

Enabling Corporate Investment in Peace

An Assessment of Voluntary Initiatives Addressing Business and Violent Conflict, and a Framework for Policy Decision-making

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Discussion Paper

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Summary Of Public Policy Recommendations

This report was commissioned by the Canadian Department of Foreign Affairs and International Trade (DFAIT) to review the provisions of voluntary codes, guidelines and initiatives that address the relationship between business activities and violent civil conflict, and to make suggestions on a framework through which public policy makers can enable more-responsible investment, and strengthen the legitimacy and comprehensiveness of these voluntary norms. It presents the results in three forms:

- a. this summary policy brief
- b. a longer review of the principal results
- c. the full study, which includes more-detailed discussion of the contents of individual codes and guidelines as they relate to the identification of conflict-sensitive business practices

Efforts by governments to strengthen the enabling environment for conflict-sensitive business practice through adoption of voluntary codes and guidelines can contribute to human security while helping to protect the reputation of companies and of home states. On the other hand, the business and conflict agenda is still early in its development, and has not become a mainstream issue in the CSR debate. In spite of several efforts now under way to develop practical operational guidance for field managers, it is too soon to look to voluntary norms emerging in this area for comprehensive operational guidance and legal risk management on conflict-sensitive practices. There is no guidance available that will guarantee a company's reputation is not harmed if it has invested in a conflict-prone situation, regardless of intent or effort.

As a result, it would be premature for any player to initiate the development of a single comprehensive code or 'metaguideline' for conflict sensitive business practice, because of three principal 'gaps':

- the 'knowledge gap' – many issues in the relationship between business and violent conflict have not been adequately researched, understood and responses tested at the field level.
- the 'consensus gap' - stakeholder groups are polarized over appropriate norms for decisionmaking in relation to the central management challenges.
- the 'participation gap' - Developing country stakeholders have so far had limited direct engagement in shaping the business and conflict agenda, undermining the legitimacy of existing voluntary initiatives.

Any metaguideline developed in the near term might lose relevance as new management tools and approaches that have been field-tested supplant previous ones and fill gaps, might stifle needed innovation, and would not guarantee reputational protection. This should not be seen as an excuse for failing to act. These gaps call for public sector engagement, to stimulate development of more-comprehensive, field-tested and legitimate guidance, and to motivate its adoption by firms. This development is unlikely to take place without modification of public policy signals and incentives. For these reasons, public action is called for:

- to support further research on the non-extractive industry sectors and on the role of business in peacebuilding, among other areas.
- to bring together representatives of different stakeholder interests to build consensus on appropriate norms.
- to support the development of networks of Southern researchers and NGOs from conflict-prone regions.
- to strengthen the enabling environment for adoption by endorsing best practice while shaming poor behaviour, and providing appropriate regulatory

or financial incentives for conflict-sensitive behaviour (e.g. through lower-cost access to export credit)

An important first step could be to sensitize senior executives to the management challenges posed by investment in conflict-sensitive regions, and to the relevant guidance available.

In deciding on the appropriate scope and means for a public sector initiative in this regard, three **contextual considerations** need to be assessed:

- Defining the public policy goals at stake,
- Assessing the performance impacts of existing voluntary initiatives, and
- Assessing the demand for public sector engagement in the business and violent conflict agenda.

With the principal contextual issues addressed, several **strategic choices** must be made:

- Whether to launch a *new initiative, participate in one or more existing initiatives, or to facilitate engagement by others* in business and conflict-related initiatives
- What the *appropriate scope* should be for initiatives undertaken or participated in, in terms of the level of *specificity of the guidance* (policy versus operational), the *issues to be addressed* (a comprehensive approach versus filling in gaps versus working on a particular country), and the *target for the initiative* (generic versus sector-by-sector, large firms versus SMEs, business alone or NGOs as well)
- Whether to start with a *national initiative, or to work bilaterally or internationally*
- *Whom to bring into the dialogue* and who should act as the *convenor*
- Whether to begin with a *modest learning initiative/pilot effort, or to seek prominence* through high level endorsement at the Ministerial and CEO level.

A multi-stakeholder dialogue might be the most appropriate means to begin reflection on these issues. We hope that this report will provide helpful background material for just such a conversation, not only in Canada but also in other countries grappling with these new policy challenges.

Overview of Codes, Guidelines and Initiatives Relevant to Conflict and Reviewed for this Report

INITIATIVE	AVAILABLE AT
MULTI-ISSUE	
Nelson, J. The Business of Peace. International Alert/IBLF/CEP (2000)	www.international-alert.org
UN Global Compact (1999)	www.unglobalcompact.org
Checklist for Corporate Actors in Zones of Conflict, Confederation of Norwegian Business and Industry (2003)	http://www.nho.no/hovedweb/hovedweb.nsf/0/e2200b1a6fb16ca7c1256d32004a5de9/\$FILE/Responsible%20Engagement.pdf
Guidelines Concerning Human Rights and Environment for Norwegian Companies Abroad (2003)	http://www.milli.no/%7Eforum/dokumenter/guidelines.rtf
OECD Guidelines for Multinational Enterprises (revised 2000)	http://www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_37461,00.html
Global Sullivan Principles (1997)	www.globalsullivanprinciples.org
European Parliament Resolution on EU Standards for European Enterprises operating in developing countries: towards a European Code of Conduct (1999)	http://www.citinv.it/associazioni/CNMS/archivio/convenzioni/parlamentoEU.html
International Code of Ethics for Canadian Business (2001)	http://www.cdp-hrc.uottawa.ca/globalization/busetics/codeint.html
Collaborative for Development Action's Corporate Engagement Project	www.cdainc.com/cep
World Bank Operational Policies	www.worldbank.org
HUMAN RIGHTS	
UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003)	http://www1.umn.edu/humanrts/links/norms-Aug2003.html
Amnesty International Human Rights Principles for Companies (1998)	http://web.amnesty.org/library/index/engACT700011998?open&of=eng-398
<i>Whether to do Business in States with Bad Governments</i> , Danish Institute for Human Rights (2001)	http://www.humanrightsbusiness.org/resp_1.htm
BRIBERY/CORRUPTION/GOOD GOVERNANCE	
Wolfsberg Anti Money Laundering Principles (2002, revised version)	http://www.wolfsberg-principles.com/
Business Principles for Combatting Bribery, Transparency International and Social Accountability International, 2002	http://www.transparency.org/building_coalitions/private_sector/business_principles.html
International Chamber of Commerce Rules of Conduct to Combat Extortion and Bribery (1999, revised version)	http://www.iccwbo.org/home/statements_rules/rules/1999/briberydoc99.asp
Extractive Industries Transparency Initiative (ongoing, launched 2002)	http://www.dfid.gov.uk/news/News/files/eiti_index.htm
SECURITY	
Voluntary Principles on Security and Human Rights (2000)	http://www.state.gov/g/drl/rls/2931.htm
CONFLICT COMMODITIES	
Kimberley Process Certification Scheme (2002)	http://www.kimberleyprocess.com/
FINANCE	
Project Finance: The Equator Principles	www.equator-principles.com/principles.shtml
Asset Management: FTSE4Good Index Human Rights Criteria	http://www.ftse.com/ftse4good/FTSE4GoodCriteria.pdf
SPECIFIC CONFLICT ZONES	
Iraq: On Whose Behalf? Human Rights and the Economic Reconstruction Process in Iraq: Recommendations to companies (2003)	http://web.amnesty.org/pages/ec_Iraq_recommendations#top
Recommendations to a Company doing business in Colombia, Chris Avery, 1997	http://209.238.219.111/ColumbiaRecommendations.htm

Eight Points for Companies, in <i>Rebuilding Bridges: Opportunities and Challenges for Responsible Private Sector Engagement in Iraq's Reconstruction</i> , Jane Nelson and Jonas Moberg, 2003	http://www.iblf.org/csr/csrwebassist.nsf/content/f1d2b3aac4.html
MANAGEMENT TOOLS	
Global Reporting Initiative (revised 2002)	http://www.globalreporting.org/guidelines/2002.asp
AA1000 (1999) AA1000 AS (2003)	http://www.accountability.org.uk/aa1000/default.asp
Conflict Risk and Impact Assessment Toolkit (Ongoing, to be published Fall 2004)	www.iisd.org/natres/security/cria.asp www.international-alert.org

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Overview

A. Business, Violent Conflict and the Role of Voluntary Initiatives

This report has two aims. First, to review the provisions of voluntary codes, guidelines and initiatives that address the relationship between business activities and violent civil conflict. Second, to make suggestions on a framework for public policy makers in high income countries to design and prioritise support for or engagement in codes, guidelines and voluntary initiatives on business and violent conflict.

A heated debate is now under way on the links between business activity and violent conflict around the world. The debate focuses on the one hand on instances of complicity of corporations in violence and human rights abuses. On the other hand it focuses on identifying ways to strengthen private sector investment in conflict prevention and in responsible business management in times and regions of conflict, as well as the contributions of business to peace building and post conflict reconstruction. With the world entering an uncertain time in which the traditional sources of national security are confounded by non-state actors empowered by globalized technologies, governments are increasingly seeking to engage all actors, including the private sector, in the promotion of security and peace¹.

The controversies that have shaped the business and conflict debate have focused on the activities of multinational companies from Canada, the United States and Europe. And whilst allegations of multinational corporate complicity in violence have been relatively infrequent, their consequences for a nation's image abroad are potentially severe, with potential to undermine foreign policy goals or create resentment directed at citizens of that country. There is a high likelihood that such allegations will increase in number for the foreseeable future, since many if not most of the potentially most lucrative of remaining unexploited natural resources and under-served markets are to be found in poverty-stricken regions with autocratic or newly-democratic regimes.

Different industry sectors have distinct interactions with violent conflict. Much of the focus of analysis and discussion to date within the business and conflict agenda has been on the extractive industry project cycle – particularly oil, gas and mining. Other sectors can be implicated as well, for example when their presence sustains or provides legitimacy to an illegitimate or repressive regime, or ignites localized conflict over access to benefits or natural resources; through their portfolio investments; because their supply chains include inputs whose production is associated with violent conflict (for example diamonds); or because their products are sold to customers who use them in conflict situations.

At its best, business investment in at-risk countries can:

- Generate incentives for sustaining peace,
- Integrate soldiers and refugees socially and economically,
- Demonstrate that the country is a worthwhile investment destination,
- Establish links to international markets, and
- Provide an impetus for improving rules, regulations, and procedures.²

At its worst, business investment can create incentives for violence, mobilize soldiers against citizenry to secure economic assets for a ruling elite, legitimize autocratic regimes, and undermine the emergence of democratic processes.

Both emerging legal standards and voluntary market-driven initiatives play an important role in defining 'responsible practice' by business in managing interactions with violent conflict. Alongside established legal norms in relevant areas such as corruption or rights of access to information and decisionmaking, performance standards are emerging through a series of legal actions in 'home country' courts for the impacts of overseas subsidiaries on human rights or the environment, often in conflict zones. Discussion is under way as well on the role of the International Criminal Court in the business/violent conflict nexus – with a particular focus on activities in the Democratic Republic of Congo. In short, there is a rising interest in defining in legal terms a baseline for corporate behaviour in conflict prone zones.

Beyond legal baselines, the contemporary corporate social responsibility – or CSR – agenda - invites businesses not only to comply with the laws of the countries in which they operate, but to embrace voluntary commitments that reflect broader expectations of businesses. From within the CSR agenda, a variety of 'voluntary initiatives' has emerged to help shape managers' understanding and capacity to deliver on those expectations. These include industry self-regulation, codes of conduct, multistakeholder joint learning initiatives, and government-led programs that offer regulatory incentives in exchange for 'beyond compliance' environmental or social performance commitments. Conflict sensitivity may therefore be viewed as an emerging theme in the broader CSR agenda.

At a general level, discussion continues on the pros and cons of various kinds of voluntary initiatives. For example, voluntary initiatives can be viewed as laboratories for future public regulation, promoting innovation in practice whilst allowing firms to accumulate the technical and managerial expertise that is needed to ensure compliance once the rules harden. On the other hand, when lacking sanctions and effective monitoring mechanisms, they can provide a means for businesses to stave off calls for more-costly regulation, while doing little to modify behaviour and increase accountability.

This is not to suggest any position in the ongoing debate over the relative effectiveness of 'voluntary' and 'mandatory' approaches to securing changes in business behaviour in different contexts. Voluntary initiatives and formal regulation have the potential to complement one another. Some hold that a public sector response to the linkages between commerce and conflict has been blocked by an ideological debate over whether to legislate or promote voluntary approaches³. Voluntary initiatives should be recognized as one element in the mix of instruments available to public sector actors to influence corporate behaviour.

This report focuses principally on the role of business in 'violent conflict' within states, though the analysis has some relevance to interstate wars and post-conflict reconstruction as well. *Organized* physical violence is the distinguishing feature of these conflicts, not the number of deaths or the involvement of state parties. The report focuses as well on the potential for voluntary initiatives to provide appropriate guidance sufficient to minimize the harms and maximize the benefits of corporate investment in conflict-prone regions.

Outbreak of *civil* violence represents a failure by governments to resolve the root sources of social tension, to establish legitimacy, to maintain security and to channel conflict towards productive and peaceful resolution. Governance failures, from

corruption and oppression to a failure to diversify the economy and generate jobs, are an important yet preventable contributor to many conflicts. Business action alone cannot be a substitute for wider efforts to build good governance. But private sector investment in conflict-prone regions has the *potential* to contribute to a positive cycle of further investment and sustainable development.

For public sector actors, an important issue is whether 'best practices' in conflict-sensitive private sector investment are likely to evolve naturally through the market-based non-governmental drivers of the CSR agenda, or whether public sector interventions of various kinds could at low cost considerably strengthen the 'enabling environment' for positive business impacts in conflict regions.

This study begins by reviewing voluntary initiatives that address business and violent conflict interlinkages. This review suggests a number of areas within the overall business and conflict agenda where knowledge is lacking, norms remain contested, and the legitimacy of existing initiatives is questionable due to a lack of engagement with developing country stakeholders. These gaps call for public sector engagement, to stimulate development of more-comprehensive and legitimate guidance, and to motivate its adoption by firms.

In the concluding sections of this paper, we suggest that governments should strengthen the enabling environment for voluntary initiatives in this domain, contributing to human security and the protection of their citizens while strengthening the competitiveness of their companies abroad.

B. Key Points from a Review of Voluntary Initiatives addressing Business and Violent Conflict

A framework for understanding corporate strategy and management of conflict issues

International Alert⁴ has proposed that corporate engagement in the management of corporate-conflict dynamics can take place at one or more of three levels: simple compliance with relevant legal frameworks; adopting a 'do no harm' approach that aims to minimize harmful impacts; and a peacebuilding approach that maximizes the positive potential of business activities to contribute to peace.

Whatever the overall level of engagement, a corporate policy and management framework for addressing the interface between business and violent conflict needs to address three distinct sets of issues - the **central management challenges** relevant to the business in the light of its relationships with violent conflict; the **channels of change**⁵ for business action to address the multiple relationships between business and violent conflict; and the relevance of insights from the wider CSR agenda on the **overall management tools, skills and approaches** to underpin effective engagement. (See *Box i* below).

If voluntary initiatives are to offer *comprehensive* guidance to businesses on the interface between business and violent conflict, it follows that they should be capable of addressing the full range of issues within this overall framework. Similarly, if they are to be seen as offering *legitimate* benchmarks for responsible behaviour at this interface, they should be recognized as such by relevant stakeholders.

Box i Three pillars of business action to address business and violent conflict

A. Central management challenges

Tackling governance failures that contribute to conflict
Managing community relations and local impacts
Minimizing conflict finance
Minimizing indirect links to conflict
Addressing the conflict context

B. Channels of change

Management Practices that address links between core business practices, violent conflict and peacebuilding
Social Investment – or ‘strategic philanthropy’ – activities that can reduce conflict-related risks and contribute to peacebuilding.
Public Policy Engagement to build the ‘enabling environment’ for peace.

C. Management tools, skills and approaches

Examples include:

Top level management commitment

Development of appropriate statements of commitment (e.g. internal codes of conduct)

Working in partnership with other stakeholders

External reporting on strategies and policies and their impacts over time

Revising policies and strategies in pursuit of continual improvement

General Findings

This report reviews the guidance available for the central management challenges, but does not assess the perceived legitimacy of these norms. It then describes some of the relevant factors in evaluating options for public sector intervention to stimulate development of more-comprehensive and legitimate guidance, and to motivate its adoption by firms

This report surveys a range of business-focused codes and guidelines, along with a smaller number of multistakeholder voluntary initiatives that have been designed to provide principles for managing key issues within the business and violent conflict agenda but that are not ‘codes’ or ‘guidelines’ for management practice in the operational sense. Our review has been limited to a selection of:

- Initiatives and documents (in the form of recommendations, guidelines, codes or principles – we refer to these in shorthand as ‘codes and guidelines’) that directly address business behaviour
- Initiatives and documents that contain provisions that are in some sense ‘normative’ for business behaviour
- Norms that are ‘voluntary’, in the sense that there are no direct legal sanctions upon businesses for failure to comply

A complete list of the codes, guidelines and initiatives that we have considered can be found in Annex II of this report. Given the number of potentially relevant initiatives, further research would be needed to collect and analyse anything approaching a comprehensive list of codes, guidelines and initiatives. We are confident nonetheless that we have considered a sufficient range and number to support the wider relevance of our analysis.

Several general points can be made about the norms that these documents and initiatives contain and their contribution to the progressive development of the agenda on business and violent conflict.

- Relatively few voluntary *codes or guidelines* directly address the behaviour of businesses operating in conflict zones⁶, though a large number of codes and guidelines *indirectly* address “conflict drivers” – for example in provisions on environment, human rights and community and labour welfare.
- *Company’s internal codes, guidelines, reports and policy documents* are an important source of additional guidance on emerging ‘best practice.’ In many cases they are more detailed than codes and guidelines at the sectoral or multi-sectoral level, including those developed through multistakeholder processes. Many, however, were developed for internal use and are not available to the public or other firms.
- *Initiatives* that have tackled business and conflict directly have tended to focus on particular ‘flashpoint’ linkages (such as human rights violations or control of resource-related revenues), or on particular industry sectors (e.g. the extractive industries), and not necessarily on those sectors with the largest ‘conflict footprint’ or the greatest potential to contribute to peacebuilding (e.g. local business actors). Sectors other than oil, gas and mining have largely remained ‘below the radar’ of the business and violent conflict agenda in terms of voluntary initiatives.
- The positive potential for businesses to *contribute to peacebuilding* has so far received the least attention⁷ among all of the voluntary initiatives that we have considered. We have found few examples of operational guidelines that directly address ‘peacebuilding’ from a private sector perspective – though indirect contributions can be found in provisions that address areas such as human resources and employment practices that foster social capital, employ local people, and tackle discrimination.
- Provisions for *monitoring, auditing and verification of compliance and non-compliance procedures* vary widely across the different initiatives we have reviewed. The triggers and processes for developing the initiatives, their functions within businesses, their objectives and their institutional settings are all important variables.
- The *processes* through which voluntary codes and guidelines have been developed have generally failed to engage meaningfully with stakeholders based in developing countries.
- There is a *lack of clear guidance* emerging from these different and sometimes contradictory normative statements on the legitimate roles and responsibilities of companies and home and host-state governments¹. This translates into uncertainty about the extent of a company’s *influence* on conflict issues and the degree to which this generates a responsibility for it to act in a particular way. This calls for dialogue between sectors at a national level in order to transparently resolve the ambiguity.
- Traditional sources for guidance on management of contentious issues at the international level are largely silent on the issue of responsible investment in zones of potential conflict. The World Bank, whose policies represent a core benchmarks for management of other concerns (e.g. environmental impact assessment, relations with indigenous communities) does not have directly relevant guidelines. On the other hand, some NGO-led initiatives, such as the Collaborative for Development Action’s Corporate Engagement Project and International Alert’s Business and Peacebuilding programme, are working

¹ Exceptions include: the Extractive Industries Transparency Initiative (government responsibilities) and the complementary Publish What You Pay effort (industry responsibilities); and the Kimberley Process Certification Scheme (government) and World Diamond Council (industry).

towards guidance on many of the core management challenges identified in this report.

Voluntary Initiatives and Central Management Challenges

Introduction

The relationship between business and violent conflict can be addressed under five principal themes – each of which gives rise to a series of difficulties which collectively we call the ‘central management challenges’: 1) **Governance failures**, from corruption and oppression to a failure to diversify the economy and generate jobs, are an important yet preventable contributor to many conflicts. 2) The **mismanagement of community relations** is a significant source of community-company conflicts. 3) The **flow of resources and finance into and out of conflict zones** is the mechanism whereby violence can be sustained, or a means for profiteering by ‘conflict entrepreneurs’. 4) **Indirect conflict linkages** can arise through companies’ supply chain relationships or the sale of goods and services to customers who apply them in conflict situations. 5) Lastly, many managers fail to properly understand and address the **impacts of the surrounding conflict context** on their operations.

