

# Options for Promoting Corporate Responsibility in Conflict Zones: Perspectives from the Private Sector

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## Executive Summary

- The objective of this meeting was to examine private sector actors' perceptions of and experiences with select existing and prospective measures, both voluntary and regulatory, to promote responsible business behavior in conflict zones. The discussions explored the costs and benefits that several emerging initiatives might entail for the private sector, the likely tradeoffs of binding regulation, and the sorts of institutional, financial, and political resources which would be needed to expand the coverage of both existing codes of conduct and binding regulations.

The following are the key conclusions emerging from the meeting:

- *Private Sector and Armed Conflict:* There is an emerging understanding among policy makers as well as business actors that certain types of private sector behavior may affect the incidence, intensity, and duration of violent conflict. Although there is a need for further, systematic analysis of the relationship between private sector activity and armed conflict, many transnational corporations are increasingly concerned with improving the way they interact with their operating environments abroad, and with maintaining the integrity of their reputation and market share at home. Many of the measures they have undertaken so far are voluntary, including codes of conduct. Others involve entry into legally binding obligations, ranging from statutory and contractual arrangements to explicit government regulation.
- *Spectrum of Approaches:* Most participants expressed a strong preference for non-regulatory approaches, rather than binding regulation. Regulation may be acceptable to firms if it obligates their competitors to standards of conduct to which

they themselves are already voluntarily committed. Participants also expressed general reservations about any regulatory apparatus that placed the burden of responsible conduct on private businesses, rather than on the governments and armed groups involved in malfeasance and conflict. As businesses are unlikely to persist with corporate social responsibility (CSR) initiatives if these threaten a loss of concessions, competitive advantage, or the withdrawal of security, more consideration needs to be given to creating the right combination of incentives and regulation to promote good corporate governance.

- *Ensuring Security:* Companies operating in conflict zones have a legitimate need to establish adequate security. But these arrangements, whether supplied by host states or private security companies, risk implicating firms in wider military operations and potential human rights violations. The US-UK Voluntary Principles on Security and Human Rights (2000) provide minimum guidelines for firms to use when contracting security services. Still, for many corporate decision-makers, compliance with the Voluntary Principles involves certain costs, at least in the short term. Consequently, adherence, to date, has been an incremental and uneven process, not one of rapid change and immediate results. To transform the Voluntary Principles into global standard practice, participation must be expanded to the widest possible range of private sector actors, including developing country corporations, their home governments, and host governments at risk of or involved in armed conflict. But currently, there is a dilemma among those actors responsible for drafting the Voluntary Principles whether to deepen implementation among existing participants prior to inviting new companies to join the dialogue.
- *Revenue-Sharing for Social Development:* Many private sector actors have developed, in consultation with a range of stakeholders, “social revenue-sharing agreements” to allocate and distribute the benefits of private sector activity among national and regional governments and local communities more equitably. These arrangements may thereby minimize potential grievances
- and reduce the risk of violent conflict. The revenue-sharing plan of the Chad/Cameroon oil pipeline project has attracted interest as a model for other primary commodity export-dependent states where governance and financial management are weak. However, it is not yet clear what the utility of the plan will be in Chad, let alone if it will prove replicable in countries where production has already commenced and where oil companies may be willing to forego corporate social responsibility agreements in order to stay competitive.
- *Transparency:* The lack of transparent political and fiscal processes is often identified as a primary reason for the weakening and collapse of states as well as the outbreak of armed conflict. The rapid and sizable influx of revenue associated with oil production, in particular, places resource-rich countries at risk of high levels of corruption and rent-seeking. In response, a recent Global Witness campaign has called for the major financial regulators of international stock exchanges to legally require publicly traded companies to publish a summary of “all payments to all national governments in consolidated and subsidiary accounts.” While not opposed to the principle of financial transparency per se, most private sector actors expressed a strong preference for non-regulatory approaches and for policies that directly target government malfeasance (such as conditionalities on multilateral aid). Promoting collective action remains a fundamental challenge to the adoption of transparency regulations. Yet, the counter-proposals offered by participants suggest that the reluctance of companies is neither uniform, nor insurmountable. Many highlighted the importance for action to be taken at the sector level, rather than that of the individual corporation.
- *Certification of Conflict Commodities:* Access to global financial and commodity markets has enabled state and non-state combatants to translate territorial control over natural resources into lucrative revenue, whether for financing armed conflict or for personal profit. As participants stressed, many corporations may be unaware of the links between their goods and

services and armed conflict, especially where they rely upon long supply chains. But even where the link is clear, firms may have little immediate financial incentive to alter their practices, to change suppliers, or to pressure suppliers to change their own practices. Certification procedures, such as the Kimberley Process, aim to differentiate “licit” business transactions from those that are conflict-promoting, thus decreasing the risk of punishing legitimate trade along with the illegitimate. Effective implementation and compliance with certification faces numerous challenges, including inadequate operational capacity and political commitment by states. Private sector receptiveness to certification efforts may depend on whether the extra cost associated with ensuring compliance can be passed on to consumers or otherwise compensated.

