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IPA Workshop Report

Private Sector Actors in Zones of Conflict: Research Challenges and Policy Responses

A report of the Fafo Institute for Applied Social Science Programme for International Cooperation and Conflict Resolution (PICCR) and the International Peace Academy project on "Economic Agendas in Civil Wars."

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Rapporteur:
Jake Sherman

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Executive Summary

- Increasing attention is being paid to the involvement and the relative influence of international private sector actors in the political economy of countries and regions experiencing violent conflict. This expert workshop was convened in order to assess the nature of business activity as it relates to violent conflict, to delineate areas where further research is needed, and to consider what policy responses may be needed to mitigate the potentially destabilizing effects of private sector activity in war-torn countries.

- As a consequence of globalization, international private sector actors have become more influential to the peace, security, and prosperity of developing countries than in previous decades. Foreign direct investment (FDI) may stimulate economic growth and facilitate economic and political liberalization. Under certain circumstances, however, and particularly in the natural resource extraction sector, FDI may contribute to the pathologies of weak states and to the outbreak and/or continuation of violent conflict, regardless of the intentions of the particular corporation concerned.

- There has been little by way of systematic research on the relationship between private sector activity and violent conflict. Much public discourse on the issue is guided by the untested assumption that all forms of private sector activity in countries at war are malevolent in effect, if not also intention. Participants agreed that there is a compelling need for more careful, refined analysis. In particular, several distinctions need to be made: between private sector activities per se and their actual "complicity" in conflict; between those actors (such as arms traders and mercenaries) who deliberately seek to profit from war and those – far more common – actors whose legitimate business activities have undesirable but unintended effects; and between the differing impacts of corporate involvement in different sectors, licit as well as illicit.

777 United Nations Plaza, New York, NY 10017 TEL [212]687-4300 FAX [212]983-8246 WEB www.ipacademy.org

- While accusations of private sector misconduct in the developing world are frequently heard, there is no consensus on what actually constitutes "complicity" in violent conflict. Just as the relationship between private sector actors and conflict may be conflict-reducing or conflict-promoting, the sort of business activities that can exacerbate violence may be either direct and intentional (e.g., provision of arms or materiel) or indirect and unintentional (e.g. hiring practices which reinforce local inequalities). The current tendency to use "complicity" expansively risks obscuring these crucial distinctions, while also creating a disincentive for constructive private sector investment in developing countries that may usefully benefit. Some participants suggested that a definition-by-consensus be developed in partnership with members of both the private sector and stakeholder groups. All agreed that until a clearer definition is established, it will be difficult to determine just what sorts of practices corporations should be held accountable for.

- Just as all private sector actors are not the same, neither is their involvement in conflict zones. Most foreign investors will leave when violence erupts. However, in certain sectors, particularly the natural resource extraction sector, asset specificity, long production cycles, and the expected returns on investment may simply outweigh the reputational and security costs of continuing to operate in areas of conflict. While international attention to the impact of extractive multinationals in conflict zones is therefore warranted, the role of other types of businesses, such as financial, insurance, and transportation companies, as well as local and regional small- and medium-sized actors who operate in greater obscurity, requires greater attention.

- Among the many legitimate concerns that private sector actors face, the need to maintain their competitive advantage vis-à-vis business rivals is crucial. Those who might otherwise adopt responsible standards and practices of conflict prevention and management face two problems of collective action: first, the possible loss of competitive advantage (including lucrative contracts and access to markets) to less scrupulous rivals (known to economists as the problem of defection); and second, the prospect of privately bearing the costs of supplying the public good of conflict prevention that others may benefit from without making a like contribution (the problem of "free-riding"). To ensure that private sector behavior does not facilitate conflict, ways need to be found to overcome these barriers to collective action and to ensure a level playing field. One potential remedy might lie in intra-sectoral cooperation (e.g. consortia, non-intervention pacts), another in the creation of common legal and regulatory frameworks.

- The motivations and strategies of private sector actors in conflict zones generally remain a "black box" for outsiders. In part, this is due to continued deficiencies in corporate transparency and, in part, to corporate wariness in the face of the failure of outsiders to acknowledge the legitimate concerns of corporations in conflict zones – both of which sometimes have been perversely reinforced by otherwise salutary NGO campaigns against corporate misdeeds. However, it can be assumed that, as profit-driven actors, corporations make operational decisions based on their anticipated impact to their bottom line. As different corporations will have different cost-benefit calculi, they will not share the same assessment of risk or the same degree of interest in adopting more constructive practices. The pivotal question for corporations in conflict zones will not only be "Should we do the right thing?" but also "What is the right thing to do and how much will it cost?" For these reasons, outsider efforts to modify business practices through normative persuasion or "naming and shaming" will achieve little unless ways are also found to tie international norms of human rights and conflict prevention to corporate self-interest.

- While some progress has been made in the promotion of corporate social responsibility, voluntary self-regulation of this sort has been complicated by the proliferation of competing codes and the absence of a widely accepted standard. Furthermore, such self-regulation lacks effective monitoring and review processes and often amounts to little more than an exercise in public relations. While legal regulation may offer a more reliable alternative, whether such regulation be domestic or international, its efficacy depends upon implementation and enforcement by national governments. Yet, in reality, the willingness of state authorities to adopt and enforce remedial regulation remains a major barrier. Such regulatory reform is costly and may imply reduced freedom of discretion over lucrative state-owned enterprises. Additionally, insofar as all legal regulation carries a perverse incentive for evasion, regulation may actually increase corrupt behavior, if it is not carefully designed.