The existing body of codes, guidelines and voluntary initiatives provides a point of reference for businesses and managers seeking to address these issues, though they largely remain at the level of policy, rather than providing concrete operational guidance. Guidance is not comprehensive but it is moving forward, though there is a lack of learning from the implementation of these guidelines at the field level.

Tackling the Governance issues that contribute to conflict

Within the overall agenda on business and violent conflict, four principal ‘governance’ issues have shaped discussion to date:

- the potential consequences of macroeconomic dependence at the level of the nation state on single sectors or investments – mostly in the extractive sector. This is one of most frequently cited indicators of vulnerability to conflict and civil unrest.⁸ None of the voluntary codes or guidelines that we have reviewed directly addresses the financial dependency of whole countries on large extractive sector projects. This may be due to the fact that there is little discussion as yet within the CSR agenda on what businesses could do to address such dependency within their legitimate spheres of influence.
- The role that business investment plays in supporting oppressive regimes. This is addressed in one or two of the more comprehensive codes. For example the Norwegian Checklist urges firms to assess whether they ‘cause more harm than good in the host country’, and whether it is realistic to assume that their constructive engagement efforts will succeed’.
- Business involvement in public sector bribery and corruption and its links to conflict. Provisions on bribery and corruption are well developed and are very common in corporate codes of conduct that complement existing legal requirements.
- The diversion and misuse of legitimate payments to fuel conflict. This issue is now beginning to be addressed through voluntary initiatives – notably the Extractive Industries Transparency Initiative.

Managing Community Relations and Local Impacts

The project-level relationship between business operations and violent conflict raises seven distinct management challenges for businesses:

- The difficulty of defining circumstances under which conflict-related considerations should rule out new investments, or lead to disinvestment.

Here, some useful signposts are beginning to emerge. The Norwegian Confederation of Industry Checklist asks whether positive social benefits of investment are likely to outweigh harms. The Norwegian Guidelines urge the preparation of entry and exit strategies that assess human rights and conflict impacts, and the assessment of contingencies that may demand early disinvestment. And the Danish Centre for Human Rights has published a collaboratively developed practical guide on “Whether to Do Business in States with Bad Governments.”

- The need to tailor management responses to the distinct stages of the project cycle – from development through to operation and closure. In general, the voluntary codes and guidelines that we reviewed do not directly refer to or reflect the changing nature of the investment footprint, of social stability and of community consent over time.
- The need to ensure that project-level security arrangements do not generate or exacerbate conflict. Voluntary initiatives that address security issues directly include Amnesty International’s Human Rights Principles for Companies and, most prominently, the Voluntary Principles on Security and Human Rights.
- The problem of minimizing negative community-level social and environmental impacts with implications for security. Businesses need to develop the management capacity to assess impacts and to prevent or mitigate them. Standard assessment tools such as environmental or social impact assessment are not well suited to identifying and prioritizing conflict-relevant impacts and mitigation strategies. Parallel efforts to address this gap in impact assessment methodologies are under way, undertaken by the Collaborative for Development Action, and by International Alert with IISD.
- The need to demonstrate respect for human rights, to ensure that businesses are not complicit in human rights violations, and to obtain local consent for project-related impacts. In the absence of specific provisions on business and violent conflict, human rights considerations are an indirect entry point to the business and conflict agenda for many voluntary codes and guidelines. Beyond general statements of the need for businesses not to be ‘complicit’ in human rights abuses, guidance is now emerging on *how* to avoid ‘complicity’ in and ‘benefiting’ from human rights abuses.
- There is some guidance (though it remains limited) on how to determine who has a legitimate right to be engaged in community-level consultations and decision-making, with particular emphasis on traditional and indigenous communities. According to the World Commission on Dams, those who bear the consequences of a project should have a right to a voice in the decision-making process behind it, suggesting an imperative to negotiate local consent for project-based investments and activities⁹. But there is still little consensus on how to carry out these concepts in practice. One particularly notable gap concerns the gender dimensions of human rights in conflict zones.
- The need – within a business’s sphere of influence - to address the distributional issues that can fuel conflict, including issues of resource access, land claims, benefit-sharing and compensation. Very few codes and guidelines address these issues at anything other than the level of broad principle, and even then such references are rare. The Collaborative for Development Action has published a series of notes based on its field assessments that offer suggestions to managers in addressing many of these concerns.
- The need to ensure that local contracting and hiring practices minimize conflict-related risks, and, to the greatest extent possible, play a proactive role in peacebuilding. We have not found any examples of voluntary codes or

guidelines that directly address the ‘peace-building’ and conflict minimising potential of sound human resources and employment practices. However, provisions on building human and social capital in the workplace, employing local people and tackling discrimination are common among the initiatives that we have considered.

The Collaborative for Development Action’s Corporate Engagement Project is unique in providing field managers with detailed recommendations drawn from cooperative assessments of extractive sector projects in conflict zones. Of relevance are Issues Papers on:

<ul style="list-style-type: none"> • Compensation, Hiring and Contracting policies • Locational decisions and exit strategies 	<ul style="list-style-type: none"> • Negotiating consent with local authorities and other stakeholders • Measuring community relation impacts
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Minimizing Conflict Financing

- The private sector can be a willing or ignorant partner in **trade in commodities** used to finance violence (including illicit narcotics). More work is needed however to clarify the framework conditions for success for different mixes of voluntary and regulatory approaches to tackle the conflict dimension of trade in legitimate commodities. The Kimberley Process Certification Scheme, and nascent efforts to address trade in timber, provide encouraging indicators of how this might develop.
- The need to address the role of finance – and specifically the financial services sector – in providing financial resources to projects or companies engaged in conflict-prone regions. This is an increasing source of concern for responsible investors¹⁰. Project finance, banking, insurance and asset management operations can all be implicated in conflict scenarios. While the financial services industry is subject to increasingly-binding normative and regulatory guidance as part of the effort to rein in terrorist and criminal financial flows, many areas – such as project finance – lack guidance to offer their clients that deals directly with conflict issues. Indirect sources of norms that could drive conflict sensitivity into standard corporate practice include ethical investment funds and rating agencies, international financial institutions and export credit agencies.

Reducing Indirect Conflict Linkages

A life cycle approach to understanding the interface between business and violent conflict highlights two further management challenges. These relate to the need to address conflict issues along the entire supply chain, not only those related to core business operations.

- The need to tackle upstream linkages between suppliers and conflict. Provisions that address the application of voluntary initiatives to suppliers are commonplace, calling for firms to ‘use their influence’ to ensure that suppliers, partners and contractors adopt equivalent standards.
- The need to tackle downstream linkages, when products or services are provided to customers who apply them to exacerbate conflict. While the UN Norms incorporate a provision on seeking to prevent the use of goods or services for the abuse of human rights or in conflict, this is an undeveloped area in the codes and guidelines we reviewed.

Addressing the Conflict Context

Finally, business activities in conflict-affected regions are affected by **external events and actors** for which little business-relevant guidance exists: the influx of displaced peoples and small arms, the activities of armed groups, and the urgent

need for humanitarian aid amongst affected communities. However, tools from other sectors may provide useful guidance, including guidelines from the World Bank on resettlement, from the Red Cross on partnering in the delivery of humanitarian aid, and from disarmament experts on the reduction of violence and control of small arms, all of which can contribute to the enhancement of security and stability.

Beyond core business: social investment and public policy engagement

Beyond tackling the management challenges that relate to 'core business' and violent conflict, there are two other principal 'channels for change' for businesses in addressing violent conflict, namely social investment, policy dialogue and advocacy.

Little guidance exists on the optimal approach for *linking social investment to conflict prevention* and resolution (e.g. through community development funds, projects, microcredit, direct payments or other revenue-sharing mechanisms). However, the general literature on CSR does offer insights into best practice in social investment. These include: engaging stakeholders in decision-making; creating mechanisms for revenue management that are widely regarded as legitimate; ensuring transparency of decision-making; and including dispute settlement procedures. The Collaborative for Development Action offers an important Issue Paper on Social Investment Projects, suggesting that firms have focused too much on the amount invested and not enough on concrete outcomes in terms of trust building and longterm development.

The importance of firms' engagement in public *policy dialogue and advocacy* in order to promote improved governance, human rights and peace is widely recognized in voluntary codes and standards. But the degree to which firms can be expected to act as explicit champions will always need context-specific assessment. A number of codes and guidelines view the basic problem as business domination of public policy, not the potential for business engagement to bring added value to public policy processes. Others simply restate the fundamental dilemma in phrases such as 'the legitimate role of business' or 'within their sphere of influence.'

Management tools, skills and approaches

Some codes and guidelines directly address internal company policy development and management processes. Most provide 'policy' principles at a high level of generality. But more detailed guidelines that could help with the development of tailored management approaches are beginning to emerge in only a few areas, such as bribery and corruption.

Who within the company should take important decisions in conflict-related situations, and how should conflict sensitivity be encouraged internally? The Norwegian Confederation of Industry's Checklist for Corporate Actors in Zones of Conflict urges managers to determine whether decisions with potentially-major social consequences are made at the appropriate level within the company, by those with requisite competence, knowledge of the company's broader activities and interests, and capacity to be held accountable for decisions made. The Collaborative for Development Practice offers guidance on the structuring of internal reward and performance policies to promote conflict sensitivity.

The broader CSR agenda has given rise to initiatives in two additional and centrally important areas: accountability to external stakeholders, and partnerships. Standards that address accountability to external stakeholders include AA1000, a process standard focused on stakeholder engagement, and guidance for company reporting on environmental, economic and social issues developed by the Global Reporting Initiative (GRI).

A number of codes and guidelines speak to the value of partnership-based approaches in tackling the relationship between business and violent conflict. But practical 'how to do it' guidance is still patchy, with the findings of the Business Partners for Development process offering one important source of guidance, and the Collaborative for Development Practice offering another through an Issue Paper on Corporate-NGO relationships.

C. Towards a decision-making framework for public sector actors

Public sector roles

Building on existing analysis on the overall role of public sector agencies in establishing the 'enabling environment' for CSR,¹¹ the roles that public sector agencies can play to build the 'enabling environment' for the full range of initiatives on business and violent conflict can usefully be categorized under four headings:

- *Mandating*: setting and even-handedly enforcing minimum legal baselines for responsible behaviour, as for example in the case of legislation to implement the Kimberley Process Certification Scheme, or anti-corruption legislation.
- *Partnering*: as with the World Bank-initiated Business Partners for Development's publicly-funded action research on tripartite partnerships between multinational companies, NGOs and home and host governments to deliver community development through private investment¹².
- *Facilitating*: as in the case of the UK and US governments' roles in the development of the Voluntary Principles on Security and Human Rights; or public sector investment in research or development partnerships to develop and refine management tools. Public sector agencies can also facilitate change by helping to strengthen external accountability mechanisms (e.g. through financial support to prominent NGO actors). Public sector agencies can also create strong financial incentives by incorporating conflict-relevant criteria in decision-making on access to export credits or public procurement.
- *Endorsing or Shaming*: for example by offering political support for best practice through speeches or awards schemes or through prominent speeches, letters to chief executives, or personal involvement of senior public officials in voluntary initiatives to address particular concerns (e.g. by UK Prime Minister Tony Blair in the Extractive Industries Transparency Initiative). Conversely, independent reviews of corporate practices in sensitive regions may also operate to shame poor performers. (E.g. The DFAIT 'Harker' Mission to investigate links between oil development and human rights violations).

Tackling Gaps in the agenda

The business and conflict agenda as a whole is still in its early development. Any public sector investment in voluntary initiatives to tackle the agenda needs to take into account its current limitations – and to consider the value of broader engagement in shaping and strengthening the agenda. There are three principal kinds of 'gap' that need to be addressed. The first kind is the 'knowledge gap' – namely those issues in the relationship between business and violent conflict that have not been adequately understood and responses tested at the field level. Important examples of these 'knowledge gaps' are:

1. the proactive role that businesses can play in *peacebuilding*, including through contracting/hiring, and through support for the progressive development of appropriate participatory processes and dispute resolution mechanisms
2. The nexus between non OECD-based enterprise and violent conflict' – and how to engage them in the agenda
3. the nexus between *small and medium sized businesses or 'juniors' and informal sector* entrepreneurs and violent conflict – whether operating in developed or developing countries
4. the roles of *sectors other than oil, gas and mining* in business and conflict, with particular interest in finance, construction, infrastructure, forestry, agribusiness, manufacturing, and textiles.
5. the *appropriate partnering frameworks* through which to align the capacities of business with the conflict prevention and transformation efforts of host states, local and international NGOs, bilateral and multilateral development agencies (e.g. to enhance governance, share revenues, and reduce host state macroeconomic dependence)
6. the role of the various elements of the private sector in *controlling resource flows into and out of conflict zones* to avoid fuelling war economies
7. *managing the conflict context* (responding to crisis, and dealing with sub-state armed groups)
8. tools for *assessment and early warning*

Second, there are some important 'consensus gaps' within the overall agenda on business and conflict. Polarization between different stakeholder groups continues in relation to the normative basis for resolving many of the central management challenges that we have outlined. Given the foreign policy significance of these for many 'home country' governments, we see a valuable facilitating role for public sector agencies to bring together representatives of different stakeholder interests to build consensus on appropriate norms. Moreover, government participation may help to ensure that resulting guidelines have broader legitimacy. Consensus-building work is particularly called for in the following areas:

1. general understanding on the *role and responsibilities of home countries of multinational corporations* in addressing the relationship between business and violent conflict.
2. the circumstances under which (and the extent to which) businesses should bear *responsibility for activities that exacerbate or fail to prevent human rights violations* associated with violent conflict
3. the legitimate role and sphere of impact and influence of business in relation to host-state *public policy advocacy*
4. *downstream responsibility* for the use of products or services in conflict, and *upstream responsibility* for activities of suppliers
5. dilemmas related to the need to negotiate consent with project-affected communities, particularly indigenous or traditional communities

A third kind of gap is the 'participation gap'. Developing country stakeholders have so far had limited direct engagement in shaping the business and conflict agenda. Their absence at the table in processes to develop voluntary initiatives on business and conflict both threatens to undermine the legitimacy of those processes and to weaken their applicability and relevance in different contexts. We see considerable value in public sector engagement in efforts to support the development of networks of Southern researchers and NGOs from conflict-prone regions, laying foundations that can strengthen the legitimacy, effectiveness and relevance of future initiatives.

All three sets of gaps – the ‘knowledge gaps,’ the ‘consensus gaps’ and the ‘participation gap’ - need to be tackled through a mixture of research, engagement, capacity-building and agenda development. Public sector agencies need to be understood as key stakeholders in relation to each.

Public sector engagement with voluntary initiatives

Contextual considerations

Three **contextual considerations** need to be addressed at an early stage in any public sector initiative to engage with, lead or promote further development of voluntary initiatives on business and conflict. These are:

- Problem and Goal definition,
- Assessment of the performance impacts of existing voluntary initiatives, and
- Assessment of demand for various kinds of engagement in voluntary initiatives on business and violent conflict.

Problem and Goal Definition: As our analysis has shown, there is a wide range of possible objectives that different actors may have for voluntary initiatives that address business and violent conflict. Given the unique role of public sector agencies as articulators and keepers of public policy goals, clear problem definition is important to the success of any public sector engagement in voluntary initiatives on business and violent conflict. The specific goals driving general or initiative-specific public sector interventions need to be clearly articulated and communicated at an early stage. In our view, public sector activity should be designed to support the full spectrum of management approaches to addressing violent conflict issues – from compliance through to the significantly neglected peacebuilding role of business. At a general level we see value in ‘home country’ governments providing clear signals (e.g. through high level speeches or formal policy statements) to businesses headquartered in their jurisdictions on the importance of the responsible management of these issues to their foreign policy.

Qualitative Assessment of Performance Impacts of Existing Initiatives: Little is known about the performance impacts of existing voluntary initiatives that are relevant to business and violent conflict. To our knowledge, no studies have yet examined the performance impacts of existing voluntary ‘business and conflict’ initiatives. We consider it essential that any deeper public sector engagement in the agenda should be preceded with an assessment of those impacts. Good starting points would be the OECD Guidelines for Multinational Enterprises, and the Voluntary Principles. The environmental policy field – where analysis of the impact of voluntary initiatives is now well established – offers insights that could help to shape both this ‘impact assessment’ work and public sector engagement in voluntary initiatives on business and violent conflict. Drawing on existing literature from the environmental policy field, some factors contributing to the performance impact of voluntary codes and guidelines are highlighted in *Box ii* below.

Box ii Factors contributing to the Performance Impact of voluntary codes and guidelines: lessons from environmental policy

Clear government expectations/signals
Corporate profitability
Proactive Management style
Diverse opportunities for inter-organizational and internal learning from best practice and mistakes
Vulnerability to social sanctioning mechanisms
Internal and external ownership of proposed solutions
Regular information disclosure
Strong business drivers for adoption

Assessment of Demand: It has not been possible in this project to assess the likely levels and sources of demand for various kinds of public sector engagement to support the development of voluntary initiatives related to business and violent conflict. This is significant gap in our analysis. Any option for public sector action should be tested against a basic ‘demand assessment’ of this kind. Where there is currently limited demand, there may nonetheless be a case for investing in complementary strategies to build that demand where necessary in pursuit of overall public policy objectives.

These are all important contextual issues that should ideally be addressed before embarking on further activity to support voluntary initiatives on business and conflict.

Strategic choices

With the principal contextual issues addressed – at the very least through an initial process of internal reflection, externally communicated - a number of other strategic choices arise. Among them, the following five are particularly pertinent - regardless of which ‘gaps’ or issues within the business and violent conflict agenda are addressed through public sector engagement.

- Whether to launch a *new initiative, participate in one or more existing initiatives, or to facilitate engagement by others* in business and conflict-related initiatives
- What the *appropriate scope* should be for initiatives undertaken or participated in, in terms of the level of *specificity of the guidance* (policy versus operational), the *issues to be addressed* (a comprehensive approach versus filling in gaps versus working on a particular country), and the *target for the initiative* (generic versus sector-by-sector, large firms versus SMEs, business alone or NGOs as well)
- Whether to start with a *national initiative, or to work bilaterally or internationally*
- *Whom to bring into the dialogue* and who should act as the *convenor*
- Whether to begin with a *modest learning initiative/pilot effort, or to seek prominence* through high level endorsement at the Ministerial and CEO level.

D. Conclusion

The business and violent conflict agenda is still taking shape. Though it has not yet become a mainstream part of the CSR agenda, this report has clearly demonstrated both the breadth of ongoing activity and some of the next generation issues that are emerging.

The evolving state both of the business and conflict agenda, and of voluntary initiatives within it, suggest that it is too soon for a manager to obtain comprehensive guidance on business-conflict interlinkages, and that it would be premature for a public sector actor to seek to catalyse the development of a single comprehensive code or guidelines to cover all of the issues within the agenda. We have not sought here to offer detailed recommendations on the preferable shape of future engagement by governments to support the development of voluntary initiatives within the business and violent conflict. But we have highlighted some of the gaps in the overall agenda; some of the considerations that could help to define the place of voluntary initiatives within the overall mix of policy approaches; some of the areas that have not yet been tackled through voluntary initiatives; and some of the strategic choices that will need to be made in moving forward by government.

An important first step could be to sensitize senior executives to the management challenges posed by investment in conflict-sensitive regions, and to the relevant guidance available. This could be achieved by distributing the key elements of this report more widely among the corporate community.

The issue of business in zones of violent conflict is one that is a common concern to many OECD governments, as well as to the governments of countries hosting these businesses. As a starting point for follow-up, we strongly recommend that governments convene a multi-stakeholder and multi-agency dialogue to obtain early input on issues reflected in this report, and in particular on some of the strategic choices that will need to be made as they develop a policy approach to business and violent conflict. While foreign policy objectives are most affected by the tensions raised by multinational companies operating in zones of potential or open conflict, we stress the importance of interagency coordination. We hope that this report will provide helpful background material for just such a discussion.

Main Report

1. Introduction

This report was commissioned by the Canadian Department of Foreign Affairs and International Trade (DFAIT). It has two main aims. First, to review the provisions of voluntary codes, guidelines and initiatives that address the relationship between business activities and violent civil conflict – as understood within the context of the contemporary agenda on ‘business and conflict’. And second, to make suggestions on a framework within which public policy makers in high income countries can design and prioritize support for or engagement in codes, guidelines and voluntary initiatives on business and violent conflict.

The report is based on desk-based research carried out by Jason Switzer and Halina Ward, with additional advisory input from Jessica Banfield. It has not been possible within the limited timeframe of the project to test our analysis on any broader group of stakeholders nor to evaluate the efficiency effectiveness or lessons learned from the experiences implementing those voluntary initiatives that we have considered. Consequently, the report is offered simply as a starting point for further discussion among a wide range of stakeholders on harnessing the private sector to the promotion of peace and human security worldwide.

The remainder of the report has the following structure.

