

Business in Conflict Areas - the need for a European policy

Report of International Expert Meeting

Brussels 8-9 December 2003

**Amnesty International, Netherlands
IRENE, International Restructuring and Education
Network Europe
NiZA, Netherlands Institute of Southern Africa
Pax Christi, Netherlands**

Business in Conflict Areas - the need for a European policy

Report of International Expert Meeting 'Business in
Conflict Areas - the need for a European policy'
Brussels 8-9 December 2003

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Business in Conflict Areas - the need for a European policy

Introduction

In December last year (2003), experts and representatives of European NGOs came together at the two-day strategic expert meeting in Brussels titled “Business in Conflict Areas - the need for a European policy”. Experts spoke together about the role of business in conflict areas and the need for a European policy. The second day conclusions were presented and discussed with MEPs Richard Howitt and Max van den Berg providing advice and comments.

European countries make a formidable political and financial effort to end wars in third world countries, but ignore the business operations that are at the heart of those wars. In some cases private enterprises are playing a negative role in conflict areas, while they can be a ‘Force for Good’. Why does the European Union allow the private sector freedom to undermine foreign policy objectives? Which policy should they adopt? What role can the civil society play to accomplish this? The Expert Meeting provided a platform for discussing these questions and looking for the possible answers.

This report provides first of all the overall conclusions from the Expert Meeting ‘Business in Conflict Areas – the need for a European policy’ that was organised by four Netherlands based NGOs (Amnesty International, IRENE, NiZA, Pax Christi). Subsequently the minutes of the meeting are briefly presented. The Annexes contain: the list of participants; the programme of the meeting, the presentation of the report: ‘TNCs in Conflict -Prone Zones’ by Jessica Banfield, International Alert; ‘The international context: Business in Conflict Zones’ by Mark Taylor Fafo AIS Norway and; ‘The Dutch policy initiatives and the effects in the case of Sudan’ by Egbert Wesselink, Pax Christi Netherlands.

1 Overall conclusions International Expert Meeting

1.1 Business in Conflict Areas - the need for a European policy

All participants at the Expert Meeting agreed to the need to seek mechanisms that effectively address the negative impact that business' operations can have on violent conflict. It was agreed that the issue of business' role in conflict areas is a distinctive problem that needs particular policy measures on top of -or parallel with - existing CSR standards. It was pointed out that there is a great need for European policy on this issue.

In clarifying what would be acceptable or unacceptable business behaviour, participants expressed the need for specification of the norms that should guide business behaviour. Besides, attention was given to the fact that the issue of business in conflict areas is not only a problem of defining norms –there already exist a set of norms that decide what is acceptable business behaviour and what is not - but there is also the major problem of the implementation of norms.

It was noted that within the EU, the awareness and sense of urgency on this issue is low. None of the European institutions feel addressed by this unacceptable impact of businesses on violent conflict.

It was proposed to:

1. Raise awareness within the European Parliament and the relevant Directorate Generals on how their working field is related to conflict prevention and push for coherency in EU policies with regard to a.o. development, human rights, peace and security policies of the EU, while linking the issue up with OECD fields of activity (e.g. OECD DAC, the OECD Guidelines for MNEs etc.).
2. Explore the contours of an implementation mechanism to develop norms and determine to which extend business can be held accountable.

One of the ways forward would be to seek co-operation among various DGs (DG Relex, DG Enterprise, DG Internal Market) and with the European Parliament who already give a high priority to safety and security policies at the EU level. Such would be a step up to prioritise conflict zones on the agenda of the EU.

1.2 Follow up

The participants agreed on the following steps to be taken:

Setting up an NGO Co-ordination Group of which the following members committed themselves already: International Alert, Amnesty International, NiZA, Pax Christi. Other NGOs are welcome to join. The NGO Co-ordination Group will prepare a next meeting and start working on the subsequent issues:

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- advance the own work on specification of norms
- build a caseload of concrete company cases and the juridical and policy measures that are taken at the national and international level
- mainstream existing knowledge among relevant EU institutions
- explore the possibilities of support for a Working Group on business in conflict zones with the different DGs
- put the issue on the agenda of the European Multi-Stakeholder Forum on CSR (March 2004), and the Dutch presidency of the EU in the second half of 2004 (CSR conference, November in the Netherlands)
- form a sub-group to define the aim and activities for March and November 2004 events
- explore the possibilities to link up with other area's such as the OECD, export credit agencies, and with NGOs that focus on arms trade and on conflict commodities and the working group of the Voluntary Principles
- organise a next strategy meeting in spring 2004

2 Minutes Meeting

This paragraph contains a short version of the Minutes of the Expert Meeting ‘Business in Conflict Areas – the need for a European Policy’ (8, 9 December, Brussels). Please note that the programme is attached in Annex 2.

