M. Anderson, *Do No Harm: How Aid Can Support Peace—or War* (Boulder and London: Lynne Rienner, 1999); A. De Waal, *Famine Crimes: Politics and the Disaster Relief Industry in Africa* (Oxford: James Currey, 1997); and A. Roberts, *Humanitarian Action in War*, IISS Adelphi Paper, No. 305 (IISS/Oxford: Oxford University Press, 1996).

⁵⁰ Overseas Development Institute, abstract for J. Prendergast, *Frontline Diplomacy: Humanitarian Aid and Conflict in Africa* (Boulder: Lynne Rienner, 1996), <http://www.odi.org.uk/hpg/warecons/abstracts/prendergast96.html> (January 11, 2002).

⁵¹ C. Rottensteiner, "The Denial of Humanitarian Assistance as a Crime Under International Law," *International Review of the Red Cross* no. 835 (1999): 555–582.

regimes. It remains in the arena of ad hoc policies and practices of humanitarian relief providers based on the specific operating environment, for example, policies established for Operation Lifeline Sudan, the DRC, and Liberia. Efforts to curtail the diversion of relief have mostly been pursued through codes of conduct agreed upon between relief agencies and warring parties, as well as through public denunciations of violators and/or the temporary withdrawal of aid by relief agencies. The use of humanitarian codes of conduct to promote greater respect for international humanitarian law by belligerents may be of practical relevance to other resource flows, most notably to those that derive from licit business activities, as these codes include a mix of self-regulation and conditionality. Research by the Overseas Development Institute (ODI) shows, however, that despite some progress, conditionality remains the least effective area for codes of conduct. These voluntary initiatives cannot fill the vacuum of regulation or impose rules on warring parties.⁵²

The 1994 Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, which was drafted by Save the Children, Oxfam, the World Council of Churches, the Catholic Relief Service, and others, is intended to serve as a framework whereby belligerents agree to respect humanitarian principles and aid agencies to not interfere in the conflict, but the code does not specifically address aid diversion. Annex 1.3 does provide that relief supplies should "not be subject to importation tax, landing fees or port charges," nor should the reexportation of relief equipment be restricted, but these recommendations apply to governments. The code does not specifically address armed groups.

The UN humanitarian agencies, under the lead of the Office for the Coordination of Humanitarian Affairs (OCHA), are currently undertaking to establish a common Terms of Engagement with Armed Groups. This policy document would attempt to address the types of problems and dilemmas that relief organizations might encounter in dealing with armed groups

and operating in areas under their control, including diversion of food aid, taxation, and misuse or appropriation of "humanitarian infrastructure." The document will not set a general policy but will offer guidelines for responding that can then be tailored to the individual agencies' needs and the specific context in which they are operating.⁵³

In many cases, the coercive intervention of foreign governments or normative pressure of civil society movements are more appropriate. Regulation in this domain takes two main forms. First, the negotiated or forceful deployment of a humanitarian protection force (e.g., operation "Restore Hope" in Somalia, or the UN Protection Force [UNPROFOR] in the former Yugoslavia). In this case, it is generally the UN Security Council that attempts to regulate the flow of humanitarian resources and prevent diversion to warring parties by providing a mandate to an international military force to protect humanitarian operations, in particular humanitarian convoys. Second, non-legally binding codes of conduct designed and upheld by relief agencies themselves (e.g., the International Committee of the Red Cross [ICRC] and NGOs) or in agreement with belligerents (the Operation Lifeline Sudan [OLS] ground rules). These codes of conduct have been designed as a response to the proliferation of NGOs since the 1980s, a growing awareness that some operations were fueling conflict, and the "vacuum of regulation" confronting large numbers of NGOs operating in stateless environments offering no protection for both agencies and beneficiaries from abuses of international humanitarian law. Occasionally, relief agencies have withdrawn from specific areas and shifted their work to advocacy and the denunciation of abuses (e.g., MSF in Ethiopia). Similarly, donors have attempted to reduce the flow of resources, but also to exercise a form of extreme boycott/isolation of the armed movement or authority, by curtailing funds to relief agencies and asking them to leave the area (e.g., the Department for International Development [DfID] in Sierra Leone in 1997 vis-à-vis the authorities of the Armed Forces Revolutionary Council [AFRC]).

⁵² ODI, "Aid Policy, Politics, and Principles," <http://www.odi.org.uk/hpg/appp/index.html> (September 3, 2002).

⁵³ Sylvia Danailov, UNICEF, Communication with Author [jhs], January 15, 2002.

If a regulation of aid can promote a greater respect for victims and minimize aid diversions by belligerents by providing one more channel to publicize and implement international humanitarian law, its ultimate success very much depends upon the overall political and military climate in which it is deployed—between, but more importantly within armed movements. Often, this is why an international force of protection is deployed. Growing awareness of the limitations of mandates restricted to relief provision rather than peace enforcement and the protection of civilians—

clearly demonstrated in Bosnia in the early 1990s—has led to more comprehensive “humanitarian interventions” in recent years (e.g., Kosovo).

A related issue is the use of NGO or relief organization status as a front for warring parties to channel resources and benefit from tax exemptions (an issue currently being addressed by the governments of the United States and the UK with regard to antiterrorism legislation).

Policy Responses to Narcotics Trafficking

Proceeds from international narcotics production and, more importantly, trafficking are a major source of financing for illegal arms trafficking by belligerent groups and one of the strongest motivating forces behind their association with, and the global expansion of, transnational criminal networks. Almost all transnational criminal operations are engaged in narcotics trafficking and in the laundering of its proceeds. Countries in conflict or in political and economic transition are a preferred base for international operations, given their weak institutional infrastructure and the virtual absence of enforcement. Narcotics are one of the world's largest illicit trading commodities and provide the proceeds for bribery, arms trafficking, illicit capital flows, and more recently human trafficking, all of which are covered in this report. In addition to being a key source of financing conflict, the profitability of narcotics activities encourages corruption of both state and nonstate actors which may contribute to destabilization of producer and transit states alike.

Yet in most instances, narcotics growers are poor farmers faced with declining international prices for alternative, licit cash crops, or they may seek "a low risk means of ensuring survival in a high risk environment."⁵⁴ They are often provided life-sustaining loans on narcotics futures. Elsewhere, farmers may be coerced into cultivating coca and opium by and for the benefit of local military forces, armed groups, and drug cartels. Eradication efforts that do not adequately address this reality may undermine, if not worsen, already precarious livelihoods and may perversely increase reliance upon narcotics income.

The transnational nature of combating narcotics cartels has also generated a high level of international cooperation between drug cartels, other crime syndicates, and insurgent organizations. International narcotics

trafficking is one of the older, more sophisticated crime networks, highly responsive to market conditions, which has access to wealth and resources on par with major transnational corporations and governments. Like multinational corporations, they make use of "subcontractors, joint ventures and strategic alliances, use . . . offshore bank accounts, and sectoral diversification."⁵⁵ Many of the more recent supply and distribution systems, money-laundering mechanisms, and corruption strategies were developed from earlier systems to combat narcotics.

While cocaine is still the hard drug of choice in North America, it is rapidly being challenged by heroin, while the reverse has been true in European markets. Narcotics traffickers are also creating demands for different drugs in new markets—for example, Colombian heroin in Eastern Europe and increased cocaine sales with inflated prices in Russia. The shift toward synthetic drugs, especially methamphetamines, is an alarming trend, as these drugs are easier to make and distribute than plant-based drugs, but more difficult to control, as their precursors continually change and they lack the stigma associated with drugs like heroin or cocaine.

Summary of the Current Regulatory Environment

Countries of Production

Most of the international regulatory focus has been on countries that produce narcotics. The "Golden Crescent," the border intersection of Afghanistan, Pakistan, and Iran, and the "Golden Triangle," the border intersection of Myanmar, Thailand, and Laos, are the two main regions of heroin production. Both have been affected by prolonged conflicts. In Afghanistan, despite the continuation by the present government of the Taliban's ban on poppy cultivation—and a further ban on buying and selling—cultivation is on the rise by struggling farmers facing starvation. In Burma, the national economy benefits from the trade and though the government makes public

⁵⁴ UNDCP, *World Drug Report 2000*, via http://www.undcp.org/adhoc/world_drug_report_2000/report_2001-01-22_1.pdf, p. 11.

⁵⁵ H. Richard Friman and Peter Andreas, introduction to Friman and Andreas, eds., *The Illicit Global Economy and State Power* (Boulder and New York: Roman and Littlefield, 1999), p. 7.

attempts to control and eradicate poppy cultivation, there is little incentive to stop the activity. Colombia, the major producer of cocaine and more recently heroin in the Western Hemisphere, has been the target of massive drug control efforts by the United States for decades (the Andean Ridge Initiative being the most recent strategy). Columbia's corrupt and inefficient judicial system has remained a problem. Other countries benefiting from the production of narcotics are Peru and Bolivia, huge producers of cocaine; India, producing huge quantities of both licit and illicit opiates; Pakistan, producing opium; and Jamaica, the largest Caribbean producer of marijuana.