- **Section Two** sets out a number of starting points for the report in terms of definition and scope of the work.
- **Section Three** introduces some of the key business issues in the relationship between ‘business’ and ‘violent conflict’
- **Section Four** assesses a range of existing voluntary codes, guidelines and initiatives against these issues identifying important gaps both in those initiatives and in the wider agenda on business and violent conflict.
- **Section Five** highlights some of the primary themes in existing literature on the pros and cons of voluntary initiatives as mechanisms for changing corporate behaviour.
- **Section Six** proposes a framework for public sector decision-making on the role and scope of voluntary initiatives to address business and violent conflict. Beginning with a review of the various roles through which the public sector can strengthen the enabling framework for corporate adoption of voluntary commitments, it identifies a range of ‘strategic options’ to guide governments as they move towards concrete efforts in this field.
- **Section Seven** offers short concluding comments.

2. Scope and Definitions

Before beginning an analysis of trends within an agenda that is fast-paced and in which basic issues of principle remain unsettled, it is useful to set out our approach to some basic issues of scope and definition.

When we refer to 'business', we address both publicly and privately owned 'for-profit' enterprises operating in zones of potential or open conflict. However, it has only been possible in this study to address the nexus between local small, medium and informal sector enterprises and conflict to a very limited extent to the extent that their activities are linked to those of multinational corporations or state-owned enterprises operating in conflict zones.

'*Conflict*' is described by the Oxford English Dictionary as a serious disagreement, a prolonged armed struggle, or an incompatibility of opinions, principles or interests¹³. It can take place at the local, regional, national or international level. Conflict can be non-violent (as in the case of broad-based civil protest or legal challenge), latent (for example when it is repressed under a dictatorial regime) or violent. Analysis of conflict typically encompasses the fragile peace that exists after a period of open conflict, as well as the unstable peace that prevails before conflict emerges.

Conflict need not be viewed as a negative in and of itself. Throughout history, conflict has played a vital transformational role in societies, offering opportunities for the redistribution of resources, the redefinition of political rights and the resolution of competing value-systems and ideologies.

'*Violent conflict*' represents a failure to resolve the root sources of social tension, to prevent violence and to channel conflict towards productive and peaceful resolution. The outbreak of violence reverses development, destroys infrastructure and social ties, and thwarts investment.

Debate continues on whether poverty is the leading source of conflict, but there can be no doubt that conflict entrenches poverty.¹⁴ Poverty alone is unlikely to trigger violence. More precisely, the problem is rapid change, coupled with availability of arms and access to financing for prolonged campaigns. Without discounting the importance of individual leaders and historical tensions, a sudden decrease in standards of living or a rise in inequity due to macroeconomic shock, coupled with a failure by governments to adequately respond, is believed to lie behind many recent violent conflicts¹⁵.

Modern conflict is largely fought by groups within a state (rather than between states), and civilians represent some 90% of casualties, largely women and children. Significantly, it can be argued that "natural resources have provided the bulk of revenues financing wars in developing countries since the end of the Cold War"¹⁶.

Violent conflict is sometimes equated with 'war', and defined quantitatively, often with reference to battlefield deaths.¹⁷ We have however elected to use a qualitative definition, focusing on organized and violent conflict, expressed not only in terms of incidences of open violence, but also in social disruption, population displacement and perceptions of insecurity and fear. These are the indicators of rising social tensions that, if unaddressed, can prove explosive. Our definitional focus is grounded in Canada's goal of promoting human security - both through conflict prevention and peacebuilding - in collaboration with the private sector¹⁸.

For our purposes, it is organized physical violence that is the distinguishing feature,

not the number of deaths or the involvement of state parties. Accordingly, a wide range of lethal violence that does not fall within the scope of studies on 'war zones' or 'war economies' does fall within the scope of this report. Isolated (non-'organised') instances of physical violence – such as crime – do not. Last, this report focuses principally on the role of business in 'violent conflict' within states, though the analysis has some relevance to the role of corporations in interstate wars and in post-conflict reconstruction as well.

Scope of Voluntary Initiatives. This study has centered on an analysis of various kinds of voluntary initiatives that address the relationship between business and violent conflict. For this report, we reviewed a range of business-focused codes and guidelines developed for application by more than one business alongside a small number of policy statements and documents reflecting the policies and progress of individual companies in the mining and oil and gas sectors.¹⁹ We have also considered a smaller number of multistakeholder voluntary initiatives that have been designed to address key issues within the business and violent conflict agenda – though without delivering documents that can strictly speaking be described as 'codes' or 'guidelines'.

Our review has been limited to a fairly small selection of:

- Initiatives and documents (in the form of recommendations, guidelines, codes or principles – we refer to these in shorthand as 'codes and guidelines') that directly address business behaviour
- Initiatives and documents that contain provisions that are in some sense 'normative' for business behaviour
- Norms (as to which see *Box 1* below) that are 'voluntary', in the sense that there are no direct legal sanctions upon businesses for failure to comply. This said, there may well be indirect legal sanctions associated with failure to meet the norms set by codes and guidelines, since they may become relevant in a variety of ways to legal claims (*Annex 1* outlines the links in more detail).

A complete list of the documents that we have considered can be found in *Annex 1* to this report.

Box 1 Norms: principles, guidelines, standards and rules

In this report, a norm is any standard, rule, guideline or principle that is designed to shape corporate behaviour in terms of monitoring, management, decision-making or performance. It may or may not be legally binding.

Principles and guidelines operate at a high level of generality, suggesting broad directions for behaviour in conditions of uncertainty. Rules and standards tend to be more specific in terms of desired outcomes.

Categories are fluid: guidelines can become standards or legal rules. Non-legal standards can become legal ones. Non-legal principles can become legal ones.

Source: John Braithwaite and Peter Drahos, *Global Business Regulation*, Cambridge University Press, 2000

3. Business and Violent Conflict: Key issues for business

Introduction

Three types of violent intra-state conflict are of principal concern in the business and conflict agenda²⁰:

- Inter-Community conflicts
- Community-Government conflicts
- Community-Company conflicts

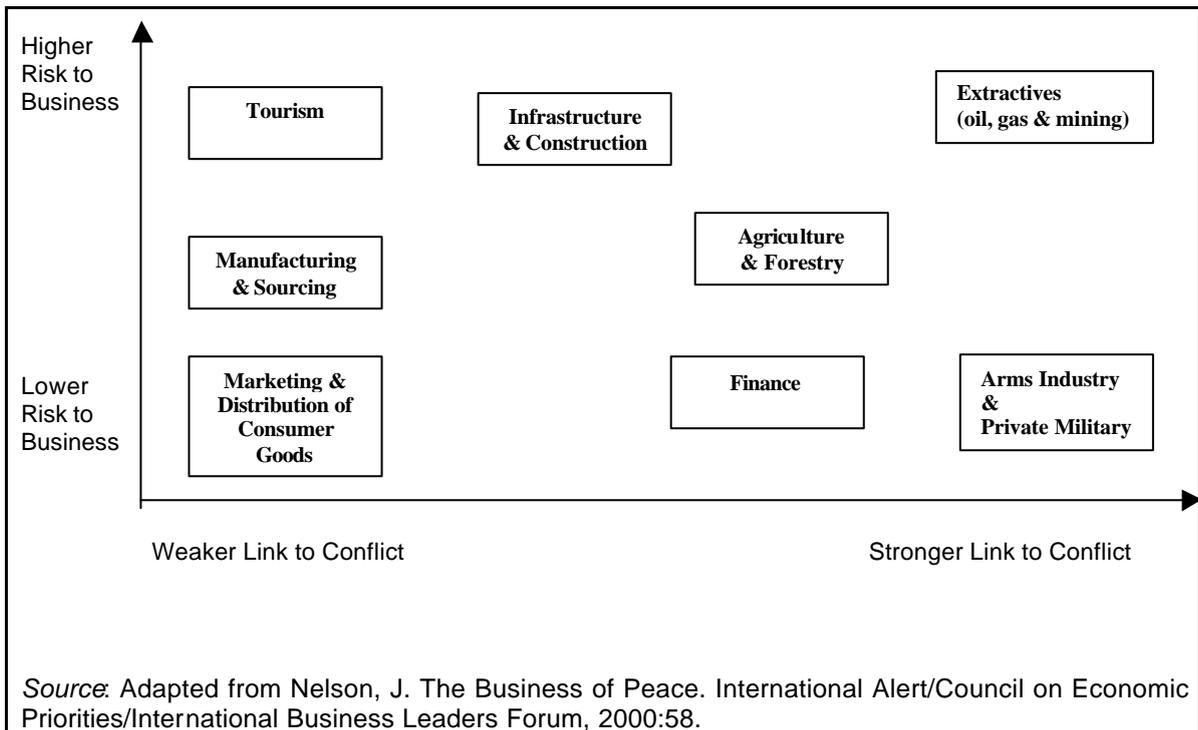
No definitive typology of corporate-conflict impact has yet been published.²¹ Most literature on business and violent conflict tends to focus on ‘community-government’ conflicts; in other words the relationship between businesses and states with oppressive governments that are themselves associated with violent conflict. For example, one Canadian commentator focuses on ‘ways in which a firm’s presence in a nation with an oppressive government can encourage the regime to increase its repressive activity and engage in human rights abuses that would otherwise not occur’.²² And a major Canadian study of self-regulation in conflict zones takes abuses committed upon civilian populations as its starting point²³.

Our focus here is broader. We do not view the presence or absence of an ‘oppressive regime’ as the defining characteristic of the business-violent conflict relationship. Violent conflict may occur within communities, or between business interests and communities, in nations that are not generally understood to be governed by ‘oppressive regimes.’

Different industry sectors have distinct interactions with violent conflict. The literature has focused on extractive industries – particularly oil, gas and mining. But other sectors are implicated; for example because their presence in a locality or in a nation governed by an oppressive regime may sustain or provide legitimacy to that regime, or ignite localized conflict over access to scarce financial benefits or natural resources. Tourism is one such sector.

Other sectors may be brought into the ‘business-violent conflict’ axis through their project or portfolio investment strategies (as in the case of the financial services sector), or because their supply chains include inputs whose production is associated with violent conflict, or products that are sold on to customers who use them in conflict situations. In sum, many more businesses are implicated in conflict than the limited number that have so far been brought into the spotlight. (See *Figure 1*, below)

Figure 1 Industry-Conflict Risk-Responsibility Profiles²⁴



A Management Framework

Recent work by International Alert²⁵ has suggested that overall corporate engagement in managing corporate-conflict dynamics can take place at one or more of three levels: simple compliance with relevant legal frameworks; adopting a ‘do no harm’ approach that aims to minimize harmful impacts; and a peacebuilding approach that maximizes the positive potential of business activities to contribute to peace.

Which approach, or combination of approaches, is taken will depend in large measure on each business or sector’s assessment of the *business case* for each level of engagement and the drivers of action. And it will also need to reflect the results of an internal process of reflection on the extent of the business or sector’s assessment of its spheres of *impact, control, and influence* in relation to the interface between business and violent conflict (see *Box 2* below).

Box 2 Impact, Control and Influence

Sphere of Impact: Range of stakeholders ‘beyond factory walls’ that are directly and indirectly affected by the activities of the project or product

Sphere of Control: Range of impacts that are under the direct control of the company – whether at corporate level or in relation to the particular activities under consideration

Sphere of Influence: Range of direct and indirect impacts that are susceptible to change, or stakeholders whose actions could be influenced as a result of dialogue or policy engagement by the company or business entity

Whatever the overall level of engagement, a corporate policy and management framework for addressing the interface between business and violent conflict needs to address three distinct sets of issues - the *central management challenges* relevant to the business in the light of its various relationships with violent conflict; the *channels of change*²⁶ for business action to address the multiple relationships between business and violent conflict; and the overall management tools, skills and approaches necessary to ensure the development and implementation of 'best practice' policy.

The central management challenges for firms in zones of potential or open violent conflict can be described under five broad headings. *Governance failures*, from corruption and oppression to a failure to diversify the economy and generate jobs, are an important yet preventable contributor to many conflicts. Similarly, the mismanagement of *community relations* is the principal source of community-company conflicts. The *flow of resources and finance* into and out of conflict zones is the mechanism whereby violence can be sustained, or even become a means for profiteering by 'conflict entrepreneurs'. Expanding the notion of accountability further, managers may need to consider the indirect social *impacts of products and services* from the base of the *supply chain* through to use or disposal by the consumer, who may use these products to commit human rights abuses. Last, many managers fail to properly understand and address not just the impacts of their operations on conflict, but also the impacts of the surrounding conflict context on their operations. Contexts are dynamic – countries can go from peace to war and back again over the lifecycle of a major project. Companies need the tools to identify and manage situations where *peace turns into conflict*.

Box 3 below outlines the range of links between business and actual, potential or recent violent conflict in terms of the dilemmas they pose for managers. Each is introduced in more detail in *Annex 2*.

Box 3 Central Management Challenges for Business in Conflict Zones

A. Tackling Governance Failures that Contribute to Conflict
Reducing Macroeconomic Dependency and Vulnerability
Minimizing Contribution to Oppressive Regime
Managing Corruption & Bribery
B. Managing Community Relations and local impacts
Comprehensive Decisionmaking for Entry and Exit
Managing Changing Conditions Across the Project Cycle (e.g. exploration, construction, operation; external shift from peace to conflict)
Ensuring Effective and Responsible Security Arrangements
Minimizing Community-Level Social and Environmental Impacts with Implications for Conflict
Respecting Human Rights and Negotiating Local Consent
Managing Distributional Issues: Resource Access, Land Claims, Benefit Sharing and Compensation
Ensuring Equitable Contracting and Hiring

C. Minimizing Conflict Finance
Addressing War Economies: Kidnapping, Extortion, and Conflict Commodities
Managing Investor and Investment Linkages
D. Minimizing Indirect Links to Conflict
Managing Upstream Linkages: Suppliers and Business Partners
Managing Downstream Linkages: Products and Services
E. Addressing the Conflict Context
Displaced Peoples, Small Arms, Humanitarian Concerns, Interaction with Insurgent Groups
Becoming a Surrogate or Symbolic Target

Businesses have three *channels of change* available to them in tackling the central management challenges:

- Management practices that address the connections between *core business practices* and violent conflict that are highlighted in *Box 3* above.
- *Strategies for social investment* – or ‘strategic philanthropy’ – that can reduce conflict-related risks and contribute to peacebuilding through the reduction of root causes, often in partnership with other actors.
- *Public policy engagement* to build the ‘enabling environment’ for peace.

Many insights from wider management thinking, and from the CSR agenda more specifically, are readily applied in the development of a business framework for addressing the violent conflict agenda. These are important resources for any business to draw on.

For example:

- the value of buy-in from top level management and of effective implementation approaches for driving policy through to every level of the business, are familiar territory for any change management process.
- Management tools such as values statements or internal codes of conduct may already exist and simply need to be adapted or updated.
- Many businesses will be used to developing performance indicators to translate their policy commitments into concrete impacts over time.
- Companies that are already active participants within the CSR agenda may already have adopted some tools for managing the interface between business and violent conflict, including:
 - reporting to external stakeholders on their strategies and policies and their social impacts over time
 - working in partnership with other stakeholders to promote sustainable development, and
 - adopting a philosophy of continuous improvement, coupled with ongoing processes of internal reflection and learning integrated into overall management systems approaches.

While many CSR tools and capacities are relevant to conflict sensitivity, adoption and implementation of conflict-sensitive business practices may require additional non-traditional skills. For example, the management skills necessary to ensure effective implementation of business policy on violent conflict may range from community engagement or expertise in the application of technologies for mitigation of environmental harm to political analysis, conflict mediation and understanding of the private security and military sectors. More important than normative guidance and relevant management tools, are individual willingness, incentive mechanisms and appropriate training.

Externally-developed codes of conduct, guidelines and voluntary initiatives (i.e. 'third party', as distinct from internal, initiatives) can provide valuable reference points as companies seek to navigate their way through the business and violent conflict agenda towards tailored internal policies and management systems. So too can wider external sources of information, including research reports, political risk ratings, or relevant guidelines developed for application by governments or international financial institutions. Collating information on different possible sources of guidance – both individuals, organizations and documents, is a valuable starting point.

Choosing *whose guidance* to take into account then becomes an important management decision – particularly given the value of understanding the full range of stakeholder concerns before seeking to crystallize any overall policy framework. Many stakeholders – particularly local communities – may not have had any involvement at all in shaping the available guidance. The factors that guide the choice may include the perceived *legitimacy* of different initiatives, their *authority*, their *relevance* to the particular issues facing an individual business and, sometimes, their *completeness* or the extent to which they *innovate* in particular areas.

We hope that the analysis of voluntary initiatives in the sections that follow will be useful to businesses seeking to find a path through these difficult choices.

4. Review of Voluntary Initiatives and their Relationship to Violent Conflict

Introduction

This section reviews the substantive norms of a range of existing voluntary initiatives that are relevant, whether directly or indirectly, to addressing the range of relationships between business and violent conflict. We aim to highlight the relevant features of existing voluntary initiatives, some emerging directions, and some of the gaps. The review has two functions. First, to provide an overview of sources of existing guidance on 'best practice' for the full range of stakeholders within the business and conflict agenda. Secondly, to provide baseline analysis for decision-making by public sector actors on engagement with such initiatives as part of efforts to strengthen the 'enabling environment' for positive business action to tackle issues within the business and conflict agenda.

There are many possible ways to classify the wide range of existing voluntary initiatives, including:

- Their *objectives* (e.g. protection of the environment, human rights, etc.)
- The *actors* involved in developing them (e.g. businesses only, public sector agencies, non-governmental organizations, or some combination)
- The *sources of the norms* that they incorporate (e.g. international agreement or human rights-based, health-based, risk-based, or negotiated with affected communities)
- The *target audiences* for the initiative (e.g. an individual sector; businesses in a particular country; businesses and NGOs, etc)
- The *actions required* to achieve the norms (endorsing a set of guiding principles, committing to achieve certain performance targets, implementing processes or management systems both to ensure compliance with principles and to achieve performance targets, monitoring and reporting on results, submitting their claims to independent verification, through to providing a mechanism for recourse and conflict resolution in case of disputes with stakeholders)
- The set of *compliance incentives* associated with the initiative (public shaming, boycotts, etc.), and the *nature of the accountability mechanism*.

For the purposes of this report, we have not sought to develop any ranking of different initiatives along these or other possible lines. Our task has been simply to undertake a comparative review of the *provisions* of codes and initiatives. Consequently we have not attempted to evaluate the relative significance or legitimacy of different codes or initiatives. Moreover, resource and time constraints mean that we have not been able to:

- Carry out detailed comparisons between initiatives or codes – our analysis is qualitative, designed to offer an overall picture of the state of the art. We have not sought to refer to every relevant provision of every relevant initiative.
- Assess the efficiency, effectiveness, or lessons learned from these initiatives through discussions with individuals or organizations who have been engaged in their development.
- Evaluate the extent to which firms adopting these initiatives have modified their practices, internal management systems and incentive structures to ensure compliance.
- Review literature generated in middle and low income countries.

Within our overall starting points, we have reviewed:

- Codes and guidelines that are cross-cutting in scope and reach. Some that fall in this category are global - e.g. the UN Global Compact, the UN Sub-Commission on Human Rights' Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights ('UN Norms', adopted in 2003). Others are regional or national in origin, e.g. the OECD Guidelines for Multinational Enterprises, or the Guidelines Concerning Human Rights and Environment for Norwegian Companies Operating Abroad ('Norwegian Guidelines')
- Codes, guidelines and initiatives that focus on particular aspects of the interface between business and violent conflict, such as human rights or security.
- Codes of conduct and guidelines of a handful of companies in the oil and gas and mining sectors – with a particular focus (though not limited to) those that have been a target of campaigns associated with operations in conflict zones. Here, we have drawn heavily on a forthcoming publication by Gare Smith and Dan Feldman for the World Bank Group's Corporate Social Responsibility Practice.²⁷
- Reports that contain recommendations or guidelines that are 'normative' in relation to the business and violent conflict agenda (e.g. Chris Avery's 1997 recommendations to companies doing business in Colombia).

The codes, guidelines and initiatives that we have referred to are listed in *Box 4* below.

We have not included a number of well-known voluntary initiatives whose norms are only *indirectly* relevant.²⁸ Nor have we reviewed comprehensive initiatives that only contain limited references to business and violent conflict and that are not well known outside their direct stakeholder communities.²⁹

In the following sections, we highlight some overall points before turning to consider in turn each of the central management challenges that we have identified; the 'channels of change'; and finally two of the management tools that have emerged from the wider CSR agenda - accountability to stakeholders through external communication and reporting; and partnerships among different actors.