2.1 Day one: 8 December 2003: Strategic Brainstorm Seminar for NGOs

The International Context: Business in Conflict Areas

by Mark Taylor, FAFO AIS, Norway

Mark Taylor from the economies of conflict project at FAFO gave a clear introduction into the subject of ‘Assessing Legal Liabilities for Business Entities in Conflict Zones: emerging conclusions from a collaborative research project into international humanitarian law’. Hereby, a framework was set for discussion about the European policy.

Please find the full presentation attached in Annex 4.

The Dutch policy initiatives and the effects in the case of Sudan

by Egbert Wesselink, Pax Christi/Netherlands

Egbert Wesselink introduced and commented on the draft policy paper: Doing business in conflict areas of the Dutch government. Furthermore he linked this to the situation in Sudan.

Please find the full presentation attached in Annex 5.

The European Political Context

by David Earnshaw

Former lobbyist of Oxfam International David Earnshaw gave an introduction into ‘where and how to lobby and campaign’ on The EU policy on companies operating in conflict zones. He provided the participating NGOs with some practical information on time schedules and entrances when discussing policy making on this specific subject.

TNCs in Conflict –Prone Zones: Public Policy Responses and a Framework for Action’

by Jessica Banfield

Jessica Banfield, Project officer of International Alert presented the new report ‘TNCs in Conflict –Prone Zones: Public Policy Responses and a Framework for Action’ and Priorities for Europe. **Please find the full presentation attached in Annex 3.**

Discussion of proposal

In succession to this the organisers of the seminar proposed a resolution in which some concrete proposals for EU policy were made. The grounds for building EU policy would be outlined by a Permanent Working Group. Arguments for this working group

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are well founded but some participants wondered why not propose legislation right away. A discussion followed about other instruments that could be used beside the Permanent Working Group. We should not leave the private sector itself out in the lobby process. Other examples are transparency of the supply chain. Important is that there is no owner within the Commission for this theme.

One practical problem was raised immediately regarding the resolution with policy proposals written by the organisers. There will be elections for both Parliament and Commission in 2004. New policy initiatives will hardly be noticed during this period. This means it makes more sense to include the issue in the final report of the European MultiStakeholderForum on CSR. Maybe even to give more concrete recommendations like founding a Permanent Working Group.

2.2 Day two: 9 December 2003

Tuesday morning the group of experts continued the discussion on possibilities of influencing a European policy on the regulation of business in conflict areas and developing a mechanism to hold companies accountable for their behaviour.

All agreed that although European rules and discussions on Corporate Social Responsibility are the basis for any kind of measures, due to its political aspects the issue of Business in Conflict Areas is a distinctive problem that needs **particular policy measures on top of-or next to- CSR standards.**

The participants saw it as one of their goals to convince the Parliament and the Commission of this, and **move the issue up the European agenda.**

Although the participants will all keep working on different -national and international-levels, the EU is an important institute to get on board. With the EU in front, it will be a lot easier to get the rest of the world on board. Furthermore, much more than for example the UN, The EU does deal with economic governance issues. One thing to bear in mind when lobbying the EU is the level playing field; the EU is not going to accept a worsening position of its companies in the world due to stricter regulations.

However, there is clearly a **lack of awareness within the EU**; therefore a lot of awareness raising on the ground will have to be done before anyone will start moving.

The discussion evolved around the question on **how to define unacceptable behaviour** and who is going to do so? Do we really need a definition or do we already have norms that only need implementation?

According to a large part of the participants the issue of business in conflict areas is not mainly a problem of defining the norms. There already exists a broad set of norms that decide what is acceptable business behaviour and what is not. It is already possible in most legislation to prosecute companies for crimes against humanity/ genocide. The problem lies mainly in implementation. National and international courts are not yet adequate enough. They sanction only the worst cases. It would be up to the participants **to build a caseload** of concrete company cases and the accompanying juridical and policy measures that are being taken on a national an international level.

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The discussion around the installation of an **EU Permanent Working Group** showed clearly there are many practical bottlenecks to be solved around membership, mandate, timeframe and co-ordination before it can actually take form.

Problem within the EU is that the subject cuts across many different areas of policy (Trade, Development, Conflict Prevention). This **issue needs an owner** that can be addressed and held responsible. This demands **creating awareness among the different DGs on how their working field is related to conflict prevention**. One of the ways forward would be to co-operate with the various DGs (DG Relex, DG Enterprise, DG Internal Market) of the European Commission and with the European Parliament who already give a high priority to safety and security policies at the EU level.

Concluding this part of the session, it was decided that in order to properly address this issue a **Twin track approach** would be needed:

We need to **firstly** channel the state of the art knowledge about the issue, and **build a caseload of concrete company cases** and the accompanying juridical and policy measures on a national and international level. (Many of the participants are already working on this). This knowledge needs to be mainstreamed among the different relevant EU agencies.