Countries of Transit

Conflict zones create a supportive climate for trafficking drugs because they are out of the reach of national and international control systems, but they are only one stop along the routes to lucrative Western markets. Indeed, enforcement efforts during conflict may be an impossible task, placing an increased burden on bordering countries and other countries of transit. Iran's efforts to police its border with Afghanistan have been described as resembling a full-scale war, as military operations against traffickers who are better equipped and strongly determined are highly costly in terms of resources and human life. Turkey, situated as a geographic transit point from East to West, strongly emphasized the role of "terrorist organizations and organized criminal groups" in promoting narcotics trafficking. Nigeria, attempting to make the transition to democracy in a conflict-ridden continent, is the base for narcotics-trafficking gangs who control the sub-Saharan African drug market and who operate one of the world's most sophisticated global trafficking networks, moving heroin from Asia to Africa, Europe, and the United States, and cocaine from South America to Europe, Africa, and Asia. Brazil is another major transit country, moving cocaine from Bolivia, Columbia, and Peru to the United States and Europe.

Countries of Consumption

To date, most of the international regulatory focus has been on enforcement—on limiting and eradicating

narcotics in countries of production, with the more recent corruption regulations targeting countries of transit, as well as policing and criminalizing consumption. Critics have pointed out that in most countries, drug control policies have proven unsuccessful or limited in impact. The principal sources of demand—primarily North America (especially the United States) and Western Europe—have remained problematic, with uncoordinated regulatory policies and varying opinions on whether or not certain narcotics should be legalized.

Some feel that an outright ban on narcotics is not working and that many laws penalize the user more than the narcotics syndicates. If drugs were legalized they would be under the jurisdiction of government and the medical authorities and no longer solely in the hands of traffickers. Deregulation advocates also propose that money currently spent on enforcement could be more wisely allocated to treatment, and to preventing future drug abuse, moving from a law enforcement-dominated strategy to a public health-based strategy.

With regard to the link between narcotics and the prosecution of civil wars, while a policing strategy is clearly needed at the international level, delinking military involvement from counternarcotics efforts, including the demilitarization of areas of illicit cultivation (e.g., Colombia), has been proposed.

International

Many of the current international enforcement efforts are based on the three UN drug control conventions, which are mutually supportive and complementary. In most countries, drug control policies currently intended to comply with international conventions on drugs (1961, 1971, and 1988) have proven unsuccessful in countering the illicit drug trade, and to the contrary have contributed to its increase and have had damaging and counterproductive effects. The weakest links of the illicit drug chain (drug consumers, couriers, and rural populations involved in the cultivation of illicit drug-linked crops) have suffered a disproportionate amount of the negative consequences of drug control policies.⁵⁶

⁵⁶ Manifesto of the International Coalition of NGOs for a Just and Effective Policy on Drugs (Vienna 1998), via <http://www.encod.org/mane.htm> (April 19, 2002).

- The Single Convention on Narcotic Drugs (1961, amended in 1972 by protocol) combats drug abuse by coordinated international action seeking to limit possession, use, trade, distribution, import, export, manufacture, and production exclusively for medical and scientific purposes; and to combat drug trafficking through international cooperation to deter and discourage drug traffickers.⁵⁷
 - The Convention on Psychotropic Substances (1971) established an international control system for psychotropic substances, responding to the diversification and expansion of drug abuse; and introduced controls over a number of synthetic drugs according to their abuse potential and therapeutic value.⁵⁸
 - The UN Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances—also known as the 1988 Vienna Convention, intended to reinforce and supplement the 1961 and 1971 conventions—provides comprehensive measures against drug trafficking, including provisions against money laundering and diversion of precursor chemicals; and provides for international cooperation in the extradition of drug traffickers, controlled deliveries, and transfer of proceedings.⁵⁹
- of which is the imposition of sanctions “against narcotics traffickers, the entities they own or control, and those persons acting for them or supporting their narcotics trafficking activities.”⁶⁰ The Foreign Narcotics Kingpin Designation Act (1999) and the International Emergency Economic Powers Act [IEEPA] (1991, supplemented in 1996) prohibit U.S. persons from engaging in transactions, trade, and services involving foreign narcotics kingpins and derivative designees. The objective of both laws is to deny drug kingpins, their businesses, and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. businesses and individuals.
- “Harm reduction strategies” compose a significant element of drug control in Europe (the Netherlands, the UK) and Australia, but are becoming more commonplace in Canada, and to a lesser extent in the United States. These strategies seek to minimize the negative public health, criminal, and social consequences of drug use on both the individual and the community level, while recognizing that drug abuse is likely to continue. Such strategies do not necessarily seek to end drug use, nor are they a means of primary prevention. Although several early studies conducted in the Netherlands found that distribution of free, clean needles, access to methadone, and the like, had not decreased addiction, drug-related crime, or the spread of HIV, further studies indicate that harm reduction strategies have been successful over the last fifteen years in reducing the spread of HIV, and in alleviating other drug-related problems. Community resistance to harm reduction approaches remains a significant challenge, as they are commonly misperceived as encouraging drug use and, in the case of programs related to injection drug use, as encouraging violation of the law.⁶¹

Regional

- The Economic Community Of West African States (ECOWAS) Drug Control Unit (established in 1996) is tasked with formulating regional drug control programs in collaboration with specialized agencies and organizations (IGOs and NGOs) involved in drug control and preparing projects to deal effectively with drug control problems encountered by member states.

National

- The United States has an extensive statutory framework for illicit narcotics, a key component

⁵⁷ Single Convention on Narcotic Drugs (1961), via <http://www.incb.org/e/conv/1961/index.htm> (April 12, 2002).

⁵⁸ Convention on Psychotropic Substances (1971), via <http://www.incb.org/e/conv/1971/index.htm> (April 12, 2002).

⁵⁹ The UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, via <http://www.incb.org/e/conv/1988/index.htm> (April 30, 2002).

⁶⁰ US State Department, “Money Laundering and Financial Crimes,” <http://www.state.gov/g/inl/rls/hrcrpt/2000/959.htm> (April 30, 2002).

⁶¹ Center for Addiction and Mental Health, Virtual Resource for the Addiction Treatment System, “Harm Reduction,” <http://sano.camh.net/resource/harm.htm> (April 30, 2002).

Policy Responses to Trade in Natural Resources and Other Commodities⁶²

Trade in natural resources and other commodities often comprise a significant portion of the war economy.⁶³ Consisting of the licit and illicit trade in legal goods, as well as the trade in illicit goods, these transactions make up just a fraction of global totals, but provide a significant source of currency when bartering for weapons and matériel, a convertible medium of exchange for criminal networks laundering money, a means of supporting patronage networks, and in some cases, a lucrative means for elites to accumulate personal wealth, especially under cover of conflict. Combatants may seek to partner with—or predate upon—businesses engaged in the extraction and trade of natural resources. Some of these businesses are reputable multinationals, many are informal enterprises, while still others operate at the boundaries of legality, deliberately flouting national regulatory controls and international sanctions regimes.

Few civil wars are motivated solely by competition over the control of natural resources. Once started, however, conflict may be perpetuated by the presence of natural resources, not only by providing a steady revenue stream, but also by transforming the agendas and strategies of belligerents. Where peace initiatives threaten belligerents' control over natural resources, and thus their often violent income-earning activities, the incentive to impede peace initiatives and thereby prolong wars may increase.

The trade in natural resources may contribute to conflict in more diffuse ways as well. Beyond motivating or financing conflicts, the level of dependence on and "lootability" of a natural

resource⁶⁴ can also increase the vulnerability of societies to, and the risk of, armed conflict. The perverse developmental effects of resource-generated revenue may indirectly make a country more conflict-prone by generating socioeconomic grievances. As primary resources are a principal source of taxation and rents, the dominance of primary commodities in an economy often testifies to the mismanagement of its political economy and its relation of dependence vis-à-vis international markets and powers. The mismanagement or direct embezzlement of mineral rents by a corrupt ruling group and its business associates is an important component of grievances that should not be discounted as a factor in motivating and sustaining rebellions. Nonetheless, not all states dependent primarily on commodities are affected by armed conflicts, and much depends upon the domestic political culture and quality of institutions, as well as the behavior of foreign interests.

While much of this trade occurs through informal channels, it is not expressly "illicit" until defined as such. The current state-centric international system *a priori* defines trade with rebel groups as illicit—whatever the legitimacy of these groups. Trade with a national government engaged in civil war, however, is considered legitimate (provided it is not subject to international sanctions). Therefore, corrupt governments that buy arms with concessions, royalties, and other rents paid by multinational corporations is a matter of national sovereignty and self-defense. Natural resources gain access to the international market through multinational corporations, which, while engaging in morally questionable transactions, are legally doing nothing wrong. Largely through the attention of international advocacy groups, as well as UN Expert Panels reports, oil, timber, coltan, and other mineral and natural resources have been added to the growing list of licit trade commodities that sustain or finance local war economies.