Box 4 Codes, Guidelines and Initiatives Reviewed for this Report

INITIATIVE	AVAILABLE AT
MULTI-ISSUE	
Nelson, J. The Business of Peace. International Alert/IBLF/CEP (2000)	www.international-alert.org
UN Global Compact (1999)	www.unglobalcompact.org
Checklist for Corporate Actors in Zones of Conflict, Confederation of Norwegian Business and Industry (2003)	http://www.nho.no/hovedweb/hovedweb.nsf/0/e2200b1a6fb16ca7c1256d32004a5de9/\$FILE/Responsible%20Engagement.pdf
Guidelines Concerning Human Rights and Environment for Norwegian Companies Abroad (2003)	http://www.milli.no/%7Eforum/dokumenter/guidelines.rtf
OECD Guidelines for Multinational Enterprises (revised 2000)	http://www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_37461,00.html
Global Sullivan Principles (1997)	www.globalsullivanprinciples.org
European Parliament Resolution on EU Standards for European Enterprises operating in developing countries: towards a European Code of Conduct (1999)	http://www.citinv.it/associazioni/CNMS/archivio/convenzioni/parlamentoEU.html
International Code of Ethics for Canadian Business (2001)	http://www.cdp-hrc.uottawa.ca/globalization/busetics/codeint.html
Collaborative for Development Action's Corporate Engagement Project	www.cdainc.com/cep
World Bank Operational Policies	www.worldbank.org
HUMAN RIGHTS	
UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003)	http://www1.umn.edu/humanrts/links/norms-Aug2003.html
Amnesty International Human Rights Principles for Companies (1998)	http://web.amnesty.org/library/index/engACT700011998?open&of=eng-398
<i>Whether to do Business in States with Bad Governments</i> , Danish Institute for Human Rights (2001)	http://www.humanrightsbusiness.org/resp_1.htm
BRIBERY/CORRUPTION/GOOD GOVERNANCE	
Wolfsberg Anti Money Laundering Principles (2002, revised version)	http://www.wolfsberg-principles.com/
Business Principles for Combatting Bribery, Transparency International and Social Accountability International, 2002	http://www.transparency.org/building_coalitions/private_sector/business_principles.html
International Chamber of Commerce Rules of Conduct to Combat Extortion and Bribery (1999, revised version)	http://www.iccwbo.org/home/statements_rules/rules/1999/briberydoc99.asp
Extractive Industries Transparency Initiative (ongoing, launched 2002)	http://www.dfid.gov.uk/news/News/files/eiti_index.htm
SECURITY	
Voluntary Principles on Security and Human Rights (2000)	http://www.state.gov/g/drl/rls/2931.htm
CONFLICT COMMODITIES	
Kimberley Process Certification Scheme (2002)	http://www.kimberleyprocess.com/
FINANCE	
Project Finance: The Equator Principles	www.equator-principles.com/principles.shtml
Asset Management: FTSE4Good Index Human Rights Criteria	http://www.ftse.com/ftse4good/FTSE4GoodCriteria.pdf
SPECIFIC CONFLICT ZONES	
Iraq: On Whose Behalf? Human Rights and the Economic Reconstruction Process in Iraq: Recommendations to companies (2003)	http://web.amnesty.org/pages/ec_Iraq_recommendations#top
Recommendations to a Company doing business in Colombia, Chris Avery, 1997	http://209.238.219.111/ColumbiaRecommendations.htm
Eight Points for Companies, in <i>Rebuilding</i>	http://www.iblf.org/csr/csrwebassist.nsf/content/f1d2b3

<i>Bridges: Opportunities and Challenges for Responsible Private Sector Engagement in Iraq's Reconstruction</i> , Jane Nelson and Jonas Moberg, 2003	aac4.html
MANAGEMENT TOOLS	
Global Reporting Initiative (revised 2002)	http://www.globalreporting.org/guidelines/2002.asp
AA1000 (1999) AA1000 AS (2003)	http://www.accountability.org.uk/aa1000/default.asp
Conflict Risk and Impact Assessment Toolkit (Ongoing, to be published Fall 2004)	www.iisd.org/natres/security/cria.asp www.international-alert.org

Overall Findings

Some general points emerge clearly from our review. First, we have found very few voluntary codes or guidelines directly address the behaviour of businesses operating in conflict zones. The most notable exceptions are:

- The Voluntary Principles on Security and Human Rights ('Voluntary Principles' hereafter),
- The UN Sub-Commission on Human Rights' Draft "Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" ('UN Norms' hereafter)
- The "Guidelines Concerning Human Rights and Environment for Norwegian Companies Abroad" ('Norwegian Guidelines' hereafter), and the Confederation of Norwegian Business and Industry's Checklist for Corporate Actors in Zones of Conflict ('Norwegian Confederation of Industry Checklist')
- Amnesty International's "Human Rights and the Reconstruction Process in Iraq: Recommendations to Companies"
- The Collaborative for Development Action's Corporate Engagement Project and resulting Issue Papers
- International Alert's Business and Peacebuilding activities

Conflict has not become a mainstream issue in the CSR debate. For example, an extensive review of codes of corporate conduct published by the OECD secretariat in 2002 does not contain a single instance of the word 'conflict'.³⁰ However, a large number of codes and guidelines *indirectly* address "conflict drivers" – for example in provisions on environment, human rights and community and labour welfare.

Company's own codes, guidelines, reports and policy documents are an important source of additional guidance on emerging 'best practice.' In many cases they are more detailed than codes and guidelines developed by 'third parties' and multistakeholder processes. This may reflect differences in the dynamics of internal and multi-party processes for setting guidance; or the fact that companies' policies and approaches are often communicated through a large range of documents that evolve over time; or of the fact that our research has, due to time and resource constraints, not considered some research-based reports that could offer additional sources of recommendations for companies (e.g. the final report of the Mining, Minerals and Sustainable Development Project, *Breaking New Ground*).

Multistakeholder initiatives that have tackled business and conflict explicitly have tended to focus on particular 'flashpoint' linkages in the extractive sectors³¹ - not those sectors with the largest 'conflict footprints' or the greatest potential to contribute to peacebuilding. Examples include efforts to promote financial transparency in the extractive industries (as with the ongoing Extractive Industries Transparency Initiative); and voluntary efforts to reduce trade in natural resource commodities linked to violence (e.g. through the Kimberley Process on conflict diamonds). The most comprehensive effort to generate external guidance for extractive sector companies in conflict zones is being led by the Collaborative for Development Action, though this has focused on community-level issues to date (see *Box 5*, below).

Sectors other than oil, gas and mining have largely remained 'below the radar' of business and violent conflict research in terms of voluntary initiatives, though pressure is now beginning to build on the financial and timber sectors.

Little dialogue has taken place between stakeholder groups, governments and industry to establish of broadly-agreed normative guidance for conflict-sensitive business practice. Many different and sometimes contradictory normative statements on the legitimate roles and responsibilities of companies and home and host-state governments exist as a result². This translates into uncertainty among some stakeholders about the true extent of a company's *influence* on conflict issues, and on the other, on the degree to which this generates a responsibility for the firm to act in a particular way.

The positive potential for companies to contribute to peacebuilding has, so far, received little attention in codes, guidelines and voluntary initiatives³². We have found only one example of a guidance note that directly address 'peacebuilding' – though indirect contributions can be found in provisions that address areas such as human resources and employment practices that foster social capital, employ local people, and tackle discrimination.

Finally, the *processes* through which voluntary codes and guidelines have been developed have generally failed to engage meaningfully with stakeholders based in developing countries. This is of particular concern given the importance of local and regional private companies in conflict dynamics, and the locally-relevant knowledge base of southern-based NGOs engaged in business-conflict research, dialogue and mediation. Notably, Southern stakeholder engagement in code formulation is called for in a recent European Parliament resolution: 'the content of a code, [and] the process by which it is determined and implemented, must involve those in developing countries who are covered by it.'

² Exceptions include: the Extractive Industries Transparency Initiative (government responsibilities) and the complementary Publish What You Pay effort (industry responsibilities); and the Kimberley Process Certification Scheme (government) and World Diamond Council (industry).

Box 5 CDA Corporate Engagement Project

Perhaps unique among the initiatives reviewed by this report, respected peace-building institute the Collaborative for Development Action has initiated a multi-year process to carry out field-level assessments of extractive-sector projects in conflict-sensitive locations and share lessons learned. **Its results should at this time be among the first ports-of-call for extractive sector project managers.** CDA seeks through externally-funded field assessments carried out in partnership with mining, timber and oil & gas companies, to understand how specific corporate operations affect conflict and how conflict affects corporate operations, and to evaluate the company's social investment efforts as a conflict management tool. From these insights, CDA is preparing issue papers that provide generic guidance to field managers on best practice. The resulting issue papers focus on assessing and managing community level impacts, strengthening peacebuilding through social investment and NGO partnership efforts, measuring the effectiveness of resulting interventions, and driving conflict sensitivity through internal incentives.

Issues Papers

- Compensation, Hiring and Contracting policies
- Locational decisions and exit strategies
- Negotiating consent with local authorities and other stakeholders
- Measuring community relation impacts
- Internal reward and performance policies
- Peacebuilding, social investment and corporate-NGO relationships

Source: Collaborative for Development Action, www.cdainc.com/cep

Box 6 World Bank Guidelines and Safeguards Relevant to Conflict

The guidelines and safeguards established by the World Bank Group are widely used within the international corporate community as a baseline for establishment of internal policies on issues ranging from environmental and social impact assessment to the particular challenges of resettlement, damage to cultural property, engagement with indigenous communities, and the like. They are also often referenced as a condition for access to project finance. For these reasons the contents of **World Bank Guidelines are of central importance to the design and implementation of projects in conflict-sensitive regions.**

That said, to date the **multilateral development banks have not put into place policies or procedures that directly address the role of the private sector in conflict or peacebuilding.**³³ The institution with the greatest direct engagement with the private sector is the International Finance Corporation. The IFC does not have any policies directly relevant to conflict or human rights issues, though this may change as part of its ongoing process of environmental and social policy review (2004).

An explicit policy on development cooperation and conflict was adopted within the World Bank in 2001 that references 'close partnership' with private sector entities, and sets out the need for conflict analysis of Bank-supported operations "if the severity of the situation warrants". This policy does not, however, apply to the IFC.

World Bank Policies Relevant to Conflict and Conflict Management (date of revision)

OMS 2.20	Project Appraisal (1984)
OP 2.30	Development cooperation and conflict (2001)
OD 4.15	Poverty Reduction (1991)
OD 4.20	Indigenous Peoples (1991)
OP 4.01	Environmental Assessment (1999)
OP 4.20	The Gender Dimension of Development (1999)
OPN 11.03	Cultural Property (1999)
OP 4.02	Environmental Action Plans (2000)
OP 4.07	Water Resources Management (2000)
GP 14.70	Involving NGOs in Bank-Supported Activities(2000)
OP/BP 4.12	Involuntary Resettlement (2001)
OP 4.36	Forestry (2002)
SDD Note 5	Conflict Analysis Framework (2002) ³⁴

Source: www.worldbank.org/conflict

Central Management Challenges

1. Tackling Governance Issues that Contribute to Conflict

Reducing Macroeconomic Dependency and Vulnerability

None of the codes or initiatives reviewed directly addresses the financial dependency of whole countries on large extractive sector projects, though this is cited as a key indicator of conflict vulnerability³⁵. At the macro, or state, level, the International Code of Ethics for Canadian Business provides a useful starting point. The Code refers to providing 'meaningful opportunities for technology, training and capacity building within the host nation', as a basis for economic diversification.

There are very few codes that tackle problems of inequitable or uneven development, which is perhaps understandable in light of the sensitive political nature of this issue. However, the OECD Guidelines include a reference to 'observing standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country'.

While broad concepts of economic diversification figure in some codes of conduct, tools for practical implementation lag behind. On the other hand, encouraging templates for resource-led economic diversification and vulnerability reduction are available:

- Mechanisms to smooth out the economic impacts of swings in commodity prices, as in Chile's Copper Stabilization Fund.
- Revenue distribution mechanisms that support economic diversification, such as providing micro-credit to entrepreneurs and small businesses, and helping to reduce bureaucratic barriers to establishing a business and entering the formal economy.

Minimizing Support to Oppressive Regimes

Business support to oppressive regimes begins with the *de facto* legitimation conferred by an international firm to a regime in consequence of investment or failure to disinvest in a project. Codes and guidelines are now beginning to offer guidance to managers on the difficult choices that they face in managing this issue. For example, the Norwegian Guidelines (see *Box 7* below), specify that companies' own ethical guidelines should 'define what activities the company will not take part in due to negative consequences unacceptable to the company'. The Danish Centre for Human Rights, jointly with the Confederation of Danish Industries and the Industrialization Fund for Developing Countries, has published very useful practical guidance on "Whether to Do Business in States with Bad Governments." This urges firms to respect international sanctions and popular sovereignty (e.g. by strengthening civil society), whilst avoiding legitimizing egregious human rights violators³⁶.

One important issue raised here concerns the sources of information available to companies seeking information on the human rights records of governments around the world to assess their 'acceptability'. Many are available. For example, the Danish Centre for Human Rights' Human Rights Commitment Index has been designed to offer a well-rounded assessment of the human rights record of 70 governments. And Freedom House in the US is used as a source by some parts of the socially responsible investment community.

In Canada, guidance for countries where firms are at greatest risk of undermining Canadian foreign policy objectives can be found through³⁷:

- DFAIT's listing of countries sanctioned for the purpose of changing their policies or practices (e.g. limiting diplomatic contacts, travel bans, economic or trade sanctions)
- The Export and Import Permits Act, which through its lists of regulated Exports, Imports and Areas, provides guidance on the control of the flow of goods to these regions.

Box 7 Guidelines Concerning Human Rights and Environment for Norwegian Companies Abroad

16th Principle: Show particular care prior to establishing an enterprise in countries where extensive infringements of human rights are taking place

Norwegian companies shall prepare entry and exit strategies...The entry strategy should assess whether the business activities are likely to support the regime's power basis. When presuming that a Norwegian business involvement will contribute towards an improvement in the human rights situation in a country, concrete strategies and goals shall be presented concerning how this will be achieved, and how the company intends to react upon any changes which may occur in the human rights situation. ...

The exit strategy is to account for how the company intends to act upon a change in the country's human rights situation, or upon evidence that its activities contribute to the upholding of the oppressive regime. The consequences of a withdrawal are to be assessed. The entry and exit strategies should be prepared in consultation with Norwegian authorities and competent specialists, as well as with local parties.

Source: <http://www.milli.no/%7Eforum/dokumenter/guidelines.rtf>

Managing Corruption and Bribery

Provisions on bribery and corruption are commonplace in corporate codes of conduct and in the broader range of codes and guidelines that we have reviewed. Some codes also address problems associated with the diversion and misuse of legitimate payments.

Among the most relevant voluntary initiatives are the International Chamber of Commerce (ICC) Rules of Conduct to Combat Extortion and Bribery and the anti-bribery provisions of the revised OECD Guidelines for Multinational Enterprises. Bribery and corruption are also heavily legislated, for example through commitments accepted under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and by the United Nations Convention against Corruption.

In June 2003, Transparency International and Social Accountability International published their Business Principles for Countering Bribery (T-SAI Business Principles), which are designed to apply to enterprises no matter what their size and to address both bribery of public officials and private transactions. These new Principles also tackle the issue of bribery disguised as charitable contributions or sponsorship (a darker side of 'social investment'). They expressly provide that "the enterprise should make it clear that no employee will suffer demotion, penalty or other adverse consequences for refusing to pay bribes even if it may result in the enterprise losing business."

A distinct issue concerns the use by governments of legitimate payments by businesses (by way of taxes or royalties) for corrupt purposes in circumstances where continued armed conflict has significantly reduced public capacities to govern for the overall good of the populace. This area is now the subject of a tailored initiative – the Extractive Industries Transparency Initiative (EITI – see *Box 8* below), which can be expected to develop a series of voluntary agreements between multinational corporations and host country governments under the overall auspices of a 'home country backed' negotiating framework. When they require details of payments to be made public, such agreements can provide citizens of host countries

with access to the information that they need to call corrupt administrations to account.

Box 8 Extractive Industries Transparency Initiative (EITI)

Launched by UK Prime Minister Tony Blair at the World Summit on Sustainable Development in September 2002, the Extractive Industries Transparency Initiative aims to increase transparency over payments by companies to host governments. At issue as this initiative further develops is whether it will lead to voluntary principles or to a mandatory approach led by home governments. Companies argue that it is vital that there be a level playing field that does not disadvantage firms seeking to be transparent.

Calling the June 2003 multi-stakeholder meeting of the EITI “broadly positive”, the Publish What You Pay NGO coalition led by billionaire financier George Soros evinced concern about the move toward a voluntary approach by the EITI. A non-regulatory approach “may succeed in accomplishing payments and revenues disclosure [in some pilot countries, but] will not deliver in the countries where transparency is most needed”³⁸.

Source: <http://www.publishwhatyoupay.org/eiti/>

2. Managing Community Relations and local Impacts

Comprehensive decision-making for entry and exit

The decision regarding entry into a project, or disinvestment from a particular project, is an issue of particular concern. At the level of general principle, Chris Avery’s advice to firms in Colombia (1997) may reflect an emerging consensus: ‘If serious human rights violations are committed in the area of your company’s operations, your company should re-examine its presence in the country and whether its investment is appropriate and justifiable.’

The Confederation of Norwegian Business and Industry has worked with a leading peace research institute in the development of a checklist for Corporate Actors in Zones of Conflict (2003), dealing principally with the issue of whether or not to invest in conflict-sensitive situations³⁹. It stresses that Social Responsibility is about “taking responsibility for the harm caused by the company itself, both directly and indirectly”. It urges managers to assess side-effects whether investment will ‘cause more harm than good in the host country’ in terms both of direct and indirect effects, and whether it is realistic to assume that efforts to mitigate negative impacts will succeed.

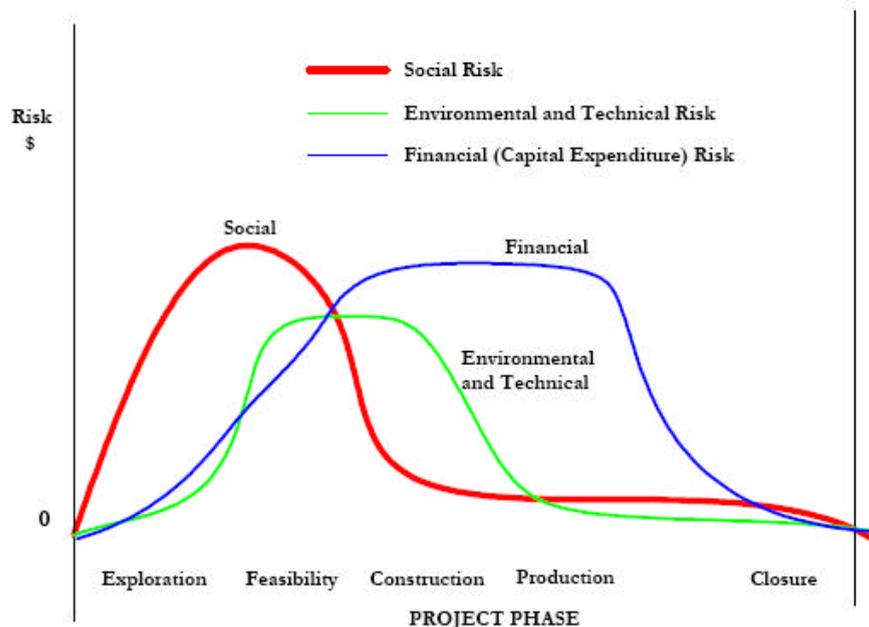
The NGO-developed Norwegian Guidelines go into greater detail, specifying that companies’ own ethical guidelines should ‘define what activities the company will not take part in due to negative consequences unacceptable to the company.’ As such, firms are called upon to exercise “particular care” prior to launching an enterprise in countries where extensive infringements of human rights are taking place, or in countries affected by war, civil war or under the threat of war. “Norwegian companies shall not engage in business activities if there is a danger that the activities contribute to an escalation or prolonging of conflicts”. The Norwegian Guidelines urge the preparation of publicly available entry and exit strategies that assess the human rights and conflict impacts of the project as well as contingencies that may call for early disinvestment, in consultation with Norwegian authorities, specialists and local parties. (See *Box 7* above).

Managing changing conditions across the project cycle

Changing conditions across the project cycle receive little direct attention in codes and guidelines. For example, the extractive sector business cycle has four distinct phases – Exploration, Construction, Operation, and Closure and Reclamation. (See *Figure 2* below). Each involves distinct activities with different vulnerabilities to, and

likelihood of, sparking conflict. Any guidance that is developed for the future needs to take account of the changing nature of the investment footprint, of social stability and community consent over time.

Figure 2 Dynamics of Risk through Phases of the Extractive Sector Project Cycle



Source: Davis, S. A Corporate Approach To Social Risk. SSDS, 1999.
<http://www.congo-online.com/products/documents/Library/lbdavis-002.PDF>

Ensuring Effective and Responsible Security Arrangements

Security arrangements – whether through a private security firm or through the activities of government troops - are often the first point of contact between communities and companies in the extractive sectors, and they are an important potential generator of tensions.