Secondly, but similarly we would need to work on the **development of a concrete mechanism for holding companies accountable**. This should be as juridical as possible, to enlarge credibility. The support of companies for a possible framework needs to be sought as well. That could be proposed to the relevant policy makers. Hereby, the possibilities of installing an organ that does have the authority to launch independent research after company behaviour as part of the proposed mechanism need specific attention. At a given stage in the process members of the EC need to be involved as well. At a later stage a Resolution of the European Parliament on the issue would be an option but not the only option. The goal set can be attained via other ways as well. We have to decide in due course what will be the best method.

Part of this work would also be to see what role CSR standards can play in the whole process, how we can build upon existing rules and regulations to make them also applicable to conflict situations. More in particular the role of the **EU Multi-Stakeholder forum on CSR** needs special attention; how can we make the Forum pay attention to the issue?

The OECD needs to be involved as well. We need to look at possibilities for the definition of a common EU position on the OECD guidelines for multinational corporations and to what extent these are useful for conflict situations.

To work on this, it was proposed to set up a **Co-ordination Group** who could prepare a next meeting and start working on the issues mentioned above.

Remaining practical issues

How to broaden participation, spread information and include others in this group?
Weight of this NGO group? Status? Relation with other networks?

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Who is going to take the lead?

Financial restraints: to push this issue forward on the European agenda we would need a permanent representative in Brussels: who would pay for that?

We have to explore ways to get Southern partners involved in this process.

Pax Christi, International Alert, Fatal Transactions and Amnesty International are willing to take up the issue. All others need to check. It is proposed to get together again in the first quarter of 2004 and discuss a structure that will be commented upon on the forehand by email.

2.3 Debate with representatives of the EP

International Press Centre

In his presentation **Max van de Berg (MEP)** pointed out that there is a strong majority within the EP that is convinced that companies must respect human rights, but an equally strong majority exists that is against all mandatory measures. The best-landed argument in favour of mandatory rules is the need to create a 'level playing field'. To which extend this can be turned into anything mandatory depends on outside pressure, e.g. NGO activity. One must realise that it is unlikely that the EU will regulate anything without similar action from the USA.

A few of his remarks included:

- Business has been successful averting mandatory regulation, by indeed taking up CSR, and arguing that they will do better when not pushed. Broad and extensive regulation will not occur, even though there is recognition that the OECD guidelines are insufficiently operational to be very helpful. What is needed is specification of existing standards. Don't exclusively push for direct binding regulation now or to an extensive regulatory model. You do have chances to succeed, but probably only as a consequence of a multitude of initiatives taking place at different levels simultaneously.
- Movement can best be achieved by capitalising on the fact that notably the extractive industries feel a need to control their reputation risks, and by connecting to NGOs in the USA as there will be movement on both sides of the Atlantic or no movement at all.
- Build on existing campaigns like Publish What You Pay and the Kimberley Process, as well as on clear cases that can easily be communicated among the public, try to connect your message to weapons trade and Millennium Goals issues, involve a broad spectrum of NGOs and countries, and seek support among the Conservatives.
- DG Trade ought to be involved, in addition to DG Development, both because of the role of EU Trade commissioner Lamy, and it helps in making your key target move: the Commission and the Council. DG Trade is committed to creating level playing fields. An EP resolution may not be the shortest way to get there.

Richard Howitt (MEP) gave his comment and advice to the debate and spoke about the current CSR issues within EU. There is an agreement in principle on a CSR framework, the White Paper. Despite progress on many fields (supply chain responsibility is broadly accepted; acknowledgement of need for private sector respect for human rights; positive engagement with the Commission) any kind of binding regulation is out of the question, even complaint procedures are not accepted by either business or the Commission. A Permanent Working Group is a good idea, but to propose it now seems too ambitious. To organise an event seems a better option, e.g. on

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the eve of the Multi-Stakeholder Forum. Equally important would seem the November CSR conference that will be organised by the Dutch presidency.

To make the EP act, confronting it with a case offers relatively good chances, a well-chosen case could serve as a vehicle for the EP to demand stronger action than voluntary regulation. Once a case erupts, speed is important, and one could outline a generic resolution now, to serve as the basis for an EP reaction to an urgent case. Another promising venue seems the idea to develop a manual of do's and don'ts for EU Member State embassies in difficult regions to use in their relations with their home companies.

2.4 Conclusions from the Chair

- a. European and US NGOs must link up and design a common strategy.
- b. The Multi-Stakeholder Forum and the November CSR conference are suitable venues to raise awareness within EU structures that the economic dimensions of violent conflict need to be addressed systematically, and that the private sector has a obligatory role to play. Several participants will assure that business in conflict areas will be added to the agenda of the Multi-Stakeholder Forum. There is broad support among NGO participants to hold a strategy meeting in spring 2004 to prepare the Multi-Stakeholder Forum.
- c. To advance their case, NGOs must themselves specify what constitutes acceptable and unacceptable behaviour.
- d. Useful venues: to link up with NGOs that are active on Export Credit Agencies and the arms trade, and to investigate historic experience with international authority over countries' natural resources.

