

## **Rules of Engagement**

### **How business can be a force for peace**

This is a reproduction of some of the speeches given during the conference ‘Rules of Engagement, organised by Pax Christi Netherlands institute for Southern Africa and , Amnesty International. This is not the report of the conference. A summary of the discussion and conclusions of the conference is available elsewhere on this website.

#### **Bennett Freeman**

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### **Managing Risk and Building Trust: The Challenge of Implementing the Voluntary Principles on Security and Human Rights**

I want to thank Pax Christi Netherlands, the Dutch Section of Amnesty International, and the Netherlands Institute for Southern Africa for inviting me to address this important and timely conference. It is a tribute to the sharp focus and hard work of the global NGO community that the whole subject of business and conflict is now on the agenda of so many industries and companies, as well as international institutions and a growing number of national governments. It is also appropriate that this subject is commanding attention in the Netherlands, in light of both the global reach of corporations based here, and the great contributions that your civil society and government have made to promote human rights and provide humanitarian relief around the world.

No doubt the Government of the Netherlands, together with Dutch NGOs and Royal/Dutch Shell, will contribute creatively to the Voluntary Principles on Security and Human Rights— one of the three initiatives highlighted by the conference this morning. The Voluntary Principles offer “rules of engagement” for extractive sector company relationships with security forces, one of the central sets of issues to have emerged in the debate over the roles and responsibilities of business in zones of conflict. I will argue that while recent events are testing the value of the Voluntary Principles, there are concrete steps that companies, NGOs and the convening governments can take to make these “rules of engagement” more useful and credible- and help business become a force for peace.

Since the U.S. and UK governments announced the Voluntary Principles on Security and Human Rights in December 2000, the clash between large-scale extractive operations and remote, impoverished communities in zones of conflict has become more acute than ever. Although the Voluntary Principles offer a global standard the combination of past

incidents and current tensions make them most relevant in three countries above all: Nigeria, Indonesia, and Colombia.

In the summer of 2002, the salience of the Voluntary Principles was highlighted in all three:

- In early July, hundreds of unarmed women from surrounding communities occupied ChevronTexaco's oil terminal at Escravos in the Niger Delta, while others took over several nearby flowstations. Shell faced similar protests the next month.
- At the end of August, two American citizens and an Indonesian were killed near Freeport McMoRan's giant Grassberg mine in the highlands of Papua, Indonesia. While the Indonesian military blamed the separatist OPM for the killings, speculation has intensified that elements connected to Kopassus, the special forces arm of the army, were responsible. The incident may have been intended as a signal to Freeport to maintain funding levels for its security arrangements with the military, and curtail its contacts with pro-independence elements in Papua.
- Late in the summer, U.S. military advisers arrived in Saravena in east-central Colombia to begin training two Colombian army brigades to protect the 500-mile Cano Limon-Covenas pipeline operated by Occidental Petroleum that has been a frequent target of guerilla attacks. Some 100 special forces personnel will reinforce the effort in January.

These developments pose challenges for the companies, and for their host and home country governments alike. Their response will test the Voluntary Principles as a framework for balancing security and human rights. At stake is not only the companies' "social license to operate" in zones of conflict and in close proximity to indigenous communities, but also the companies' ability and willingness to continue operating in difficult circumstances— even with such large investments on the ground. If the Voluntary Principles are to remain a useful framework, the convening governments and participating companies and NGOs must together sharpen the focus of the process around the twin objectives of managing risk and building trust. It is essential to continue the dialogue in the conference rooms of the State Department and the Foreign Office, but even more important to extend the dialogue and take actions on the ground in the countries where the threats loom largest.

The year-long dialogue convened by the State Department and the Foreign Office in March 2000 did not attempt to address all the issues which have put extractive sector companies under the harsh spotlight of international NGOs and the local communities where they operate. Avoided were the perhaps tougher issues of whether a particular company should even operate in certain countries, such as Burma or Sudan. Instead, the dialogue focused exclusively on the clash between security and human rights: how to balance the companies' legitimate need to meet real security threats in certain countries with NGOs' and local communities' insistence that company security arrangements respect human rights.

The Voluntary Principles are framed around three concrete sets of issues: the criteria that companies should consider as they assess the risk of complicity in human rights abuses in their security arrangements, including their relations with local communities and diverse

stakeholders; company relationships with state security forces, both military and police; and their relations with private security forces. The principles provide practical guidance to companies, particularly to country and security managers, on how to incorporate international human rights standards and emerging best practices into policies and decisions that sometimes have life and death consequences.

For example, the Risk Assessment section of the Voluntary Principles offers a roadmap of key human rights “factors” to be taken into account as companies plan or update their security arrangements. These include identifying conventional security risks as most companies do as a matter of course as well as broader conflict impact assessments, which are less common; the human rights records of public and private security forces operating or available in the region; the strength of the rule of law and judicial processes; and equipment transfers. Most significantly, companies are called upon to “consider the available human rights records” of potential security providers, both public and private, so that “awareness of past abuses and allegations can help companies to avoid recurrence as well as to promote accountability.”

The Public Security section urges that “the type and number” of forces should be “competent, appropriate and proportionate to the threat.” The most far-reaching provision in this section calls on companies to “record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities” and “where appropriate urge investigation and that action be taken to prevent any recurrence.” This provision breaks new ground by effectively encouraging companies to not only report potential abuses but to urge accountability for them, an important step in countries where impunity has been the norm.

If observed, these kinds of guidelines can alter the dynamics among companies, security forces and local communities by lowering risks to human rights and identifying companies with the rule of law—while maintaining necessary security. Yet they also raise difficult operational issues on the ground with military commanders and, ultimately, political and diplomatic issues with the host country governments that cannot necessarily be resolved by the companies themselves.

Seven U.S. and UK-based companies (Chevron and Texaco separately prior to their merger, Conoco, BP, Shell, Rio Tinto and Freeport McMoran) and nine major NGOs (including Human Rights Watch, Amnesty International, International Alert, the Lawyers Committee for Human Rights and the Fund for Peace, along with the Prince of Wales International Business Leaders Forum and Business for Social Responsibility) were able to “support the process and welcome the principles” because they saw an opportunity to serve their own core interests. The companies wanted the benefit of such rules of the road developed jointly with the NGOs, several of which had published detailed reports alleging company complicity in human rights abuses in the Nineties. The NGOs may have preferred principles that would be both legally binding and subject to independent monitoring. But they decided that engaging was better than missing a chance to develop a standard, though voluntary, which nonetheless the companies would be expected to implement and in turn could be used as the basis for further scrutiny.