⁶² A related issue is that of private-sector behavior in areas of conflict. This issue is addressed under a separate section below.

⁶³ See for example, Robert Neil Cooper, "Conflict Goods: The Challenges for Peacekeeping and Conflict Prevention," *International Peacekeeping* 8, no. 3 (Autumn 2001): 21-38; and Philippe Le Billon, "The Political Ecology of War: Natural Resources and Armed Conflicts," *Political Geography* 20, no. 5 (2001): 561-584.

⁶⁴ Certain primary commodities—alluvial diamonds, coltan (columbo-tantalite), timber—provide relatively lootable resources for rebels and governments alike to exploit. Others—particularly oil—require high start-up, production, and transportation costs, which limit their utility to the state working in partnership with national or multinational firms.

Finally, it is not the trade in natural resources alone that fuels conflict. The smuggling of other commodities—from cigarettes, stolen cars, and fuel, to arms, humanitarian aid, and narcotics (addressed separately in this paper) and even humans—provides sources of revenue for combatants and the criminal networks with which they may be linked.

Summary of the Current Regulatory Environment

Initiatives to prevent and resolve armed conflicts need to better understand and address the role of natural resources in the political economy of conflicts and to address the self-interests of concerned actors, whether they are foot soldiers, warlords, politicians, or businesses. While this report addresses specific policies for stemming "conflict trade" in resource flows and other commodities, it should be noted that multidimensional policies are needed to address the complex linkages existing between natural resource dependence and armed conflict. In this regard, while economic diversification and greater access to international markets, fair and transparent resource revenue allocation schemes, sustained assistance during periods of crisis, and targeted sanctions against profitable war economies have long been on development and peacebuilding agendas, more efforts are needed in these directions.

There is a growing sentiment that a comprehensive international framework for regulating illicit resource flows to armed conflicts is required, rather than the current ad hoc approach of tackling the issue on a conflict-by-conflict basis (DRC, Angola, Liberia) or commodity-by-commodity basis (rough diamonds, timber). Securing broad agreement on, let alone enforcing, such a global regime would likely face critical obstacles, not the least of which are defining illicit resource flows and overcoming state-centrism. Nonetheless, there are existing and emerging UN conventions and policy initiatives that may offer a legal basis for such an agreement, many of which are addressed in this document. These include the Convention on the Suppression of Terrorist Financing, the Convention Against Transnational Organized Crime, the 1988 Vienna Convention, and the UN Conference on the Illicit Trade in Small Arms and Light Weapons.

Several existing approaches are explored below.

- Targeted sanctions. Such sanctions on natural resource flows include those on oil, gems, and other commodities. UN Security Council Resolutions 1173 (1998), 1306 (2000), and 1343 (2001) imposed bans on the trading of rough diamonds from UNITA-controlled territory in Angola, from Sierra Leone, and from Liberia, respectively. In 2001 the UN Panel of Experts on Liberia recommended the imposition of sanctions against the Liberian timber industry over its alleged links to supplying arms and funding armed militias. In these cases, targeted sanctions have been successful in the overall reduction, but not elimination of, the transactions by which insurgents profit.
- Economic protectorate and trust/escrow funds. Sanctions, whether broad economic sanctions or those that target a specific commodity, can wreak havoc on a state's economy, devastating the livelihoods of the local population, if not causing humanitarian crises. Escrow accounts, like that of the Oil for Food humanitarian program in Iraq, offer one potential solution by maintaining resource production and export, but regulating both the commodity market and the disbursement of proceeds. As states are unwilling to cede sovereign control over their resources, the establishment of an escrow mechanism is difficult. Enforcement is likewise complicated by the demands of monitoring and enforcement combined with noncompliance of the state.
- Certification regimes: the international diamond trade. The Kimberley Process, a regulatory initiative of diamond-producing and diamond-selling states, NGOs, and industry, introduced by South Africa following UN Security Council and General Assembly resolutions, seeks to establish minimum common rules for rough diamond certification. The Kimberley Process relies on a "chain of warranties" intended to provide an audit trail linking each diamond to its mine of origin. Angola and Sierra Leone implemented the first legally binding national controls, followed by Botswana, Namibia,

and Guinea. Additional regulatory controls have been adopted bilaterally between Belgium and the DRC. Import controls are being considered by the United States, the largest global consumer of diamonds, under the "Clean Diamonds" bill, which has passed in the House, but has yet to be voted on in the Senate.

Implementation of an effective global certification regime will require the compliance of relevant governments and industry actors alike, and will simultaneously to contend with corruption, which would enable new laws to be circumvented. The lack of industry transparency (e.g., the lack of consistent trade statistics, and the absence of guidelines for self-assessment and monitoring) remain significant challenges to the Kimberley Process. Moreover, it is far from certain that such a regime can eliminate the illicit trade in diamonds, much of which occurs outside official channels, let alone the patronage and criminal networks it feeds, and thus prevent state failure.

The "chain of warranties" idea is being applied on a more limited basis for the timber industry, identifying wood harvested from sustainable sources.

Similar certification and warranty systems are used or are being considered to address other social issues as well, notably labor conditions.

- IMF monitoring: the Angolan oil industry. Faced with minimal foreign reserves and growing pressure by international donors and advocacy groups to bring about more transparency in the oil sector, the government of Angola agreed to an "oil diagnostic" to be conducted by an international audit firm. This agreement was part of broader IMF Staff Monitored Program (SMP), including economic and institutional reforms. While most of the attention on the Angolan war economy has been placed on the diamond sector, and its role in financing the UNITA rebel movement, the lack of transparency in the oil sector's financing of the government and allegations of high-level corruption have prompted this IMF initiative. The "oil diagnostic" is, however, limited to the proper channeling of oil revenues to the state treasury, and not the transparent and accountable allocation of these revenues once incorporated into the budget. Furthermore, its findings are not to be made public, thereby jeopardizing the credibility of the initiative.⁶⁵

⁶⁵ Human Rights Watch, "The Oil Diagnostic in Angola: An Update," March 2001, <http://www.hrw.org/background/africa/angola>.

The Private Sector and Armed Conflict

I. Commercial Business⁶⁶

Civil strife may be overwhelmingly bad for the majority of licit business because of the high uncertainty and insecurity putting at risk investment, production, and trading. Many transnational corporations are able to protect economic enclaves even during conflicts, and networks of individual entrepreneurs are able to link war zones to international markets. The influences of these businesses can include the provision of significant economic and employment opportunities, and the rise of standards in labor practices and social relations, and they can participate in political stability and even economic justice.

Yet businesses can also have negative influences that may exacerbate conflict. These may include aggravating inequalities or increasing economic rents amenable to factional control, both of which may exacerbate conflict; degrading local livelihoods and entitlements (access to resources), promoting discrimination, denying political participation, using slave or child labor, and using disproportionate force to protect their interests (see the section on private security groups below); bankrolling belligerents by providing voluntary or coercive financial or logistical support; sustaining misgovernance by participating in the corruption and legitimization of unrepresentative and repressive authorities; and impeding peace by reducing the leverage of international institutions and populations on authorities through the provision of politically accountable resources, and lobbying for "private" diplomacy.

Private-sector actors may not realize that otherwise routine business activities can have unintended consequences detrimental to the stability and security of the country in which they operate. They may not

appreciate how the revenue streams generated by the commodities they produce benefit combatants and perpetuate conflict. In Angola, for example, the government has borrowed money against future oil production; many of these loans went toward arms purchases and support of the regime's clientelist network. Today, nearly half of the country's oil revenue is committed to servicing this debt. Or, having already made a major investment in what were initially stable countries or regions, companies may find themselves having to operate in contexts where growing instability and armed conflict have changed the original ground rules. Legitimate concerns about the safety of staff and infrastructure may demand firms to seek assistance from undisciplined or unaccountable public or private security firms. Finally, lack of financial transparency in royalty payments, inadequate revenue sharing between national, regional, and local governments, and hiring practices that unwittingly exacerbate local socioeconomic inequalities—frequently along ethnic or factional lines—may all contribute to an environment where violent conflict is more likely.