- There is a dearth of reliable empirical information on corporate decision-making in conflict settings. Preliminary research suggests that, more than is commonly recognized, some private sector actors have undertaken policies that seek to promote human rights and environmental health and to mitigate or avoid conflict in host communities. Efforts to survey instances of positive corporate engagement further suggest that those initiatives undertaken in cooperation with governmental and non-governmental organizations have been more effective than isolated efforts. More research is needed to determine whether this pattern holds generally and why.

- Given the variation in actors and contexts, no single model or policy approach is likely to prove effective in shifting the behavior of private sector actors towards consistent conflict management and prevention. The question is not whether to address corporate behavior, but how to do so. Among the participants, there was consensus that any effort must include both "carrots," in the form of incentives, and "sticks", in the form of legal sanction and normative pressure. Identifying not only the right incentives, but the right balance is crucial.

Introduction

On April 19, 2001 the International Peace Academy (IPA)'s project on "Economic Agendas in Civil Wars" (EACW) and the Fafo Institute's Programme for International Cooperation and Conflict Resolution (PICCR) held an informal workshop on "Private Sector Actors in Zones of Conflict: Research Challenges and Policy Responses." This workshop arose from a Meeting of Experts, held in January 2001 under the auspices of IPA's Economic Agendas Program, which indicated a need for a more focused examination of the substantive research and policy challenges posed by the pervasive involvement of international private sector actors in countries marked by weak states, chronic instability, and violent conflict.

The purpose of the IPA-Fafo meeting was to identify major obstacles and continuing gaps in current research and policy development in this vital area, to develop the analytic and conceptual underpinnings of the particular security challenges posed by private sector activities, to uncover the range of strategies that have been undertaken to resolve them, and to assess possible options for improving our collective capacity to effect meaningful policy-change.

As a consequence of rapid globalization, economic privatization, and the retreat of state-led development, private sector actors have – for better and for worse – become more influential to the peace, security, and prosperity of developing countries than in previous decades. Yet, while the growing global role of private sector actors is widely recognized, to date there has been little empirical study of the actual consequences of private sector activity, particularly in countries at risk of, or undergoing, conflict. While there is an established literature on state actors and conflict, there has been little systematic research on the role of private sector actors. There have been some case studies examining the role of corporate behavior in specific conflicts, but no coherent "big picture" exists.[1] The motivations and strategies of private sector actors in conflict zones generally remain a "black box" for outsiders. In part, this is due to continued deficiencies of corporate transparency and, in part, to corporate wariness in the face of the failure of outsiders to acknowledge the legitimate concerns of corporations in conflict zones, both of which sometimes have been perversely reinforced by otherwise salutary NGO campaigns against corporate misdeeds. This has impaired the capacity of individual governments and the international community to regulate private sector activities.

[1] For conflict-specific studies, see the "Oil and Conflict" Project of the Centre for Global Governance at the London School of Economics; Global Witness' reports on Angola: "A Crude Awakening" (oil) and "A Rough Trade (diamonds); Human Rights Watch's "The Price of Oil" (Nigeria); Christian Aid's "The Scorched Earth" (oil in Sudan); Jakkie Cilliers & Christian Dietrich, *Angola's War Economy: The Role of Oil and Diamonds*, (Pretoria: Institute for Security Studies, 2000); Partnership Africa Canada's "The Heart of the Matter" (diamonds in Sierra Leone); and others. Organizations undertaking initiatives with corporations on conflict prevention and resolution include: Collaborative for Development Action, the Council on Economic Priorities, International Alert, and the Prince of Wales Business Leaders Forum.

"Complicity" and "Responsibility"

At the most general level, private sector actors make themselves part of the wider context of conflict by entering or continuing to operate in countries affected by chronic human rights abuse, instability, or civil war, or by maintaining business relations with local suppliers and/or distributors. Any decision a corporation makes in these circumstances may potentially affect the conflict in a positive or negative manner. Establishing the extent to which a corporation is complicit in conflict is central to the notion of responsibility, yet there is no consensus on what "being complicit" constitutes.

Some have defined complicity broadly to include all corporate involvement in countries in which a wide-spread abuse of human rights takes place. For many analysts, this definition is too encompassing to be conceptually or practically meaningful. Corporations require a clear definition of complicity if they are to know what practices they should avoid. Regulators require a clear definition in order to hold firms accountable and to devise effective remedies. While a narrower definition may be preferred, in fact, the present tendency among NGOs and activists critical of corporations favors expansion. The continued broadening and vagueness of the concept of complicity has the effect of "moving the goal posts," whereby corporations meet one set of standards only to find themselves under criticism for failing to address others. This is both unconstructive and unfair to private sector actors, particularly those which are genuinely concerned with minimizing the negative impact of their activities. One possible solution is to establish an accepted minimum standard upon which all corporations and other stakeholders could agree, for example, an injunction against selling arms or using forced labor. At the same time, those corporations that – in hopes of deflecting further NGO scrutiny – adopt a particular corporate social responsibility (CSR) standard need to realize that responsible conduct is a process which requires continued monitoring to ensure that standards are in fact properly implemented.