Voluntary initiatives that address security issues directly include Amnesty International’s Human Rights Principles for Companies and, most prominently, the Voluntary Principles on Security and Human Rights (as to which, see *Box 9* below). Though direct participation in the Voluntary Principles is limited to companies in the extractive sectors and to invited participants, they are referred to with approval in the Codes or initiatives of a number of non-participating companies, such as Canada’s Talisman Energy. The UN Norms state “that Security arrangements for transnational corporations and other business enterprises shall observe international human rights norms as well as the laws and professional standards of the country or countries in which they operate”. There are also some notable gaps. The OECD Guidelines for Multinational Enterprises, for example, do not refer to security issues at all.

A number of companies have developed statements on their security policies – many of which refer to the Voluntary Principles.

Box 9 Voluntary Principles on Security and Human Rights

While “governments have the primary role of maintaining law and order, security and respect for human rights”, there are cases where companies may be required to reimburse public costs of protecting facilities and personnel, and/or to hire professional security services. In these instances, the Voluntary Principles suggest that companies:

- consult regularly with host governments, local communities, civil society, home and host governments, and with other companies
- communicate their policies and encourage security force and host government transparency and respect for human rights,
- support training and education to those ends
- Use their influence to screen out individuals implicated in human rights abuses, to avoid inappropriate and excessive use of force, and to ensure appropriate medical care

In *instances where private security is required*, in addition to the provisions above, companies are called upon to seek security firms that:

- Observe the policies of the contracting Company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; emerging best practices developed by industry, civil society, and governments
- Develop explicit policies regarding appropriate conduct and the local use of force.
- Record and investigate allegations of human rights abuses
- Act only in a preventative and defensive manner, without entering the domain of state military or law enforcement authorities.
- Employ staff that is representative of the local population.

Minimizing environmental and social impacts with implications for conflict

In order to minimize community-level impacts with implications for security, firms need to develop the capacity to identify and prevent or mitigate them. Yet standard assessment tools such as environmental or social impact assessment are not well suited to identifying and prioritize those impacts with harmful implications for social stability.

In response to this gap, the International Alert – IISD Conflict Risk and Impact Assessment toolkit proposes to deliver conflict-sensitive Environmental and Social Impact Assessment and management planning tools, field-tested and readily-integrated in standard project practice and finance guidelines⁴⁰ (see *Box 11* below). The project builds on the foundations of the Global Compact’s earlier conflict dialogue (see *Box 10* below). The Voluntary Principles also incorporate some relevant guidance on impact assessment (see *Box 12* below).

Box 10 UN Global Compact Conflict Dialogue

The UN Global Compact was launched by UN Secretary-General Kofi Annan in 1999 in order to promote global CSR. High-level representatives from leading companies and NGOs, as well as from the development policy world, were brought together in 2001 to identify key obstacles and recommendations for companies operating in conflict zones in four areas. Work continues in different forms and through regional outreach on each theme:

- Ensuring transparency of extractive sector revenue flows
- Alternative models for revenue sharing from extractive sector investments
- Case studies of multistakeholder partnerships to reduce conflict
- Conflict impact assessment and stakeholder identification

Box 11 IA-IISD Conflict Risk and Impact Assessment Guidelines

Building on the foundations of the Global Compact's earlier work (see Box 10), International Alert and IISD have initiated the development of a Conflict Risk and Impact Assessment Toolkit to establish commonly-accepted guidelines for conflict-sensitive environmental and social impact assessment (ESIA) and management planning. This methodology is designed to integrate into existing ESIA practices in companies, and to be the basis for a systematic approach to conflict management, rather than a one-off exercise. The CRIA guidelines are intended to identify the impacts of the project on the conflict, and vice versa, as well as to identify opportunities for peacebuilding. Since they integrate into an already-internalized (and often legally required) impact assessment and mitigation process within most companies, the CRIA guidelines designed to fit within corporate due diligence practice in conflict-prone settings, and avoid unnecessary duplication of assessment activities. Guided by a steering committee of ESIA practitioners from the extractive and finance industries, consulting firms, civil society and the development sector, this initiative seeks to address many of the gaps identified above. Draft guidelines will be published in Fall 2004.

Source: www.iisd.org/natres/security/cria.asp

**Box 12 Voluntary Principles on Security and Human Rights:
Factors for accurate and effective risk assessments**

Identification and ranking of security risks from external political, economic, civil or social factors and from impacts of Company actions.

Potential for violence

Rule of law. Risk assessments should consider the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses.

Conflict analysis. Identifying and understanding the root causes and nature of local conflicts and potential conflicts.

Box 13 Collaborative for Development Action Field Visit Methodology

As the basis for its Corporate Engagement Project, CDA's field visits are designed with the same aims as the CRIA process outlined in *Box 10* above, to identify project-conflict interactions and strengthen peacebuilding activities. The field visits are to be carried out in close cooperation with company staff, and while staff time is funded by the Corporate Engagement Project's donor governments, coverage of the costs of field visits and financial contribution to CDA are expected from the participating company.

Each site visit is carried out by a team of 2-3 over 10-14 days, divided evenly between interviews with staff and external stakeholders. Products include an oral and written briefing for management, covering the sources of intergroup tensions and conflicts, operational interactions with those conflict drivers, stakeholder perceptions of the company, options for improving those perceptions and local tensions, and a forward-looking assessment of expansion or reduction of project activities and options for managing these effectively. The results of the field visit are also fed into the preparation of papers on key flashpoint issues common across the projects that have been assessed by CDA, though the specific site report may be kept confidential at the discretion of the company.

To date, field reports that are publicly available include:

- Oil & Gas: Shell and other oil companies in Nigeria, TotalFinaElf in Myanmar/Burma, Unocal in Indonesia
- Mining: PlacerDome in Canada and Papua New Guinea
- Logging: Mozambique, Cambodia

Source: www.cdainc.com/cep/fieldvisits.php

For the time being, human rights impact assessment may be a worthwhile entry point for conflict sensitivity. The Danish Centre for Human Rights report 'Doing Business in Countries with Bad Governments'⁴¹ offers step-by-step guidance across the project cycle to shape decision-making. The ultimate aim is to produce a Human Rights Compliance Assessment methodology, a computer-based tool that, through some 1000 indicators and 300 questions based on major human rights treaties, will generate "concrete indications of areas of non-compliance" (to be available June 2004).

Amnesty International addresses the issue of social divisions that can exacerbate conflict in its recommendations to companies on human rights and the economic reconstruction process in Iraq – specifically in the context of companies involved in provision of relief or goods and services that are indispensable to the survival of the citizens of Iraq. Detailed references to cultural sensitivity in project design and implementation are unusual, with the Norwegian Guidelines offering one exception, and occasional references in company policy documents to respect for the cultural identity of stakeholders including indigenous people or to the need for employees to respect traditions of the countries in which they work.

Respecting Human Rights and Negotiating Local Consent *Corporate Complicity in Human Rights Abuses*

A large number of voluntary initiatives address issues at the business/violent conflict interface in terms of their relationship to the protection of human rights, commonly as a variation of text reflected in the UN Norms: "[Though] States have the primary responsibility to ...protect human rights ...[w]ithin their respective spheres of activity and influence...enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights".

References to 'complicity in', 'engagement over' or 'benefiting from' human rights abuses are common. The International Code of Ethics for Canadian Business says that participating companies will 'support and promote the protection of international human rights within our sphere of influence' and 'not be complicit in human rights abuses'. Provisions of this type are congruent with the Global Compact's human rights principles as well.

Local Consultation

Recognizing the human rights of project affected peoples, and engaging them in relevant decision-making processes, are distinct yet closely related issues. A general principle of 'community dialogue' is emerging, both from third party and company codes and guidelines. The OECD Guidelines contain references to considering 'the views of other stakeholders'; the International Code of Ethics for Canadian Business refer to ensuring 'meaningful and transparent consultation with all stakeholders'. The Voluntary Principles call on companies to consult regularly with host governments and local communities about the impact of their security arrangements on those communities. Unsurprisingly given the practical difficulties, there is little guidance on how to handle community consultation in the face of open violence.

Some initiatives contain specific process guidance. The Norwegian Guidelines offer advice on defining who should be consulted, and who should be involved in the absence of formal representative structures: "all who are potentially affected by [their] activities". They also address the difficult question of representation: "The local community and its elected representatives shall always be heard in cases where a business enterprise affects the local community directly, also when national or regional government has granted the enterprise permission. In communities that

have no formally elected organs or no organs with a democractical [sic] credibility, the local community is to be consulted in a manner that expresses respect towards traditional organisation and ensures that different local interests are allowed to express their views.”

Equity: Indigenous Communities and Gender Issues

Indigenous peoples are ‘communities’ whose special circumstances and rights are addressed by intergovernmental norms. The European Parliament Resolution says that indigenous peoples ‘should benefit from’ corporate codes of conduct...’ And the UN Sub-Commission resolution that adopted the UN Norms indicates that further work in this area can be expected, specifically to develop principles “which would include further references to indigenous concerns and rights with regard to transnational corporations and other business enterprises”. A number of company codes and guidelines place a special emphasis on the representation of indigenous people in project decision-making processes and the workforce and the impacts on indigenous people of extractive sector projects.

Apart from provisions addressing discrimination in the workplace, there are almost no norms that address gender dimensions of violent conflict. The single exception that we have come across is Amnesty International’s recommendations to companies on Human Rights and the Economic Reconstruction Process in Iraq, which says that companies consulting with stakeholders ‘should ensure that the views of women are heard, as well as those of marginalized communities or groups facing discrimination’.

Managing Local Distributional Issues: Resource Access, Land Claims, Benefit Sharing and Compensation

Few ‘third party’ voluntary codes and guidelines (i.e. those that are not individual company documents) address the distributional issues that can fuel conflict. The International Code of Ethics for Canadian Business’s provisions on community participation and environmental protection say that ‘we will strive within our sphere of influence to ensure a fair share of benefits to stakeholders impacted by our activities.’ The only other direct reference to resource distribution that we have found in third party codes and guidelines is an ‘additional’ (optional) indicator in the Global Reporting Initiative’s 2002 guidelines, on ‘share of operating revenues from the area of operations that are redistributed to local communities.’

The Norwegian Guidelines contain provisions on recognition of traditional use of resources and collective ownership. The UN Norms address the issue of reparation for failures to comply with the Norms at a very general level, and the Norwegian Guidelines tackle the issue of compensation in cases of environmental harm. The Norwegian Guidelines do however carry an unique provision addressing the capacity of affected stakeholders to protest against company decisions: “the Company shall inform those affected [by their activities] about their right to protest as well as methods of protesting against decisions”. Most of the initiatives that we have considered are not ‘outward-facing’ in this respect, beyond their provisions on public reporting, or auditing and verification.

The UN Global Compact has published a report on “essential factors for creating functional revenue-sharing regimes to contain socio-economic tensions that promote conflict”. Based on a review of models in use around the world, the report suggests that effective revenue-sharing regimes must engage the right stakeholders; they must have legitimate mechanisms for the management of revenues; they must enforce provisions to ensure transparency; and, finally, they must include effective procedures for dispute settlement⁴².

A number of company documents address local economic development issues through aspirational provisions on improving living conditions or the quality of life of local communities or in the areas where they operate. Newmont Mining Corporation states that '[i]t has an obligation to distribute the wealth generated from resource exploitation to its host communities, through training and education, health, infrastructure and a range of other activities associated with being a 'good corporate citizen'. Newmont aims to use that wealth to invest in enterprises which can be sustained long after the mineral resource has been depleted'. References to encouraging local businesses to supply goods and services are common in the policy documents of many companies in the oil and gas and mining sectors.

References to policies in relation to land rights and resettlement are common in the policy documents of companies in the oil, gas and mining sectors. Rio Tinto's statement of business principles, "The Way We Work" incorporates fairly detailed guidance on the management of land claims issues, acknowledging that "claims to land can be based on traditional tenure as well as statutory law. Local and national land use policies may also differ. Our objective is to bridge significant gaps between legislated and customary arrangements through the fullest possible understanding of the issues involved. Where property is affected, its value is assessed and appropriate compensation mutually agreed. We work with others where frameworks do not exist to encourage and help governments put appropriate consultation processes in place."⁴³ Other companies report that they use national laws as a baseline for compensation rates or refer simply to 'fair compensation'.

Ensuring Equitable Contracting and Hiring

We have not found any examples of voluntary initiatives that directly address the peace-building and conflict-minimising potential of sound human resources and employment practices. However, provisions on building human and social capital in the workplace, employing local people and tackling discrimination are common among the codes, guidelines and initiatives that we have considered and could be readily adapted to relate directly to conflict issues.

The Global Sullivan Principles refer to providing employees with 'the opportunity to improve their skill and capability in order to raise their social and economic opportunities' and to improve the 'educational, cultural, economic and social well-being' of the communities in which signatories do business. The OECD Guidelines go further. They refer to provision to training with a view to improving skill levels, but also require businesses to 'encourage human capital formation.'

Some company codes of conduct refer explicitly to hiring nationals and/or local community members in international operations (e.g. BHP Billiton, Unocal, Shell, and ExxonMobil). The OECD Guidelines advocate employing local personnel. Linked to these principles are commitments on freedom from discrimination (e.g. Amnesty International Human Rights Principles for Companies, or the OECD Guidelines for Multinational Enterprises), or equality of opportunity, or both (UN Norms). Rather ambitiously, the International Code of Ethics for Canadian Business commits signatories to 'strive for social justice' (though it is not clear if this is limited to the workplace or more widely). The UN Norms speak of "eliminating discrimination or complying with measures designed to overcome past discrimination against certain groups".

What is missing are standards on the application of these general principles in conflict contexts. Provisions on cultural sensitivity are as likely to be found in commitments addressing local communities as those addressing employees. However, principles on violent conflict, avoidance of physical punishment, or

harassment in the workplace are relatively commonplace. And company codes of conduct that address these issues typically set out redress mechanisms and disciplinary penalties.

3. Minimizing Conflict Finance

Addressing war economies: conflict commodities, kidnapping and extortion

The problem of conflict commodities arises when businesses purchase commodities from enterprises that use the revenues to fund rebel groups. In theory any commodity could become a 'conflict commodity.' In one sector, diamonds, problems of 'conflict commodities' have given rise to the Kimberley Certification Process Scheme, which operates on the basis of an innovative mix of intergovernmentally agreed controls and industry self-certification.

More work needs to be done to clarify the framework conditions for success for different mixes of voluntary and regulatory approaches to tackle the conflict dimension of commodity trade. The diamond industry may have presented unique circumstances given the structure of the sector and the economic significance of a single corporate group, De Beers, in transactions within the sector. Other commodities may lack the combination of a public campaign of product devaluation ("diamonds are a guerilla's best friend") with an opening for a firm with a commanding market share to consolidate its control of the market, through its participation in the commodity certification scheme.

We have not come across any examples of widely available 'best practice' guidance to companies on dealing with extortion or kidnapping. Moreover, it is arguable that making such information public would be counterproductive in preventing kidnappings. On the other hand, leading consultants on these issues do admit to pursuing a multi-pronged strategy aimed in the first instance at prevention, and in the second at achieving the "timely and secure release of hostages" that does not rule out the payment of ransoms⁴⁴. A comprehensive kidnapping prevention and release strategy would address community investment and outreach to secure local support, international and local political pressure, close liaisons with local law enforcement, and due diligence in matters of security.

A 2003 report by the World Bank concludes that the emergence of 'kidnapping insurance' as a specialist product in the finance sector is contributing to kidnapping economies, and should be halted⁴⁵. We are not aware of any work to examine the extent to which this recommendation has been integrated in financial sector practice nor have not found any references to this in any of the codes guidelines or initiatives that we have considered.

Managing Investor and Investment Linkages⁴⁶

The many sources of finance that flow to projects or companies engaged in conflict-prone regions are an increasing source of concern to investors⁴⁷. The finance sector can be disaggregated into project finance, banking, insurance and asset management operations. Project finance and political risk insurance are important points of leverage for the encouragement of responsible business practices by large projects. Asset managers and ratings agencies for their part are increasingly looking for evidence of corporate commitments to systematic management of human rights and other issues with implications for financial performance. The transaction and financial management services of financial institutions can be misused by arms traders, terrorists and warlords (for an initiative on money laundering that indirectly addresses these issues see *Box 14* below). Last, the assets of companies, including

their pension funds, can be invested in projects or in other companies implicated in conflict issues.

Box 14 The Wolfsberg Principles

“The proceeds from illicit trafficking in arms, narcotics, humans, natural resources, and other commodities; kidnapping; corruption and other forms of “whitecollar crime”; and diversion of humanitarian aid and siphoning of diaspora remittances play a critical, if sometimes indirect, role in sustaining armed conflict and undermining post-conflict economic recovery. By providing a means to launder and transfer the billions of dollars these enterprises generate for combatants and criminal organizations, the ...international financial system facilitates these transactions.”

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

Source: Controlling Resource Flows to Civil Wars: A Review and Analysis of Current Policies and Legal Instruments. International Peace Academy, May 2002: 2, 22

The financial sector has tremendous leverage over the businesses it invests in through practices including ‘know your customer’ background checks, conditions placed on access to finance or capital markets, and positive shareholder activism to promote more-responsible behaviour. (see *Box 15* below).

Box 15 Shareholder Resolutions on Human Rights and Conflict Assessment Standards: the case of Enbridge⁴⁸

In early 2002, Real Assets Management hc. and Meritas Mutual Funds filed a shareholder resolution calling on energy company Enbridge Inc. to enhance human rights protection in relation to its stake in a Colombian oil pipeline. “As investors, we are very concerned about potential human rights risks arising from Enbridge’s operations in Colombia”, stated Deb Abbey, CEO of Real Assets. In January 2002, Enbridge adopted the Voluntary Principles on Security and Human Rights, which include guidance on the contracting and training of security forces, and on sources of information and key questions necessary for carrying out a conflict assessment (e.g. rule of law, human rights records, root causes and level of violence).

Source: “Enbridge to Adopt human rights standards in Colombia following Shareholder pressure”. Human Rights Watch, March 2002. and “Community Investment”. Enbridge Inc., Downloaded 2 September 2003. <http://www.enbridge.com/about/comm.html>

To our knowledge, no voluntary codes or guidelines have yet emerged that directly address the financial sector in relation to conflict issues, but potential indirect sources of norms include ethical investment funds and rating agencies, international financial institutions and export credit agencies.

In June 2003, ten leading banks representing 30% of the project finance market announced their adoption of a voluntary set of guidelines for managing social and environmental issues – the Equator Principles. The guidelines are based on World

Bank and IFC environmental and social policies and guidelines. Under the principles, the banks commit to screening all projects over USD\$50 million which they propose to fund. For those projects posing the greatest risk, banks will require detailed Environmental Assessments, and Management Plans where needed, to identify and mitigate environmental and social risks. The banks further agree to “not provide loans directly to projects where the borrower will not or is unable to comply with our environmental and social policies and practices.” If management plans are not followed and problems not remedied by borrowers, the banks can declare the loans in default. Critics point to a number of potential loopholes, including the need for a mechanism to verify project compliance. Since their launch five additional banks have adopted the Principles⁴⁹.

4. Managing Indirect Linkages

A life cycle approach to understanding the interface between business and violent conflict highlights two further management challenges. These relate to the need to address conflict issues along the entire supply chain, not only those related to core business operations.

Managing Upstream Linkages: Suppliers and business partners

Provisions that address the application of voluntary initiatives to suppliers are commonplace both in individual company documents and codes and guidelines developed by third parties (e.g. the International Code of Ethics for Canadian Industry). In a company’s internal policy documents, references that take the form of a commitment to ensuring that ‘contractor’s, supplier’s and agent’s activities are consistent with’ individual company principles are common. Some express a policy of preferring business partners who conduct their business in accordance with ethical principles consistent with their own (e.g. Noranda). BP has a general policy of ensuring that ‘major strategic contracts contain a contractual commitment regarding compliance with BP’s business policies, including ethical conduct). The Voluntary Principles envisage incorporation of the principles in contractual arrangements for private security providers.

Coverage is less extensive in the case of other kinds of non supply-chain based business relationships. The OECD Guidelines allude to the problem when they say that businesses should ‘encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines’. Unocal says that its Code applies to its ‘wholly owned subsidiaries,’ but is silent on joint venture partners. BP seeks to apply its human rights commitments in those joint enterprises where it is the operator and where we are not they take an approach that can be found in many other company policies, namely seeking to influence partners to operate in accordance with their own policies. The Transparency International/Social Accountability International Business Principles also address the issue directly, suggesting that enterprises should ensure that ‘subsidiaries and joint ventures over which [they] maintain effective control’ should adopt its Programme to counter bribery. Amnesty International’s Human Rights Principles for Companies contain references throughout to ensuring that ‘suppliers, partners or contractors’ respect the Principles.

Mining company Rio Tinto “expects business partners, such as associate companies or joint ventures where we do not have operating responsibility, as well as principal contractors, suppliers and others with whom we have a substantial involvement, to maintain high standards themselves. We inform them of Rio Tinto’s principles and policies and work with them where appropriate to support their adoption of policies consistent with our own. Rio Tinto is prepared to withdraw from business relationships if any partners do not live up to our values”⁵⁰.