To date, most attention has been focused on the role of multinational corporations, notably the extractive industry. There are other private-sector actors that are deeply, if less visibly involved, including domestic or regionally operating firms without an international profile and based in countries lacking strong civil societies. Consequently, these firms have few incentives to operate responsibly and face fewer sanctions for their activities. Whereas these firms may engage in questionable practices, their overall business strategy is still oriented toward legitimate ends; still other companies specialize in, profit from, and may seek to prolong conflict. The existence of what a recent Fafo report on private-sector activity in armed conflict labels "rogue companies" demonstrates that, for those firms that deliberately flout international law, voluntary regulation is not enough.⁶⁷ In

⁶⁶ See International Council on Human Rights, *Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies* (Geneva: ICHRP, 2002); Overseas Development Institute, *Regulating Businesses During Armed Conflicts* (London: Overseas Development Institute, forthcoming); and Jane Nelson, "The Business of Peace: The Private Sector as Partner in Conflict Prevention and Resolution" (London: International Alert, Council on Economic Priorities, and Prince of Wales Business Leaders Forum, 2000).

⁶⁷ Mark Taylor, "Emerging Conclusions – March 2002", Fafo Programme for International Co-operation and Conflict Resolution, 2002, pp. 23-25.

such situations, a regulatory framework is required not to create a level playing field for competing businesses, but to criminalize the operations of these firms outright.

Summary of Approaches to Business and Conflict

Emerging policy initiatives, regulatory proposals, and industry standards concerning various aspects of private-sector activities in conflict zones tend to focus on affecting the behavior of multinational corporations, principally because, as publicly traded companies based in countries with organized civil societies, their reputation, market share, and stock valuation are not immune to consumer pressure and thus provide a point of leverage. The extractive sector has been subjected to the most scrutiny, though others, including the financial, insurance, and infrastructure sectors, warrant greater attention. Instruments may take the form of, at one extreme, the purely voluntary, relying on company or industry self-policing. At the other extreme are explicit legal and regulatory instruments, including national and international law. In between exist a range of public and private-sector measures that are neither wholly voluntary nor explicitly regulatory. Positive inducements for good corporate citizenship, such as tax deductions and exemptions, preferential status for receiving contracts, or specific market deregulation, may influence and reward acceptable corporate behavior.

At present, there is little consensus on what actually constitutes corporate complicity in armed conflict. The degree of responsibility of businesses is highly variable; one can distinguish a wide spectrum between passive and active responsibility, with some businesses more victim than perpetrator. Many of these negative influences result from the unintended consequences of conducting business in a predatory environment where violence is deployed to serve key political and economic functions for ruling groups. While there is rarely a deliberate malicious intent, the passive complicity of businesses needs nevertheless to be acknowledged and addressed. In order to promote positive engagement of private-sector actors in peace and security issues, there is a need to establish a clear normative consensus, grounded in international law, as

to what constitutes "complicity" for private-sector actors.

Voluntary Measures

Voluntary approaches include the UN Global Compact, the U.S.-UK principles for extractive industries on the use of security, company- and sectorwide codes of conduct, such as the Global Mining Initiative, and a proliferation of NGO-sponsored initiatives. Voluntary approaches are advantageous in that they address problems of asymmetrical information and are highly adaptive to specific firms.

Yet voluntary approaches have several drawbacks: they are self-selecting (firms need to recognize the value of implementation and compliance) and they lack monitoring and enforcement in the event of noncompliance. Apart from their desire to be good corporate citizens, it must be in their economic interest for private sectors to adopt socially responsible behavior. They are unlikely to modify their business practices if it will place them at a disadvantage vis-à-vis their competitors, particularly less reputable firms motivated solely by profits rather than broad social benefits.

Voluntary initiatives include the following examples:

- The UN Global Compact is a voluntary initiative requiring participating companies to commit themselves to nine principles related to human rights, environmental protection, and labor rights. Participating companies agree to regularly share information with the UN on best practices they have undertaken to respect the principles and to participate in roundtable discussions with NGOs, trade unions, and other relevant stakeholders. Recognizing the role of private-sector actors in armed conflict, as well as their potential contribution to conflict prevention, the UN Secretary-General made business and armed conflict the theme of the compact's first roundtable discussions. Focus groups are preparing studies on transparency, revenue sharing, development of a conflict prevention toolbox, and conflict impact assessments. The compact neither sets a code of conduct, nor is intended as a regulatory instru-

ment. Nonetheless, many question its effectiveness, not only because, like other voluntary measures, it lacks monitoring, but also because the valid business concerns of corporations are not adequately addressed.

- The industry-driven Global Mining Initiative (GMI) is an initiative by the world's largest mining and minerals companies to work together with stakeholders to develop "a clearer definition and a better understanding of the positive role that the mining and minerals industry can play in generating a transition to a sustainable pattern of economic development."⁶⁸ The initiative is proceeding along three lines of action: First, working with other interested stakeholders to sponsor an independent process of analysis to promote the development of a response to the goal stated above. Second, holding a global conference on mining and sustainable development in 2002. Third, bringing mining associations and the minerals industry into line with the goals of the initiative. As part of the GMI, the Mining, Minerals, and Sustainable Development final report includes recommendations for industry on revenue-sharing agreements and recognizes their potential role in the prevention of armed conflict.⁶⁹
- The U.S.-UK Voluntary Principles on Security and Human Rights (December 2000) is both a tripartite dialogue on security and human rights with companies in the extractive and energy sectors (eight companies initially) as well as NGOs, and a set of principles concerning corporations' risk assessment and use of private and public security forces. The participants developed "a set of voluntary principles to guide companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental

freedoms."⁷⁰ The ongoing dialogue provides participants with the opportunity to review the principles and ensure their continuing relevance and efficacy. Through the participation of additional companies with similar concerns in other operating environments and their governments, it is hoped that the principles will set an emerging global standard. Requirements for participation in the dialogue may exclude some non-U.S. or non-UK firms seeking to participate due to their operation in areas of armed conflict—ironically, the environment in which firms are most in need of accountable security with clearly delineated responsibilities.

- The nonbinding OECD Principles of Corporate Governance create multilateral and national processes for states to encourage and monitor good corporate citizenship among their multinationals. They were developed with input from non-OECD countries, the World Bank and the IMF, the business sector, investors, trade unions, and other interested parties. The principles focus on publicly traded companies, though they may also be relevant to improving corporate governance in nontraded companies, for example, privately held and state-owned enterprises. As the OECD guidelines include annual review meetings and progress reports and assistance to states on implementation, they may be a more effective tool than the Global Compact for ensuring corporate compliance. Some business associations worry that the guidelines may be misused by competitors, or that they will be unable to police their own subcontractors.⁷¹
- Revenue management is complex and many proposals are controversial and still not very robust. The Chad/Cameroon oil pipeline, one of Africa's largest public/private development

⁶⁸ Global Mining Initiative, http://www.globalmining.com/home/gm_frame.asp (March 8, 2002).

⁶⁹ Mining, Minerals, and Sustainable Development, *Breaking New Ground: Mining, Minerals, and Sustainable Development*, via <http://www.iiied.org/mmsd/finalreport/index.html> (August 25, 2002).

⁷⁰ U.S. Department of State, Voluntary Principles on Security and Human Rights Fact Sheet, December 20, 2002, via http://www.state.gov/www/global/human_rights/001220_fsdr1_principles.html (April 23, 2002).

⁷¹ OECD Online, <http://www1.oecd.org/daf/governance/principles.htm>.

projects, provides a useful starting point. The World Bank has provided the three-member oil consortium (Exxon, Petronas, and Chevron) with political risk mitigation, and the governments of Cameroon and Chad with financing for their share of the cost. Under the agreement, 10 percent of the oil revenues are directly deposited into an offshore escrow account and saved as part of a "fund for the future." The government of Chad has committed to allocate 80 percent of its share of the revenue to finance poverty reduction and development (health, education, etc.), and 15 percent to finance investment and "recurrent state expenditures" (to be reallocated to poverty reduction after five years). The remaining 5 percent is earmarked for development in the oil region. As part of the project, Chad adopted a revenue management law, which includes creation of a stakeholder committee to supervise distribution of oil revenue with considerable leeway to freeze funds to the government.

External Measures

Many argue that the limits of corporate self-regulation on issues related to conflict require external means for encouraging corporate compliance. These might include either explicit, statutory regulation, or implicit, market-driven, or contractual measures, such as indices that track and report on the ethical performance of companies, the incorporation of political risk assessment in valuations of companies, and shareholder activism, all of which may influence a corporation's behavior by affecting the value of its shares. In other cases, such as securities and exchange requirements or contractual obligations, which carry legal obligations, firms may face punitive measures for noncompliance. In effect, these subject firms submit themselves to regulation as a sine qua non of meeting business strategies.