- *Sanctions:* Traditionally used against states, sanctions are increasingly being applied in a targeted form against non-state armed groups. In theory, the UN Security Council could extend targeted sanctions to private firms found complicit in armed conflict or human rights violations to pressure corporate decision-makers to modify or restrict their behavior. In addition, the Security Council could impose embargoes on commodities in which they deal. Private sector opposition to comprehensive trade sanctions is well-known. Less known is whether their opposition extends to targeted sanctions, as private sector views have been excluded from the process of UN sanctions reform. According to participants, private sector actors would welcome greater consultation in UN sanctions policy making.
- *Regulatory Frameworks:* Generally, private sector participants favored voluntary measures, rather than legally binding obligations. Conversely, many outsiders argue that voluntary measures alone are ultimately insufficient to ensure that private sector activities do not directly or indirectly contribute to armed conflict, as they lack rigorous enforcement and broad coverage. There is an emerging interest – predominantly among NGOs, but also within some governments and industry groups – for a more overarching

and robust approach to complement self-regulation, for example, a global minimum standard of conduct on the responsible use of natural resources and on norms of fiscal transparency. The most likely trend in the near future is the fine-tuning and standardization of existing voluntary international measures, combined with improved national legal and regulatory enforcement.

## I. Introduction

On April 5, 2002, the International Peace Academy’s “Economic Agendas in Civil Wars” (EACW) program convened a meeting of its Working Group on “The Role of Private Sector in Armed Conflict.”

The purpose of the Working Group is to bring a private sector perspective to bear upon the way legitimate business operations, regardless of their intent, may contribute to the outbreak and duration of violent conflict, and to solicit the views of private sector actors in developing more effective responses by all stakeholders, including international policy makers, to minimize the direct or indirect contributory role of business in violent conflict.

The objective of this meeting was to examine private sector perceptions of and experiences with select existing and prospective measures, both voluntary and regulatory, to promote responsible business behavior in conflict zones. These initiatives included the US-UK Voluntary Principles on Human Rights and Security; social revenue-sharing provisions, such as the arrangement underpinning the Chad-Cameroon oil pipeline; the recent Global Witness “publish what you pay” campaign on corporate financial disclosure; the Kimberley Process on certification of rough diamonds; UN sanctions; and finally, the prospects for creating an international regulatory framework on private sector behavior with respect to armed conflict. The discussions explored the costs and benefits these initiatives might entail for the private sector, the likely tradeoffs of binding regulation, and the sorts of institutional, financial, and political resources which would be needed to expand the coverage of both existing codes of conduct and binding regulations.

## II. Private Sector Behavior and Armed Conflict

As a result of rapid globalization, economic privatization, and the retreat of state-led development, private sector actors are more relevant to the peace, security, and prosperity of developing countries than in previous decades. Access to international financial and commodity markets, often through FDIs by multinational corporations, is a necessary component of national economic development. In post-conflict situations, the long-term transition from emergency reconstruction to a sustainable economy is increasingly dependent upon such access.

Yet, the unregulated nature of global financial and commodity markets facilitates a range of transactions that, though not necessarily illegal, can erode security, finance conflict and undermine national development. These transactions involve a range of actors, including the private sector, governments, warlords, and war-profiteers. The relationship between private sector operations and armed conflict has recently gained the attention of policy makers, largely due to the advocacy work of international NGOs, as well as through the UN's own work on conflict resolution and peace building in Angola, Colombia, Afghanistan, and elsewhere.

Importantly, private sector actors are often victims of armed conflict – both directly, through the loss of infrastructure or personnel, as well as indirectly, through loss of markets or supply chains. But their activities may also contribute to violence – most often unintentionally and unknowingly, though occasionally more directly. While there is a need for further, systematic research on this relationship, there is an emerging understanding among policy makers as well as business actors that certain types of private sector behavior may adversely affect the incidence, intensity, and duration of violent conflict.

The “private sector” encompasses a broad array of actors and activities. From the perspective of those actors engaged in conflict prevention and resolution, a principal concern has been the link between armed conflict and the operations of multinational natural

resource extraction firms (and to a lesser, though no less important extent, the international finance and insurance sector.) Even within the natural resource sectors, including petroleum, mining, and timber, there is variation in size (multinational, regional or local), market (upstream, downstream, or service provider), and ownership (public, private or parastatal) – characteristics which affect the nature of their operations, and thus their impact on armed conflict.

Nonetheless, certain general patterns have emerged. The UN Expert Panels on Sierra Leone, Liberia, Angola and DRC have clearly shown that the illicit extraction of natural resources, particularly oil, timber, alluvial diamonds and other minerals, by combatants has sustained conflict in these countries. Frequently, these commodities gain access to international markets through transactions involving global networks of legally operated companies. The revenues, including concessionary payments and royalties, that firms provide to host governments may act as an incentive for corruption, trigger wider macro-economic distortions, or be used to finance armed conflict or repression, often at the expense of social service provision and national development. Where firms are subject to extortion and kidnapping by rebel groups, as in Colombia, company payments – often backed by insurance – have not only helped to increase the financial and military capability of these groups, but also generated further incentives for extortion and kidnapping. Natural resource extraction may also generate or exacerbate grievances with host communities over the inequitable allocation of revenues and benefits, inadequate compensation for loss of land, abusive security practices, biased hiring methods, and a range of other issues.

In response, corporations are increasingly concerned with improving the way they interact with their political and security environments abroad, and with maintaining the integrity of their reputation and market share at home. Many of the measures they have undertaken so far are voluntary, including the adoption of internal codes of conduct. Others involve entry into legally binding obligations, ranging from statutory and contractual arrangements to explicit government regulation.