We have not come across other initiatives in this review that address the problems of joint ventures in which the 'code-setter' or businesses addressed are a minority partner or non-operating stakeholder. In the meantime, the Norwegian Guidelines are the most comprehensive starting point that we have seen. Further guidance from a human rights perspective may be imminent. With partners, the Danish Institute for Human Rights is working to develop a practical guide dealing with suppliers and joint venture partners. The UN Global Compact is also looking at product supply chains in an ongoing policy dialogue process.

Managing Downstream Linkages: Products and Services

Just two of the voluntary initiatives among those that we have considered address the use of products or services to commit human rights violations or pursue violent conflict. The Amnesty International Human Rights Principles for Companies say that 'companies which supply military security or police products or services should take stringent steps to prevent those products and services from being misused to commit human rights violations.' And the UN Norms say that "...business enterprises shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights. They shall further seek to ensure that the goods and services they provide will not be used to abuse human rights".

5. Managing the Conflict Context

A number of the difficulties raised by business activities in conflict-affected regions have little to do with business projects themselves and far more to do with the contexts into which projects are inserted. These include the presence or influx of displaced peoples and small arms in the area. And the presence of armed bands or insurgent groups in the region surrounding the project presents special dilemmas: when and how should companies engage in dialogue with insurgent groups, many of whom function as states-within-states and may become part of government in the future?

Companies are now working with the ICRC on operational guidance for partnering on humanitarian relief to communities in the event of disaster or conflict⁵¹. This work has focused on "sharing information and concerns about local situations ... (and on) logistical cooperation to address urgent needs".

Armed combatants have on occasion targeted companies in order to gain indirect access to political decision-makers. Foreign companies can sometimes find themselves viewed as a lever through which otherwise-marginalized communities can gain a political voice and make themselves heard by remote or uninterested government decision makers. And companies can become symbolic targets of violence for ideologically motivated groups that are opposed to actors of different nationalities or religions.

None of the codes we reviewed dealt with these issues explicitly. We have not found direct references to guidance on the role of business in providing humanitarian assistance in crisis situations, for example. Indeed, in codes we reviewed, the term 'humanitarian assistance' is defined very broadly, or used in a context different from that associated with the notion of 'relief work'. For example, Unocal's Guiding Principles say that 'we will support humanitarian initiatives that promote health, education and economic well-being in communities where we work.'

Amnesty International's Iraq recommendations address the role of private actors in the provision of essential services, and stress the non-discriminatory provision of such services. Specifically, the recommendations suggest that 'companies involved

in the provision of relief goods, or goods indispensable to the survival of civilians, such as food, water, basic health care or shelter, must ensure that in providing these services they do not contribute to the perpetuation of social divisions, long-standing animosities or entrench inequalities.’

Resettlement of displaced peoples is mentioned as an issue of concern by 17 percent of petroleum companies and 10 percent of mining companies surveyed recently by the OECD, with two companies citing the World Bank’s Resettlement Guidelines in their internal codes.⁵²

Engagement with substate insurgent groups is another difficult area where there is little guidance. Political risk consultants caution against entering into a dialogue with rebels, as this may contravene national law, and put staff safety at risk⁵³. On the other hand, such dialogue may be a vital element in minimizing harm or bringing parties together in peacebuilding efforts.

6. Social Investment and Public Policy Engagement

So far, our analysis has considered how voluntary initiatives address the business/violent conflict relationship in relation to *core business* activities along the project and supply chains. Beyond tackling the management challenges that arise from this relationship, there are two other principal ‘channels for change’ for businesses in addressing violent conflict, namely social investment and business engagement in policy dialogue and advocacy.

Social investment

If businesses are to adopt an integrated approach to addressing conflict issues, and if they are to maximize their contribution to peacebuilding, it becomes particularly important to develop tailored social investment strategies. For the time being, there is little guidance on the optimal approach for linking social investment to conflict prevention and resolution. Of particular note in this regard are the Issues Papers by the Collaborative for Development Action on Social Investment and on Peacebuilding.

Development of business-focused guidance at the level of principle could be helpful to address issues such as social capital formation, project identification and planning and the long-term sustainability of social investments.

The International Code of Ethics for Canadian Business refers to providing ‘meaningful opportunities for technology, training and capacity building within the host nation.’ The OECD Guidelines call on businesses to ‘encourage local capacity building through close cooperation with the local community, including business interests..’. Some company policy documents now address these issues – for example Statoil has developed guidelines for social investment which adopt UN principles for development cooperation as one reference point and Anglo American say that they aim to enhance the capacities of the communities of which they are a part.

Social investment activities by businesses in conflict zones must be closely related to the building of social capital. Indeed, one could envisage an emergent business principle on social capital (perhaps along the lines of ‘striving to enhance social capital across all operations and through our social investment and community engagement’) playing a central role in a future comprehensive code of conduct on business and violent conflict.

Microcredit may be a useful mechanism through which to encourage local development and foster interdependence between the project and the community. Rabobank, for example, has established a foundation to “alleviate poverty and promote development” through the provision of microcredit to groups of social entrepreneurs. “Rather than just handing out funds, we encourage self–help at [the] grass roots level...[through] joint responsibility ... The initiative must be taken by the people involved and then, with our aid, credit cooperatives can be formed.”⁵⁴

Community investment funds often operate on a project-by-project basis. This is problematic in that working on an ad hoc basis can fail to realize synergies, whether with broader public development planning processes at the national or sub-national level, or with other resource extraction projects, and donor and government development and conflict resolution activities. Firms are now however moving towards establishing joint funds within and between industry sectors, and partnering in their management with donors and multilateral agencies. A particularly well-known example of the latter is the management of revenues from the Chad-Cameroon Pipeline project.

The Collaborative for Development Action identifies as a core problem in social investment in conflict-prone regions the lack of rigour in analysis of actions taken by the company and the results that follow. CDA asserts that companies monitor the level of investment (assuming more money is necessarily better) rather than focusing on concrete achievements in terms of a community’s perceptions of the company and of its long-run development objectives.

Public policy engagement

The appropriate role of business in public policy is difficult to define in theory, and harder to achieve in practice. Positively, businesses can be advocates and models of good governance and participatory decision-making. Negatively they may lobby for the dismantling of environmental and labour protection, or be presented as meddling in the legitimate affairs of sovereign states.

A number of codes and guidelines view the basic problem as business domination of public policy, not the potential for business engagement to bring added value to public policy processes. References in codes and guidelines to respect for territorial sovereignty can be viewed as reactions to the ‘business domination’ perspective. The Norwegian Guidelines say that ‘no pressure shall be exerted on the government to make exceptions from existing regulations, and the governing bodies and cooperating parties in the host country are to be made aware that there is no wish for such exceptions.’ Provisions on bribery and corruption often contain guidelines on political donations. This has become relatively comfortable territory.

A much more difficult area to navigate is the role of businesses as positive advocates of environmental or social change or, for the purposes of this report, peacebuilding. The contemporary CSR agenda is generating calls for businesses both to seek to align their corporate strategies with public policy goals in support of sustainable development, and to play a positive advocacy role in support of good public governance and sustainable development.

On the former, Statoil’s social investment guidelines are notable in stating that to be sustainable, ‘a project must build on the community’s own efforts and fit into national development plans.’

On the latter, Amnesty International’s Iraq recommendations, for example, call for companies to ‘support the establishment of a fair and effective justice system in line

with international human rights standards in Iraq as soon as practicable.’ Amnesty goes further, suggesting that ‘it is in the interest of companies to make clear their support for the early establishment of a UN Commission of Experts that would, in close contact with Iraq civil society, make recommendations for a fair, independent and effective means of ensuring accountability for past human rights abuses in Iraq.’

Many voluntary initiatives are not this bold, and simply restate the fundamental dilemma; asking ‘what is the legitimate role of business?’ The Global Sullivan Principles talk of applying the Principles ‘consistent with the legitimate role of business.’ The Global Compact and UN Norms use the formulation ‘within their sphere of activity or influence’. BP notes that endeavours to support human rights may require discussions with authorities, and cautions that these ‘must be handled in a constructive and sensitive manner.’ In contrast, ExxonMobil is forthright in expressing its ‘fundamental right and responsibility to influence [government] decisions by participating in public policy debates; by directly and indirectly lobbying public bodies and officials; and by supporting candidates, parties and campaigns that further [the company’s] viewpoints’. In contrast, a number of companies in the oil sector have adopted a policy of not making any political contributions, whilst engaging in public debates.

The Danish Centre for Human Rights advises companies not to take the dangerous line of condemning repressive regimes themselves, but to acknowledge other actors’ condemnations. In contrast, Chris Avery recommends that a company investing in Colombia ‘publicly condemn[s] human rights violations’ and ‘publicly urge[s] a full and impartial investigation into all reported human rights violations, and urge that the perpetrators be brought to justice.’

The suggestion that companies engage in dialogue with the government is relatively commonplace. Individual circumstances may well present distinct channels for such dialogue. In Colombia for example, Chris Avery advises a company to become actively involved in a group called ‘business leaders for peace.’ On the other hand, this needs to be carefully weighed against the laws of the host state and the safety of staff members.

7. Management Tools, Skills and Approaches

Some codes and guidelines directly address internal company policy development and management processes. For example, the OECD Guidelines for Multinational Enterprises call for companies to ‘*develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate*’. Others refer to the role of internal company codes or rules of operation in implementation of their principles (e.g. the Norwegian Guidelines, the International Code of Ethics for Canadian Business, the UN Norms, and the OECD Guidelines for Multinational Enterprises). Some refer to the value of high level commitment from the CEO and Board and the need to build awareness among employees and train them in the implementation of the norms that they set out.

Most of the codes and guidelines that we have reviewed provide ‘higher order’ principles at a high level of generality. More detailed guidelines that could help with the development of tailored management approaches are beginning to emerge in a few areas. Transparency International and Social Accountability International’s Business Principles, for example, provide detailed guidance on development of a management programme to combat bribery.

Who should take important decisions in conflict-related situations? The Norwegian Confederation of Industry's Checklist for Corporate Actors in Zones of Conflict urges managers to determine whether decisions with potentially-major social consequences are made at the appropriate level within the company, by those with requisite competence, knowledge of the company's broader activities and interests, and capacity to be held accountable for decisions made.

Two themes that have evolved through the broader CSR agenda are the subject of important initiatives that are relevant to the development of management approaches to business and violent conflict: accountability to external stakeholders and partnerships.

Stakeholder Accountability

A business commitment to public reporting on environmental and social issues is generally considered a central element of any overall business approach to CSR. Public reporting can work to facilitate third party accountability by making information publicly accessible that allows third parties to hold business to account for their impacts. Yet even then, without independent verification and monitoring of compliance and performance, voluntary initiatives of all kinds are limited in their utility to third parties.⁵⁵ Failure to commit to third party compliance mechanisms have tended to undermine the credibility both of individual company codes and guidelines and also other kinds of voluntary initiatives developed to provide guidance to businesses on various issues in the CSR agenda.

For businesses seeking to address these issues, two initiatives in particular offer generally relevant guidance. AA1000, developed through multistakeholder dialogue by the UK-based Institute for Social and Ethical Accountability, is a process standard designed to help its users to 'establish a systematic stakeholder engagement process that generates the indicators, targets, and reporting systems needed to ensure its effectiveness in overall organisational performance.'⁵⁶

Detailed guidance for company reporting on environmental, economic and social issues have been developed by the Global Reporting Initiative (GRI). GRI reporting guidelines contain 'core' and 'additional' (optional) performance indicators for the public reporting of environmental, social and economic aspects of sustainability, as well as guidelines for reporting on governance structures, management systems and stakeholder engagement activities. The guidelines do not directly address issues related to business activities and violent conflict. However, a number of indicators are directly relevant. These include:

- Taxes of all types paid
- Human rights strategy and management
- Non-discrimination
- Core labour rights
- Policies and procedures for managing community impacts, and
- Bribery and corruption.

The AA1000 assurance standard, launched in 2003, is a standard for assurance of sustainability reports. Discussions are under way on linking the GRI guidelines to this standard.

Exhortations to publicly report on performance are fairly commonplace among initiatives we reviewed. The OECD Guidelines for Multinational Enterprises contain detailed general principles on communication for public disclosure with an emphasis on formal statements (see *Box 16* below). The Norwegian Guidelines add a further important element. Without referring to 'company reports' as the principal tool for

external stakeholder communication they contain a principle on ‘public access to information’, which requires companies to ‘give information to all who are potentially affected by its activities.’ They underscore the need to root communications in the context of local traditions and conditions.

Box 16 Reporting Provisions in the OECD Guidelines for Multinational Enterprises

Enterprises are encouraged to communicate:

- Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes.
- Performance in relation to these statements,
- Systems for managing risks and complying with laws, statements or codes of business conduct, and
- Relationships with employees and other stakeholders

Important ‘flanking’ principles for accountability provisions in companies’ internal guidelines and codes concerns incentives for employees to comply, and protection for ‘whistle-blowers’ (which is dealt with through legislation in a number of countries). Common provisions include personal reports from managers to chief executives on implementation and compliance with company policies; integration of company policy commitments into employee recruitment, training and contracts of employment; incorporation of social performance criteria in staff performance reviews; protection from dismissal for failure to follow orders in instances where this would contravene environmental, human rights protection, anti-bribery or other policy commitments. Confidential ‘hot-lines’ or ‘helplines’ and other kinds of protection for internal “whistle-blowers” are also common.

Any public sector agency considering whether and how to engage with the progressive development of the ‘external’ body of codes and guidelines on business and conflict (i.e. beyond single-company codes and guidelines) will also need to take account of the various possible approaches to dealing with verification and monitoring of compliance with those codes and guidelines. Provisions for monitoring, auditing and verification of compliance with the various codes and guidelines that we have reviewed vary widely across the different initiatives. Examples include:

- The European Parliament Resolution calls on the European Commission to study the possibility of setting up a European Monitoring Platform to promote dialogue on standards for European enterprises and identify best practice as well as being open to receive complaints about corporate conduct.
- The UN Norms envisage the establishment of “periodic monitoring and verification” by United Nations, other international and national mechanisms already in existence or yet to be created, regarding application of the Norms.” The UN Sub-Commission on the Promotion and Protection of Human Rights has requested the relevant working group to “receive information” from Governments, non-governmental organizations, business enterprises, individuals, groups of individuals and other sources concerning the possible negative impact of the activities of business enterprises on human rights, particularly those affecting implementation of the Norms. The working group is requested to transmit its recommendations to relevant enterprises and stakeholders and it is also mandated to pursue its efforts to explore possible mechanisms for implementing the Norms.⁵⁷

- The OECD Guidelines for Multinational Enterprises have developed a distinctive compliance process that establishes national contact points within signatory states to receive complaints, along with annual reviews of implementation of the Guidelines and supporting legislation. States that receive complaints are required to attempt mediation between the company and complainants. Should the firm resist responding legitimate complaints, signatory states are committed to 'name and shame' it in a press release⁵⁸.

It is also common for company management systems to incorporate voluntary norms and standards developed through other processes in addition to legal requirements. This is the case for adoption of the Voluntary Principles, the Global Compact and the Global Sullivan Principles. Through this process, companies invite scrutiny through the lenses applied to those other processes, and embed these norms in their activities.

The ISO 14001 third-party certification process comes with a requirement to document conformance with additional voluntary commitments that are embedded in corporate social and environmental policy, such as those described above. In this manner, it provides a mechanism for the verification of compliance with these voluntary norms⁵⁹.

Partnership

The value of working through partnerships to address the relationship between business and violent civil conflict is well established within the agenda as a whole, reflecting strong links to the broader CSR agenda in which partnership is a core theme. But 'how to do it' guidance from third party initiatives is still patchy. The findings of the Business Partners for Development initiative (as to which see *Box 17* below) offer one important source of guidance. And references to consultation, engagement, dialogue and partnership with a variety of external stakeholders are also very common in company policy statements and reports.

The Amnesty Human Rights Principles say that companies suggest that companies should 'work cooperatively with organisations that promote human rights'. The OECD Guidelines refer to partnership as a means to contribute to 'environmentally meaningful and economically efficient public policy' – but not to social justice, nor to conflict resolution or prevention.

Box 17 Companies in Conflict Situations – A Role for Partnerships?

In conflict situations, tri-sector partnerships between businesses, governments and civil society may offer one tool for improving social stability. The Business Partners for Development, a two-year action research initiative on tri-sector partnerships, suggests that in conflict situations:

- Companies need to recognize their impact on the conflict
- Social bonds and trust are weak, meaning that organizations are less willing to cooperate, and transaction costs are high
- The process of partnering and building trust may be more meaningful in terms of positive impact than more-tangible development products,
- Partnerships should aspire to equal representation of all parties
- Partnerships can be used to monitor compliance with voluntary commitments e.g. for human rights, though in instances where monitors are threatened, the prospect for such partnerships is poor.
- Where the legitimacy of the private sector is in question, companies may need to pool social investment resources in a fund administered by respected local NGO partners
- Where legitimacy of the government is weak, private sector-civil society partnerships may be more realistic.
- Experience seeking to build partnerships in the Niger Delta indicates that effective consultation and dispute resolution processes may be pre-requisites for the accumulation of sufficient trust to begin a partnering process
- The creation of longer-term community dependency on the company can be mitigated by supporting and building capacity in local government, through the partnering process.

Source: Sullivan, R. and Warner, M. Case Study 5: Partnering and EIA, Nigeria. Business Partners for Development, Natural Resources Cluster. 2002. and Davy, A. Companies in Conflict Situations: A Role for Tri-sector Partnerships. Business Partners for Development, Natural Resources Cluster. Working Paper 9, March 2001.

Filling Gaps: Relevant Guidelines

There is still little guidance for managers in a number of key areas in the business/violent conflict interface. Examples include:

- managing influxes of displaced peoples or of small arms,
- entering into dialogue with sub-state armed groups, and
- assisting in the provision of humanitarian aid within conflict-affected communities.

None of the codes or guidelines that we reviewed dealt with these issues explicitly, though there are tools that have not been specifically developed for application by businesses that could usefully be adapted for use by managers. Some are already drawn on by businesses. These include guidelines from the World Bank on resettlement, from the Red Cross on partnering in the delivery of humanitarian aid, and from disarmament experts on the reduction of violence and control of small arms, all of which can contribute to the enhancement of security and stability. Some of these additional sources of guidance are set out in *Box 18* below.

Box 18 Guidelines that could be adapted to Business-Conflict Links

Issue	Relevant Guidelines	Description
Internally Displaced Peoples	<p>Forbes Martin, S. Handbook for Applying the Guiding Principles of Internal Displacement. UN Office for the Coordination of Humanitarian Affairs (OCHA), 1999.</p> <p>http://www.reliefweb.int/w/lib.nsf/WebPubDocs/CC0565745867A49CC1256C0F004C9D5E?OpenDocument</p>	<p>This document sets out the UN OCHA Guiding Principles on Internal Displacement, the rights of IDPs and the obligations of governments, non-state actors and international organizations in non-technical language for field staff.</p>
Working with Sub-state Armed Groups	<p>Petrasek, D. Ends and Means: Human Rights Approaches to Armed Groups. International Council for Human Rights Policy, 2000.</p> <p>http://international-council.org</p>	<p>Armed groups that are not under government control are a prominent feature in conflict and often form part of future governments. Examining the successful and unsuccessful efforts of human rights groups in engaging with these groups, this study provides a framework for decisionmaking on whether and how to engage in communications with these groups in order to positively influence their respect for human rights and other international norms.</p>
Addressing Small Arms Issues	<p>Tackling Small Arms and Light Weapons: A Practical Guide for Collection and Destruction. BICC/SAND, 2000.</p> <p>http://www.bicc.de/publication/s/books/guide_smallarms/guide_smallarms.pdf</p>	<p>Organizations and individuals outside the military and security sectors need to be aware of the small arms issues and the alternatives for their collection, handling and disposal. While these organizations are unlikely to collect and destroy weapons themselves, they do have a direct interest in seeing a reduction in the availability and number of weapons in their area of operation. With the help of this Guide, they can provide direct or indirect support for such efforts, thereby increasing the likelihood of success.</p>
Investing in Peacebuilding	<p>Guidelines for Employment-intensive Reconstruction Works in Countries Emerging from Armed Conflicts. ILO, 2001</p> <p>http://www.ilo.org/public/english/employment/recon/</p>	<p>This guide outlines how to plan for employment intensive rehabilitation of damaged infrastructure through reintegration of conflict affected groups in project implementation.</p>

5. The Performance Impacts of Voluntary Initiatives

Introduction

In this section we address the debate over the use of voluntary initiatives. We then turn to the evidence on their impact on (environmental) performance. Finally, we outline the various roles governments can play in promoting the development and adoption of voluntary initiatives by industry, and in maximizing their performance impacts.