Legal measures create rules equally applicable to all firms within a given jurisdiction, promoting a level playing field and encouraging an environment in which legitimate businesses following "propeace" best

practices are not at a disadvantage. Some have argued that an international legal framework is required to truly level the playing field, as it would affect areas where national law is weak or unenforced and otherwise unaccountable firms. It is unlikely that such a framework on corporate conduct in conflict zones will be agreed upon in the near future, nor is it clear what such a regime would entail, let alone whether it would prove enforceable. However, the lack of an international framework does not preclude the emergence of binding norms on corporations. Indeed, corporations are not necessarily opposed to legal obligations, provided they have a role in the development, as indicated by the recent call by the mining sector for governments to set standards of behavior with respect to the environment.⁷²

Few businesses have faced severe consequences for the infringement of such policies, and there have been so far a very limited number of largely inconclusive trials. The same can be said of sanctions-busting businesses.

Below are several categories or specific examples of external regulation. Most of these measures do not explicitly concern corporate activities in armed conflict; rather they are possible mechanisms for encouraging implementation of or ensuring compliance with measures on corporate transparency, conflict risk assessment, responsible use of private security, and the like.

- **Securities and exchange regulations.** In the UK, the "Turnbull Report" on corporate internal control has in essence mandated that corporations identify and disclose what they are doing to mitigate their risk in order to be listed on the London Stock Exchange. Likewise, in the United States, Congress passed the "Sudan Peace Act," which would prohibit foreign oil companies doing business in Sudan from listing or trading their securities on any U.S. financial exchange (U.S. oil companies are already prohibited by sanctions from investing in the country). All other companies were required to disclose the use of proceeds from capital raised in the United States, the nature of their commercial

⁷² Matthew Jones, "Mining Groups Ask for Environmental Guidelines," *Financial Times*, January 29, 2002.

activities in Sudan, and the relationship of these activities to human rights violations, to investors and the public via the Securities Exchange Commission (SEC) or face a similar prohibition.

An alternative approach is that of the recent campaign by a broad coalition of NGOs, labor unions, and other civil society groups in the United States to discourage investors from purchasing shares of an initial public offering by PetroChina, a subsidiary of a Chinese state oil company with operations in Sudan and Tibet. As a result, the company raised several billion dollars less than it had hoped to raise. This may be an alternative means of pressuring foreign, if not state-owned, companies otherwise insulated from advocacy pressure to adopt more socially responsible behavior.

- **Socially responsible investment (SRI)/shareholder activism.** Ethical investment funds (e.g., the UK-based Friends Ivory & Sime, the U.S.-based Calvert Group) and pension funds (e.g., of trade unions), which may control significant shares of a company, are increasingly using their financial influence to encourage companies to improve the quality of their governance and management of significant environmental and social issues. SRI is facilitated by socially responsible indices that track and report on the ethical performance of companies (e.g., FTSE4Good).
- **Conditionality on the provision of financing and/or guarantees.** Given their financial clout, public and private finance and guaranteeing institutions could potentially influence corporate adherence to conflict risk management by making access to capital or insurance conditional upon corporate performance. Additional contract conditions may discourage some potential borrowers, which may seek alternative sources of financing or insurance. But many businesses, unwilling or unable to self-finance, may respond by positively altering their behavior on the ground. Government and multilateral agencies that provide
- financing and guaranteeing to the private sector, including the U.S. Overseas Private Investment Corporation (OPIC), and the Multilateral Investment and Guarantee Agency (MIGA) and the International Finance Corporation (IFC) of the World Bank, are not mandated, nor designed for, conflict prevention. At present, they do not include assessments of corporate political risk or conflict impact in determining whether to extend credit or insurance to their clients. Nonetheless, some of these agencies are beginning to recognize that conflict has a direct bearing on the security of their investments, and are considering expanding their criteria for financial assistance to include conflict risk management.
- **Targeted UN sanctions.** To date, the UN has employed sanctions primarily against illegitimate government elite and rebel leaders. Targeted sanctions could be extended to other nonstate actors, including corporations implicated in sanctions busting or that knowingly traffic in illicitly exploited natural resources. The Security Council could require member states to freeze accounts, block commercial and financial transactions, including investment and credit services, and impose travel restrictions on employees, contractors, or board members as a means of applying coercive pressure to corporate decision-makers in an effort to change or restrict their behavior.
- **Transparency.** Like revenue sharing, transparency is a complex issue not amenable to a single regulatory response; many companies would voluntarily publish their payments to government, but face reprisals if they act alone. One method of tackling nontransparency proposed by Global Witness is for the major financial regulators of international stock exchanges (e.g., the U.S. SEC or the UK Listing Authority) to legally require listed companies to publish a "summary of payments to all national governments in consolidated and subsidiary accounts." Among other benefits, Global Witness argues that such an obligation

⁷³ Global Witness, "The Failure of Voluntary Initiatives and the Need for Disclosure Regulation," <http://www.fatbeehive.com/global-witness/text/campaigns/oil/regulation.html> (March 19, 2002).

would level the playing field among competitors, depoliticize the issue of disclosure, and involve minimal added cost to firms. Global Witness has also called on natural resource companies to make public their total net payments to national governments, including signing bonuses and royalties, in all countries of operation and in a national language.

II. Private Security Firms, Private Military Firms

The 1990s witnessed the growth of private security firms and private military firms in Africa and elsewhere. Businesses operating in unstable areas often employ "traditional" private security forces to protect commercial operations and investments, especially where public security is unreliable, implicated in human rights abuses, or used for other purposes. Intentionally or not, these forces can aggravate armed conflict and its consequences, such as by displacing or otherwise abusing local populations or engaging in combat. Examples include exactions committed by security forces in Burma and Sudan to facilitate and secure gas and oil exploitation and pipelines. In other cases, however, these forces may create an enclave of relative peace and prosperity.

Although a distinction needs to be made between legitimate private security companies, hired by companies and concerned with crime prevention and public order (e.g., providing guard services or training local police), and private military companies (PMCs), hired by states to provide operations of a military nature, this distinction is often ambiguous. Executive Outcomes operated as both a "security" and "military" company, for example. Other PMCs, such as MPRI, provide training to national militaries—albeit, often to protect oil infrastructure.

Central to the concern about PMCs is their lack of accountability and their potentially negative impact on peace, stability, and human rights. Executive Outcomes, Defence Systems Limited, Sandline International, and Saladin Security, by disregarding

ethical issues in favor of trade and business interests, have been implicated in acting as brokers, supplying weapons to armed groups who have perpetrated some of the worst abuses in Africa, as well as themselves carry out human rights violations. Offering military assistance and weapons to international clients directly relates to the proliferation of illegal arms trafficking to conflict areas.

Through shareholding or sitting on the corporate boards of so-called junior mining companies (American Mineral Fields, Branch Mining, Diamondworks), some PMCs have transformed their military services into highly profitable commercial ventures, receiving payment from client governments in the form of below-market concessions for their associated firms. Unlike mercenary groups of the 1960s and 1970s, these companies are, according to Kareen Pech and David Beresford, "not just guns for hire, but 'the advance guard for major business interests engaged in a latter-day scramble for the mineral wealth of Africa.'"⁷⁴

Yet some observers have argued that disciplined PMCs, subject to national or international oversight, may provide an alternative to public security that neither the domestic government nor the international community are willing to provide in the form of peacekeeping missions.

A more recent development in the "commercialization of conflict" is the role taken by regional armies to secure mineral wealth, many of which are paid—and some would say motivated—by organized loot and natural resource extraction. The commercial activities of regional armies involved in the conflict in the DRC (e.g., Angola, Zimbabwe, Uganda, Rwanda) or Sierra Leone (Liberia) are marginalizing the role of PMCs.⁷⁵

Summary of the Current Regulatory Environment

There has been marked development of international legal prohibitions on mercenary activities and obligations upon states to legislate against such activities.

⁷⁴ K. Pech and D. Beresford, "Corporate Dogs of War Who Grow Fat Amid the Anarchy of Africa," *The Observer*, January 19, 1997, p. 19.

⁷⁵ See for example, the UN Panel of Experts on the Illegal Exploitation of Resources from the DRC; and Global Witness, "Branching Out: Zimbabwe's Resource Colonialism in Democratic Republic of Congo," February 2002.

But according to International Alert, "there are currently still no instruments that go far enough to prohibit mercenary activity as part of customary international law,"⁷⁶ nor are private military companies adequately covered by existing legal instruments.