### III. Private Sector Perspectives

#### A. Balancing Private Sector Security with Human Security: The US-UK Voluntary Principles on Security and Human Rights

A principal challenge facing private sector actors operating in conflict zones is the safety of their assets and personnel. Private sector activities may exacerbate pre-existing tensions or generate new ones, as a result of inadequate revenue-sharing, biased hiring practices, or disruption of land use. Even where they do not engender these problems, their mere presence may represent a lucrative source of revenue for state military and security forces, and/or armed groups to extort. In both cases, firms often find themselves operating in the midst of armed conflict, if not a direct target of military action. Consequently, companies have a legitimate need to establish adequate security arrangements. Typically, they do so by contracting state security agencies or private security services.

Both arrangements involve certain risks. In conflict zones, public security forces, whether provided by civilian police or the military, are typically also engaged in wider military operations, thereby implicating the firm in hostilities in the eyes of local communities and outsiders alike. Protection of assets and personnel may necessitate direct payment to these forces or to the national defense budget of the host country and may constitute an important source of revenue for the government. Local public security forces may also be unable to ensure ethical protection, either because they lack the capacity to do so or because they themselves are engaged in predatory or unaccountable behavior. Contracting private security firms presents similar risks, not least when the security firm has a financial interest in the company whose assets it is hired to protect, and thus an incentive to shift from defensive to offensive operations.

The absence of any international standard of conduct for firms contracting security services prompted the US and UK governments in 2000 to initiate an on-going dialogue with international NGOs and an initial eight American and British-based extractive companies, resulting in the US-UK Voluntary Principles on Security and Human Rights.<sup>1</sup> The Voluntary Principles emerged out of a recognition that corporations could not insure their security at the expense of the surrounding community; that rather than building a fence around their operations, firms had to include stakeholders on issues of security. Although maintaining security remains the primary responsibility of states, a fact acknowledged by the Principles, participating corporations also recognize that they may have a positive role to play. This means not only abiding by local and national laws, but also committing to accepted international standards on human rights and security, and in the absence of directly applicable standards, to building them.<sup>2</sup> Thus, the Voluntary Principles are a response to the need for international standards on human rights and security to which extractive industries could refer.

The efficacy of the Voluntary Principles is currently being tested by a limited, albeit growing, number of corporations in their day-to-day operations in the field. The Principles are still relatively new and evaluating their success is difficult (due in part to the lack of a clear, common operating model), even when measured against relative improvements in the security of the firms' operating environments. According to one participant, efforts to develop and implement the Principles have resulted in a greater recognition of the importance of integrating human rights into company risk assessments and security policies, which, for most businesses, have not traditionally extended beyond consideration of protecting their own bottom line. Arguably, the Principles are changing the mindset of many employees within participating firms as well as their home governments and NGOs. Often at odds,

<sup>1</sup> "Voluntary Principles on Security and Human Rights Fact Sheet," Released by the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, December 20, 2000, via [http://www.state.gov/www/global/human\\_rights/001220\\_fsdr1\\_principles.html](http://www.state.gov/www/global/human_rights/001220_fsdr1_principles.html) (April 8, 2002).

<sup>2</sup> While such standards exist in the context of law enforcement and the use of firepower (e.g., the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials), they were not applicable to private security.

companies and advocacy NGOs involved in developing the Principles have gained a greater recognition of their mutual interest in preventing armed conflict, as well as their need to work together towards mutually acceptable solutions.

In the absence of any enforcement mechanism, the relative efficacy of the Principles will only be evident once results start being achieved. The Principles have provided a minimum standard of behavior not only for actively participating firms, but, as they are publicly available, for any willing firm. For some, the decision to adopt the Principles may be driven more by public relations strategy than by genuine good intentions, as it may promote a “clean” reputation at home without significantly altering behavior abroad. As the Voluntary Principles are being developed through deliberation among participating stakeholders and through firms’ operational practices, companies adopting them without genuine commitment to their implementation could threaten to undermine the process as a whole.

Corporations that have taken the lead in voluntarily implementing the Principles are not necessarily opposed to their becoming binding through legislation. For these companies, prior experience in implementing the Principles might provide a competitive advantage vis-à-vis their business rivals. Firms also have an incentive to “sell” the Principles within their sector, particularly if the behavior of competitors affects the operating environment for all.

The Voluntary Principles, like other forms of corporate social responsibility can be highly contentious even within participating firms. As the Principles are voluntary, operationalizing and integrating them into management processes remains the responsibility of the company by establishing goals, monitoring performance, maintaining accountability, and rewarding compliance. Still, for many corporate decision-makers, compliance remains a cost, at least in the short-term. Consequently, adherence to date has been an incremental and uneven process, rather than one of rapid change and immediate results.

According to several participants, successful implementation of the Voluntary Principles by

companies requires the support of home governments, particularly to engage the support of host governments. Even where there is interest by firms in applying the standards, host governments may not be so inclined. The receptiveness and institutional capacity of governments to cooperate with corporations to find sustainable solutions to security problems varies widely. Defence priorities or other national interests may be a major obstacle to host state commitment. Elsewhere, there may be approval within certain levels of government, but this may not filter down to defense forces in the field, or up to executive decision-makers. Corporations are unlikely to carry through with implementation where it means risking loss of concessions, competitive advantage, or the withdrawal of security. Diplomatic inducements for host state governments by influential states and international organizations may give firms needed leverage. A key policy priority for corporate actors and their home states is to bring host governments and communities into the dialogue on security and to translate the Principles into the national legislation of host states.