Annex 1: List of participants

Bennekom, van Sander	Novib
Feldt, Heidi	WEED
Zint, Martin	Joined German NGO Working Group on the Chad-Cameroon Oil and Pipeline Project
Gisbergen, van Indra	11.11.11
Mans, Ulrich	International Crisis group
Pickard, Russel	OSI-Brussels
Corene Crossin	Global Witness, UK
Expley, Owen	Quaker Council for European Affairs
Tshiswaka, Hubert	ASADHO
Barbara Sellier	EPLO
Kerckhove, mark	CNCD
Dréanic, Alan	FIDH
Vranckx, An	International Peace Information Service
Terzi, Federico	Organisation Mondiale contre la Torture
Hund, Kirsten	NiZA
Sargentini, Judith	NiZA
Molenaar, Hilke	Amnesty International
Pennartz, Peter	IRENE-network
Schure, Jolien	NiZA
Taylor, Mark	FAFO
Banfield, Jessie	International Alert
Earnshaw, David	Oxfam
Wesselink, Egbert	Pax Christi
Heres, Mariëtte	NiZA
Takken, Hille	NiZA
Langemeijer, Nils	EZ-NL
Alexander, Lindsay	International Alert
Kroner, Nathalie	Buza
Lenzen, Olga	SNS Asset Management
Kagamba Singoma, Mr. Julius	First Secretary Ugandan Embassy
Bronkhorst, Serge	BILS
Maukisch, Marc-André	Political researcher to Nirj Deva, MEP
Concannon, Tim	
Rydberg, Erik	GRESEA

Annex 2: Programme December 8 & 9, 2003

BUSINESS IN CONFLICT AREAS – THE NEED FOR A EUROPEAN POLICY

ORGANISERS:

Amnesty International/Netherlands

IRENE (International Restructuring and Education Network Europe)

NiZA (Netherlands Institute for Southern Africa)

Pax Christi/Netherlands

DAY ONE: Monday 8 December 2003

Strategic Brainstorm Seminar for NGOs: how to build a European policy on Business Activities in Conflict Areas

12.30h: Lunch

13.30h: Welcome by the organisers and introduction of the aim and programme

13.45h: Short round of introduction by the participants

14.00h: The International Context by Mark Taylor, FAFO AIS, Norway
Assessing Legal Liabilities for Business Entities in Conflict Zones: emerging conclusions from a collaborative research project into international humanitarian law

14.30h: The Dutch policy initiatives and the effects in the case of Sudan
by Egbert Wesselink, Pax Christi/Netherlands

14.45h: Questions for clarification

Why A European Policy Is Needed
Lobby and campaigns on the national level

15.15h: The European Political Context by David Earnshaw, former lobbyist of Oxfam International, Brussels

The EU policy on companies operating in conflict zones; what departments of the EU deal with this topic - where and how to lobby and campaign;

15.45h: Coffee break

16.00h: A presentation of the report: 'TNCs in Conflict -Prone Zones: Public Policy Responses and a Framework for Action', and Priorities for Europe, by Jessica Banfield, Project officer of International Alert

16.30h: Questions for clarification

The making of a European Policy: focus on the campaigning and lobbying of the EU

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17.00h: Presentation of a NGO proposal for a EP Resolution and the underlying aims

17.15h: Discussion about the proposal and strategic recommendations - questions, comments, the making of a Resolution and how to use it

18.00h: Closure of Day One

19.00h: Dinner at the Taverne du Passage, Galerie de la Reine 30 (own costs)

DAY TWO: Tuesday 9 December 2003

Finalising the NGO proposal for a European Policy and the Planning of a Campaigning Strategy

9.30h: Resume of the strategy discussion of Day One, review of the draft EU resolution

11.00h: The road ahead: a strategy for action

12.00h: Conclusions and agreements

12.30h: Lunch

Debate with representatives of the EP

Hosted by Max van den Berg, MEP, vice-chair of the Party of European Socialists, vice-chair of the Development Committee
MEP Richard Howitt, Labour European Office

Venue: Centre de Presse International
Brussels, Rue de la Loi 155

14.00h: Welcome by the organisers

14.15h: Chances And Possibilities for the European Parliament,
by Max van den Berg

14.30h: Why a European Policy is Needed,
by Egbert Wesselink, Pax Christi (the Netherlands)

15.00h: De-briefing by the NGOs of the outcomes of the preceding Strategy seminar: a presentation of the recommendations and the NGO proposal for EU policy for corporations operating in conflict zones