International

- The UN International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries (1989) was drafted to protect states from the unlawful use or threat of force against their political independence and territorial integrity. It is the only international instrument applicable to both mercenaries and private military companies, though it does not ban mercenarism outright, only those activities that undermine a state's political stability or territorial integrity. Likewise, it is limited in its scope, applying only to the country where mercenary activities take place, not to those countries violating its principles. The convention has not entered into force, but it does provide a minimum standard for national legislation.⁷⁷

Regional

- The OAU Convention for the Elimination of Mercenarism in Africa (1977, entered into force in 1985) is the only international instrument in force specifically applicable to mercenary activity. The OAU convention is intended to complement the UN international convention, but is in fact superior to it in many respects, including: defining the elements of the crime of mercenarism rather than only prohibiting the recruitment, use, financing, and training of mercenaries; converting preambulatory principles of the international convention into substantive provisions; and defining the criminal responsibility of states and their representatives. The OAU convention is

rarely enforced, however; many signatories continue to violate its principles. It does not apply to private military companies, nor include corporate criminal responsibility.⁷⁸

National

While several countries have domestic laws governing mercenary activity, few of these states have legislation relevant to private military companies. According to International Alert, there are four general categories of national legislation: "those passed to 1) control mercenary activities in response to the requirements of neutrality laws; 2) deal directly with mercenaries and mercenary activity; 3) regulate the provision of foreign military assistance as opposed to merely regulating mercenary activities and direct participation in conflicts; and 4) regulate military services within arms export control systems."⁷⁹

- South Africa's Regulation of Foreign Military Assistance Act (1998), the third category of national legislation above, was enacted in response to the continued involvement of South African mercenaries in African wars, most notoriously Executive Outcomes. The act carries punitive measures and applies to both individuals and PMCs engaged in mercenarism, defined simply as "direct participation as a combatant in armed conflict for private gain," within South Africa and abroad. Foreign military assistance is not proscribed, but falls under the licensing and authorization of a separate government body also responsible for approving arms exports. Despite its extraterritorial nature and inclusion of PMCs, the act has been criticized as more symbol than actual deterrent. Few companies have registered and few contracts have been licensed.
- U.S. private military companies are regulated within its arms export control systems and are thus

⁷⁶ Chaloka Beyani and Damian Lilly, "Regulating Private Military Companies: Options for the UK Government," International Alert, 2001, p. 27.

⁷⁷ Ibid., p. 24.

⁷⁸ Ibid., p. 25.

⁷⁹ Ibid., p. 28.

licensed through the same process as companies seeking contracts to supply arms or other military equipment to foreign governments. These transactions are governed by the International Traffic in Arms Regulations (ITAR), part of the U.S. Arms Export Control Act of 1968. According to International Alert, "the ITAR is . . . probably the most developed and comprehensive regulation

system [capturing] the activities of most private firms in the US supplying defence services abroad."⁸⁰ Under ITAR, there is a "presumption of denial" for the provision of military services if they would lead to a "lethal outcome." Effectively, this means that PMCs should not be allowed to engage in or train others for direct combat. However, determinations of this nature are often ambiguous.

⁸⁰ Ibid., p. 32.

Customs Controls and Air and Maritime Transport Regulations

Unlike other sections of this document, where the unit of analysis is the type of resource flow, this section focuses on a primary means by which nonmonetary commodities enter into or exist within conflict zones.

Much of the resource flows to conflict zones take place across increasingly porous international borders and amid greatly increased levels of licit trade. Some have to reach remote areas without land transport infrastructures via air. Others may rely on questionable international shipping practices to conceal their origin, destination, or contents. Customs and the regulation of air transport thus play a key role in any regulatory framework. However, national customs agencies and transport systems are generally under budgetary constraints as well as vulnerable to corrupt practices even in the absence of conflict.

There are few government agencies in which inherent preconditions for institutional corruption exist so readily as customs. The combination of administrative autonomy, discretionary decision, and availability of huge bribes strains even the most developed countries' customs agencies, but is overwhelming to a country where civil servant pay is low and few systems of control or accountability are in place. Almost every country with an advantageous geographical location for international trade and relatively weak enforcement capabilities has experienced significant corruption in its customs agency.

Conflict areas are poorly suited to the regulation of resource flows and international assistance, in terms of both "assisting" the regulatory environment (such as preshipment customs controls in the most reliable countries) and direct assistance (such as air traffic monitoring capacities in poor countries). This problem is significant, as illegal export of goods destabilizes countries of destination whether or not they are subject to sanctions. States that are incapable of regulating their exports are equally unable to stop illegal imports,

which undermine local human security and business, and threaten the stability of states that have recently emerged from conflict. States with porous borders are also ideal transit points for illicit goods. All of these factors have direct and indirect economic costs for the host state and undermine international efforts to enforce sanctions and national laws to prevent illegal trade.

Illicit Use of Air and Maritime Transport⁸¹

The use of aircraft is essential in transporting illicit cargoes into and out of conflict zones. Areas in conflict are an ideal base for highly visible illicit operations, especially transport of large aircraft and weapons. Arms produced in Eastern European countries like Bulgaria are being flown to conflict destinations in Africa. One of the largest transgressors is Liberia, where regional air surveillance is virtually nonexistent, and where corrupt aircraft registration practices provide an ideal air base for illicit activities. Liberia served as an air supply base and diamond transit center to the RUF in Sierra Leone for most of the 1990s. To cite one example, a private businessman known as Victor Bout, a well-known embargo breaker in Angola and the DRC, directs a network of fifty planes, from cargo charter and freight companies, involved in transporting illicit goods. Bout uses the Liberian aviation register, while operating out of the United Arab Emirates' Sharjah Airport, which is used as a base for planes registered in other countries. Although some countries have begun to refuse airspace to Liberian-registered planes, they remain highly visible in many African countries with conflicts, where the criminal transport network operates with little interference.

Meanwhile, according to the UN Panel of Experts on Liberia, revenue accrued from the widespread (mis)use of Liberian "flags of convenience" by shipping companies has been diverted toward purchasing weapons, despite the UN-imposed arms embargo. Elsewhere, Sri Lanka's LTTE owns and operates (through various front companies) a fleet of at least ten freight ships, traveling mostly under the flags of Panama, Honduras, and Liberia, countries all known

⁸¹ See UN Panel of Experts Report on Sierra Leone (December 2000), special section on air transport.

for lax registration requirements. While this maritime network carries legitimate commercial goods 95 percent of the time, its 5 percent share in the illicit shipping market enables it to procure and transport arms, ammunition, and other matériel from around the world to Sri Lanka.⁸²

Summary of the Current Regulatory Environment

The potential of corruption to infiltrate customs and air transport systems has been recognized and addressed by leading intergovernmental organizations such as the World Customs Organization (WCO), which assists member countries to promote effective action against transnational crime; and the International Civil Aviation Organization (ICAO), which seeks to prevent illicit interference with international civil aviation. These organizations understand their frontline position in stopping illicit trafficking and are trying to promote ethical reform and implementation assistance. Likewise, they have contributed knowledgeable and influential staff to the UN Experts Panels. Nonetheless, many of their efforts are currently undermined because of the weak infrastructure of states (an infrastructure that may be nonexistent in the case of air traffic monitoring), and because of the nonaccessibility of rogue countries such as Liberia that serve as bases for illicit transport activities.

International

- The Convention for the Unification of Certain Rules for International Carriage by Air (1999), which modernized and consolidated the 1929 Warsaw Convention (Unification of Certain Rules for International Carriage by Air), applies to all international carriage of persons, baggage, and cargo performed by aircraft for reward.
- The multilateral World Customs Organization establishes recommended standards to harmonize

national customs systems and procedures, provides technical, legal, and methodological assistance on customs enforcement, and encourages cooperation and information sharing, including best practices. Its functions are predominantly aimed at facilitating and promoting international trade, though it is apprised of the role of customs in combating cross-border crime and has taken a number of steps to address this issue. The Arusha Declaration on Integrity in Customs (1993) contains provisions to prevent corruption and to increase the level of integrity among member administrations. The Model Code of Ethics and Conduct (2000) is a primer to be used by members to upgrade and develop improved ethical codes of conduct.⁸³

- Specific measures of UN Security Council resolutions deal with air and maritime transport, such as Resolution 1343 (2001) on the grounding of all Liberian-registered aircraft, which appears to have been effective means of limiting trafficking opportunities. The UN Panel of Experts on Liberia recommended against the imposition of sanctions on the Liberian corporate and maritime registry, instead suggesting the establishment of an internationally supervised escrow account for the earnings of the Liberian shipping and corporate registry.⁸⁴
- One prospective means of enforcement worth further attention concerns that of insurance coverage for the shipping and air transport industry. It has been suggested, notably by UK-based international lawyer Jeremy Carver, that transport companies implicated in the smuggling of arms, narcotics, or other commodities lacking proper export certification have their insurance revoked, greatly increasing the cost of transshipment. (This could be extended to holding accountable financial institutions that provide services for these transactions.)

⁸² Peter Chalk, "Liberation Tigers of Tamil Eelam's (LTTE) International Organization and Operations—A Preliminary Analysis," commentary no. 77, Canadian Security Intelligence Service, 2000.

⁸³ World Customs Organization, <http://www.wcoomd.org/ie/index.html> (September 3, 2002).

⁸⁴ Report of the Panel of Experts pursuant to Security Council resolution 1343 (2001), paragraph 19, concerning Liberia (October 26, 2001), via <http://www.globalpolicy.org/security/natres/docsindex.htm>, (March 20, 2002), paras. 56–59.