Expanding the Voluntary Principles into a global standard, yet one that takes local conditions and dynamics into account, is a challenge not only for those firms, home governments and NGOs which are currently signatories. At present, these participants are relative few in number and are disproportionately “majors” – that is, the larger North American and European oil and mining firms. Ideally, the Voluntary Principles should be expanded to include the widest possible range of multinational private sector actors, developing country businesses, home countries, and host countries at risk of armed conflict. But currently, there is a dilemma among those actors responsible for drafting the Voluntary Principles whether future efforts should focus on deepening implementation among existing participants prior to inviting new companies to join the dialogue. The bottom-up approach of the US-UK Voluntary Principles, routinizing them into the conduct of business, may be predominantly a western approach. Some participants noted that gaining the compliance – let alone involvement – of parastatals remains problematic, as it requires securing the agreement of states like Sudan, Burma, and, to a lesser extent, China.

As the principles are adopted by more corporations, they may gradually emerge as a global standard on human rights and the use of private security. An international standard may not only push corporations to be better global citizens, but also, by leveling the playing field, have competitive benefits as well.

#### B. Businesses, Host Governments and Local Communities: Social Revenue-Sharing Agreements and Natural Resource Management

Private sector actors, above all those engaged in natural resource extraction, often operate in remote and economically underdeveloped regions where state presence may be weak. In the absence of economic opportunities and adequate social service provision by the state, host communities may look to firms to fill these needs – a perception that host governments may readily support. Where corporate engagement with the community is perceived as inadequate, or when access to the proceeds of corporate activities is believed to favor the central government at the expense of local communities, firms may become targets of violence. Natural resources may provide revenues that are used by political elites to reward allies or favor certain sectors of the population along economic, ethnic, or religious lines. Alternatively, rival factions within the state may compete over access and control of lucrative natural resources. Accordingly, there may be few incentives for politicians to channel revenues into sustainable and equitable development.

In response, many private sector actors have engaged with a range of stakeholders, including host governments, local community actors, and IFIs, to develop “social revenue-sharing agreements” to allocate and distribute the benefits of private sector activity more equitably among national and regional governments and local communities; to adequately compensate loss of land or livelihood arising from these operations; to offset or prevent economic distortions commonly associated with natural resource dependency; and to promote savings and investment for the future. Social revenue-sharing arrangements may also be a way to build capacities to deter inefficiency and corruption, while promoting transparent and equitable public expenditure, thereby minimizing potential grievances and reducing the risk of violent conflict.

The Chad/Cameroon oil pipeline project is an innovative partnership between firms, host governments, NGOs and the World Bank to develop and transport national oil reserves, while ensuring responsible social revenue management. The agreement involves a partnership between the governments of Chad and Cameroon, a consortium of oil companies led by ExxonMobil, along with Petronas and Chevron, which provide financing for 97% of the project costs, and the World Bank, which is providing the governments of Chad and Cameroon with financing and technical assistance in social revenue management. The World Bank’s involvement provides the oil companies with needed political risk mitigation for their sizeable investment. Under the agreement, oil revenues from Chad’s Doba region will be channeled through an audited offshore escrow account. A national Revenue Management Plan (RMP) binds the government of Chad to specific allocations for poverty reduction, government administration, and regional investment for five years. A portion of the money will be set aside in a fund for future use. Finally, the account and the expenditures are to be monitored by a control group comprised of a Chadian NGO, a trade union, members of Parliament and the Supreme Court, as well as government representatives.

For actors engaged in conflict prevention and management, three aspects of the Chad/Cameroon project have attracted particular interest: 1) whether the revenue management policies agreed will achieve their intended effect; 2) whether the Government of Chad will abide by the terms of its commitments after the stipulated five-year period; and 3) whether this model is replicable for other primary commodity export-dependent states, where governance and financial management are weak. As oil production has not yet begun, the utility of the agreement has yet to be determined. Critics of the agreement point to the Government of Chad’s November 2000 purchase of arms, using USD 4.5m of the 25m bonus it received from the oil companies, as evidence that oil money will be used by the government to strengthen its military capacity against rebel movements. While justifiable, perhaps, as a legitimate state expenditure for national defense, the purchase raises questions about the commitment of the government to the intent of the Revenue

Management Plan. Moreover, the exclusion of the country's other oil-producing areas from the plan provides a potential source of discretionary funds for the government.<sup>3</sup>

The issue of replicability is less clear. In the case of the Chad/Cameroon pipeline project, the agreement was made possible by a combination of very specific factors. Not only the extreme poverty and economic underdevelopment of Chad, but especially the oil consortium's demand for World Bank participation as a precondition for engagement left the Government of Chad with few realistic alternatives. Most importantly, the agreement was reached prior to the onset of operations. Many participants and outside experts are skeptical that similar arrangements could be implemented where production has already commenced, let alone in cases like Angola, Nigeria, and Equatorial Guinea, which have suffered from decades of mismanagement, where contractual agreements on revenue-sharing between firms and host governments are long-established, and where oil companies may be willing to forego CSR agreements in order to stay competitive. However, in cases such as East Timor, which is only now beginning to develop its oil fields and which has voiced interest in a revenue-sharing arrangement, there may be an opportunity to implement such policies at the outset of resource development projects.

From the perspective of private sector participants, the efficacy of social revenue-sharing and the replicability of the Chad/Cameroon model has long-term implications for the security of their operations.