Despite evident business enthusiasm for voluntary initiatives, discussion continues about their pros and cons relative to traditional forms of regulation, in particular 'command and control' rules. But a new focus is now emerging on 'smart regulation' – the mix of different instruments, from command and control regulation to various kinds of voluntary initiatives, that together make up the 'regulatory web.' From this starting point, voluntary initiatives can be viewed as laboratories for future public regulation, promoting innovation in practice while allowing firms to accumulate the technical and managerial expertise that is needed to ensure compliance once the rules harden.⁶⁰

Voluntary initiatives have been both criticized and supported by different actors on the basis that they provide a means for businesses exposed to reputational risks by the actions of less responsible enterprises to protect collective reputation and reduce demand for more intrusive public regulation. And voluntary initiatives may also be understood as a strategic move by leading firms to consolidate market dominance by raising the costs of doing business for competitors.⁶¹

Advocates of voluntary initiatives make the following points:⁶²

- Voluntary initiatives can help regulators make more efficient use of scarce public resources, by providing them with a signal of good management that allows them to concentrate on misbehaving firms.
- Voluntary initiatives can often be more readily adapted to changing circumstances than traditionally-rigid and hard-to-renegotiate command and control regulation.
- Voluntary initiatives can encourage integration of new values across an organization, encouraging innovation, prevention of harm, and a comprehensive approach to impacts that extends beyond what is specifically mandated by regulation.
- Voluntary initiatives can establish a basis for cooperative relations between regulators, stakeholders, and proactive businesses.

Nonetheless, many commentators have criticized the effectiveness of voluntary commitments in delivering environmental or social benefits. Objections include:⁶³

- Commitments that are "purely voluntary" tend to lack in common interpretation, credible disclosure requirements and oversight mechanisms and sanctions for non-compliance, so that some firms can 'free-ride' on the work of others.
- Voluntary initiatives tend to contain process-based, not performance-based norms. Thus, companies may commit to 'attempt to ensure' compliance with human rights norms and other values, and will implement management processes to that end, but are not required to guarantee that this has been done.
- Voluntary commitments are often undertaken in order to forestall tougher, performance-based regulation. Strict regulatory standards, on the other hand,

may increase international competitiveness, by forcing innovation and generating new industrial sectors⁶⁴.

- Voluntary initiatives and the norms that they contain tend to favour large multinational companies over smaller players, and can therefore act as a barrier to entry to markets for smaller firms, particularly those from developing countries.
- Many voluntary initiatives are designed with a limited group of participants, who may not reflect the full range of stakeholders implicated in the norms set by the initiative.
- Levels of engagement by developing country-based stakeholders in development of voluntary initiatives remain poor.
- There is the possibility for members of the public or other external stakeholders to confuse adoption of voluntary commitments with meaningful action.
- Unlike regulation, voluntary initiatives apply only to those businesses that choose to adopt them. There appears to be a crucial trade-off between the stringency of norms and the level of business uptake of an initiative.⁶⁵

The Challenge of Measurement

The most ambitious yardstick for the effectiveness any voluntary initiative on business and violent conflict is whether it leads to performance improvements for those businesses that have signed up. Unfortunately, we are not aware of any studies that address the performance impacts of voluntary 'business and conflict' initiatives. Though this is a clear gap, it is not a surprising one given that conflict has only become an explicit CSR issue in recent years. However, the environmental policy field – where analysis of the impact of voluntary initiatives is well established – offers insights that could help to shape understanding on the role of voluntary initiatives at the business/conflict interface.

Research from the environmental policy field indicates that adoption of a voluntary initiative is more likely to lead to performance improvements when certain 'success factors' are present (See *Box 19* below). Which of these enabling factors is critical in the circumstances of a particular case will depend on a variety of factors, including the industrial sector concerned, the issues addressed by the initiative, and the location of the targeted business activities.

Box 19 Factors Contributing to the Performance Impact of Voluntary Codes

Clear regulatory expectations: Anticipation of reduced regulatory scrutiny, enhanced compliance with existing rules, or a desire to prevent new rules.⁶⁶

Corporate profitability: Availability of resources to invest in public goods⁶⁷ (such as environmental integrity or peace)

Proactive Management style: Proactive strategy towards environmental and social issues, high-level commitment and strong internal capacity to tackle the issues.⁶⁸

Diverse opportunities for learning: information diffusion and exchange in relation to issues addressed by the initiative within and between organizations engaged in the initiatives⁶⁹,

Vulnerability to social sanctioning mechanisms: brand reputation/exposure, sectoral reputation, peer pressure⁷⁰

Internal and external ownership: Multistakeholder and employee engagement in design and implementation⁷¹

Information disclosure: Regular and readily-understood reporting of performance against management commitments⁷²

Strong business drivers for adoption: for example, the presence of win-win opportunities/efficiency gains, the need to attract talented employees, direct impact of adoption on share price, requirement of adoption for access to finance

Many of the most significant changes may not be measurable in conventional terms, particularly given the qualitative nature of conflict prevention and peace-building when contrasted with the more-measurable and quantifiable aspects of environmental pollution. Some voluntary initiatives are designed with limited objectives in mind, or with a 'systems approach' to management that focuses on organizational learning. These kinds of initiatives demand a different approach to the evaluation of effectiveness, in which changes in organizational culture, norms and management capacity result in internal changes. It may take considerable time for implementation of codes and guidelines to change values and through this to deliver returns in terms of performance.

As the literature on performance impacts of environmentally focused voluntary initiatives underscores, any 'successful' voluntary initiative needs the right mix of features to encourage adoption, while at the same time reducing instances of non-compliance.⁷³

An important mechanism to guarantee the implementation of a code's provisions is the existence of sanctions for non-compliance. This presents a paradox, since the more stringent the terms of a code, the smaller the number of firms that sign up⁷⁴. For that reason, those firms for whom adoption represents a modest additional cost, whose operations are under the greatest threat from collective reputation problems, and who foresee little difficulty in ensuring compliance are likely to be the strongest advocates for a strong sanctioning mechanism for non-compliance.

The possibility of sanctions acting as an effective deterrent, however, is dependent on the existence of effective enforcement agents, equipped with the knowledge and skills to secure compliance. Without considerable investment in provision of additional financial resources, reliance on NGO scrutiny alone is unlikely to prove effective for all but a relative handful of high profile companies. Trade associations may be equipped to expel members for failure to comply with codes of conduct, but there are few examples of this happening. Two trade associations, the National Association of Chemical Distributors and the American Forest & Paper Association, report having expelled members for noncompliance with voluntary code requirements by 1996⁷⁵. While anecdotal evidence suggests that peer pressure does play some role in driving compliance, there is little research on the instances and effectiveness of private pressure brought to bear among laggard signatories of voluntary initiatives⁷⁶.

Non-compliance is not always willful – it may be due to lack of awareness of the relevant norm, or human error, or failure correctly to follow an operating procedure. To the extent that this is the case, effective implementation is likely to be assisted by availability of training and technical assistance, information sharing and mutual learning.⁷⁷ Several legal studies in OECD countries - in areas ranging from income tax to environmental management - have found levels of compliance that are in excess of what could be considered 'rational' given the low risk of, and penalties from, enforcement.⁷⁸ In places where compliance with law is a shared norm, firms may comply more often with voluntary commitments than is economically rational. Answers to this seeming paradox from within the CSR literature have often taken as their entry point the 'business case' or 'ethical case' for addressing various environmental or social challenges. Different incentives are more or less effective for different businesses – even within the same industrial sector. On the other hand, social pressure, competitive pressures and mimicry of management practices in leading firms each contribute motivations for beneficial action.

Any regulatory framework needs to have tough mandatory mechanisms for dealing with the worst players who do not respond to anything but the most direct threats of sanctions. But it may be that given the right framework conditions of management and surrounding culture and human capacities, many more businesses could be persuaded to change core business practices to actively engage in conflict prevention and peace-building – simply because it is the ‘right thing’ to do.

6. A Decision-Making Framework for Public Sector Engagement with Voluntary Initiatives on Business and Violent Conflict

The range of public sector roles

This section sets out some of the considerations and the strategic choices that individual governments, in collaboration with other nations, will need to reflect on in developing a strategy for engaging with voluntary initiatives that address the relationship between business and violent conflict.

It is useful to begin this exercise by taking stock of the range of roles that could potentially be played by public sector agencies. Public sector initiatives to build the enabling environment for 'best practice' voluntary business efforts on the relationship between business and violent conflict need to be sited among the overall range of overall range of activities that can be undertaken by public sector agencies to building the 'enabling environment' for responsible business practice. Building on existing analysis on the overall role of public sector agencies in building the 'enabling environment' for CSR,⁷⁹ the roles that public sector agencies can play to build the 'enabling environment' for the full range of initiatives on business and violent conflict can usefully categorized under four headings:

Mandating: setting and even-handedly enforcing minimum legal baselines for responsible behaviour, beyond which the market can operate to reward businesses that go further. Examples include anti-corruption legislation or the legislation to implement the Kimberley Process Certification Scheme, with its innovative mix of government regulation and industry self-regulation, operating within an intergovernmentally agreed framework.

Partnering: as with the World Bank-initiated Business Partners for Development's publicly-funded action research on tripartite partnerships between multinational companies, NGOs and home and host governments.⁸⁰ The BPD investigated ways to maximize the development effectiveness of private foreign investment in a range of sectors through tripartite partnerships.

Facilitating: as in the case of the UK and US governments' roles in the development of the voluntary principles on security and human rights; or public sector investment in research or development partnerships to develop and refine management tools. Public sector agencies can also facilitate change by helping to strengthen external accountability mechanisms (e.g. through financial support to civil society). For example, the NGO watchdog Partnership Africa-Canada has been a key player in the initiation of the Kimberley Process against conflict diamonds, supported in part by grants from DFAIT.⁸¹ In a distinct example, Canada has recently amended the Canada Business Corporations Act to permit minority shareholders to bring resolutions relating to ethical issues.⁸² This can be understood as 'facilitating' legislation since it generates the enabling environment for drivers for change to work more effectively. Finally, public sector agencies can promote improved behaviour by incorporating conflict-relevant criteria in decision-making on access to export credits or public procurement.

Endorsing or Shaming: for example by offering political support for best practice through speeches or awards schemes or through prominent speeches, letters to chief executives, or personal involvement of senior public officials in voluntary initiatives to address particular concerns (e.g. by UK Prime Minister Tony Blair in the Extractive Industries Transparency Initiative). Chevron Nigeria, for example, was the recipient of the 2003 Award for Corporate Excellence from the US Secretary of State,

on the basis of actions including airlifting residents threatened by conflict to safety.⁸³ Conversely, independent reviews of corporate practices in sensitive regions may also operate to shame poor performers. The ‘Harker’ Mission to Sudan, for example, was given the mandate by then-Foreign Affairs Minister Lloyd Axworthy “to investigate...the alleged link between oil development and human rights violations”⁸⁴.

The OECD’s Development Assistance Committee has also considered the relationship between business and violent conflict (see *Box 20* below), issuing recommendations for governments which provide additional indications of specific public sector actions to support positive change within the overall agenda.

Box 20 OECD DAC Recommendations on Business and Violent Conflict

The OECD Development Assistance Committee suggests that “like public and aid supported investments, the private sector needs to be guided by an informed commitment to guard against side effects of its investments which may have negative impacts on ‘structural stability’ of the local and national host society, and plan for ways it can ensure the maximum positive benefits”⁸⁵. It recommends inter alia that governments:

- Promote the use of peace and conflict impact assessment by businesses,
- Support processes to resolve project-related claims by indigenous communities,
- Improve codes of conduct on specific issues and risk-insurance mechanisms,
- Explore tri-sectoral development partnerships, and create fora for multistakeholder dialogue,
- Identify mechanisms and create space to involve the private sector in the peace building process.

Source: Development Assistance Committee. Helping Prevent Violent Conflict: Orientations for External Partners. DCD/DAC(2001)7/FINAL, April 2001:46

The business and conflict agenda as a whole is still relatively undeveloped. Any public sector investment in voluntary initiatives to tackle issues within the agenda needs to take account of some of the current limitations of the agenda – and to consider the value of broader engagement in shaping and strengthening the agenda.

The conflict agenda is in a similar position to the environment agenda of the early 1990s in relation to *integration* of environment into economic and social policy. The notion of *sustainable development*, which reflects the need for integration across the three pillars of sustainable development (social, environmental and economic) emerged to reflect this need.

Debates about integration and ‘mainstreaming’ focus on the point at which institutional and human capacities in a particular discipline are such that it becomes standard practice without requiring the assignment of a focal point on that subject area within the organization (e.g. creation of an environment department, or Ministry, or business team).

As we suggest in the next sections, there are a number of areas where human capacities and knowledge within the overall business and conflict agenda need to develop further before we can expect any integration process to be ‘self-executing’ – ‘knowledge gaps’, ‘consensus gaps’ and the ‘participation gap.’

Initial signals to promote a greater attention to conflict sensitivity by business might be provided through interventions including public statements of concern (e.g. the Prime Minister’s annual throne speech⁸⁶), investment in development of a manual on ‘integrating conflict awareness into voluntary initiatives’, or support for an overarching multistakeholder learning process to develop guidance on best practice guidance.

Recommendation: *There is value in treating the range of issues at stake in the interaction between business and violent conflict as a distinct agenda; both with a view to integrating it into other initiatives, and enhancing capacity to address the agenda itself. Governments should provide a clear signal to firms of the importance of responsible management of conflict to its foreign policy.*

Knowledge gaps, consensus gaps, and the participation gap

Three principal kinds of ‘gap’ need to be addressed within the overall business and conflict agenda. The first kind is the ‘knowledge gap’ – namely those issues in the relationship between business and violent conflict that are not yet adequately tackled by the contemporary agenda, and the paucity of field-based sharing of best practices. The second kind is the ‘consensus gap.’ Polarization between different stakeholder groups continues in relation to many of the central management challenges that we have outlined. The third gap is the ‘participation gap’ – namely the predominance of stakeholders based in OECD countries in shaping the contemporary business and conflict agenda.

In all three areas - ‘knowledge gaps,’ ‘consensus gaps’ and the ‘participation gap’ - the governments can play an important role in furthering understanding and multistakeholder action.

Issues within the ‘knowledge gaps’ include:

1. the proactive role that businesses can play in *peacebuilding*, including through contracting/hiring, and through support for the progressive development of appropriate participatory processes and dispute resolution mechanisms
2. The nexus between non OECD-based enterprise and violent conflict’ – and how to engage how to engage them in the agenda
3. the nexus between *small and medium sized businesses or ‘juniors’ and informal sector* entrepreneurs and violent conflict – whether operating in developed or developing countries
4. the roles of *sectors other than oil, gas and mining* in business and conflict, with particular interest in finance, construction, infrastructure, forestry, agribusiness, manufacturing, and textiles.
5. The *appropriate partnering frameworks* through which to align the capacities of business with the conflict prevention and transformation efforts of host states, local and international NGOs, bilateral and multilateral development agencies (e.g. to enhance governance, share revenues, and reduce host state macroeconomic dependence)
6. the role of the various elements of the private sector in *controlling resource flows into and out of conflict zones* to avoid fuelling war economies
7. *managing the conflict context* (responding to crisis, symbolic targeting and dealing with sub-state armed groups)
8. tools for *assessment and early warning*

As to the ‘consensus gaps’, further work is particularly needed to build consensus in the following areas:

1. general understanding on the *role and responsibilities of home countries of multinational corporations* in addressing the relationship between business and violent conflict.
2. the circumstances under which (and the extent to which) businesses should bear *responsibility for activities that exacerbate or fail to prevent human rights violations* associated with violent conflict

3. the legitimate role and sphere of impact and influence of business in relation to host-state *public policy advocacy and provision of services* (e.g. health, education, transport, energy, etc.);
4. *downstream responsibility* for the use of products or services in conflict, and *upstream responsibility* for activities of suppliers
5. dilemmas related to the need to negotiate consent with project-affected communities, particularly indigenous or traditional communities

Both of these sets of gaps – the ‘knowledge gaps’ and the ‘consensus gaps’ - need to be tackled through a mixture of research, engagement, capacity-building and agenda development. Public sector agencies such as DFAIT can invest in development of further understanding through a number of routes, including:

- Investment in development assistance activities designed to address these issues in particular contexts (e.g. through practical initiatives that address proactive role of business in peacebuilding; or build understanding on the role of developing country-based SMEs and the informal sector in the business/violent conflict interface).
- Commissioned research, field-trials and think-pieces on the different issues
- Multistakeholder dialogue to provide guidance on dilemmas where consensus between stakeholders is lacking.

So far as voluntary initiatives are concerned, a valuable question to consider is the extent to which understanding on some (or all) of these issues could be furthered through a ‘learning-based’ voluntary initiative – whether directly or indirectly. None of these gaps are fully addressed by the current range of voluntary initiatives. The Voluntary Principles on Security and Human Rights demonstrate a useful model of home country governments as facilitators of dialogue around business and violent conflict.

One area where we see considerable potential for government-led innovation concerns guidance on the management of conflict commodities. The ‘blood diamonds’ issue has already generated a distinct Canadian certification initiative for diamonds. This has the potential with potential to sustain consumer confidence in ‘conflict free’ diamonds whilst building competitive advantage for ‘conflict free’ Canadian diamond production. The Kimberley Process Certification Scheme is designed to address the corrosive effect of revenues from diamond mining being used to fund armed conflict. Interest in the area of ‘conflict commodities’ is likely to prove sustained, as recent controversy over ‘conflict coltan’ and the problems of illegal logging demonstrate.

The ‘participation gap’ is also an area where the government has a uniquely important role. The contemporary business and conflict agenda has largely been shaped in the North, with limited direct engagement of stakeholders based in developing countries. The same can be said of southern stakeholder engagement in the development of voluntary initiatives to tackle issues related to the business and conflict interface. This limited engagement both threatens to undermine the legitimacy of voluntary initiatives and to weaken their applicability in different contexts.

Recommendation: *As home to a large number of multinational corporations operating across a range of the extractive sectors – mining and forestry in particular - that have attracted attention over ‘conflict commodities’, OECD governments could usefully consider development of a comprehensive strategy on ‘conflict commodities’, and evaluate the conditions for take-up and effectiveness of various kinds of certification initiatives to tackle the issues. Given the continued polarization between*

sectors on many of the management dilemmas identified earlier, governments could usefully bring together a range of stakeholders to map out areas of potential consensus on appropriate norms.

Recommendation: Governments, in collaboration with other actors, should invest in efforts to support the development of networks of Southern researchers and NGOs from conflict-prone regions, laying foundations that can strengthen the legitimacy effectiveness and relevance of future initiatives.

Initial Scoping

Quite apart from efforts to tackle some of the outstanding ‘knowledge gaps,’ the ‘consensus gaps,’ and the ‘participation gap,’ there are some important contextual starting points for development of public policy approaches to engagement with voluntary initiatives on business and conflict.

These include:

- The government’s starting point for understanding the **core problem to be addressed and objectives pursued** through any engagement on voluntary initiatives to address the business/violent conflict nexus.
- Assessment of the **performance impacts** of existing voluntary initiatives,
- The **extent and sources of existing and potential demand for public action** to address business and violent conflict, and the appropriate role of voluntary initiatives in response.

Problem and Goal Definition

Before developing policy on business and violent conflict, each government will need to consider its fundamental starting points for addressing the business/violent conflict nexus through voluntary initiatives. This essential problem definition stage has three dimensions:

1) Clarifying *basic objectives* and starting points. At the level of foreign policy, these are provided by the vision of the business/violent conflict interface as part of the overall policy framework on promotion of human security abroad and avoiding the generation of ill-will overseas. However, there are other considerations that will help to frame an initial view on the ‘problem to be addressed’, including

2) Clarifying the range of *conflict* to be addressed. The definition adopted in this report may be considered helpful here. We have suggested a focus on violent conflict understood within the human security paradigm.

3) Clarifying the starting points for positioning relative to the overall spectrum of *management responses* within the business and conflict agenda. International Alert presents the agenda as a hierarchy of increasing management commitment, from “compliance” through “do no harm”, to “peacebuilding”. Is the government’s aim simply to provide a ‘risk management’ steer, or to contribute to the development-related goals of peacebuilding?

Possible objectives might include:

- National security and security of citizens and commercial interests at home and abroad
- Promotion of human security, reconciliation, multilateralism and protection of global public goods and vulnerable communities
- National competitiveness and reputation at the international level

- Cost-effectiveness of policy interventions (impact per unit of investment or opportunity cost)
- Public support for policy interventions

The definition of the problem to be addressed will shape the interventions that emerge. If, for example, the government sees its objective as providing 'clear guidance for companies in conflict zones', this would produce a different initiative to one that saw the central problem as 'maximizing the business contribution to peacebuilding and human security in developing countries'. The former would focus on guidelines for voluntary action; the latter would encompass as well the means to strengthen the enabling framework, and the roles of other sectors.

Recommendation: *Governments should adopt a policy approach that engages with the full spectrum of management responses to the business/violent conflict interface – from compliance to peacebuilding, and which strengthens the enabling framework for voluntary action by firms. In particular, the specific goals driving policy intervention in this area should be clearly articulated and communicated.*

Performance Impacts

We have not evaluated the impacts of the range of existing initiatives with relevance to business and violent conflict on social performance. Many of the initiatives are too new to allow for a detailed assessment. If appropriately resourced, however, it would be possible to engage in a qualitative analysis of impacts; ranging, (at the most ambitious) from performance improvements to enhanced understanding among stakeholders, or shifts in management culture.