The motivations of the U.S. and UK governments in convening and driving the process were just as clear. They shared a concern over the implications of such serious allegations made against a number of their flag companies. They shared a commitment to work together with companies and NGOs to promote corporate social responsibility, partly in response to the growing backlash against globalization. At least as important, they also shared an economic and strategic interest in ensuring that their companies could continue to operate in Columbia amidst that country's armed insurgency. They shared the same interest in Nigeria and Indonesia, two key countries facing fragile political transitions to democracy against a backdrop of low-intensity but violent regional conflicts threatening their unity and stability. For example, Texaco was forced to halt operations in the Niger Delta in August 1999 due to large scale community protests, while in Indonesia ExxonMobil was forced to shut production for several months in early 2001 at its Arun LNG facility after its operations came under direct attack from Acehese separatists.

The process probably never would have been convened nor the Voluntary Principles negotiated, agreed and announced without the key convening and drafting role of the U.S. and UK governments. Both the companies and NGOs looked to the governments to bring them together and then to announce the Voluntary Principles while shielding them, respectively, from perceptions that companies were foisting the Principles on sensitive host country governments; or that the NGOs were implying that their concerns were now resolved. And both the companies and NGOs looked to the governments to either lead or support the process of implementation at the country level by briefing the host country governments in Abuja, Bogota, Jakarta and elsewhere.

The Bush Administration has carried the initiative forward together with the British government. Steps were taken in 2001 and early 2002 to brief the governments of Colombia, Nigeria and Indonesia, and to join implementation discussions with the companies (including several not part of the original meetings in London and Washington.).

Further progress was made in a London plenary session in May 2002 when an additional U.S.-based company, Newmont Mining, joined the process and was followed the next month by Occidental Petroleum and ExxonMobil. These developments brought the number of participating companies to nine. As significantly, the governments of The Netherlands and Norway joined at that time: The Netherlands with its joint home country relationship with Shell (along with the UK); Norway with a commitment to bring Statoil and possibly others into the process. The engagement of these new participants reflects and reinforces the emergence of the Voluntary Principles as the global standard on security and human rights issues for extractive companies.

The government of Canada and several Canadian companies have also indicated an interest, along with other UK-based companies which have been following developments closely. When the process can be further expanded without diluting progress made so far, it would be useful to add the governments of Australia, South Africa and Chile together with the international mining companies based in those countries, along with the governments of Mexico and Brazil together with their state-owned oil companies which also operate abroad.

But more important right now than further expansion is consolidation and implementation on the ground. Two years after their launch, the credibility of the Voluntary Principles is on trial; the ability of the process to demonstrate concrete progress is being tested. The NGOs inside the process and others outside of it cannot be expected to accept such progress on trust alone. Progress must be demonstrated in concrete contexts and specific countries, and trust must be developed through further dialogue and new patterns of cooperation.

Tangible steps can be taken on three interlocking levels to give the Voluntary Principles more operational texture: one set of steps by the companies on their own; a second by the companies and NGOs working together; and a third by the convening home country governments, working directly with host country governments and security forces.

**First and foremost, companies can intensify the integration of the Voluntary Principles into their statements of company policy, training, and community engagement programs on a global basis.**

**They can:**

- Revise operating guidelines and procedures for their facilities and personnel in relevant countries to reflect provisions of the Voluntary Principles. Many managers in the field have little experience on these issues, and can benefit from materials which can help them meld company policy with the Voluntary Principles in specific situations.
- *Integrate the content of the Voluntary Principles into their training programs.* Personnel, from senior site and operations managers to company security guards, could benefit from basic introductions to human rights issues and detailed discussions on the use of force. Case studies and role-playing scenarios can be useful, especially if tailored to particular country conditions.
- Add clauses to security contracts with public and private security forces detailing expectations on key issues such as use of force and company equipment, and prior human rights records of individual units and commanders. Since much of the content of the Voluntary Principles calls on companies to reach certain understandings with security forces, it can be helpful to codify such understandings to the extent possible even if they are not made public.
- Integrate some provisions of the Voluntary Principles into community engagement programs so that security and community relations staffs more fully coordinate their activities. These programs require a willingness to expand communication and consultation on security issues with the local communities near their operations. Community-based security can be strengthened by hiring and training local community residents as security guards where conditions warrant. This approach depends not only on informing local communities about their rights but also their responsibilities for ensuring security. It also depends on developing trust and cooperation with local government authorities and security forces.
- Build understanding of the Voluntary Principles through direct dialogues with host country governments and militaries at the national and regional levels. It is especially important to engage with national oil companies such as the NNPC in Nigeria, ECOPETROL in Colombia, and Pertamina in Indonesia, which have a stake in

working with their foreign partners to address security issues in ways which minimize risks to reputation as well as to production.

BP Indonesia is trying to develop such a community-based approach for its planned Tangguh LNG project in Papua. Moreover, it has taken the unprecedented step of annexing the full text of the Voluntary Principles to its contract with Pertamina, and has also developed a set of security guidelines for private security contractors based explicitly on them.

Other companies may want to consider similar steps as they plan new projects, or revise their policies and procedures in connection with existing ones.

Second, far more interaction should take place between the companies and NGOs outside the annual plenary sessions convened by the governments. In addition to companies communicating the progress they have made and the problems they have encountered in their implementation of the Voluntary Principles, companies could work together with NGOs in four areas:

- *Consult on risk and conflict assessment criteria and planning with respect to global policy and specific countries.* The companies and NGOs might strengthen mutual understanding and trust by sharing information, methods and analysis, especially as new issues emerge or incidents occur.
- *Develop human rights content of training programs undertaken with both public and private security forces.* The International Committee of the Red Cross has joined the Voluntary Principles process as an observer. Its impartiality and expertise makes it ideally suited to facilitate and contribute directly to this kind of cooperation. Likewise, other NGOs may be willing to work with private companies in specific countries.
- Offer general reports on their implementation of the Voluntary Principles at the annual plenary sessions convened by the governments, as well as through other company communications channels. Such reports could strengthen the credibility of company implementation efforts, and encourage greater confidence on the part of the NGOs.
- Consider the Human Rights Watch proposal that companies begin “incident reporting” in the absence of viable or acceptable third-party monitoring. Companies could offer oral or written briefings on their response to specific incidents and issues addressed by the Voluntary Principles, while respecting the voluntary and non-binding character of the overall process.

Such direct consultation and cooperation must be handled sensitively to remain consistent with the core interests and appropriate roles of the companies and NGOs alike. NGOs would have to be willing to engage on this basis without diminishing their ability to scrutinize and criticize company security policies and practices. Companies no doubt would have to find and test the appropriate limits of information they would be willing to share.