Conclusion

The legal and regulatory tools identified in the preceding sections are by no means comprehensive, nor do the brief overviews of the resource flows identified capture the full range and depth of the economic behavior that accompanies, shapes, sustains, and often outlasts conflict. Nonetheless, from these examples, valuable conclusions can be drawn concerning the internal and external challenges to existing and emerging legal and policy responses to control resource flows to and from armed conflict. These conclusions fall into two categories: those highlighting characteristics of war economies that pose challenges to control efforts, and aspects of control regimes that themselves complicate effective enforcement.

- Efforts to curtail the profitability of illicit economic transactions in which combatants and their support networks engage (and thus shift the incentive structure from the pursuit of conflict to that of peace) are unlikely to fully halt resource flows. Moreover, even if they can substantially reduce these flows, they are unlikely by themselves to ensure peace. Although they can increase the transaction costs to belligerents, even the most effective policy responses are ultimately likely to have diminishing returns, as existing activities are driven underground, new illicit activities and networks fill the void, and new means develop to evade detection. Likewise, cutting off resource flows cannot substitute for more concerted efforts by the international community and other actors to address the grievances or motivations underlying conflict, as through poverty reduction, more accountable and transparent governance, and equitable distribution of resources in unstable countries.
- The lack of a clear distinction between "illicit" and "licit" activities or resources complicates control efforts. Certain activities are clearly illegal under national or international law, but other transac-

tions are more ambiguous, particularly at the margin between legitimate financial or commercial enterprises and black market smuggling or brokerage networks. While many of these transactions occur through informal channels, they are not expressly "illicit" until defined as such. Natural resources gain access to the international market through multinational corporations, which, while perhaps engaging in questionable transactions, are legally doing nothing wrong. Certification regimes, like the Kimberley Process on rough diamonds, offer one means of stemming illicit economic transactions while preserving legitimate economic activity by states and private-sector actors, and more narrowly defining the difference. Likewise, the current state-centric international system has defined a priori trade with rebel groups as illicit, whatever the legitimacy of these groups themselves; trade with a national government engaged in a civil war is legitimate (provided it is not subject to international sanctions). Therefore, the case of corrupt governments that buy arms with concessions, royalties, and other rents paid by multinational corporations is a matter of national sovereignty and self-defense. To date, there has been no consensus on which types of economic transactions actors should be held accountable for—though such normative expectations are clearly emerging.

- Initiatives that target the supply side of resource flows, as through prohibition, may increase rather than decrease the incentive—and profitability—of engaging in illicit activity, negatively affecting not only the prospects for peace, but also humanitarian conditions.⁸⁵ In some cases, this problem may be remedied through legalization of certain activities, albeit with some measure of regulation. Both existing and emerging efforts to curtail resource flows to conflict zones therefore require a more careful analysis of their efficacy in shifting the economic incentives of combatants from war to peace relative to their potential consequences.

⁸⁵ In Afghanistan, for example, attempts to eradicate opium are driving up the price, thereby increasing incentives for expanded cultivation, while simultaneously strengthening the hand of regional warlord factions who control trafficking routes and undermining the central government and international efforts at peacebuilding. (S. Lautze et al., *Qaht-e-Pool "A Cash Famine": Food Security in Afghanistan 1999-2002*, Overseas Development Institute (ODI), May 2002, p..21).

- National strategies continue to provide the most robust means of combating illicit activities related to armed conflict. This strength is primarily due to the jurisdiction of states—they not only remain the key actors in international relations, but also have the authority to create, modify, and implement legislation and policy, to allocate (where available) necessary fiscal resources, and to mobilize administrative, policing, and judicial capacities—within their national territory.
- The transnational nature of conflict resource flows means that national strategies alone are inherently inadequate. Resource flows to and from conflict zones take place across increasingly porous international borders, amid greatly increased levels of licit trade, and involve multiple jurisdictions. Illicit transactions are difficult to identify, let alone prevent, amid the total volume of global trade and financial transactions. Globalization likewise has facilitated the ability of combatants and war profiteers to establish connections with regional and international criminal and brokerage networks, as well as licit commodity markets and financial institutions. Thus war is easier to sustain and more profitable for a growing number of actors. These international support networks exist through the complicity of warlords and national armies, local smugglers and multinational corporations, and heads of state and overseas communities in the industrialized North and the global South. Moreover, globalization has enabled the diversification of economic activities (as well as political and military activities) and, perversely, the proliferation of means by which to evade enforcement efforts. Regardless of the resource flow concerned, the most effective policy responses appear to be those that have horizontal cooperation (i.e., intra- or interregional cooperation, as in the case of the SADC-EU initiative on small arms) and vertical cooperation (i.e., between global, [sub]regional, and/or national levels, as in the case of the complementary regimes against narcotics-related money laundering in the Americas). This is particularly true when institutions are specifically mandated to share information and provide technical assistance among members (e.g., regional police associations, financial intelligence units, mutually monitored arms export regimes) or when such arrangements facilitate exchange between supplier countries, countries of transit, and markets. The effectiveness of these efforts remains subject to the capacity not only of the institution, but also of its constituent members.
- Efforts to combat the illicit transactions and actors most directly implicated in the perpetuation of armed conflict will require reform of local economic and political governance. But developing these capacities must also be accompanied by more long-term and far-reaching structural reform of the international aid, trade, and financial systems that facilitate such behavior. This will require complementary efforts by member states, international financial institutions, regional organizations, as well as private-sector actors. It will also require the formation of an integrated strategy that combines both economic development and international peace and security.
- Paradoxically, those multilateral initiatives that are sufficiently specific in their definitions of illicit behavior tend to be voluntary in nature, whereas those that are legally binding tend to be ambiguous, lack adequate transparency of process, monitoring, and mutual evaluation, or fall short on effective compliance and enforcement. International treaties in particular suffer from a lack of national enforcement. This suggests that while stricter, unambiguous, and common standards of what constitutes illicit or criminal activity need to be developed, ensuring compliance with legal regimes codifying such standards is likely to become more difficult. However, as the FATF demonstrates, when backed by mutual enforcement and credible threat, multilateral initiatives may be able to pressure member and nonmember states to comply with specific principles if the incentive structure is right. The growing influence of the FATF—and the formation of the similar CFATF—demonstrates that the most effective global solutions may often in fact be regional.

- In comparison with global approaches, regional efforts, particularly by regional or subregional organizations, have the potential to better influence the political economy of armed conflicts. Regional actors are more likely to be aware of the economic as well as the political dynamics of neighboring conflicts; states bordering armed conflict are directly affected by refugee flows, by armed groups operating across national borders, by the loss of legitimate regional and international trade and investment, by the corresponding growth of illicit trade, as well as by the unintended consequences of international intervention. Regional interventions that have ownership of those states most directly affected by conflict should improve both their design and their likelihood of enforcement by member states, while at the same time being mindful of the impact of such efforts on their own security. Nonetheless, regional efforts may be complicated by local interests, either public or private, which may be complicit in and profiting from illicit activity, rendering control efforts ineffective.
- Implementation and enforcement of international and regional initiatives depends on the ability and will of states to implement these agreements—to tackle issues of supply, transit, and demand within their national borders (or by their nationals operating extraterritorially). The lack of capacity (whether institutional, financial, or technical) of many states to police their borders, maintain effective export/import regimes, monitor their financial systems, combat corruption, effectively design, implement, and enforce legislation, let alone coordinate these myriad activities, is most clearly a challenge for developing countries, but also for developed countries. Above all, conflict and postconflict states are poorly suited to controlling illicit resource flows (due to weakened administrative, judicial, and policing capabilities, criminalization of the economy, the complicity and self-interest of authorities, the development of alternative survival strategies, etc.). Indeed, the institutional limitations facing these states may be so overwhelming that their individual actions are inconsequential, making multilateral and bilateral agreements a necessity. The lack of adequate resources at the state and consequently the regional level can become a problem of international dimensions, as these areas risk attracting or becoming havens for illicit activity. Countries and multilateral organizations with the available financial and technical resources need to assist developing countries in improving their legal infrastructure and law enforcement capabilities, including their coordination across national jurisdictions, through information sharing, training of customs officers, law enforcement agencies, judiciary, and financial regulators, and the provision of mutual legal assistance. Many countries have outdated laws, often stemming from a failure to adequately recognize the extent of the problem, or from insufficient expertise in the formation of new laws, or from corrupt officials with a vested interest in ineffective laws who are thus resistant to change. Even where good legislation exists, compliance by targeted institutions is often minimal and overlooked by regulatory agencies.
- National, regional and international policy responses have developed rapidly over the last five years in response to the increased security threat posed by transnational criminal activities, and post September 11, in response to the threat of international terrorism. Many of these initiatives are still nascent—those targeting sanctions busting, illicit exploitation of natural resources in conflict zones, and arms brokering, for example. Others build upon already well-developed policy arenas, notably combating narcotics, money laundering, and international terrorism. Yet even where highly developed and effective, they remain limited and are not equally robust across all states or regions, leaving open many havens for illicit activity. Additionally, where existing regulatory efforts have proven successful in particular areas—combating money laundering from narcotics, for example—this success has often not been translated into strategies for combating related activities—such as tracing proceeds from ill-gotten gains from looting or grand corruption. At the national level, this is due in part due to the