It is important that any future engagement in this agenda should not only be informed by the kind of 'gap analysis' that we have presented here, but also by a richer understanding of the *specific* impacts of the existing range of voluntary initiatives on business and violent conflict, and the dilemmas these pose for managers. Without this kind of understanding, the potential *benefits* of engagement cannot be evaluated. It is not enough simply to assume that evidence from existing literature in the environmental policy field is replicable for the conflict agenda.

At the same time, violent conflict is the most political of policy issues, and the legitimacy of efforts to address it become even more important than in the hotly-disputed environmental domain. Attention to process, to the engagement of Southern perspectives, and to the interests both of the private sector and the realities of local communities and host governments in the design of these strategies, has been lacking in most of the initiatives we reviewed.

Recommendation: *A qualitative assessment of the process, legitimacy and performance impacts of existing initiatives is needed to inform national business and conflict policy development – focusing in particular on those initiatives that have been developed on a multistakeholder basis (be it NGOs, business, government, or some combination). A good place to begin would be the OECD Guidelines for Multinational Enterprise, and the Voluntary Principles. Such a review should also seek to build a network of Southern researchers and NGOs from conflict-prone regions, laying foundations that strengthen the legitimacy of future efforts.*

Demand for Public Action

Any engagement in voluntary initiatives to address the business and violent conflict agenda needs to be preceded by a demand assessment phase. This means considering the key questions:

- *what* are current levels of demand for different kinds of engagement in voluntary initiatives,
- *what* are the sources of that demand
- *how* could demand evolve for the future, and
- *what* kinds of interventions could be helpful in boosting that demand?

There is considerable information available on the various ‘business cases’ for addressing the relationship between business and violent conflict. However, the fact that this information exists does not mean that it is having an impact on all of the businesses that it addresses. Neither does it mean that there is necessarily demand for further innovation in voluntary initiatives of various kinds.

This raises issues of ‘ripeness’ of the different gaps for a voluntary initiative, and the incentives for different stakeholders to participate in activities to address them. The development of ‘best practice’ guidelines on the role of business in peace-building would be far less contentious than a policy dialogue aimed at developing authoritative guidance on the legal responsibilities of business for human rights abuses.

Should interventions react to existing demands (be they from within government, business or civil society) or should governments seek to build demands in the marketplace to tackle the interface between business and violent conflict? Without a minimum level of demand, it will be difficult to secure sufficient engagement in an initiative to make it worthwhile.

The two approaches are complementary, since the demand creating approach calls for an understanding of the extent and sources of existing demands for various kinds of engagement. The assessment of existing demand need not be an onerous exercise – but it should, to be useful, involve engagement with a wide indicative range of stakeholders. Which stakeholders is itself dependent on the approach chosen for problem definition.

Public sector agencies can help to facilitate emergence of demand in a variety of ways, for example by supporting activities to evaluate and disseminate ‘the business case’ for positive engagement with the business and violent conflict agenda; or by providing financial support to civil society organizations to act as watchdogs, communicate the results of their work and build demand for better business practices.

A further choice concerns the stage at which public agencies should seek to engage in this demand assessment exercise: only after some initial decisions have been taken on the shape of any engagement in voluntary initiatives (e.g. ‘a national initiative to tackle gender dimensions of business and violent conflict’, or ‘a global multistakeholder initiative to build a comprehensive code of conduct on business and violent conflict’) or at the very earliest scoping stage. We suggest the latter approach – though we recognize that this will call for a more extensive ‘demand assessment’ exercise.

Recommendation: *The public sector should enhance its understanding of the existing sources and level of demand for various kinds of government engagement in voluntary initiatives on business and violent conflict, and map out opportunities and strategies for building demand in support of its objectives.*

Strategic Choices

Our analysis has pointed to some of the gaps in the overall agenda on business and violent conflict; to some of the gaps in the coverage of the existing range of voluntary initiatives; and to the range of roles that public sector agencies can play in generating the 'enabling environment' for responsible business activity in conflict prone areas.

Turning to voluntary initiatives more specifically, we have also suggested that there are three 'contextual' steps towards the development of a strategy on 'voluntary initiatives for business and violent conflict'. These are:

- Problem and Goal definition
- Qualitative assessment of the range of impacts of existing voluntary initiatives, and
- Assessment of demand, and the sources of demand, for various kinds of engagement in voluntary initiatives on business and violent conflict

With these decided, a series of **strategic choices** (elaborated below) can be made with respect to:

- Whether to launch a new initiative, participate in, or to facilitate engagement by others in business and conflict-related initiatives
- What the appropriate scope should be for initiatives undertaken or participated in, in terms of the level of specificity of the guidance (policy versus operation), the issues to be addressed (a comprehensive approach versus filling in gaps versus working on a particular country), and the target for the initiative (generic versus sector-by-sector, large firms versus SMEs, private sector alone or NGOs as well)
- Whether to start with a national initiative, to work bilaterally or internationally
- Whom to bring into dialogue and whom should act as the convenor
- Whether to launch the initiative with great fanfare and high political endorsement, or to begin with a more modest learning initiative/pilot effort

We suggest that these decisions form the basis of an interdepartmental dialogue including the full range of stakeholders, with the aim of defining how governments will use voluntary initiatives in overall efforts to build the 'enabling environment' for responsible business practices at the interface of business and violent conflict.

Choice #1:

Whether to engage directly in, or facilitate engagement by others in, existing initiatives OR to
Develop a new initiative.

In some areas, the overall goal of enhanced conflict sensitivity may be more efficiently be facilitated by promoting corporate engagement in existing processes, than by initiating new initiatives. The specific experience and skills that are being developed in these 'niche' initiatives could then potentially be brought into a broader initiative through a process of code consolidation.

The advantage of spearheading a new initiative is that it is likely to allow a greater degree of control over the agenda – but the price could be a lower level of participation by voluntary-initiative weary stakeholders if sufficient 'demand' does not exist.

Choice #2

Should the aim be to develop general principles, OR
Guidelines, OR

Detailed operating standards on the different issues in the business and violent conflict agenda.

Choice #3

Whether engagement should seek to cover the full range of issues in the business and violent conflict agenda OR
Just those areas where there are currently gaps?

Different issues in the business and violent conflict agenda are at different stages of knowledge and code development. Some, as the Voluntary Principles demonstrate, may be at a stage where they are moving towards the delivery of detailed operating standards. Understanding on others is at a much earlier stage of development.

The question then is whether it is feasible to seek to develop standards on some at the same time as helping to develop much more general guidelines in other areas. One approach for addressing this issue would be to develop a framework process, to be supplemented by more detailed protocols as demand, knowledge and resources permit.

In some cases, it may not be desirable to develop widely available standards. Kidnapping, for example, is an area where learning is valuable, but transparent standards developed on a multistakeholder basis in the public domain could actually increase, rather than decrease, risks. These issues will naturally feed into the discussion of 'ripeness', and of the 'form' of the intervention: informal learning platform, best practice distillation, or definition of guidelines and standards.

Choice #4

Should an initiative engage with SMEs only in so far as they do business with large businesses and multinationals OR
Seek to explore the distinct relationship between entrepreneurs in SMEs and the informal sector and their role in conflict resolution and prevention, and in peacebuilding

This is related to the broader question of participation in any initiative. As we have suggested above, we strongly recommend that governments and other actors seek to engage to the greatest extent possible with the range of existing expertise and capacities within developing countries. This is in turn related to problem definition. But if, as we think they should, governments adopt an approach to problem definition that views issues of business and violent conflict as part of a broader development agenda on enhancing human security, this should be reflected in efforts to move the agenda to the specific concerns of the range of stakeholders based in conflict zones, not limited to those of multinational corporations and their home country governments.

On the other hand, a nation's interest is in understanding and moderating the negative impacts of its industry on conflict issues overseas. With that boundary in place, the scope of the intervention can be sharply defined.

Related to this key issue of participation, public sector decisionmakers will need to consider

Choice #5

Whether to start with a national level initiative(s) OR
Seek to launch an international initiative

Choice #6

Whether to invest in voluntary initiatives on a sector-specific OR multi-sectoral basis

AND

Choice #7

Whether to focus on the problems of one particular conflict zone OR A generic set of business and violent conflict issues

These need not be 'either/or' choices, since one could envisage a tiered approach. However, it would be helpful to arrive at an initial understanding in relation to these issues.

Choice #8

Whether an initiative be launched with a fanfare and high profile political endorsement OR As a lower profile learning initiative

Launching any initiative with a fanfare and major investment of political and financial resources can help to generate high level participation, but it can also generate unrealistic expectations, and even in worst cases a backlash. In particular, we consider that it is very important that any initiative be presented as one approach among others to tackling the problems of business and violent conflict.

The UN Global Compact, launched by UN Secretary General Kofi Annan, found itself embroiled in controversy around the 'either/or' debate of 'regulatory versus voluntary' approaches. In part, this can be understood to be due to fears that the voluntary learning approach of the Compact would cut off any possibility of discussing the role of multilaterally coordinated approaches. Effective communication about objectives – problem definition – when engaging in any initiative is clearly valuable.

There are at least two sets of choices to make about the audiences for any engagement.

Choice #9

Should an initiative develop norms for businesses only OR For businesses and NGOs OR For the full range of actors?

The initiatives that we have reviewed have mostly been those that have been developed specifically to address businesses. But there is also a case to be made for developing norms addressed to non-governmental actors who have a major contribution to make in building social capital in conflict zones, as well as developing drivers of enhanced business behaviour and calling the worst players to account.

Once more, this relates to problem definition. If the problem is 'businesses doing bad things' in conflict zones, that suggests that businesses should be the principal audience. If problem is 'harnessing business to human security goals in conflict zones', the value of developing norms for NGOs also becomes apparent.

This leads to the question: what should the government role be?

Choice #10

Should the public sector seek to act as a convenor/facilitator/funder of any initiative only OR
As an active participant

Choice #11

Should (an) initiative(s) engage with SMEs only in so far as they do business with large businesses and multinationals OR
Seek to explore the distinct relationship between entrepreneurs in SMEs and the informal sector and their role in conflict resolution and prevention, and in peacebuilding

This is related to the broader question of participation in any initiative. As we have suggested above, we strongly recommend that in any work in this area, government and other actors seek to engage to the greatest extent possible with the range of existing expertise and capacities within developing countries. This is in turn related to problem definition. But if, as we think it should, the government adopts an approach to problem definition that views issues of business and violent conflict as part of a broader development agenda on enhancing human security, this should be reflected in efforts to move the agenda to the specific concerns of the range of stakeholders based in conflict zones, not limited to those of multinational corporations and their home country governments.

7. Conclusions and next steps

The business and violent conflict agenda is still taking shape. Though it has not yet become a mainstream part of the CSR agenda, this report has clearly demonstrated both the breadth of ongoing activity and some of the next generation issues that are emerging.

The evolving state both of the business and conflict agenda and of voluntary initiatives within it suggest that it would be premature for a public sector actor to seek to catalyse the development of a single comprehensive code or guidelines to cover all of the issues within the agenda. We have not sought here to offer detailed recommendations on the preferable shape of future engagement by governments to support the development of voluntary initiatives within the business and violent conflict. But we have highlighted some of the gaps in the overall agenda; some of the considerations that could help to define the place of voluntary initiatives within the overall mix of policy approaches; some of the areas that have not yet been tackled through voluntary initiatives; and some of the strategic choices that will need to be made by the public sector in addressing these.

As a starting point, we recommend that governments confronting the issue of business and conflict host a multi-stakeholder and multi-agency dialogue to obtain early input on issues reflected in this report, and in particular on some of the strategic choices that will need to be made. We hope that this report will provide helpful background material for just such a discussion.

Annex I

Links between voluntary initiatives and law

Links to Legal Accountability

Whatever codes of conduct or voluntary initiatives say formally about their voluntary nature, their implementation may in practice be linked to a variety of legal accountability mechanisms.⁸⁷

Voluntary codes can be linked to legally binding instruments, whether explicitly or implicitly. For example, the Joint Declaration of the Chile-EU Bilateral Investment Agreement calls on European companies “to observe the OECD Guidelines for Multinational Enterprises, wherever they operate”⁸⁸.

Codes of conduct or voluntary guidelines in supply chain relationships can become legally binding through contractual provisions. For example, the Voluntary Principles on Security and Human Rights directly envisage that participating companies will reflect the principles that they set out in contractual arrangements with private security providers.

But perhaps the most common way for company codes of conduct to become incorporated in contractual commitments is through inclusion in terms and conditions of employment. This works two ways. An employee who fails to respect the terms of a voluntary code of conduct may find him or herself subject to disciplinary proceedings or, in extreme cases, dismissal. Likewise, an employer who has adopted a policy or code of conduct that is incorporated into employees’ contracts may be in breach of contract if it can be shown that he has acted in breach of the code. In the British context - and many other common law jurisdictions - such a breach of contract can give rise to a claim of constructive dismissal. In essence, this is behaviour on the part of the employer that is so at odds with the terms of the contract between employer and employee that entitles the employee to leave and still claim dismissal.

In some circumstances, particularly in common law jurisdictions, voluntary initiatives can play a role in shaping the standards of care that can be expected of a ‘reasonable’ company in the context of lawsuits under the law of negligence. In Canada, for example, a Provincial Judge ordered an out-of-compliance electronics manufacturer to obtain voluntary environmental management system standard ISO 14001 certification as part of his ruling in one case.⁸⁹

Some of the issues on which it is most difficult to find consensus in the business/violent conflict interface concern principles that have a legally relevant normative context – not just a meaning within the CSR community. The clearest example of this is the notion that businesses should not be ‘complicit’ in human rights violations, which can be found in the UN Global Compact and a number of other voluntary initiatives. ‘Complicity’ forms the basis for a number of ongoing legal actions in the US, under the 1789 Alien Tort Claims Act, alleging that parent companies of multinational corporate groups – some but not all of them headquartered in the US – were ‘complicit’ in human rights violations in host countries in which they, or their subsidiaries, or joint ventures in which they were involved.

Voluntary initiatives can provide an opportunity for joint learning and experimentation that can, with appropriate political will, subsequently crystallise into legally binding legislative requirements. This idea is commonplace in the environmental policy field of many OECD countries, though there are no examples of this happening yet in the

business and conflict field. The Extractive Industries Transparency Initiative and the UN Norms may yet evolve in this direction.

In the business and conflict agenda, this becomes particularly important because so many of the most difficult issues are associated with legal actions in home country courts in areas where there are few clear precedents, but considerable NGO demands for legislated approaches. These include the extent of parent company responsibility for human rights violations in different kinds of business relationships including joint ventures, and the public policy role of businesses in conflict zones.

Codes of conduct may be developed in the shadow of litigation or threat of legislation. In the so-called 'Saipan sweatshop' litigation, NGOs and a class of some 30,000 foreign textile workers brought an action in Californian state and federal courts, and in a US federal court on the Western Pacific island of Saipan against US retailers who, they said, had falsely advertised their goods as sweatshop free, and aided and abetted violations by their contractors in Saipan of laws against involuntary servitude. Out of court settlements reached with a number of the US retailers and Saipan-based manufacturers include provisions on compensation, but they are also innovative in providing for strict monitoring, and also for incorporating a comprehensive new Saipan Code of Conduct which governs working and living conditions in the Saipan factories and living quarters.

Links to norms of international law

References to relevant norms of international law are commonplace in the voluntary initiatives that we have considered.

- The human-rights focused initiatives draw directly on principles and core documents of international human rights law (e.g. Amnesty International's guidelines). A number of company codes of conduct declare some measure of support for the principles and aspirations of the Universal Declaration on Human Rights.
- On the labour side, there are references in a number of initiatives to the International Labour Organisation's fundamental rights at work. Additionally, a small number refer to ILO Convention 169 on indigenous peoples' rights. Surprisingly, references to the ILO's Tripartite Declaration on Principles Concerning Multinational Enterprises and Social Policy are rather rare (the Norwegian Guidelines and BP's overall policy on labour are exceptions).
- On the environment side, some initiatives include references to multilateral environmental agreements, or to Agenda 21.⁹⁰
- Many of those initiatives that address security issues refer to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials.
- Only the UN Norms and the European Parliament resolution refer directly to the principles of international humanitarian law, though some commentators have helped to identify their relevance to multinationals in conflict situations.⁹¹
- The Norwegian Guidelines call on companies to comply with the 'goals' of international agreements and conventions concerning protection of the environment and natural resource management, and to 'do their best to comply with the principles and goals' set down in international agreements and conventions concerning human rights and workers' rights.

Annex II Codes, Guidelines and Initiatives Reviewed

INITIATIVE	AVAILABLE AT
MULTI-ISSUE	
Nelson, J. The Business of Peace. International Alert/IBLF/CEP (2000)	www.international-alert.org
UN Global Compact (1999)	www.unglobalcompact.org
Checklist for Corporate Actors in Zones of Conflict, Confederation of Norwegian Business and Industry (2003)	http://www.nho.no/hovedweb/hovedweb.nsf/0/e2200b1a6fb16ca7c1256d32004a5de9/\$FILE/Responsible%20Engagement.pdf
Guidelines Concerning Human Rights and Environment for Norwegian Companies Abroad (2003)	http://www.milli.no/%7Eforum/dokumenter/guidelines.rtf
OECD Guidelines for Multinational Enterprises (revised 2000)	http://www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_37461_00.html
Global Sullivan Principles (1997)	www.globalsullivanprinciples.org
European Parliament Resolution on EU Standards for European Enterprises operating in developing countries: towards a European Code of Conduct (1999)	http://www.citinv.it/associazioni/CNMS/archivio/convenzioni/parlamentoEU.html
International Code of Ethics for Canadian Business (2001)	http://www.cdp-hrc.uottawa.ca/globalization/busetics/codeint.html
Collaborative for Development Action's Corporate Engagement Project	www.cdainc.com/cep
World Bank Operational Policies	www.worldbank.org
HUMAN RIGHTS	
UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003)	http://www1.umn.edu/humanrts/links/norms-Aug2003.html
Amnesty International Human Rights Principles for Companies (1998)	http://web.amnesty.org/library/index/engACT700011998?open&of=eng-398
<i>Whether to do Business in States with Bad Governments</i> , Danish Institute for Human Rights (2001)	http://www.humanrightsbusiness.org/resp_1.htm
BRIBERY/CORRUPTION/GOOD GOVERNANCE	
Wolfsberg Anti Money Laundering Principles (2002, revised version)	http://www.wolfsberg-principles.com/
Business Principles for Combatting Bribery, Transparency International and Social Accountability International, 2002	http://www.transparency.org/building_coalitions/private_sector/business_principles.html
International Chamber of Commerce Rules of Conduct to Combat Extortion and Bribery (1999, revised version)	http://www.iccwbo.org/home/statements_rules/rules/1999/briberydoc99.asp
Extractive Industries Transparency Initiative (ongoing, launched 2002)	http://www.dfid.gov.uk/news/News/files/eiti_index.htm
SECURITY	
Voluntary Principles on Security and Human Rights (2000)	http://www.state.gov/g/drl/rls/2931.htm
CONFLICT COMMODITIES	
Kimberley Process Certification Scheme (2002)	http://www.kimberleyprocess.com/
FINANCE	
Project Finance: The Equator Principles	www.equator-principles.com/principles.shtml
Asset Management: FTSE4Good Index Human Rights Criteria	http://www.ftse.com/ftse4good/FTSE4GoodCriteria.pdf
SPECIFIC CONFLICT ZONES	
Iraq: On Whose Behalf? Human Rights and the Economic Reconstruction Process in Iraq: Recommendations to companies (2003)	http://web.amnesty.org/pages/ec_Iraq_recommendations#top
Recommendations to a Company doing business in Colombia, Chris Avery, 1997	http://209.238.219.111/ColumbiaRecommendations.htm

Eight Points for Companies, in <i>Rebuilding Bridges: Opportunities and Challenges for Responsible Private Sector Engagement in Iraq's Reconstruction</i> , Jane Nelson and Jonas Moberg, 2003	http://www.iblf.org/csr/csrwebassist.nsf/content/f1d2b3aac4.html
MANAGEMENT TOOLS	
Global Reporting Initiative (revised 2002)	http://www.globalreporting.org/guidelines/2002.asp
AA1000 (1999) AA1000 AS (2003)	http://www.accountability.org.uk/aa1000/default.asp
Conflict Risk and Impact Assessment Toolkit (Ongoing, to be published Fall 2004)	www.iisd.org/natres/security/cria.asp www.international-alert.org

Endnotes

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⁵ Nelson, J. *Business of Peace*. IBLF/CEP/IA, 2000

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²⁶ Nelson, J. *Business of Peace*. IBLF/CEP/IA, 2000

²⁷ Smith, G and Feldman, D, *Company Codes of Conduct and International Standards: an Analytical Comparison, Part Two: Mining*, forthcoming World Bank Group.

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- ⁹⁰ the non-binding policy blueprint that resulted from the 1992 UN Conference on Environment and Development,
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