Third, the convening governments should be prepared to take a more active role in working with host country governments to institutionalize the Voluntary Principles with military and police forces. The home country governments of companies operating in Nigeria, Indonesia and Columbia, among others, can use the Voluntary Principles as a

framework for helping their companies navigate some of the toughest threats to their investments, while remaining on the ground in such important countries. The Voluntary Principles can also be used as a framework for working with host governments and militaries to strengthen respect for human rights and accountability for abuses— sensitive issues which ultimately reflect on all parties and shape the climate of bilateral relations and cooperation on other interests.

The U.S., UK and Dutch governments can contribute to the implementation process in Nigeria in light of the incidents in the Niger Delta last summer. Further unrest is possible as the revenue allocation process channeling funds back to the states and local communities remains incomplete and expectations for tangible improvements remain unmet.

The U.S. Government in particular has raised the bar for testing the credibility of the Voluntary Principles in Colombia through its direct support for pipeline security. It will have a high political price to pay if such protection, however inadvertently, becomes connected to new allegations of human rights abuses by U.S.-funded and trained forces operating around an American company's operations. With the U.S. military increasingly called on to extend security protection to large-scale foreign-owned oil, gas and pipeline facilities in Colombia and elsewhere (such as Georgia), the line between the national interest of those countries and the corporate interests of the companies involved also becomes blurred. This development not only opens up new opportunities for expanded human rights training, but also exposes companies to new and different risks. In the event that U.S.-trained forces exceed their mandates and are found complicit in human rights abuses, companies are exposed to potentially significant new liabilities as well as risks to their operations and ultimately to their reputations.

For these reasons, the U.S. forces hitting the ground to train and equip the Colombian army brigades to protect the Cano Limon-Covenas pipeline should also come prepared to reinforce human rights training for their Colombian counterparts. They should also work with Occidental Petroleum to draw on the content of the Voluntary Principles where appropriate.

The U.S. and UK governments, together with those of Australia, The Netherlands and other countries, face the most sensitive situation alongside the companies in Indonesia. In the wake of the Bali bombing in October 2002 and threats to oil company facilities in Aceh and elsewhere in Sumatra, American pressure on the Indonesian government to crackdown on terrorism has become the overriding priority of U.S.-Indonesian bilateral relations. Stronger security cooperation is surely in the interests of both the Indonesian and U.S. governments, as well as of the foreign extractive companies operating across the archipelago. Yet as military and intelligence cooperation are strengthened to counter further terrorist attacks, the NGO and media spotlight will remain trained on the Indonesian government and military's record on human rights. The U.S. Government has pushed hard for accountability for past abuses by the military, in East Timor in particular. No doubt it recognizes that while the bilateral relationship and foreign investment environment both depend on a full Indonesian commitment to counter terrorism, congressional and public support for the relationship could be undermined by further abuses. It has already been put on notice by Senator Leahy, who has urged that U.S. training assistance to the Indonesian military be halted if the military is found to have planned the killings near the Freeport mine in Papua.

Those killings also threaten the long-term security and even viability of extractive company operations in Papua if accountability is not achieved. The Voluntary Principles will not provide security, the most critical priority. But they can contribute to accountability, on the part of both the companies and the security forces. Long-term security will not take hold in Indonesia without greater accountability, together with renewed efforts to achieve reconciliation in regions of unrest. While the companies will continue to share the main responsibility for implementing the Voluntary Principles, the U.S. Government should help engage the government and military in the process constructively. Such a signal from the U.S. can also help overcome any doubts to its commitment to the Voluntary Principles in Indonesia stemming from its August 2002 intervention in the lawsuit against ExxonMobil, when it asked a federal court to drop the case due to the complications it could cause in U.S.-Indonesian bilateral relations. (That suit alleged company complicity in human rights abuses in Aceh, including the charge that it provided land moving equipment used by the Indonesian military to dig mass graves).

While most attention has focused on the risks facing extractive operations in Nigeria, Colombia and Indonesia, the Voluntary Principles may be useful in a number of other countries as well— even those without current armed conflict or unrest but with records of human rights abuses or tensions with local communities. These range from Peru and Ecuador in South America to Papua New Guinea in the South Pacific where oil and mining companies have had tense relations with indigenous peoples, to several countries in Africa. In Africa, these countries include Chad and Cameroon, where the major pipeline project supported by the World Bank passes through regions previously torn by strife; and Equatorial Guinea, where major oil companies have established a presence in a country long governed repressively. The Caspian is another region where the Voluntary Principles may be relevant, especially as a security corridor is established alongside the Baku-Ceyhan pipeline from Azerbaijan through Georgia to Turkey.

Finally, much attention has been paid recently to the activities of private security companies, especially those based in the U.S. which are playing a growing role in advising and training military and police forces around the world. Whether or not these firms are unofficial extensions of U.S. foreign policy, the U.S. Government has an opportunity through its official licensing process to encourage them to integrate human rights training into their activities. Such training could include issues addressed by the Voluntary Principles, such as use of force and community engagement, while coordinating with similar training undertaken by the companies themselves.

Implementing the Voluntary Principles on Security and Human Rights is challenging enough since they already address the most pervasive human rights risks facing the operations and reputations of extractive companies around the world. Yet their implementation is further complicated by the fact that they connect not only to the collision of extractive companies and remote communities on the frontlines of globalization, but to sensitive diplomatic relationships and even geopolitical challenges at the same time. They raise difficult questions about the blurred, overlapping roles and responsibilities of companies, NGOs and governments. They address directly, even if only in certain countries, the turbulent but necessary balance that must be struck between security and human rights in an era of local conflicts and global terrorism. The



imperative of finding that balance will only increase in what has also become an era of accountability as well.

### **Ms Ieke van de Burg**

#### **Debate in European Parliament on Promoting a European framework for CSR**

Ms Ieke van der Burg is member of the European Parliament, for the Group of the Party of European Socialists. She is a member of the Committee on Employment and Social Affairs, Member of the Committee on Economic and Monetary Affairs and the Commission on Corporate Social Responsibility, Promoting a European framework for CSR.

#### **Introduction**

A week ago I happened to speak with two NGO representatives, Russell Pickard (Open Society Institute) and Geraldine McDonald (Coopération internationale pour le Développement et la Solidarité). They were in the Parliament to promote the campaign Publish What You Pay. The Publish What You Pay campaign tries to make politicians and the public aware of the importance of transparency in international business traffic. It is focussed on attractive industries such as oil, gas and mining. Foreign investors pay taxes, fees and other payments in order to get concessions of governments to operate in their countries. The problem is that these payments are often unaccountable to the parliaments and citizens of the countries involved. That is why the campaign calls for **mandatory** disclosure of payments and transactions with governments by multinational natural resource companies. Interesting is that the campaign uses a business argument to explain why it calls for mandatory disclosure. The argument is that all companies and investors will benefit from a level playing field if regulators require disclosure of taxes, fees, royalties and transactions. **Voluntary** disclosure would give companies who refuse transparency of their payments a competition advantage. This is a clear answer to one of the questions of this seminar: do we need binding regulation or voluntary principles? At the European level this last question on binding regulation or voluntary principles also plays a important role.