15.30h: Comments and strategy discussion on the way forward: the roads into the EP, lobby and campaigns - the future agenda

17.00h: Conclusions and agreements

17.30h: Closure

Annex 3: A presentation of the report: 'TNCs in Conflict -Prone Zones'

by Jessica Banfield, Project officer of International Alert

I'll start by giving a brief overview of our understanding of the relationship between investing companies and conflict, and then turn to share some findings from our recent publication: 'TNCs in Conflict Prone Zones: Public Policy Responses and a Framework for Action', focusing on the question of what role for governments. This work is part of a larger programme on Business and Conflict that has been ongoing at International Alert since 1999 – seeking to engage companies in conflict transformation and peacebuilding, and to promote understanding of what governments and IGOs can do to promote such an approach. Some of you working on this issue might be familiar with the Business of Peace report that we published in 2000 together with the IBLF and CEP. We work with both transnational corporations (particularly those northern-based industry leaders whose concern with reputation offers opportunity to influence them) and local businesses that are indigenous to conflict contexts. This includes practical engagement with companies in-country – with field programmes in the Southern Caucasus and Sri Lanka as well as developing work in West Africa, any of which I'm happy to talk about later, in addition to the policy strand that looks at the role for governments/ IGOs and on making recommendations to companies at HQ level on how to improve practice.

Companies have over the last decade or so begun to pay attention to human rights, the environment and other areas of 'corporate social responsibility', but typically their understanding of conflict and corporate–conflict dynamics remains under-formulated, and constrained by a lack of skills and experience. Yet the challenges posed to the CSR debate – in particular human rights, corruption and environment – all become more challenging in conflict contexts – and companies continue to get caught up in conflict around the world, as we have heard already today.

The relationship between companies and conflict is two-way. Corporate operations influence conflict dynamics, with decisions on a range of issues from security arrangements to hiring of local staff; from the location of operations to the relationship with host governments – all these and more can influence the fact or possibility of violent conflict at either local or national levels. Meanwhile, conflict in turn imposes a range of both direct and indirect costs on companies, increasing transaction costs and the likelihood of reputational damage. Companies therefore have a clear interest in conflict prevention and in supporting peacebuilding processes.

A range of management strategies is available to companies in seeking to minimise the harmful and maximise the positive impacts of operating in conflict-prone zones.

The 'do no harm' idea is borrowed from the development and humanitarian sectors – many of you here will be familiar with PCIA tools, and we draw heavily on these in our representations to business on being conflict-sensitive – most specifically in our Conflict Risk and Impact Assessment project, which I won't go into in too much depth here but which basically involves research into existing corporate environmental and social impact assessment and political risk analysis approaches to see where these fall down from the conflict prevention perspective, and working with a group of extractive sector companies to try and improved these, drawing on development sector expertise. The bulk of attention today has been on extractives and also of our work, but in 2004 we will be expanding our focus with CRIA and other areas of the programme to look at other sectors that operate in conflict-prone areas.

What role can governments and IGOs play in promoting a constructive role for business? Our recent report seeks to answer this question, through surveying existing policy and initiatives of five northern governments, as well as the OECD, UN, World Bank and the EU. The focus was on policy in the areas of conflict prevention and corporate social responsibility, and the research sought to identify where linkages are beginning to be made between these two areas, as well as where there are obstacles and opportunities. It represents a snapshot of where policy action on the issue is, and inevitably there will have been developments since our closing on the research. Clearly, given the broadbrush approach of the research,

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much more could be said on each institution surveyed. The recommendations made are generic, and there is a need for institution or area-specific dialogue to develop the ideas into practical action.

In terms of our outreach work, a few weeks ago we presented the findings to a X-HMG group hosted by DfID seeking to highlight possible action for the UK; we have taken findings at a consultation on the broader issue of war economies convened by FAFO at the request of the Norwegian foreign minister; in September, shortly prior to publication, we visited BMZ and talked to a cross-government group about the research – the problem there being that German companies are probably further behind others in accepting the need to look differently at conflict, and we have had a similar chat in Switzerland. The report was flagged by its funders (UK) at the most recent OECD-DAC meeting and, supported by Sweden the idea of feeding it in more concretely to the next was also discussed so we will be pursuing that in an effort to promote more concerted DAC action on this issue. Today's event we hope will lead to more concerted EU-level action on this issue, and I would like to thank NiZA and Pax Christi in bringing us all together.

Mainstreaming conflict prevention/ sensitising CSR

All of the institutions surveyed in our research in one way or another articulate a commitment to conflict prevention as part of foreign and development policy, articulated by the Commission in its 2001 Communication on Conflict Prevention. Some stand out for specific recognition in key documents of the role of international business in behaving responsibly in conflict situations –including the Communication, which notes that on the positive side foreign businesses can contribute to sustainable development, but that they 'can also be partly responsible for maintaining, or even creating, structural causes of conflict'.¹ To date, however, the Commission has done little to promote awareness or guidance for European companies on how to avoid such conflict-feeding impacts. This represents a major gap in efforts to mainstream conflict prevention across EU policymaking.