### C. Business, Host Governments and Local Communities: Financial Transparency

Research by the World Bank has found that states that are highly dependent on natural resource exports are at greater risk of armed conflict than those that are resource poor.<sup>4</sup> The lack of transparent political and fiscal processes has been a primary reason for the weakening – and, indeed, the collapse – of several states and the outbreak of armed conflict. In countries with illegitimate or unaccountable regimes, corrupt civil service bureaucracies and weak civil societies, political elites may have an incentive to divert public revenue for personal profit or political and military gain at the expense of society at large. The rapid and sizable influx of revenue associated with oil production, in particular, places oil-producing countries at risk of high levels of corruption and rent-seeking. Signing bonuses, royalties and other payments from firms to national governments may be in excess of hundreds of millions of dollars – often comprising an overwhelming proportion of GDP.

While corporations cannot fully control the use of the vast revenues their operations provide to governments, NGOs and likeminded supporters argue that neither can they ignore the issue. Corporations have long avoided involvement in “internal politics” of host countries, but they can do more to ensure that such funds are used in a manner that promotes rather than undermines national development and which prevents rather than fuels armed conflict. By promoting financial transparency in their own dealings with governments, corporations would facilitate the tracing of payments to and expenditures by government, giving the international community,

<sup>3</sup> More recently, the World Bank's independent inspection panel has criticized the project for allocating only five percent of royalties from oil revenues to the producing region and for inadequately ensuring that these profits would be distributed as agreed. Alan Beattie, “World Bank attacks own African oil project,” *Financial Times*, August 18, 2002.

<sup>4</sup> Paul Collier and Anke Hoeffler, “Greed and Grievance in Civil War,” The World Bank Development Research Group; 2000; 2001; Indra de Soysa, “The Resource Curse: Are Civil Wars Driven by Rapacity or Paucity,” in David Malone and Mats Berdal, eds., *Greed and Grievance: Economic Agendas in Civil Wars*, (Lynn Rienner: Boulder, CO, 2000). Alternatively, James Fearon, using a different data set, has found a correlation between resource dependence and the duration, but not the incidence, of civil wars (James Fearon, “Why Do Some Civil Wars Last So Much Longer Than Others?,” paper presented at the World Bank-UC Irvine conference, “Civil Wars and Post-Conflict Transition,” Irvine, California, May 18, 2001). For research on how resources affect conflict, see Michael Ross, “How Does Natural Resource Wealth Influence Civil War? Evidence from 13 Case Studies,” Department of Political Science, University of California Los Angeles, July 3, 2002 (mimeo).



NGOs and local civil society a means through which to hold government accountable and to hinder the diversion of public funds.

Securities and exchange regulators are a potentially powerful agency for improving fiscal transparency and otherwise promoting responsible corporate behavior in conflict zones.<sup>5</sup> The UK-based NGO Global Witness has called on natural resource companies to voluntarily “publish what they pay,” that is, to make public their total net payments to national governments, including signing bonuses and royalties, in all countries of operation and in the national language. The proposal is intended to eliminate the double standard whereby multinational companies operating in developing countries do not follow the strict disclosure requirement they are subject to in their home countries. Greater transparency, in turn, could provide civil society in resource-rich developing and war-affected countries a platform to mobilize pressure for more equitable distribution of resource wealth, government accountability, and, in turn, conflict prevention.

Global Witness has also proposed that the major financial regulators of international stock exchanges legally require publicly traded companies to publish a “summary of payments to all national governments in consolidated and subsidiary accounts.”<sup>6</sup> Among other benefits, Global Witness argues that such an obligation would level the playing field among competitors and depoliticize the issue of disclosure at minimal added cost to firms. By requiring disclosure by all publicly listed companies, this measure would help to overcome collective action problems, while at the same time prevent governments from using “divide and rule” tactics. Moreover, securities and exchange requirements might provide an alibi for corporations otherwise reluctant to adopt financial transparency;

the regulatory proposal follows the initiative of BP in Angola, which demonstrated that corporations unilaterally undertaking transparent accounting and reporting procedures may face retaliatory measures from host governments.

Participants expressed doubt that the Global Witness proposal will succeed in getting the necessary support of securities and exchange regulators. Moreover, they expressed concern that securities and exchange requirements would affect only publicly listed companies, and therefore disagreed that a level playing field would be achieved. By default, non-listed companies, including state-owned and parastatal companies, would be exempt from this requirement for disclosure.

For many participants, promoting collective action remains a fundamental challenge to the adoption of transparency regulations. Yet, the proposals offered suggest that the reluctance of companies is neither uniform, nor insurmountable.

Many highlighted the importance for action to be taken at the sector level, rather than that of the individual corporation. Sector-level CSR initiatives, like the Global Mining Initiative, give progressive corporations time to recruit others, encourage the participation of firms that lack the resources and capacity to undertake such initiatives alone, and provide a unified public stance, enabling companies to avoid the division tactics of governments. One private sector participant, for example, noted that there are only a handful of oil companies with the expertise to develop the “deep water” oil fields in Angola and elsewhere. If these companies voluntarily agreed to collectively publish their payments, resistant host governments would have little recourse. Such an agreement could be facilitated through an

<sup>5</sup> 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, but after 9/11 subsequently shelved, the “Sudan Peace Act,” which would prohibit foreign oil companies doing business in Sudan from raising capital or trading securities on any US capital market. Foreign companies would also be required to disclose the use of proceeds from capital raised in the US, the nature of their commercial activities in Sudan, and the relationship of these activities to human rights violations to investors and the public via the Securities Exchange Commission or face a similar prohibition. U.S. oil companies are currently prohibited by sanctions from investing in Sudan.