I am asked by the organisers to focus my contribution on the European aspect of CSR: can Europe make a difference? I certainly think it can. I will deal with several aspects of CSR and Europe: the mandatory and voluntary approach, Multi-Stakeholder Forum, mainstreaming and the relation of CSR with other debates. But I will start first with a short introduction on the discussion in the European Parliament with the Commission on promoting an European framework for Corporate Social Responsibility (CSR).

#### **Background**

In July 2001 the European Commission presented its Green Paper on CSR. The purpose of this Green Paper was to launch the debate on promotion of corporate social responsibility at a voluntary level, to achieve an overall European framework and to introduce greater transparency and greater credibility business own initiatives and to its evaluation and validation. The Commission's strategy to promote CSR builds on voluntary initiatives. My colleague Labour MEP Richard Howitt, who unfortunately could not be present here today, was rapporteur for the European Parliament on the CSR Green Paper. Richard is one of the most active MEPs on the field of CSR. He helped to put CSR more prominent on the political agenda. With the adoption of his report in may 2002 the European Parliament expressed its support for the Commission's efforts.

Although Richard would have preferred a more obligatory approach, we had to find a compromise which favours the voluntary approach, but nevertheless emphasises the need to have some binding rules. The Parliaments' position makes it clear that we have to work in the direction of minimum standards and mandatory annual reporting by companies on the social and environmental impacts of their activities. These annual assessment reports need to be independently verified at all levels of the company, its supply chain and business partners. Furthermore the EU should improve public access to existing information by public bodies, on companies' environmental and social performances.

Another element of the Parliaments' resolution is the request to set up a European Social Label to endorse products where there is respect for human and trade union rights.

A new element of the strategy to promote CSR is the idea to set up a European CSR Forum to bring together business and stakeholders, NGOs, trade unions and investors, in a dialogue. Last but not least the Parliament called upon the EU to mainstream CSR in EU internal and external policies.

A year after this Green Paper the Commission reacted in July 2002 to the proposals of the Parliament and of a broad range of NGO's and other interested parties, with a Communication on CSR and presented its strategy to promote business contribution to sustainable development. In this policy paper the Commission sticks to the voluntary approach, core innovation is expected to be found in 'European Multi-Stakeholder Forum', but there is no demand for mandatory annual reports or minimum standards. The Commission calls for a social and environmental role of businesses in a global economy and sets up a Forum for all players to establish principles for codes of conduct and to seek consensus on objective evaluation methods and validation tools such as 'social labels'. The strategy seeks to complement existing initiatives by companies themselves and by public organisations such as the OECD and the United Nations.

Many elements of the Parliaments proposals were taken on board by the Commission but, as I said, the Commission insisted to define CSR as *“voluntary social and environmental practices of business, linked to their core activities, which go beyond companies' existing legal obligations.”* Of course own voluntary initiatives are important. They complement but should not replace legislation and social dialogue. Both mandatory and voluntary initiatives are important as is mainstreaming CSR in internal and external policies of the European Union, which I call the integrated approach.

### **Mandatory approach : CSR reporting and Social labels**

A good example for the need of mandatory rules are the recent developments in CSR reporting and social labels. Increased consumer and investor awareness and pressure has led to a multiplication of social labels and codes of conduct on the company's social or environmental performance. Now, as we say in Dutch: “kun je door de bomen het bos niet meer zien”. Translated: we can not see the forest anymore because there are too many trees. In fact there are too many ethical reports and standards which business and consumers struggle to use but much less understand. The sheer number of voluntary codes on offer makes them part of the problem instead of the solution. That is why the Commission is asked to investigate the possibility of common social and environmental standards.

I already stressed the great importance of transparency of social reporting at European and international level. Transparency and annual reporting are or should at least be common practice in the field of financial markets and Company Law. Within the single European internal market companies call for the introduction of harmonised international accounting standards and other regulation. Internal Market Commissioner Bolkestein is very eager to proceed with his Financial Action Plan. But when it comes to standardisation of social reports or the introduction of international rating on social and environmental aspects, like Global Reporting Initiative and A2000, the Commission is suddenly less eager and companies stress the voluntary nature of CSR. Independent supervision is important, also in the field of social and environmental reporting. Social labels or codes of conduct have to be verified to prevent misuse and window dressing or to repeat Social and Employment Commissioner Diamantopolous' words :

“Greenwashing your social and environmental performance is as bad as whitewashing your profits” CSR should no longer be just a job for marketing departments. CSR should be linked to corporate governance, as companies must be as accountable for their corporate social and environmental behaviour as for their financial acts.

Mandatory provisions are crucial to create independently verified standards for CSR reporting and Social Labels. At the start of my speech I referred to the Publish What You Pay campaign. I said that one of the interesting reasons for the appeal of mandatory disclosure of payments is the creation of a level playing field. Why should we only create a level playing field when we talk about Internal Market and Competition Law and not create this in the sphere of CRS measures?

Also the role of investors and shareholders should be considered. Particularly institutional investors, such as pension funds, have taken a more and more active role regarding CSR in the recent year. Both in the companies' financial and overall strategy, but also with respect to the specific policies in the social and environmental field, they have developed as active promoters. This turned out to be both profitable in the financial sense and positive for the increasing CSR performance. These performances go hand in hand.

### **An EU Multi-Stakeholder Forum on CSR**

One of the ideas initiated by the European Parliament and taken up by the Commission, is the creation of a Multi-Stakeholder Forum. As I mentioned before this Forum will consist of all players, social partners, business networks, civil society, consumers and investors. It can drive the process forward in a very practical way: registering business codes which meet established minimum standards (to 'mark' the trees in the forest), publishing comparative data on companies' social and environmental performance, providing for supervision, monitoring and even perhaps mediation in the event of disputes. It can also help promoting transparency and convergence of CSR practices and instruments, through exchange of experience and good practice and seeking to establish a common EU approach. In 2004 the Commission will publish a review report on the work of the Forum. That will provide a second change to discuss further on the need for mandatory rules.

### **Integrated approach: mainstreaming CSR in EU's internal and external policy.**

In my approach of CSR I have always focussed particularly on another important issue: mainstreaming CSR in EU's external and internal policy. CSR is often linked with activities of multinationals in developing countries where NGO's and Trade Unions call for companies to apply ethical standards: instrumental values (like freedom of trade union

organisation and negotiation) and other ILO core labour standards (like equal treatment of men and women and prohibition of child labour). But also respect for the environment and human rights in general. I think CSR is not just for multinationals. It is also important for the policy of states, when looking at foreign trade, development aid and other investments in less developed countries. The Member States of the EU should coordinate their external policy and discuss CSR issues within the World Trade Organisation. By the way is it not strange that the EU still protects its own markets with subsidies against products from developing countries while spending money on development aid to support the development of those same economies? It is time that the EU not only calls to multinationals to respect CSR values, but also fully incorporates them in its own external policy. Furthermore the EU should mobilise the EU's trade and development programmes to tackle abuses by companies in developing countries, and also establish an EU blacklist against companies guilty of corruption (similar to that operated by the World Bank).