Meanwhile, to differing degrees, the institutions surveyed have promoted concepts of corporate citizenship and socially responsible business. As we all know, the EU is still finalising its Strategy on CSR signalled by publication of the Green Paper in 2002, and ongoing ESF process. It is vital that recognition of the relationship between companies and conflict is reflected in definition of CSR included in the final text of this – as in fact is envisaged again in the 2001 Communication on Conflict Prevention, and as the Parliament resolution of July 2002 also recommended. Recognition will in turn in and of itself not be sufficient – DfID's recent Issues Paper on CSR includes recognition again of the negative and positive impacts that international business can have in conflict but again there is little by way of practical follow-up to these statements. Interestingly, the Norwegian Confederation of Business and Industry with support from the Norwegian government has developed just such a set of guidelines, included in the report; and the ILO IFP/ Crisis programme has also just published some guidelines for employers of companies in conflict zones that is also a useful document. Development and promotion of guidelines and tools are all key – I'll come back to this in a minute.

EU efforts to promote conflict prevention as part of development will continue to be undermined in practice until the relationship between trade and private sector activity and conflict is addressed more substantially and convergence achieved. Agencies working on ethical business conversely need to address the particular challenges faced by companies in conflict zones if ethical business abroad is to become a reality. We recommend that internal review of existing conflict prevention and CSR policy instruments be conducted to establish more secure linkages; leading to the development of clear institutional priorities on coherence between the two.

Support of norms, standards and accountability

There is no one overarching legal framework to govern the activity of foreign investing companies in conflict prone zones; nor is there one definitive voluntary code (interestingly, Canadian DFAIT has recently commissioned some research reviewing all existing voluntary codes to find out what their relevance to conflict is). There is however a growing body of work investigating the boundaries of companies' legal accountability for conflict related impacts (FAFO and IPA) and I think clear evidence that while still imprecise, a normative framework is emerging regarding what is and what isn't acceptable when it comes to foreign private sector activity – signalled by UN Sanctions and Expert Panel reports, eg on the DRC, by the KPCS, by increasing NGO scrutiny of corporate actors activity in conflict, by explicit mention of the links between increased transparency and conflict prevention in the EITI, by guidance on

¹ Communication on Conflict Prevention, p. 20 (April 2001).

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risk assessment and security personnel in the Voluntary Principles. The European Parliament in its Resolution on the CSR Green Paper recommended that sanctions for companies who become complicit in conflict be developed – further indication that slowly international opinion is moving towards greater clarity on these.

The various mandatory and voluntary emerging standards and norms that address the role of companies in conflict should be specifically supported and promoted by the EU, and broadened out in their constituency, in order to ensure that European companies do not have negative conflict-feeding impacts and maximise their potential to contribute to stability. The EU has played an important role already in recognising natural resource exploitation as a cross-cutting issue relevant to conflict prevention and by supporting the Kimberley Process and exploring options for timber – and it is crucial that commitment to seeing these initiatives mature be maintained and the instruments promoted to the widest possible groups of governments and companies. There is also an emerging body of best practice on improved conflict impact assessment as a tool for companies to use in order to mitigate potential harmful impacts, including International Alert's CRIA project I have already mentioned. The OECD Guidelines, through the NCP mechanism, have also played a prominent role in debates on this issue and the EU should do more to promote these. The Background Note produced by Kathryn Gordon at the OECD on OECD country companies in conflict zones is a useful document, and together with OECD DAC commitment to promoting further policy awareness on this issue, an opportunity exists to have the utility of the Guidelines to companies in conflict enhanced at the next review.

Sensitise investment promotion

Governments and IGOs are typically promoting their companies' investment in developing countries and seeking to partner with the private sector in meeting poverty reduction goals with a range of instruments – there is a need for clearer guidelines for companies operating in conflict-prone areas as part of this. Export credit agencies and lending to projects in unstable regions offers another important area where improved corporate behaviour in conflict prone zones could be addressed. Export Development Canada is unique among the agencies surveyed for the IA report in that it does have a specific methodology for understanding the potential conflict impacts of projects – others should follow suit. As an aside it appears that there is a growing move towards looking at the relationship between project finance and not only human rights but also conflict, with UNEP-FI recently launching an initiative on this issue and individuals at the IFC open to discussion on it as part of the standards review currently ongoing. Our CRIA project that I mentioned earlier is providing useful learning on improved conflict impact assessment approaches that we hope to feed into different ECAs and IFIs' thinking on this. Beyond promoting awareness and skills to European companies to assist them in operating in conflict-prone areas to the benefit of all, the Commission therefore has a role to play through the European Investment Bank and the EU-ACP PROINVEST programme which should both factor in conflict impact assessment to lending decisions, ensuring that private sector projects that have substantial EU financial backing are again not associated with a worsening of conflict dynamics. This would be an important step towards promoting coherence across different policy areas.