Participants suggested that complicity may be direct and intentional or indirect and unintentional. It was recognized, however, that in many cases of actual civil conflict, this distinction is easily blurred. In cases of direct complicity, the private sectors actors in question are those who deliberately seek financial profit from instability and conflict. Usually, too, the activities in which they are engaged directly abet armed conflict in one way or another: through the sale of private mercenary forces, or the supply of arms or other military materiel to belligerents, or through direct contracts with combatants to build roads, landing strips, or other infrastructure for military use. Indirect complicity, by contrast, refers to the unintended side-effects of routine business operations. In the view of most participants, this is by far the more common pattern of corporate behavior in conflict zones. Here, the private sector actors in question are not deliberately or directly involved in human rights abuse or in practices designed to profit from violent conflict. Rather, their negative impact may be the result of operating in a hostile environment. 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 or appreciate how the revenue streams generated by the commodities they produce benefit combatants and perpetuate conflict. For example, legitimate concerns for the security of staff and investment may compromise the stability of the host society. Or, having already made a major investment in what were initially stable countries or regions, they may find themselves having to operate in contexts where growing instability and armed conflict have changed the original ground rules. Most commonly, they may face a corrupt political and business culture, which requires them to make extra-contractual payments[2]; or they may have hiring practices which unwittingly exacerbate local socio-economic inequalities and which contribute to instability in the longer term.

Apart from these sorts of problematic practices, there is a consequentialist argument concerning indirect complicity which suggests that if a corporation's activities contribute to the revenues of a government prosecuting war, then it is sustaining that government and its ability to perpetuate systematic violence. This link between private sector activity and the sustainability of militaristic regimes needs to be demonstrated empirically, as many questions remain, including the extent to which the provision or deprivation of such revenues correlates to the scope and intensity of military campaigns.

[2] See Hongying Wang and James N. Rosenau, "Transparency International and Corruption as an Issue of Global Governance," *Global Governance*, vol. 7 (2001), p. 41.

In order to develop a better understanding of the full range of ways that private sector activity may contribute to conflict, and to develop a workable definition of "complicity", the participants endorsed the need for further empirically-based analysis of the actual connections between private sector activity and the incidence and intensity of armed conflict as well as a critical survey of the various conceptions of "complicity" currently being used in policy debates. It was also suggested that such an exercise should involve members of the private sector as well as other stakeholders.

Given the breadth of private sector impact in conflict situations – positive and negative, direct as well as indirect – some suggested that a more nuanced terminology be used. Accordingly, in keeping with its established negative connotation, the term "complicity" should be reserved for those cases of direct and deliberate private sector involvement in war economies. In contrast, when describing those private sector activities that are problematic because of their unintended consequences, "complicity" may be at once both too harsh and too misleading a label for what is properly "private sector involvement" in conflict zones. As "involvement" is neutral and less fraught with accusation, it may usefully open up space for more analytically nuanced investigation, while also encouraging more cooperative engagement of governments and private sector actors in designing effective remedies.

Questions over the meaning of complicity raise the corresponding question of what corporations involved in conflict zones should be held responsible for. Again, the range of possibilities is quite expansive. Much will depend on the character of the conflict in question and the particular endowments of the corporations concerned. Most broadly, corporations could be encouraged, alongside other third-party actors, to use their economic influence with host governments to take an active diplomatic role in conflict prevention, dispute resolution, and post-conflict reconstruction. Alternatively or in parallel, they could undertake partnerships with donor states and NGOs to promote social investment and community development projects in the host country that target pressing social needs and directly extend redistributive benefits to surrounding communities. Neither of these proposed initiatives is without complication, however. Private sector diplomacy raises legitimate concerns about the potential for self-interested collusion between powerful multinationals and host governments. It may also add to the unwieldy proliferation of third-party actors in conflict mediation efforts.[3] Moreover, the projected efficacy of this sort of diplomacy assumes that international private sector actors enjoy more leverage and access in host-state capitals than they actually do. Likewise, unless carefully designed and managed, social investment and community development initiatives can – and, indeed, do – exacerbate social and political tensions. According to some participants, an effective way of mitigating these risks is to discourage companies from acting unilaterally and, instead, to promote such corporate conflict management initiatives in partnership with international organizations and local NGOs. Some participants also cautioned against the urge to overwhelm private sector actors with too many demands. First and foremost, corporate responsibility for conflict mitigation should begin with more sustained efforts to identify the wider security risks and minimize the destabilizing repercussions of otherwise routine business operations.

Variations in Private Sector Involvement

The relationship between private sector activity and armed conflict varies according to a range of institutional and environmental factors, some of which can exacerbate or prolong hostilities. These factors include: the sector of corporate involvement and the nature of their ground operations (e.g. extractive vs. manufacturing enterprises; large multinational corporations vs. small, local firms); the company's governance and investment structure (e.g. public vs. private; partnership vs. sub-contractor; sole operator vs. member of a consortium with other firm(s) or government agencies); the geographic proximity and severity of conflict (e.g. widespread vs. isolated hostilities; intentional vs. accidental targeting of staff or assets); and the nature of the firm-government relationship.

In general, most foreign investors will leave when violent conflict erupts. Service firms, manufacturers, and other sectors with comparatively light investment and

[3] For a consideration of this and other problems encountered in conflict mediation, see: Bruce D. Jones, "The Challenges of Strategic Coordination: Containing Opposition and Sustaining Implementation of Peace Agreements in Civil Wars", *IPA Policy Papers Series on Peace Implementation*, New York June, 2001.

mobile assets can relocate more easily and are thus less likely to maintain a physical presence when conflict erupts, although dependence on supply and/or distribution chains may affect decisions to divest.

Some industries, however, are more resilient to conflict situations. For certain sectors, long production cycles and the expected returns on investment may simply outweigh the economic and reputational costs of continuing to operate in areas of conflict. Extractive industries, including petroleum, natural gas and mining, may be particularly reluctant to withdraw, given their extensive financial investment and physical presence on the ground.[4] The geographic specificity of extractive assets may likewise influence decisions to remain, as ensuring access to resources may necessitate continued operation in unstable regions. Remaining in-country will be easier for those companies with off-shore or enclave operations that are geographically more insulated from conflict. Finally, the nature of concession agreements, which may carry time-frames of several decades, necessitates that extractive corporations learn how to weather political instability. Not surprisingly, then, it is the extractive multinationals such as DeBeers, Talisman, Royal Dutch/Shell, and Chevron which have been most targeted by advocacy organizations for their alleged role in exacerbating conflict in areas where they operate.