Another element of the integrated approach is mainstreaming CSR in internal policy. The EU should subject all financial assistance programmes, including procurement and investment promotion, to compliance with basic standards. I refer for instance to the European Investment Bank which, like the World Bank, invests billions in projects inside and outside the EU. Compliance with social and environmental standards of these projects should always be transparent and supervised. An EU Compliance Panel could ensure that companies awarded for EU public procurement or financial guarantees comply with EU human rights obligations and minimum applicable international standards such as ILO core labour standards and OECD guidelines for multinational companies. This brings me to my last point about the way the European Commission tries to tackle the issue of CSR.

### **Stakeholders of shareholders approach?**

In short one could say the message that the European Commission is giving is not completely clear, because while Commissioner Diamantopoulou is promoting CSR her colleague Commissioner Bolkestein does not seem to know the real meaning of the words Corporate Social Responsibility. While Diamantopoulou wants to involve all stakeholders, ngo's, workers, companies, business partners, consumers, public authorities and local communities, Bolkestein is only interested in shareholders. But Bolkestein's ideas are old fashioned, even for entrepreneurs, because more and more companies realise that involving employees, clients and local communities, is part of their core business. And not only companies, but also investors, especially major institutional investors like pension funds, are becoming more and more aware of the ethical aspect of their investments. They are not only using financial criteria, but also take into account ethical, social and environmental criteria. Unfortunately we do not see this integrated approach in the debates on Company Law and Financial Markets. There pure shareholder value is still dominant. The last proposals of the Winter Expert Committee on Company Law for example do not even mention workers involvement. We should not only appeal to companies to apply CSR, but also incorporate workers involvement, social and environmental elements when we talk about Financial Services, Company Law, public procurement, take over bids and competition policy. Because for me, together with Diamantopoulou, CSR means an integrated approach, not just greenwashing of EU policies or company activities.

## **Conclusion**

To conclude: how can Europe make a difference?

CSR builds on existing initiatives. But there is a need for both a voluntary approach and a mandatory approach, and besides that CSR has to be integrated into EU all external and internal policy. Not only into development aid, but also into foreign trade policy. And not only in social policy but also company law and internal market policy.

- **Yes, Europe can make a difference.**

In the field of trade policy for example, the EU is an important partner in the World Trade Organisation, EU Member States play an important role in the United Nations or G8. As EU we have to use this position and try to put CSR high on the agenda of the international political and public debate.

- **And not only externally, but also internally the EU can make a difference.**

Many companies are operating across borders in the single European internal market. To prevent social dumping, business activities should be based on agreed principles. These principles should include ethical, social and environmental standards. Companies, but also States, are often reluctant to go beyond legal obligations. That is why the bringing together of voluntary activities in the Stakeholder Forum may finally lead to European wide standards, criteria and mandatory procedures for CSR reporting, help to give CSR a boost. Such a basis is also imperative to create a fall back position in situations of crisis and war, which you are discussing in this conference.

## **Some Comments on War Economies in the DRC**

### **Koen Vlassenroot**

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On the surface it seems that the present conflict in the Democratic Republic of Congo (DRC) is all about gold, coltan and diamonds rather than about security concerns, national power or political representation. For many reasons, the war in DRC has been presented as an illustration of the shift to a new type of conflict, in which national armies, liberation movements and political ideologies are replaced by warlords, informal economic networks and greedy army officers, who are primarily concerned with making a profit from Congo's natural resources. This presentation attracted particular attention after a United Nations Panel of Experts in April and November 2001 and in October 2002 came up with some remarkable research results that seemed to confirm this economic thesis. The UN Panel's conclusion certainly illustrates the 'greed' account of Paul Collier and others, which came to dominate the public debate on present conflicts. The least one can say about Collier's thesis is that it has enabled conflict analysts to integrate the economic dimensions of civil war into their thinking. Moreover, his understanding that "*it is the feasibility of predation which determines the risk of war*" has had a direct consequence on the formulation of policy objectives by development agencies and international decision makers the like.

However, this limited explanation of the DRC conflict as an international struggle for natural resources includes a great risk for the current peacebuilding process in the Great Lakes region. On the one hand, war economies are a result rather than a cause for conflict, so greed does not explain why people start to fight but why they continue to fight. On the other hand, in the DRC the present war economy differs from the pre-war economic organisation in terms of degree rather than absolute conditions. The existence of a pre-war network of parallel economic activities and trans-border trade indeed has facilitated the development of a local war economy that is largely based on these networks.

In this short presentation, I would like to raise three issues that are of particular importance when dealing with the economic dimensions of conflict and the possible role business can play in peace strategies:

the first one is about the comprehension of the specific role of economics as an element that is fuelling violence and conflict in the DRC;

the second one is about the grassroots perspective on war economies;

the third one is about possible strategies in order to turn war economies into peace-economies.

Let me start with the first point, eg. the relationship between violence and economics, and propose an alternative view to the current belief that *economics fuel violence*.

To move forward in the comprehension of the true relationship between violence and economics, a paradigm shift seems very crucial. Instead of focusing on war economies as an isolated phenomenon, I would like to argue that we should try and understand how local elites and societies are responding to global economic and social changes within a context of war. Elsewhere, I have stressed the need for a better understanding of the corrosion of the social fabric as a consequence of the war if one wants to construct peace building strategies from an economic point of view. Also various reports of the International Peace Information Service (IPIS) have illustrated the often particularistic nature of economic violence in the DRC. In accordance to IPIS's conclusions, the UN Panel of Experts in its October 2002 report assigned crucial importance to certain "elite networks" in the continuing exploitation of Congo's natural resources. Together, these studies provide a clear illustration to the idea of a "network war" that works through and around states. On the one hand, most observers agree that the conflict in DRC is increasingly challenging the competence of territorially defined governments and armies. On the other hand, there exists a general reluctance to also accept the normative conclusion of this thesis, namely that the same conflict is generating alternative nodes of political, social and economic power. Instead of "complex political emergencies", according to Mark Duffield conflicts such as the one in DRC should be regarded as "emerging political complexes". "Rather than expressions of breakdown or chaos," Duffield says, "the new wars can be understood as a form of non-territorial network war that works through and around states." These new wars are by definition associated with a process of social transformation.