<sup>6</sup> Global Witness, “The failure of voluntary initiatives and the need for disclosure regulation” via <http://www.globalwitness.org/text/campaigns/oil/regulation.html> (May 19, 2002).

industry-organization initiative, such as the Association of Oil and Gas Producers. If the deep-water firms come forward, then presumably others would follow. Alternatively, it was suggested that if published figures were to be aggregated on an industry level, rather than on a per company basis, host governments would be less likely to single out individual companies for retaliatory measures. Provided these figures were regularly and reliably audited so that overall payments to particular governments could be determined, IFIs could then use this information when auditing governments.

Fiscal transparency is fundamental to improved efforts to reduce the flow of conflict goods and the financing of war. Participants stressed the importance of involving the financial and insurance industries, which play a major role in providing capital and guaranteeing infrastructure and other project costs. Financial and insurance institutions must become more engaged in promoting good governance, both in their own operations and by creating incentives that reward good practices of the firms they finance. Major western financial institutions know the balance of Angola's oil-backed funds – and therefore how much money is flowing into the country – because they themselves are providing loans to the government. The creation of a corporate “white list” has recently been proposed, under which financial institutions meeting specific guidelines on transparency (such as those detailed in the Wolfsburg Principles) would be given preference for managing accounts or handling transactions of public, UN, IFI, or other donor funds. An advantage of the “white list” is that, as all private financial institutions have a vested interest in being awarded contracts to manage these funds, it creates tremendous incentive for corporations to mutually monitor each other's compliance.<sup>7</sup> The white list could be expanded to explicitly include standards of behavior in conflict zones. Another “market-based” approach would be to develop incentives for financial analysts to incorporate firms' political risk assessment and compliance with accepted human rights standards, such as is envisioned by the US-UK Voluntary Principles, into their routine assessments of corporate valuation.

In general, many participants acknowledged that financial transparency may be a significant means for corporations to shift the focus of social grievances back onto governments, while also fostering greater trust between host communities and private sector actors. However, most private sector participants expressed a strong preference for non-regulatory approaches, as well as serious reservations about a regulatory apparatus that places the burden of responsible conduct on corporations, rather than on the governments and armed groups involved in conflict. Many felt that firms are being wrongly targeted – and made to bear the cost – for government malfeasance. Instead, they preferred policies that targeted state actors directly, suggesting for example that multilateral assistance to states be conditional upon increased financial transparency and good governance, as has been proposed in the New Partnership for Africa's Development (NEPAD). Already, the IMF and World Bank are pressing countries for more open disclosure and are increasingly prepared to impose consequences for non-compliance.

#### D. Reducing Trade in “Conflict Commodities:” The Use of Certification Regimes

Access to global commodity markets has enabled combatants to translate territorial control over natural resource wealth into lucrative revenue, whether for financing armed conflict or for personal profit. Corporations may be unaware of the links between their goods or services and unethical or conflict-promoting behavior, particularly if they rely upon long supply chains. Often, a series of transactions are involved, combining legal with illegal activities. The boundary between these categories may not always be clear. But even where the link is clear, firms may have little immediate financial incentive to alter their practices, to change their suppliers, or to pressure their suppliers to change their own practices.

The trade in “conflict diamonds” enabled rebel movements like UNITA in Angola and the RUF in Sierra Leone to sustain particularly brutal insurgencies. In response to advocacy attention and fear of a

<sup>7</sup> See Jonathan Winer, “How to Clean Up Dirty Money,” *Financial Times*, March 23-24, 2002; Jonathan Winer, “Illicit Finance and Global Conflict,” Fafo Institute for Applied Social Science, 2002.

general consumer boycott on diamonds, the diamond industry, countries of production, transit and consumption, and NGOs sought to initiate a global import/export system, whereby “licit” diamond transactions would be more clearly differentiated from those that are “illicit” and thought to sustain conflict, thus decreasing the risk of punishing legitimate trade along with the illegitimate. The resulting Kimberley Process (2000) aims to establish minimum common rules for rough diamond certification. The Kimberley Process relies on a “certificate of origin” and “chain of warranties” intended to provide an auditable trail linking diamonds to their mine of origin, and thus to deny illicit rough diamonds access to international markets and curtail their profitability to criminals and combatants. The “chain of warranties” idea is potentially applicable to other natural resource “conflict commodities.”

However, as the course of the Kimberley Process indicates, effective certification regimes face numerous obstacles. First, global certification regimes will require implementation and compliance not only by industry actors, but also relevant governments, and will thus have to contend with incentives for circumvention. Second, the ability to verify that goods are in fact in compliance with specified standards throughout their entire supply chain requires effective and credible monitoring and enforcement by national customs agencies, and by corporations, without which “certification” is meaningless. However, independent third party monitoring was rejected by states and industry in favor of voluntary enforcement. Also, many states lack these capacities. Third, even if these conditions are met, it is far from certain that certification regimes can completely eliminate trade in illicit rough diamonds, much of which occurs outside official channels, let alone the patronage and criminal networks it feeds. Thus, effective regulation must address both the supply side – predominantly located in the South – and the demand side – consumption by the North – of the problem.