Even in countries without widespread violent conflict, the negative impact on national economies of windfall profits that governments reap from natural resource exploitation can be significant. In a phenomenon known as the "Dutch Disease", access to natural resources revenues tends to distort investment, undermine competitiveness, and accelerate inflation. Particularly in developing countries, where governance capacity is low, such massive capital flows can also exacerbate the pathologies of weak states by fuelling corruption, weakening fiscal discipline, and freeing state officials from political accountability. In situations of conflict, the effects of the Dutch Disease force policy-makers to address issues related to both the financing of repression and the political economy of failed or corrupt states. Among the participants, it was suggested that multinationals might help to mitigate these tendencies by seconding accountants and experienced administrators to host governments to improve the latter's governance capacity. Another off-setting effort might be for corporations to use local subcontractors to better mesh their business practices with local business development. However, it was noted that, in many places, government officials may not be eager to improve their governance structures as this would entail a loss of discretion over lucrative state-owned enterprises.

To date, most policy attention has been focused on the role of multinationals in conflict zones, particularly those in the extractive industry. Yet, there are other private sector actors who are deeply, if less visibly, involved in these economies, including those in other sectors, such as arms manufacturers and brokers, private security firms, and para-statal or state-owned monopolies. Other businesses in conflict countries may include infrastructure contractors and power industries, which typically have a large physical presence on the ground; service firms, including various suppliers to extractive operations; and agro-business. As one participant stressed, the relationship between logging corporations and conflict, particularly in Southeast Asia, is a critical but neglected area of policy research. Because the firms involved here tend to be private, national or regionally-based corporations, without an international profile and based in countries without strong civil societies, they have few incentives to operate responsibility and face fewer sanctions for activities that violate human rights, despoil the environment or catalyze violent conflicts. For this reason, policy responses that are developed with large, western-based, multinational corporations in mind may prove less effective in affecting the behavior of these smaller, regionally-based firms. Finally, it was observed that the provision of a range of goods and services to internationally isolated governments or to rebel groups is typically carried out by a fluid network of very small businesses operating at the margins of legality. This is particularly true where international sanctions regimes are in place. In fact, the profitability of such actors may depend upon deliberately flouting national laws and international norms; in such an environment, policy approaches based on engagement are unlikely to succeed. The fluidity and obscurity of this

[4] This said, in countries experiencing severe repression or violent conflict, there have been instances when extractive industries have either withdrawn their operations or opted not to begin new projects until conditions changed. This has been the case for several multinational oil companies in Burma/Myanmar. In Sierra Leone, where diamond mining has been implicated in the brutal civil war, corporations have been reluctant to re-enter in the absence of a diamond certification regime. In Chad/Cameroun, oil companies were reluctant to undertake the pipeline project until the interests of all affected stakeholders, including local communities, ethnic minorities, and the Chad government were incorporated. What remains unclear is which factors influence corporate behavior in such cases.

sort of private sector involvement present policymakers with a much more daunting challenge insofar as monitoring and enforcement is much more difficult to ensure.

This said, there are several reasons why small- and medium-scale operators may yet be willing to promote conflict resolution. First, they may be more susceptible to the losses associated with armed conflict. Alternatively, they may have a stronger commitment to the region, particularly if they are regional investors, which are more likely to be the last out and the first back in. The question was raised as to how best to reach smaller firms. One suggestion was to begin by approaching on-site field managers who are most familiar with and sensitive to problems on the ground. It was pointed out, however, that this very familiarity often makes site managers very wary of outsider interference and may make them even less disposed to engagement than their CEOs at headquarters.

Engaging Private Sector Decision-Makers: Incentives and Self-interest

Relatively little is understood about the interests, motivations, and business strategies that shape international private sector actors' behavior in conflict zones and, hence, their impact on conflict and conflict prevention. On intuition alone, most outsiders assume that, given the typically disruptive effects of war on private investment and business activity, decision-makers have a vested interest in preventing and managing conflict, or at the very least, in minimizing those aspects of their own conduct which may exacerbate it. Yet, not all corporations share the same level of interest in ethical practices or assessment of risk. Corporate "altruism" may stem from a variety of underlying motivations and is therefore unpredictable.

Very often, major corporate actors engage in various forms of "quiet diplomacy" and "closed door meetings" with local authorities. Often, they do so out of necessity in order to manage unforeseen disputes or to ensure the security of physical assets and personnel. This may provide them privileges of access and information, as well as personal leverage, all of which raise the possibility of using their good offices for a more active role in conflict management and prevention. Further exploration of this potential role should, however, proceed with caution, as private sector diplomacy raises legitimate concerns about the potential for self-interested collusion between powerful multinationals and host governments. Moreover, it is far from clear that corporate actors can transform their economic clout into effective persuasion of local authorities. For one thing, their diplomatic influence may not be as great as their economic clout might suggest. For another, undertaking such diplomacy, even in the name of universal human rights or international norms of peace and security, exposes corporations to accusations of unwanted interference and to the risk of retaliation by host governments. Whether corporations can be, or indeed desire to be, engaged in conflict prevention in this way is a question that is probably best decided on a case-by-case basis.