Therefore, we want to argue that the economic imperatives of the warring parties and the impact of the conflict on the local economic fabric and local opinion should not be neglected but have to be put into the right perspective to protect against drawing any erroneous conclusions. The situation on the ground in the DRC became one in which "economics fuels the violence, which fuels the economics". The recent competition for the

coltan business and the diamond trade once again exemplified how local businessmen, armed movements, foreign government forces and Western private business interests are all part of the same informal commercial networks, but also continuously fuel the present conflict in the two Kivu provinces and beyond. The result is a remodelling of local and regional modes of economic transaction and the consolidation of violence as the organising principle.

This brings us to our second point of concern. Although often neglected among peacemakers, western civil society leaders, scholars and diplomats, the different networks that link the local to the global not only facilitate the rebel movements to continue their military activities and foreign entrepreneurs to continue their profitable economic activities. For large parts of the population, they are also the sole mechanisms left for coping with the conditions of the present conflict. Contrary to what some have argued, the present popular discourse spread by civil society leaders in the DRC -that these parallel networks at present are mainly selling the national birthright and therefore should be obstructed - does not prevent most of the Congolese from searching for access to these economic networks; many Congolese even depend on them. The advantages of mining activities are no longer limited to multinational companies or national elites, but also spread to the grassroots level and create an alternative source of income for many households. Placing this activity under international embargo, as was recently recommended by some European NGOs, might have equally disastrous effects as the present war. The question, indeed, remains whether it is the current war that is facilitating the coltan and diamond rush or the total collapse of state structures and the absence of economic prospects. As the gold rush of the eighties suggests, it is highly questionable that there would have been no search for diamonds or coltan if there had not been a war.

Therefore, I want to conclude with some elements of discussion. First, as fieldwork in the DRC by a number of academics has demonstrated, not all economic activities should be considered bad economies. Embargoing the present economies of the DR Congo thus risks creating additional violence rather than reducing it. As Dietrich states in his article on diamonds, the first challenge is to ensure that diamonds do less, rather than do more damage. This aim cannot be obtained by simple embargo's but need, in line with Dietrich's argument, strategies to introduce or improve good management over natural resources. It is in this sense that business can become a force for peace. A Belgian Parliamentary initiative that aims at putting a number of conditions on the economic activities of Belgian enterprises in conflict-torn societies, is a step in the right direction and will help realising a number of economic actors that their activities have an impact on the conflict within which they operate. Once again, this is an indirect argument for responsible governance.

Second, the grassroots level of these war economies should be integrated into every discussion that aims at reducing the scope of violence and that aims at turning war economies into peace economies. While this approach integrates the position of the grassroots population into its analysis, it does not neglect the existing links between war and economic activities. Grassroots populations in many cases depend on their involvement in the illicit extraction of natural resources in order to survive. Our plea for the incorporation of economic security into demobilisation and disarmament and reintegration programmes therefore points to one of the crucial, although highly neglected, elements of any successful strategy to bring about peace.

Ghent, 12 November 2002.

## **Presentation by Michael Lundberg**

### **Global Witness Assistant Campaigner for Liberia**

#### *A Few Words of Thanks*

First, I would like to say a word of thanks to the sponsors of this conference, for making sure that timber receives sufficient publicity as a conflict commodity. Timber often loses out to diamonds and oil, but it is no less important. Unfortunately, “conflict coffee table” is not as sexy or attention grabbing as “blood diamonds”. So thank you to the organisers of this conference for providing a forum in which to raise the issue and profile of conflict timber.

#### *Introduction*

First off, a warning of sorts, in that you will hear me mention the phrase “conflict timber” a lot, in a deliberate attempt to enter it into common usage. To Global Witness, conflict timber is:

“timber that has been traded at some point in the chain of custody by armed groups – be they rebel or regular soldiers – or by a civilian administration involved in armed conflict – either to perpetuate conflict or take advantage of conflict situations for personal gain.”

So this is distinct from unsustainable forestry, and is beyond the use of timber revenues for normal corruption. Conflict timber relates specifically to a conflict commodity and in this sense is a perfect description of what is going on in Liberia.

As we know, Liberia was sanctioned by the UN Security Council in May 2001 for its role in fuelling the brutal civil war in Sierra Leone; a war that reduced the average life expectancy in Sierra Leone to under 26. Earlier this year, that war that ravaged Sierra Leone for so long was officially declared over. But while President Kabbah may consider overt hostilities by Liberia and the RUF over, the regional instability and threat that Liberia poses has not been lessened. And while the UN may have banned the sale of rough diamonds, which funded Liberia’s war machine during the Sierra Leone civil war, the UN has not tackled President Taylor’s current source of conflict finance: timber.

#### **• Speech Overview**

Regarding the Role of Timber Companies in Liberia, there are three major points to make:

1. The timber industry is what sustains President Taylor’s war and corruption machine. Timber is his “pepperbush”, his lifeblood.
2. Many logging companies are themselves arranging and facilitating illicit arms transfers for President Taylor
  - a. They are paying for weapons and setting up deals
  - b. Overseeing arrival of weapons at Port Buchanan (OTC) or Port Harper (MWPI) on logging ships, as well as overseeing weapons storage and transshipment to logging company militias and government forces.



- c. Our information shows that remittances are paid to the government, which are all but required to maintain one's logging concession, are paid as a percentage in arms and a percentage in cash. Both weapons and cash are paid to President Taylor at the Executive Mansion, not through the Central Bank or any other accountable government structure.
3. However, beyond supplying arms (in contravention of UN sanctions) and money to the government, some logging companies have built up significant militias which serve as proxy fighting forces for the Liberian government.
- a. These logging company militias commit grave human rights abuses
  - b. These militias fight for the government, supplementing an unreliable and hard to maintain government military force, and act with relative impunity.

### **Liberian Timber Industry Revenues**

It is hard to put an accurate value on the Liberian timber industry revenue. Why? The use of "transfer pricing", whereby companies exporting officially understate the value and amount of timber being shipped out, to avoid domestic export and revenue taxes. Those companies do, however, charge the buyer for the full amount. Then importing companies will overstate the value of timber once it reaches Western ports, to, at least on the official audit books, show less profit than was actually accrued, to avoid paying corporate revenue and profit taxes.

Corruption. It is revealing to compare the revenue figures calculated by different Liberian government agencies.

First, it is interesting to compare the difference between the internal documents from the Ministry of Finance and its official external figures. In the internal document that Global Witness obtained, the amounts discussed are solely for timber felled by OTC/RTC. There, the document lists total 2001 OTC/RTC production at 508,000 cubic meters, conservatively valued at approximately \$47 million. This compares to the official Ministry of Finance numbers, which state that OTC/RTC produced just 360,000 cubic meters, at a value of approximately \$39 million. That creates a difference of \$8.6 million that has gone missing just within the walls of the Ministry of Finance and just in relation to one company. The logic would hold that more money is unaccounted for with regard to the 32 or so other companies officially operating in Liberia.