It is no longer enough to assert that investment is in and of itself a force for peace and development – the message needs to become more qualitative, and guidelines and assessment tools made available to ensure that rich country companies' albeit unwitting contribution to violent conflict, comes to an end. Traditional barriers between conflict prevention and trade agencies need to be overcome if this is to be achieved.

Multistakeholder dialogue

On p. 20 of the Communication on Conflict Prevention, the Commission outlines a role for itself as 'a facilitator, helping to bring the parties involved together for discussion and debate' on the role of the private sector in conflict. While various member states (including Belgium, Germany, the Netherlands, Sweden and the UK) have hosted cross-sectoral dialogue and conferences on business and conflict, the EU has yet to give this issue higher prominence at the EU level among European companies – yet this would be a logical entry-point to more concerted action in this critical area. Both the Voluntary Principles and EI-TI, as well as the 2001 Global Compact dialogue on companies in conflict zones have featured higher level dialogue processes that have contributed to catalysing the beginnings of a shared analysis on these issues. Several years on in the agenda, while the convening power of governments remains important, there is a need to move beyond dialogue alone with concreted action.

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Enabling environments

Development agencies also have a role to play through supporting the creation of enabling environments for conflict-sensitive TNC activity – particularly through building up the ability of finance ministries to cope with large-scale investment and promoting transparency. Increasing emphasis on natural resource management and recognition of war economies is welcome in this regard.

Supporting research

Dialogue, research and awareness-raising are all useful inputs particularly given the newness of this area. The independent and rigorous attention that organisations such as FAFO and IPA have given to discovering policy options to address war economies have played a key role in catalysing debate; and the institutions surveyed fund a range of relevant research projects, including our own. There remains a lot that is not known – we for instance are in the process of developing a sort of part 2 report to the Business of Peace, recognising that more needs to be known specifically on making the business case (so we have commissioned someone to ‘cost’ the costs of conflict more convincingly) and precisely what is the ‘peacebuilding role’ for business; and on the implications of this whole debate for non-extractives who have tended to hog the spotlight. Despite these ongoing gaps, several years on into the agenda, findings of funded research to be followed-up with concrete initiatives and action. The EU has not necessarily played a direct role in this particular area but its member states have and I thought it worth including as one among other areas for public actors to play a role.

I hope this has been useful and leave with you a handout that brings together the various points I have raised, which, though in draft form, will be included in the joint International Alert and Saferworld submission to the Irish and Dutch presidencies (we produce these regularly and they have an impact at the Commission level).

Annex 4: The international context: Business in Conflict Zones'

Summary of comments by Mark B. Taylor, Fafo AIS, Oslo Made to the meeting

The New Security Programme² at the Fafo Institute for Applied International Studies in Norway has carried out a project to with a focus on the private sector activities that help sustain armed conflict. The project has recently been developing policy options, including the development of definitions of unacceptable practices based on case studies and principles already enshrined in policy and law.

On the basis of this work, we can discern a pretty clear picture of the political problem structure presented by economies of conflict in general. The challenges are ones which private sector actors – both companies and industry associations – will have to come to terms with. They include: the presence of a diverse set of actors with strong incentives to resist or evade regulation; difficulties in designing regulations in ways that hit the policy target without harming civilians; difficulties in assessing the legitimacy versus illegitimacy of given parties' involvement in conflicts; difficulties in establishing clear and causal links between financial flows and conflict behaviour

In particular, there is a problem of what categories we apply in looking at the problem. For example; Are large MNCs really the problem? Probably not in a conflict zone, where there are many other actors. Does that mean we should leave them be? Probably not, because they are key in the transmission of illicit goods to consumer markets.

What is a conflict zone? What is conflict? What is a zone? Conflict zones can be seen as social and economic space. When considering private sector activities, conflict zones can be seen as markets in which private sector activity moves to meet demand of the warring factions, international demand (esp. for natural resource commodities), demand generated by the survival tactics household economies in war zones. The crucial element that policy makers need to look for is the problem of coercion, coercion, the marriage of economic assets and armed force; namely, those activities in which the use of force has become a factor of production could be called conflict trade.