As profit-driven actors, corporations make decisions about a particular course of action based on its anticipated impact to their bottom line. For policy-makers seeking to advance responsible corporate behavior in conflict zones, much will depend upon engaging corporate actors in a way that resonates with that bottom line. This has proven to be a difficult proposition, however. Conflict prevention and political stability are goods that are, by definition, hard to value in money terms. Generally, the costs of undertaking preventive measures are more evident than the benefits they may generate.[5] The lack of quantitative data on the relative value of investments in such practices as corporate transparency, community development, and conflict impact assessment, as compared to corporate earnings in the absence of these measures, further mitigates against a straight-forward cost-benefit analysis. Decision-makers might instead be persuaded by the lessons of practical experience, whether their own or others'. But the impact of conflict on firm revenues has varied widely. For example, whereas Shell's economic performance was relatively unaffected by the political unrest of 1996 in Nigeria, restarting the Panguna copper mine in Bouganville, where corporate practices were directly implicated in provoking civil war, allegedly cost Rio Tinto $3 billion. Thus, sometimes a bottom-line

[5] David Cortright, ed., *The Price of Peace: Incentives and International Conflict Prevention*, (Lanham, Maryland: Rowman & Littlefield Publishers, Inc., 1997); Michael E. Brown and Richard N. Rosecrance, "Comparing Costs of Prevention and Costs of Conflict: Toward a New Methodology," in Brown and Rosecrance, eds., *The Costs of Conflict: Prevention and Cure in the Global Arena*, (New York: Rowman & Littlefield Publishers, Inc., 1999).

argument may be evident and compelling; but much depends upon the relative size of the investment and the time horizons of corporate investors. Those with short-term or one-off projects may be less amenable than those with longer-term investments to arguments based on the returns on investments in social peace. In both cases, assessments of political risk and projected schedules of profit margins will factor into the choice of whether or not those risks can be borne, and whether or not conflict management strategies will be worth the added investment.

For corporations re-evaluating the way they conduct operations in conflict zones, a pivotal question will be: "How costly is it to adopt a conflict management strategy?" A consideration of the cost-benefit calculus will not only include the direct costs of implementing new internal practices -- such as conflict impact assessments, fiscal transparency, supply-chain monitoring, or context-sensitive hiring practices-- and external, community relations policies, but also the opportunity costs these initiatives may entail for a firm's competitiveness vis-à-vis rivals. As some participants observed, however, there are ways to minimize these costs. For example, the social pact agreed to as part of the Chad/Cameroon pipeline oil consortium offers potentially significant benefits at little or no extra cost to the participating oil companies, and, in dedicating revenues for social development programs, reduces the risk that their investment will be subject to future social and political instability. It was further noted that the relative influence of a major corporation on a host economy may be a factor in facilitating these sorts of low-cost, risk-reducing arrangements. For example, BP Amoco was recently able to adopt a policy of fiscal transparency in its Angola operations, without increased cost or risk to its contract, perhaps because it was able to appeal to the Angolan government's need to maintain good relations with the British government.[6] Such engagement also reduces NGO criticism. Thus, while it may take some persuasion, corporations are more likely to take remedial action if the business risks of doing so can be minimized.

Effectively "spinning" conflict management practices as economically advantageous to corporations may persuade CEOs and other decision-makers, but, as some participants noted, for these practices to be meaningfully implemented, buy-in has to happen at multiple levels within the corporate hierarchy. As noted above, field managers are well-placed to understand the local conditions and challenges that adversely affect company operations, but may resent CSR requirements as an imposition and a burden. Conversely, even when CSR strategies are accepted at the operational level, they may still fall afoul of resistance by CEOs and Boards of Directors. Further consideration of how to engage senior managers and how to institutionalize conflict management strategies within the firm is needed.

Perceptions of the relative cost of conflict management and conflict prevention strategies may be influenced by legitimate concerns that corporations have regarding their competitive advantage. Maintaining a competitive advantage vis-s-vis business rivals is the *sine qua non* of corporate culture. Those who might otherwise adopt responsible standards and practices of conflict prevention and management face two problems of collective action: first, the possible loss of competitive advantage (including lucrative contracts and access to markets) to less scrupulous rivals (known to economists as the problem of defection); and second, the prospect of privately bearing the costs of supplying the public good of conflict prevention that others may benefit from without making a like contribution (the problem of "free-riding"). A single corporation is unlikely to take decisions which place it at a disadvantage vis-à-vis its competitors, such as placing conditions upon its investment, particularly when competition is high. Moreover, many conditionalities are fundamentally at odds with the self-interest of kleptocratic and/or dictatorial regimes and can thus involve severe opportunity costs. The pervasiveness of these problems imply that private sector behavior in conflict zones can only be modified if ways are found to overcome these barriers to collective action, to ensure a level playing field, and to reduce opportunity costs. One potential remedy might lie in intra-sectoral cooperation (e.g. consortia, non-intervention pacts), another in the creation of common legal and regulatory frameworks. In Chad, the existence of the oil consortium and the guarantor role played by the World Bank may have been vital to overcoming these collective action problems, thereby enabling the creation of a common adherence to provisions that restrict the government's use of oil revenues.

[6] Since this meeting, Global Witness reports that due its transparency policy, BP been threatened by the state-owned oil company Sonangol with withdrawal of its concession and/or its permission to operate in Angola.