It is then interesting to compare total, industry-wide export figures from the Ministry of Finance and the Forestry Development Authority (FDA), which is the principle decision making body related to timber issues. The FDA, presumably the first government body to keep track of production and export figures, and the government body with the most accurate accounting of timber revenues, listed total 2001 production at 790,000 cubic meters, with an export value of \$83 million. The Ministry of Finance holds that only 560,000 cubic meters were produced, with an export value of \$60 million; a discrepancy of about \$23 million. And that is just for the values that the government admits to. Considering the money seen missing at the Ministry of Finance, it is likely that these values are understated.

Global Witness, while focusing more intensely on the production and export values of OTC and its sister companies RTC and Natura, conservatively estimates that, after the costs of labour, equipment and other overhead is taken out, the timber industry in 2001

produced approximately \$106 million in profits to be shared among timber companies and the government.

Why focus so much on these numbers and discrepancies?

- To show how much money is at play officially.
- To show how much goes missing for off budget arms buying, militia salaries, and corruption.

When we talk of CSR and commodities in conflict zones, a key element to bringing both companies and governments in line is transparency of accounting; ensuring that no hidden money is used for extra-budgetary arms imports and parastatal militias.

No such transparency, or even any form of opacity exists currently in Liberia.

Global Witness has been integrally involved in the Publish What You Pay campaign, bringing pressure on oil companies to publicise the signatory bonuses and other payments made to governments, specifically Angola. A similar type of transparent behaviour would be highly useful in Liberia.

In relation to transparency in accounting and auditing procedures, it is worth a quick mention of the current situation with Deloitte and Touche, the international auditing firm. Deloitte was hired to perform an “audit” of Liberia’s timber industry and shipping and corporate registries’ revenue, in accordance with recommendations made by the UN Security Council and its Panel of Experts on Liberia.

This audit would seem a good step, however:

there is total lack of transparency, both in the tendering process and in the Terms of Reference for the contract.

Deloitte has been uncooperative and not forthcoming with information; a point made also by the last Panel of Experts on Liberia report.

The mandate, as according to the draft terms of reference, is a systems audit, and does not fully and retroactively audit the revenue and hard numbers of previous years. This further delays any real opening up of the government’s accounts.

Those involved in the audit raise questions. It was not a team from Deloitte and Touche international doing the job; rather, a small country office out of Ghana was hired to perform the audit. This is a small country office, whose capacity to handle such a large project is legitimately called into question. Moreover, the draft TOR show a significant portion of the work being subcontracted to a small, unknown Liberian auditing firm which is owned by one of the lead partners, a Liberian named George Fonderson.

All notes and final assessments are the sole property of the government of Liberia, and cannot be released without the direct approval of the government. This is anything but transparent.

The audit, overall, is lending legitimacy to destructive industries, and a whole contract which grants both the UN and general public access to the information found by qualified auditors should be put in place.

### **Logging Companies Facilitating Arms Deals**

Logging companies and logging ships serve as vital conduits for illicit arms imports, and have been largely ignored or left unchecked.

The Ports are managed and operated by logging companies, and those companies help provide mostly expatriate, well-armed stevedores and security forces when suspected weapons shipments arrive. Moreover, if weapons are not picked up immediately by the

government, they are often stored at the logging company's compound, with both OTC and MWPI maintaining well-secured storage areas for such arms.

Buchanan Port – operated by OTC

Harper Port – operated by MWPI

There are 5 incidents so far in 2002 that we have been made aware of, but many more are coming in that we do not know about.

The links between logging people and arms is long:

Gus Kouwenhoven, currently under a UN travel ban for his arms transport to the RUF rebels in Sierra Leone, manages OTC/RTC/Natura.

Mohammed Salamé, owner of Mohammed Group of Companies (MGC) and Bureaux Ivorian Ngorian (BIN), has also been named in UN reports as an arms facilitator.

Leonid Minin and Sanjivan Ruprah, notorious arms dealers named in numerous UN reports and both currently under arrest in Italy for arms dealing, had logging interests in Liberia.

Victor Bout, arms dealer and alleged transhipper of weapons and troops for the Taliban and Al Qaeda, also has business ties with Liberian logging companies.

### • **Logging Company Militias and Human Rights Abuses**

Beyond aiding arms imports, a number of logging companies are actively engaged in the ongoing war against the LURD rebels, through building up and arming private militias which then go and fight on behalf of President Taylor.

Trained by the ATU and other paramilitaries, these militias act with impunity both in logging company concessions and on the battlefield.

Logging militias have been implicated in the following human rights abuses:

- Arbitrary arrest and detention
- Torture
- Public humiliation
- Sexual exploitation
- Summary killings (by those fighting in Lofa)
- Intimidation, forced displacement
- Forced labour
- Destruction of private property

OTC and ILC are specifically labelled two of the worst militias, with OTC's number over 2,000 men. Both use forced labour, and ILC has been said to use rape as a tool of intimidation and control over local populations.

Beyond militias, some companies have contributed to:

Exposure to disease, through poor sanitation, introduction of prostitution at work camps, lack of family housing leads to squatter settlements

Hazardous working environment, where untrained personnel are being killed or maimed

Illegal dismissals and labour restrictions

Wanton environmental destruction, in violation of Liberian government regulations.

Etc.

### **So where does this leave us?**

What is the state of CSR in Liberia?

There is a vicious cycle in Liberia. The government that relies on human rights-abusing logging militias for its survival, and companies that must produce weapons and fighters in order to stay in business.

Hence, it is highly unlikely that a voluntary arrangement would suffice in Liberia, and even any legislative remedy would be very difficult to enforce, given how the companies act with impunity on the ground.

Moreover, the companies are mostly Liberia based, not large MNCs, so shareholder actions and laws against MNC abuses would not apply.

Better still is to discuss the role of the large European and Chinese importers of conflict timber from Liberia.

These companies have, or should have, the responsibility to do proper due diligence in determining where their logs are coming from, and under what conditions they are being extracted.

Surprisingly, many know and have done little; including DLH Nordisk (Danish), Wijma (Dutch), Global Star (Chinese), Pinault (French), Danzer (German) and Theodore Nagel (German). These groups have all been approached by Greenpeace, Robin dus Bois and Global Witness, but continue to buy conflict timber from Liberia. Many of these firms don't bother to try and hide their sources, and buy directly from OTC/RTC/MWPI/etc. There are many more European manufacturers who buy via agents and intermediary dealers, to obscure the origins of their wood.

Secret codes of dots and front companies are now being used, to hide the fact that the timber being imported is Liberian.

OTC tried changing its exporting name to avoid detection, but was soon found out.