Despite the potential of certification to protect legitimate trade, participants were generally unreceptive to the use of certification regimes as a regulatory approach, contending that certification, like sanctions, unfairly imposes costs on businesses for the bad

behavior of states and armed groups. Indeed, in certain circumstances, as with rough diamonds, private sector receptiveness to certification efforts may depend on whether the extra cost associated with ensuring compliance can be passed on to consumers or otherwise compensated. However, one participant acknowledged that certification may bring clarity and predictability to what companies otherwise often regard as uncertain situations.

Participants also expressed concerns over the fate of stocks of commodities acquired prior to certification, for which provenance could not be guaranteed, jeopardizing the ability of firms to market these goods. They were also wary of uneven monitoring and compliance. Some questioned how certification agencies would be selected – or who “certifies the certifiers,” as it is important for all stakeholders to perceive such agencies as credible and impartial. In cases where certification requirements are not universal, but based on select national legislation, they noted that rivals may be able to circumvent the rules by purchasing a stake in foreign companies not subject to such requirements by their home governments.

Other participants doubted the ability of certification regimes to prevent corruption, including falsification of end user certificates and provenance documentation, in narrow markets like diamonds, where customs officers often have limited capacity to evaluate the origin and value of diamonds against their certificates of origin.

It was suggested that firms may be more amenable to “certification of procedure,” rather than “certification of origin.” Whereas the latter seeks to establish auditable systems to separate licit from illicit commodities, the former seeks to establish minimum standards at the sector-level for how firms operate, which allows for monitoring and verification of implementation and compliance. According to participants, “process certification” can provide firms with a CSR “seal of approval” with which to market themselves to investors, attracting investment, and to consumers, attracting market share. Process certification is especially relevant for general operations in the mining and upstream oil industries in socially unstable or conflict-affected areas.

From an industry perspective, “certification of procedure” would level the playing field by providing common, sector-led operating principles to which firms would be held accountable through mutual monitoring by their competitors. For example, the mining industry, under the Mining, Minerals and Sustainable Development (MMSD) initiative, has expressed an interest in such a certification effort. Some of these firms recognize that this form of certification can be a valuable tool for creating change within industry, as has been the case in the creation of sustainable timber harvesting programs.

#### E. UN Sanctions and Private Sector Actors

In general, the range of voluntary and regulatory measures for reducing the deliberate or unintentional effects of legitimate business operations in conflict zones and insuring the safety of private sector operations has been approached as an alternative to the most common policy option for the UN and many member states: sanctions.

Sanctions, particularly in their targeted form, have been used, both unilaterally and multilaterally, against a growing number of states. In the past decade, the UN Security Council imposed sanctions regimes against twelve countries compared with two in the previous forty-five years. Targeted sanctions are being applied to an increasing number of non-state actors as well. Although to date this practice has been limited to armed groups, the Security Council could extend sanctions to include private firms implicated in sanctions-busting or those which 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 of companies involved in these activities as a means of applying coercive pressure to corporate decision-makers to modify or restrict their conflict-promoting behavior. In addition, the Security Council could impose embargoes on commodities in which they deal.

The private sector’s opposition to sanctions is well-known. Multilateral trade sanctions impose high costs in loss of market access, loss of real investments, and

loss of relative competitive edge. Unilateral trade sanctions tend to be imposed by democratic governments at the expense of their own multinational corporations, while leaving the field open to less scrupulous competitors. Typically, unilateral sanctions do little to impose the pain intended on targeted states, while also reducing the potential leverage of positive engagement.

As private sector views have been excluded from the process of UN sanctions reform, less known is whether this opposition extends to targeted or smart sanctions. Nor is it clear what the consequences of improved monitoring and enforcement of UN and other sanctions regimes might entail for specific private sector actors. For most sectors, the move towards selectivity via targeted sanctions may be good news, as smart sanctions do not preclude all trade and investment. However, for specific industries, including arms producers, oil and natural resource firms, and financial services, targeted sanctions will continue to present challenges which need to be addressed if such efforts are to be as effective as possible. Private sector participants would welcome greater consultation in sanctions policy.

#### F. Towards an International Regulatory Framework on Corporate Behavior

According to many NGOs, self-regulation alone is ultimately insufficient to ensure that private sector activities do not directly or indirectly contribute to armed conflict. By definition, voluntary measures lack rigorous enforcement and broad coverage. Compliance depends exclusively on the will of firms to commit. Without verifiable standards, there is no reliable way to distinguish firms that pay lip service to CSR from those genuinely seeking to promote responsible practices. As a result, there is an emerging interest – predominantly among NGOs and multilateral organizations, but also within some governments – for a more overarching and robust approach to complement voluntary initiatives. These calls have even been echoed by some private sector groups concerned that their access to capital and insurance could be restricted by financial institutions under pressure to avoid sectors engaged in practices which are socially or environmentally disruptive. For example, the mining industry recently appealed for

states to establish common, minimum social and environmental standards.<sup>8</sup>

It has been argued that such an approach has several advantages: 1) where standards of accountability are clearly defined and transparent, legal regimes provide a better basis for consistent, transparent, and fair judgments; 2) where endorsed by legitimate bodies, they will provide legitimacy to what are now hotly contested (because not fully transparent, inclusive or enforceable) voluntary firm-based measures, thereby mitigating the common criticism that voluntary measures are purely a function of expediency and self-promotion, rather than a long-term commitment by stakeholders with genuine commitment to corporate responsibility; and 3) provided it is comprehensive, a legal regime has the potential of creating a level playing field and for extending requirements for and sanctions upon all relevant actors, if only by extending the penalties of non-compliance and the threat of international sanction against host states that are now, for lack of democracy and good governance, self-exempted from the corrective actions of their own social constituencies.