The Chad/Cameroon pipeline project suggests that it may be easier to attach conflict-management conditions to an investment project *at its inception* rather than alter on-going contractual arrangements. Tellingly, BP Amoco's recent decision to provide financial transparency of its ongoing operations in Angola concerns its own accounting and reporting procedures only; it does not seek to impose similar obligations on the Angolan government as a condition for BP Amoco financing oil extraction. This is understandable. At this stage in the game, doing so might leave BP Amoco vulnerable to retaliatory measures. In future investments, therefore, it was proposed that, as in the Chad/Cameroon arrangement, all major investors and stakeholders undertake to develop certain shared ground rules *before* entering risky settings. Such a collective agreement might encourage socially responsible behavior among the principle players, and discourage smaller, less scrupulous firms who might be tempted to flout standards, by increasing the latter's costs of operating – that is, the costs associated with transportation, refining, and distribution. In essence, this would give those corporations that undertake responsible investment a shared monopoly vis-à-vis those who defect. Some participants questioned the feasibility an arrangement of this sort; however beneficial it may prove for constructive corporate engagement in conflict settings, it may tread too finely the line between intra-sectoral cooperation and outright collusion.

Another factor upon which the cost of CSR may be based is "reputation assurance". Consumer industries, from textile manufactures to diamond retailers, rely upon their brand name to distinguish their product from that of competitors. In many instances, businesses have adopted codes of conduct on human rights and other valued social norms in order to insulate the reputation of their brand name. The association of violence or human rights abuse with a product brand has the potential to alienate consumers in ways that can severely punish producers, both reputationally and financially. This, in fact, is what has made the "name and shame" campaigns of NGOs so effective. In the face of public exposure of its corporate misdeeds in conflict zones, DeBeers recognized that its reputation and its economic standing would suffer unless it took steps to withdraw from all trade in conflict diamonds and to support rough diamond certification. While DeBeers' calculation was ultimately based on whether it could still make a profit by doing so, the point is that reputational concerns figured prominently in its decision. Although light manufacturers are likely to leave when violent conflict breaks out, retailers downstream from those companies that continue to operate in unstable regions remain vulnerable to consumer pressure. Brand name recognition is routinely evaluated by accountants and lawyers when they make a determination of a corporation's monetary value. Currently, further work is being done to expand the valuation of "social intangibles" to include public or social "good will." However, unlike environmental performance, social performance remains very difficult to measure.

For some firms, adopting responsible social behavior may be part of a change management strategy to distinguish one's corporate identity in a crowded marketplace. Paradoxically perhaps, these sorts of "progressive" corporations may yet be reluctant to share their best practices or accumulated expertise with other companies, as doing so would erode their comparative advantage. In a similar manner, there are niche companies whose success is based on local specialization, on developing a deep understanding of and an ability to operate in complex political contexts. Working in areas where others cannot or will not go is their comparative advantage.

Strategies that utilize informed insiders who are willing to take on the challenges associated with corporate behavior in conflict zones may be more effective than attempting to shift corporate behavior through public confrontation. Identifying, supporting, and linking these interested insiders across corporations may be a valuable way to promote broad-based improvements. In this regard, generational factors may be critical to changing corporate cultures; in the diamond industry, for example, it was the younger CEOs who were responsible for shifting opinion in support of diamond certification. NGOs should cultivate friendly insiders and their good offices to gain access to CEOs and corporate boards. Elsewhere, instituting corporate change may depend upon the retirement of key decision-makers, including CEOs. While these cooperative means of promoting corporate engagement are worth exploring, they were not proposed as replacements to NGO advocacy campaigns, whose ability to alter corporate behavior is already well-demonstrated.

The financing and guaranteeing of investments provides another area through which corporations may be urged to responsibly invest. Although the financial and insurance sectors are not on 'the front line' in the same way as corporations with on-site operations, these sectors provide important backing for private sector operations in risk-prone regions. Political risk insurance is provided by a specialized group of corporations, including, recently, Lloyd's of London, which share their liability with overseas guarantors like the World Bank Group's Multilateral Investment Guarantee Agency (MIGA) and the (US) Overseas Private Investment Corporation (OPIC).[7] In the Chad/Cameroon case, the guarantor role of the World Bank was the *sine qua non* of the oil corporations' involvement.

Banks and financial guarantors are beginning to see the long-term implications of underwriting practices today which may negatively affect them in the future. Although, to date, there has been little public discussion by US-based insurers of their own risk in providing coverage to operations in areas of conflict, insurance corporations outside the US are increasingly questioning the corporations they guarantee regarding their environmental impact and social practices as well as those of their subsidiaries in other countries. While larger corporations may self-insure if they are unable to get coverage from guarantor agencies, small- and medium-size firms, particularly those located down-stream, depend upon export credits to cover their risk. Financing for large infrastructure development projects may be one potential mechanism for moderating firm behavior. Whereas the nature of multinational corporations enables them to disperse their liability across their holdings, large infrastructure projects tend to be financed by project-specific bonds and, thus, may be one area where insurers have leverage where a project is deemed likely to risk unacceptable social consequences. It was noted that credit and bond rating agencies do not currently include indicators that may be relevant to conflict in their routine assessments; at present, political risk analysis focuses only on relative macroeconomic health, rather than on the determinants of political stability. Additionally, standard bank practices, particularly secrecy rules, have come under scrutiny for their role in facilitating money laundering and for allowing banks to serve as depositories for the ill-gotten gains of war, corruption, and crime.

Corporations require not only an accurate assessment of instability and how that instability may affect their operations, but also an understanding of how their activities may exacerbate existing socio-economic and political tensions or contribute to wider conflict. In short, they need to engage in conflict prevention. A handful of organizations, notably Control Risks Group (CRG), provide "country risk assessments" which analyze the impact of political and security developments on business operations in countries were they are planning or maintaining operations. Rather than focus solely on potential economic risks of investment, this adaptation of the risk management tool enables corporations to monitor political and security risks to their staff and other assets, as well as to gauge the potential negative effects of their own practices on the local context. Unfortunately, these forecasts are limited both in terms of their availability – CRG, one of the few groups doing this, has a research staff of one – and scope – forecasts cannot provide the long-term outlooks required by many multinationals, particularly the extractive industries.