separate jurisdictions of government agencies responsible for implementing national laws and, by extension, multilateral treaties (inter alia immigration, customs, financial supervision, judiciary, and police). Often, the prioritization of limited resources—including political capital—means that national governments will avoid “nonessential” issues. For example, governments may freeze assets or block financial transactions of terrorist or rebel groups that jeopardize their own national interests, but tolerate those that do not, including turning a blind eye to money laundering by corrupt but “friendly” governments. Problems of coordination are equally present for multilateral enforcement agencies and technical assistance providers; coordination between the UN, Interpol, the World Customs Organization, and the International Civil Aviation Organization on preventing sanctions busting has only recently begun. Information sharing within and between national and multilateral bodies would be facilitated through the establishment of “best practices units” in key agencies. Likewise, joint task forces and/or strategic coordination units among these actors to proactively target criminal activities have been effective in many cases, though such reform often remains highly political or restricted by institutional capacity. In general, more emphasis needs to be dedicated to coordinating the various overlapping control systems, both within states and through multilateral agreements and conventions, to make them mutually reinforcing.

- Last, alongside the growing importance of nonstate actors in armed conflict, a new generation of policy responses has arisen, marked by contractual instruments and partnerships between donors, private companies, enforcement agencies, NGOs, and governments. Many of these emerging approaches are being developed as a result of work by pressure groups and advocacy NGOs. They complement not only the vast array of legal and regulatory measures, but also voluntary initiatives, particularly where private sector actors are concerned. Purely voluntary measures, whether aimed at states or nonstate actors, if operating without the threat of legal or other enforcement,

have generally proven ineffective. In between exist a range of public and private-sector measures that are neither wholly voluntary nor explicitly regulatory. These include so-called market approaches, including inter alia statutory and contractual requirements, for example, by public and private financial and insurance industries, securities and exchange requirements, and the rewarding of “whistleblowers.” By reshaping incentive structures to reward compliance, rather than merely penalizing criminal or illicit behavior, these initiatives may effectively address some of the respective shortfalls of both legal and voluntary approaches.

Toward an Overarching International Regime on Conflict Resources?

The existing and emerging instruments examined in this paper provide a legal and policy base for development of a more comprehensive global normative and regulatory framework for controlling the diverse resource flows to armed conflict.

Based on the demonstrated shortcomings of current ad hoc approaches applied by the UN, other multilateral organizations, and member states to interdict financial and resource flows that sustain armed conflicts, there is a growing sentiment in some quarters that a coherent multilateral legal regime, likely UN-sponsored, is warranted. An international framework would enhance both the authority and the capacity of the international community to sanction those whose economic activities serve to support and/or exploit armed conflict. In principle, such a regime would start with an explicit focus on the legal obligations of state parties to relevant existing conventions to situations of armed conflict; second, it should serve to tighten ambiguous or insufficient definitions, legal requirements, and enforcement mechanisms; and third, it should seek to create new obligations to cover previously neglected aspects of economic behavior in armed conflict.

The formation and implementation of an overarching international convention on economic behavior in conflict will face several critical obstacles. First, the

political requirements of developing an international agreement are significant. Consensus must be secured among diverse states—and possibly nonstate actors as well—on three critical questions: What type of behavior should be included—economic predation by combatants (looting of civilians, exploitation of natural resources, expropriation of humanitarian aid), “white-collar crime,” private-sector operations? Over which actors should the agreement have jurisdiction—state and nonstate combatants alike, brokers and shipping agents, corporations? Under what circumstances should these principles apply? Second, even if consensus is reached on these issues, enforcement of a global regime faces numerous challenges, not least of which are the vested—and often highly lucrative—interests of states themselves.

While an enforceable regime may be a long way off, this does not preclude the development and promotion of international norms on resource flows in armed conflict. Existing legal precedents, applicable international norms, and a variety of institutions, including international human rights conventions, international humanitarian law, the Convention for the Suppression of the Financing of Terrorism, the Convention Against Transnational Organized Crime, the UN Conference on the Illicit Trade in Small Arms and Light Weapons, the 1988 Vienna Convention, the Expert Panels and Monitoring Mechanisms of the Security Council, and the UN Global Compact provide the basis for proscribing certain economic activities and for the better regulation of such activities in situations of armed conflict. These norms are already instrumental in shaping criminalization at the national level. Likewise, the significant progress of regional and sectoral initiatives covering various illicit resource flows represent building blocks toward a broader, more comprehensive international approach. The

achievements of the FATF in combating financial crime and of SADC, working in cooperation with the EU, on small arms, demonstrate the merit of approaches that can more directly develop consensus at the national and regional levels, but that may be globally relevant. Even voluntary measures may carry a strong normative weight, as demonstrated by the U.S.-UK Voluntary Principles on Security and Human Rights, which are being implemented by a growing number of companies with the support of their home governments.

The UN can and should play a leadership role in calling upon states to apply these obligations more proactively to cutting off resource flows to conflict. Through its convening power, it should build upon subregional and regional efforts to forge broader international normative consensus on what constitutes illicit economic activity in conflict zones. In this way, it can foster gradual emergence of an international framework that will both reinforce existing efforts, and be extended to those regions lacking effective regional organizations. A systematic, analytical effort to identify the shortcomings of the various relevant existing instruments should be undertaken with an eye toward strengthening them, or, in the case of gaps, filling them, through the use of optional protocols. This combination of legally binding conventions and sanctions, nonbinding guidelines, and platforms for action would provide the legal basis for more effective multilateral treaties addressing specific resource flows in armed conflict, including perhaps the illicit exploitation of natural resources in armed conflict. In the long term, initiatives against illicit economic behavior in armed conflict might be brought under a single overarching convention, as is currently being considered for the numerous UN conventions on international terrorism.

ABOUT THE PROGRAM

Economic Agendas in Civil Wars (EACW)

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Initiated in September 2000, the EACW program follows from a conference held in London in 1999, which produced the seminal volume, *Greed and Grievance: Economic Agendas in Civil Wars*, Mats Berdal and David M. Malone (eds.) (Lynne Rienner Press: Boulder, 2000). The program addresses the critical issue of how the economic agendas of armed factions sustain violent conflict and inhibit durable peace, while also assessing the role of globalization in creating new opportunities for combatants to finance their military operations. This hitherto under-developed field of research holds particular promise of policy relevance for those international and national actors seeking more effective strategies for both conflict prevention and conflict termination.

Beginning with an overall commitment to durable conflict resolution, the broad aims of the program are:

- to improve understanding of the political economy of civil wars through a focused analysis of the economic behaviors of competing factions, their followers, and external economic actors in conflict zones;
- to examine how globalization shapes the economic interests of belligerents as well as creates new opportunities for competing factions to pursue their economic agendas through trade, investment and migration ties, both legal and illegal, to neighboring states and to more distant, industrialized economies; and
- to evaluate the effectiveness of existing and emerging policy responses used by external actors, including governments, international organizations, private sector actors, and NGOs, to shift the economic agendas of belligerents from war towards peace and to promote greater economic accountability in conflict zones.

Policy research and development proceed along two tracks: four expert working groups (Advisory Group, Working Group on Economic Behavior of Actors in Conflict Zones, Private Sector Working Group, and Policies and Practices Working Group) and commissioned research. Case studies have been commissioned on the political economy of conflict in Burma, Bougainville (PNG), Colombia, Kosovo, Sri Lanka, and West Africa and will be published in an edited volume (Lynne Rienner Press, forthcoming). A second volume of analytic studies assessing policy responses to the economic dimensions of armed conflict is being commissioned. Other products include periodic meeting reports, policy briefs and background papers, which are available electronically on our website (details below).

Policy development also involves on-going consultations with international experts and practitioners, academic conferences, and workshops and briefings that bring together relevant UN actors, governments, private sector actors, and NGOs. As part of a continuous outreach effort, the program has engaged in several partnerships, including the Fafo Institute of Applied Social Science (Oslo); the Institute for Security Studies (Pretoria); the Woodrow Wilson International Center for Scholars (Washington, DC); the International Institute for Strategic Studies (London) and the World Bank's Development Research Group (Washington, DC). We have also built a virtual network of experts and policy practitioners through sponsorship of an electronic list-serve, war_economies@yahogroups.com.

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More information on program events and all of the program reports are available on the program website at http://www.ipacademy.org/Programs/Research/ProgReseEcon_body.htm>

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