An international regulatory framework for companies could either require states to regulate corporate behavior within their jurisdiction or could directly impose international obligations on companies. As a recent study points out, there is already a body of rights and duties under international law to which corporations are directly bound.<sup>9</sup> There are also several core standards contained in UN conventions and agreements to which most states are signatories, including International Labor Organization (ILO) standards and the Universal Declaration of Human Rights. These are complemented by a range of other resolutions and conventions, including the OECD's anti-corruption and anti-bribery measures and non-binding Principles of Corporate Governance. Following the terrorist acts of September 11, 2002, UN Security Council Resolution 1373 requires governments to take immediate and

far-reaching legislative action against terrorism. The subsequently established Counter Terrorism Committee anticipates significant progress on national-level regulation to curtail illicit financial transactions, which may have positive ramifications for conflict resolution.

Other alternatives available to international organizations include refining the existing language of the UN Charter and relevant conventions, the ILO conventions, and the International Criminal Court to make explicit the responsibilities of state, private sector actors, and NGOs in conflict zones, and to define and prohibit specific economic crimes. Enforcing these measures, especially in areas that lack state presence or have weak institutions, may be difficult, and binding measures could discourage investment in regions that need economic development. Alternatively, an Optional Protocol on minimum standards of conduct for businesses could be added to the recent Convention on Organized Crime, as was done with the protocol on arms brokering. This would be easier than creating an entirely new convention.

Additionally, there are several initiatives to create new standards of conduct. At the international level, the UN Sub-Commission on the Promotion and Protection of Human Rights has prepared draft principles for businesses that foresee placing direct legal obligations on them,<sup>10</sup> and at the January 2002 WSSD Preparatory Committee Meeting, NGOs, trade unions, and other groups made strong calls for the UN to develop binding global laws to govern the behavior of multinational corporations. While subsequently rejected in the WSSD final document, these calls had initially received backing by some UN Member States. Regionally, the NEPAD sub-committee on Peace and Security has called for the initiation of a dialogue with governments, the private sector, international organizations and civil society to generate a minimum set of standards on the exploitation of natural resources in areas of conflict.

<sup>8</sup> Matthew Jones, "Mining groups ask for environmental guidelines," *Financial Times*, January 29, 2002.

<sup>9</sup> International Council on Human Rights Policy (ICHRP), "Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies," (ICHRP: Geneva, February 2000).

<sup>10</sup> UN Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/2001/WG.2/WP.1/Add.1 (2001).

Unlike voluntary principles, which can be adopted relatively quickly, creating a binding international regulatory framework within the UN faces many political and operational challenges in terms of building the necessary political consensus and ensuring ratification and enforcement. Not least, there is also the likely opposition of some member states, backed by powerful corporate lobbies. Given these hurdles, the most likely trend in the near future is the fine-tuning and standardization of existing voluntary international measures, combined with improved national legal and regulatory enforcement.

According to many participants, the role of international organizations, above all the UN, should be to set and promote global norms, not establish or enforce global regimes. It was suggested that the UN use its convening powers to organize an international conference on common standards of practice for the private sector, for example on the responsible use of natural resources and on norms of fiscal transparency. Institutions like the UN Global Compact can play an important role as a deliberative forum for developing a normative consensus. The aim of such an exercise would be: 1) to establish a dialogue between corporations, their home and host governments, and civil society on their mutual concerns and common goals; 2) to generate a platform for action on global and regional levels; and 3) to develop common minimum standards and practices at the international and national level. In the long-term, binding regulations may emerge on private sector exploitation of natural resources or on a broader range of issues (human rights, labor, environment, financial transparency).

#### IV. Emerging Opportunities

The Working Group discussions focused primarily on particular issues and sectors, rather than country contexts. However, recent developments in Angola

provided the participants with the opportunity to bring their concerns to bear upon this specific case.

The death of UNITA leader Jonas Savimbi has irrevocably altered the context of conflict in Angola, and thus the context of doing business there. After decades of civil war, Angola has a new cease-fire, and with it a chance for peace. Whereas the country has been illustrative of the potential destructiveness associated with natural resource dependency, its oil and diamond wealth may now become critical to its recovery. In 2001, Angola's national oil revenues totaled \$6.9 billion. In five years, Angola may account for twenty percent of US oil imports and in six years, its production may be equivalent to that of Kuwait today. Rather than fueling war, this revenue can be a powerful force for financing reconstruction and addressing the pervasive social legacies of decades of war. Multinational oil companies operating in Angola will have a principal role to play in the outcome of the peace process, above all through the promotion of greater financial transparency.

Indeed, the attention that private sector behavior in Angola has received from the international community is becoming the norm, rather than the exception. There is increasing awareness by the UN Security Council that the impact of corporate behavior on armed conflict and, by extension, on efforts to negotiate peace is relevant to the maintenance of peace and security. Both corporations and the UN have a mutual interest in security. It is therefore in the interest of policy actors to solicit the participation and input of private sector actors and other stakeholders to develop an international normative consensus as to what constitutes licit and illicit economic behavior in conflict zones and to develop standards which would not only promote mutual benefit to both of these actors, but also, more importantly to the societies of war-affected states.

# 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 campaigns. 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, 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, 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@yahoogroups.com](mailto:war_economies@yahoogroups.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](http://www.ipacademy.org/Programs/Research/ProgReseEcon_body.htm)



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