Finally, it should be noted that private sector actors already undertake *ad hoc* initiatives to improve their on-the-ground relations with local communities. Most often, these initiatives have involved infrastructure improvement, environmental protection, and social development projects, such as the provision of micro-credit loans. Very often they have been done out of necessity and on a trial-and-error basis: that is, in the absence of a coherent strategy or well-designed assessments of their relative impact. Anecdotal evidence suggests that, at best, the results have been mixed. However, some recent initiatives indicate that corporate actors increasingly recognize these shortcomings and are interested in finding ways to rectify them. In Azerbaijan, for example, where the unresolved status of the Armenian enclave of Nagorno-Karabakh complicates proposed Caspian oil pipelines, BP Amoco and Stat Oil are working together with government officials and NGOs in an informal network to find workable solutions that are acceptable to all major stakeholders. These kinds of initiatives may not always be conceived as deliberate efforts at conflict prevention. Yet, even where they are pursued for other purposes, they may contribute to that end. The discussion made clear that much more needs to be known about the scope, nature, and effectiveness of the specific kinds of initiatives private sector actors have already attempted in their efforts to protect their assets, minimize conflict, and promote good relations with the societies in which they are located. To date, the need for this kind of systematic inquiry has not been widely recognized, in part because of the mutually reinforcing tendencies of

[7] Andrew Bolger, "Lloyd's to offer war cover", *The Financial Times*, May 27 2001.

private sector actors to play down problem areas in their foreign operations and of outside critics to play them up, both in ways that can obscure the bigger picture. Obviously, such an investigation cannot be undertaken unless corporate decision-makers are far more open and forthcoming than they have been in the past.

Designing Appropriate Policy Responses

Broadly speaking, there are three types of approaches available to international actors seeking to promote conflict-reducing behavior among private sector actors: normative, instrumental, and coercive. Respectively, these include: the promotion of principled conduct, either through advocacy campaigns that mobilize public awareness and pressure, or the voluntary adoption of codes of conduct and engagement in public-private sector dialogues; positive inducements that reward constructive industry practices; and domestic and multilateral legal and regulatory regimes that sanction prohibited behavior. Each approach has its own strengths and weaknesses. For this reason, the participants felt that no single approach is likely to prove effective in isolation. The principal question is how to make them complementary.

The most visible example of the normative approach are the various NGO "naming and shaming" campaigns which seek to expose corporate behavior deemed contrary to accepted international norms. Notable examples include Global Witness's exposure of "conflict diamonds" in Africa and the extensive corruption and environmental destructive practices of logging companies in Cambodia.[8] This strategy can be extremely effective. Indeed, in many cases, advocacy campaigns have provided the crucial impetus for private sector reform. In the case of "conflict diamonds", the entire sector responded through the creation of the World Diamond Council, as well as other important measures undertaken by the International Diamond Manufacturers Association, the World Federation of Diamond Bourses, the Diamond High Council and individual companies, through the launching of the Kimberley Process. Yet, the success of advocacy campaigns greatly depends upon the extent to which targeted actors are susceptible to external pressure. Consumer pressure, for example, may only be effective where the targeted company has a broadly recognizable product brand and where documented misdeeds are persuasive enough to induce consumers to forego the benefits they derive from the good in question. Companies that have a lower public profile, have extensively diversified holdings, or which deal in "generic" commodities like timber and oil, may be less amenable to this sort of pressure. Although an extreme measure, broad-based divestment campaigns have also, on occasion, proven a successful tactic; typically, however, the participation of powerful governments has been crucial to change corporate behavior. As effective as naming and shaming campaigns may be in getting corporations to acknowledge problem areas, their ability to ensure that corporations actually take steps to rectify their conduct is considerably more limited. Corporate responsiveness may last only as long as the glare of unfavorable publicity, which can be fleeting. Finally, naming and shaming runs the risk of alienating the very corporations whose sustained cooperation is needed for long-term improvement.

The most common corporate response to bad publicity has been to adopt voluntary, self-regulating codes of conduct. The rapidly expanding scope of these initiatives now includes many different, often competing, standards and codes of conduct at the firm, sector, and multi-sector levels. This proliferation of codes makes it difficult to speak of a single or common standard of voluntary regulation. Moreover, where external codes are involved, it becomes difficult for participating companies to determine exactly what is required of them. Voluntary codes of conduct have often been criticized for not going far enough, as they lack effective monitoring and review processes, and may be little more than public relations exercises, undertaken provisionally by wary companies eager to redeem their public image. Some critics, therefore, prefer the creation of verifiable and legally enforceable regulatory mechanisms.

By setting a uniform standard and compulsory sanction, legal regulation establishes a common playing field for all private sector actors and helps to overcome "defection" and "free-riding", the classic barriers to collective and cooperative action. Yet, this approach has problems and trade-offs of its own. First, there are

[8] The UN Security Council's Panel of Experts and monitoring mechanism also employed naming and shaming in their reports on the illicit connections between armed groups and private sector actors in Angola and Sierra Leone.

different levels of regulation, different jurisdictions, and different actors, both within and between states. How these interface can complicate efforts at establishing common legal norms. Second, all regulation has the perverse effect of increasing the incentives for evasion, and, hence, can actually generate new forms of corrupt and illicit activities. Finally, international regulation depends upon the cooperation of states to secure their obligation to undertake the domestic implementation and enforcement of international standards or their acquiescence to the authority of international juridical, monitoring, and enforcement bodies. In reality, however, getting states to commit to these sorts of legal regimes is a notoriously difficult challenge.