In response to the problems of market-based activity and conflict, there is a range of discreet initiatives in a wide variety of sectors, countries and institutions that are now building a patchwork regime of very different and largely unrelated pieces of regulation. Profit-making activity in war or conflict is a very old and well-established phenomenon. It is not generally illegal. There is no law against economic activity in war and the international state system is built around notions of sovereign right to self-defence and sovereign control over natural resources. Still, measures have gained ground over the past decade in combating such activities as money laundering, organised crime, terrorism, corruption, and corporate malfeasance, etc. Even attempts to grapple with UN sanctions busting or policing illicit trade, while still in their infancy, have moved quite far in the past 5 years. All of these have conflict as at least an important secondary target. A norm or principle is emerging from this activity which views corporate involvement in

² www.newsecurity.info

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sustaining armed conflict as unacceptable and conflict commodities or the revenues from those commodities as tainted. Commodities produced in contravention of this norm are already being targeted as conflict commodities. Companies operating in contravention of this norm run the risk of being labelled as rogue companies.

Yet, while the normative basis of policy is being developed, there is no coherent policy locus or 'home' for the problem of economies of conflict. This lack of an administrative mechanism is the most obvious source of impunity for actors involved in economies of conflict. It also contributes to a lack of coherence of international policy concerning those economies. There is no mechanism that can manage the various policy initiatives and create some coherence to international attempts to manage conflict and conflict prevention activities.

As a result, the next steps in policy development will require the following:

Regulation should build on the principle of 'do no harm'. Regulation should design responses to unacceptable economic activity in a targeted manner, seeking to avoid unintended economic damage to national economies, local communities or conscientious companies. Developing countries dependent upon single commodities will not accept – and should not be asked - to be targeted by Northern campaigners. In this vein, we need to stimulate (self) interest amongst governments and companies in normative approaches, regulatory frameworks and laws to address the collective action problem in specific industries, countries or regions and clarify the framework for decision-making and policy in this area.

We need to understand the mechanisms of economic opportunity in conflicts, which means focusing on identifying unacceptable activities. We should criminalize behaviour, not entities; target what is done by market actors, do not target market actors *per se*. This means viewing the war zone as economic and social space and using this perspective to look for the points at which coercion plays a role in production. Policy should target regulation at market based (or business entity) behaviour.

We should be creating common rules for all actors, with a view to understanding their impact on those communities most affected by conflict. The diversity of actors involved suggests the need to elaborate core principles, or norms, at an international level which governments, business and civil society organisations and affected communities can use to design responses to conflict trade. Ultimately, this will require some form of inter-governmental negotiation, and possibly an international instrument, to establish a global normative basis for the identification and control of abusive forms of conflict trade.

Business entities look to national laws to guide their activities. When entering new markets or evaluating major changes in their operating environments, most international businesses look at the legal regime governing their area of activity. It is in the domestic jurisdiction where legislation will have the most immediate effect and where global norms can be confirmed and developed through practice. That means promoting regulation in affected countries and at the same time creating complementarity at the international level to compensate for a lack of effective capacity – or unwillingness - to regulate by host or home countries. In the absence of a domestic will or capacity to enforce domestic law, international law will be needed to ensure there are legal remedies to abusive forms of conflict trade.

Annex 5: The Dutch policy initiatives and the effects in the case of Sudan

by Egbert Wesselink, Pax Christi/Netherlands

The Dutch Government is currently finalising a policy paper on the role and responsibilities of private parties in areas of violent conflict. The draft paper acknowledges that this is a legitimate and serious question that needs to be resolved, the analysis parallels ours. It is e.g. noted that in the context of violent conflicts, private entities find themselves in a regulatory void and that this must be remedied. It also acknowledges that some companies are motivated by greed and not likely to resort to effective voluntary regulation, stresses the need to define corporate responsibilities through the full chain of production. Disappointingly, the paper does not attempt to offer solutions for the serious problems that it lays out. While stressing the need to build policy on existing treaties and conventions, it does not specify these or clarify how they are to be made applicable to private parties. When it comes to solutions, the paper does not go far beyond the notion of a need for tripartite collaboration, (inter)state, civil society and business, A remarkably weak conclusion when talking about global responsibility.

An interesting point of action mentioned in the paper is to promote that companies and EU Member States assemble information on areas of violent situations, that would lead to a database which companies that are interested in working in these areas could consult. Related to that, EU embassies could write manuals to use in their relations with home companies. This could be linked with the formation of platforms of local organisations, embassies and companies to exchange experiences and design policies that would promote peace.

Interestingly, the paper does mention the need to develop some kind of punishment for companies that work in bad faith, but it fails to suggest a mechanism that would be able to bring this about.

On Sudan: oil was found in 1978, and eventually became one of the factors that led to a resumption of the civil war in 1983. Oil is again at the centre of the current peace process between the Sudanese People Liberation Movement/Army, complicating both the security arrangements, the revenue sharing and the power sharing arrangements. The European Coalition on Oil in Sudan proposes the EU to adopt do's and don'ts for private companies in post-peace Sudan, to ensure that the tremendous efforts that are put into bringing about peace, will not be undermined by private party activities.