Domestic legislation compels private sector actors subject to national jurisdiction to ensure their business practices are in accordance with the law. Violation of such laws can carry stiff penalties. Perhaps the most effective examples of domestic legislation include the United States' Foreign Corrupt Practices Act,[9] which obligates corporations to take internal measures to implement international contracts in accordance with the law, and the United States' Alien Tort Claims Act.[10] Outside the US, conflict between the obligations of private legal persons under public international law and the absence of fora for legal recourse has become a growing issue.

In the view of most participants, the question is not whether to regulate corporations, but how to do so in the most effective and least disruptive way. One suggestion was to formulate a template clause, delineating firm responsibilities in conflict countries, for inclusion in international contracts, whether with governments or other private sector actors. The precise scope of these obligations could be developed on a sector-by-sector or firm-by-firm basis. For a start, they might include: fiscal transparency, injunctions against using prison labor, or explicit guidelines on private firms' use of security services, such as embodied in the "Voluntary Principles on Security and Human Rights", devised by the U.K and U.S. governments in partnership with extractive and energy companies and NGOs.[11] These undertakings would be voluntary, but once entered into, they would become legally binding. Some suggested that integrating these sorts of obligations into standard contracting practices would not necessitate the creation of whole new mechanisms, as existing institutions could be easily adapted. The International Chamber of Commerce (ICC) is one such potential mechanism, as it already makes standard contract models available to its many members. The gradual adoption of such a practice by more and more corporations might eventually make it possible to transform voluntary undertakings into a universal legal obligation.

Conclusion: One size fits all or different approaches for different actors?

Securing the commitment of private sector actors to ensure that their activities are consonant with sustainable peace is an important objective. In many instances, however, normative appeals may not be enough to ensure sustained improvement; measures intended to shift corporate behavior towards peace will also need to engage corporate self-interest. Carrots, in the form of incentives, and sticks, in the form of legal coercion or normative pressure, must go together. Getting the right incentives and the right balance is crucial. One starting point is to decrease the economic and political cost of engaging in socially responsible behavior. This requires developing solutions for legitimate private sector concerns about security and competition.

Given the variety of actors and contexts involved, no one model is likely to work. Rather, some combination of the policy approaches outlined above is needed. This implies that civil society, governments, and private sector actors must all be engaged. The Chad/Cameroon pipeline arrangement represents one potentially valuable model for minimizing the negative side-effects of similar operations as witnessed elsewhere. Yet, even if this innovative project should prove successful – and this is far from sure, the question of whether it can be replicated elsewhere remains to be seen. This said, it may hold valuable lessons as to how the economic interests of private sector actors can be reconciled with the security and humanitarian concerns of international

[9] The Foreign Corrupt Practices Act of 1977 ("FCPA"), 15 U.S.C. §§ 78dd-1, *et seq*.,

[10] The Alien Tort Claims Act (ATCA), 28 U.S.C. §1350, which provides federal jurisdiction to US district courts for "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

[11] U.S. Department of State, http://www.state/gov/www/global/human_rights/001220_fsdrl_principles.html (2 January 2001).

organizations and NGOs – and more importantly, with the needs and aspirations of the communities which they affect.

In more difficult conflict environments such as Angola, Nigeria, Sudan, Colombia, or Indonesia, where private sector activities not only continue to operate, but have often been implicated in hostilities, solutions are less clear. Most businesses are engaged in legitimate enterprises and have some awareness of the ethical dilemmas raised by operating in areas of conflict. The decisions they take will depend on the success of insiders and outsiders alike to successfully argue the benefits of conflict mitigating practices relative to their perceived costs. Sharing best practices may be a valuable tool in making this argument, but distilling broadly applicable lessons from these cases remains problematic. Many corporations from the North have demonstrated commitment to CSR, but still others, including regional firms, continue to have deep reservations. Where voluntary steps fall short, regulation may be necessary.

Legitimate private sector activity may be a source of instability in conflict zones. By far the greater challenge for policymakers is the threat posed by those commercial outfits which specialize in profiting from violent conflict – often illicitly providing military services in exchange for natural resource concessions. Criminal activities of this kind have proven highly resilient not only to any normative pressure but also to various efforts of legal and regulatory enforcement. Better coordination of national and international regulatory bodies, and the development of more effective multilateral regimes, including financial sanctions, may help to constrain these actors, but only if they do so in a way that significantly raises the costs of war profiteering.

Participants

Mr. David Angell
Permanent Mission of Canada to the United Nations

Ms. Lauryn Beer
The Fund for Peace

Ms. Juliette Bennett
The International Peace Forum

Mr. Jonathan Berman
Political and Economic Link Consulting

Ms. Jordana Friedman
Burson-Marsteller

Dr. Virginia Haufler
University of Maryland

Mr. Andrew Mack
Harvard Program on Humanitarian Policy and Conflict Research;
Chair, Economic Agendas in Civil Wars Advisory Group

Ms. Denise O'Brien
UN Global Compact

Mr. Luc Zandvliet
Collaborative for Development Action

Fafo Staff

Mr. Christian Ruge
Senior Programme Officer, Programme for International Cooperation and Conflict Resolution (PICCR)

Mr. Mark Taylor
Director, PICCR

IPA Staff

Ms. Karen Ballentine
Research Coordinator and Program Associate, Economic Agendas in Civil Wars (EACW)

Mr. Jake Sherman
Program Officer, EACW

International Peace Academy
687-4300 FAX [212] 983-8246 WEB www.ipa@ipacademy.org