So while these companies are not directly involved in logging in Liberia they are certainly culpable as the buyers of conflict Liberian timber and perpetuate this vicious and destructive cycle.

It is important to remember, ALL timber from Liberia is "conflict timber", not just that produced by MWPI and OTC. A portion of all revenue being produced by these logging companies and their European buyers is funding the conflict, even if they themselves are not directly involved in the human rights abuses.

When we sanction rough diamonds we do it in a blanket fashion; we should do the same with conflict timber. Treat it as a conflict commodity just like any other, putting aside personal economic or political interests to cut off the funding that is fuelling such a brutal war.

### **Conclusion**

The picture painted in Liberia is pretty grim.

The timber industry is a major source of conflict finance.

Some companies are involved in importing arms, thus violating UN arms embargoes, with the support of the Liberian government.

Some companies have actually mobilised fighting forces that are part of the conflict, fighting with the government against the LURD rebels.

Thus, there is not much hope for voluntary measures of CSR in Liberia, and any enforced measures would be difficult to implement given the lack of government concern and judicial infrastructure.

Where does that leave us?

Do we turn focus on European and Chinese importers? Whilst some companies have bowed to public pressure and moral common sense and stopped importing from Liberia, many more have not.

Do we legislate away their ability to import conflict timber? And would countries like France and China, the two largest importers of Liberian conflict timber, agree to any legislation that would restrict such sources of tropical hardwood? Judging by past behaviour, I would expect them to be resistant.

But, to ignore the role that conflict timber revenue and timber companies play in Liberian and West African instability is criminal negligence.

With Sierra Leone trying desperate to consolidate its nascent peace and suffering under Liberian refugee inflows, and Guinea's instability and Ivory Coast's current political upheaval, we cannot overlook such a significant source of conflict as the Liberian timber industry.

Whether it be voluntary or legislated, producer or buyer focused, something must be done. Either way, I think that we can agree that the status quo is unacceptable.

Thank you.

### **Concluding remarks from the point of view of the Ministry of Foreign Affairs**

**Mrs Renée Jones-Bos, the Netherlands Ambassador for Human Rights**

- Corporate social responsibility is a complex issue, with many dilemma's. Dilemma's are part and parcel of human rights issues in general – we do not always have clearcut answers. That is why I am grateful that Amnesty International, Pax Christi and the Netherlands Institute of Southern Africa have organised this conference today. It has given us an opportunity to perhaps come closer to the answers, to perhaps solve a number of dilemma's. It was very valuable that different perspectives were brought into the debate today. I would also like to express my appreciation for all the work done by ngo's in the field of human rights.
- The discussion on corporate social responsibility is not new. In recent years, there has been an ongoing debate in the Netherlands on the subject, between enterprises, consumers, ngo's and the government. So far the Dutch government has played a facilitating role in the debate. After the establishment of the OECD guidelines, the government has set up a National Contact Point, and a CSR knowledge centre. The government is also actively involved in providing information to enterprises on the situation in the countries in which they want to invest.
- The Dutch government participates actively in international activities in the field of CSR. I already mentioned the OECD guidelines, which we promote. In providing funding or subsidies to companies for activities in developing countries, the Ministry of Foreign Affairs asks companies to commit themselves to the OECD guidelines. An important contribution is also the strengthening of the capacity of governments, through institution building, developing proper legislation etc. in which the Ministry

of Foreign Affairs is actively engaged. But not only governments, also civil society and trade unions receive support from the Dutch government, bilaterally and through the so called Co-Financing Organisations and through our trade union support program.

- We support international initiatives, such as the Global Compact launched by UN SG Kofi Annan. By signing on to the Compact, companies commit themselves to nine principles related to human rights, the environment and labour rights. After doing so, companies share regular information on measures they have taken, best practices, etc. The World Bank has set up a similar initiative called Business Partners for Development. As you are all aware, the Netherlands has joined the US and UK government in subscribing to the 'Voluntary Principles on Security and Human Rights'.
- A question was posed this morning about the role of the Netherlands government on the discussions within the Subcommission of the UN Human Rights Commission on the Draft Norms and Responsibilities of Transnational Corporations and other Business Enterprises with regard to human rights. The government has so far not taken a position in this discussion because the sub-commission is a group of independent experts and we value that independence.
- A lot of progress has been made with voluntary approaches. Many companies have adopted codes of conduct. Some of these go beyond minimum standards. And they are adapted to the circumstances of particular firms or industries and particular countries. So they can be efficient and can have a beneficial effect. The Dutch government welcomes these voluntary activities.
- We discussed the voluntary approach vs. mandatory regulations in length today. Should the role of the government go beyond voluntarism? Is mandatory regulation the best way forward? As discussed today, some argue that mandatory arrangements are an indispensable complement to voluntary regulation, as the voluntarism has no impact on those companies that are uniquely motivated by profit making. This a question with which we continue to struggle. If mandatory regulation is the best way, what should be included in those regulations? Can regulations be specific enough to be used by a wide range of business sectors? Are companies too diverse to regulate? The fear exists that binding regulations can only be so general that they have no value. That they will not go beyond the obvious, such as the fact that companies should refrain from human rights violations, such as torture, or that companies should avoid the use of worst forms of child labour. As Fried van Hoof pointed out this morning, these issues are already covered by many binding legal instruments. Also, the fear exists that binding regulations may be so general that they cannot be applied in day to day situations, in day to day business transactions. Prof. Flinterman pointed out that the voluntary approach can be seen as a supplement to the existing binding regulations.
- The question of binding regulation is even more important when it comes to investments in conflict areas. Recently, the UN Security Council discussed the report on the illegal exploitation of natural resources in the DRC. The report, in which critical remarks were made also about neighbouring countries, gave cause to strong reactions. One African country accused the panel from using the OECD guidelines as a reference point for the report. After all, the African countries were not committed to

the OECD guidelines. This again raises the question of the international commitment to CSR. When negotiating international standards, they should be global, all countries should be involved, and committed to the standards. It is not enough that western countries and western companies favour these principles. As Andre Driessen said this morning: you can't rule the world from the west. And that is another problem: there is much resistance in less developed countries to international standard setting. Another important question that was raised this morning by many different speakers is the question of implementation and verification. Companies, although recognised to have rights and obligations under international law, are not full subjects of international law. Governments conclude treaties, and it is up to them to provide the necessary implementation. As Liduine Zumpolle pointed out, especially in conflict areas, this cannot be guaranteed, as there often is no government to enforce the obligations.

- There are clear situations in which investment in conflict areas should be discouraged, such as Birma for example. Embargo's can be a useful instrument. But there are also many cases in which embargoes cannot be applied, simply because the situation is not clear enough to warrant such strong measures, and also because embargo's sometimes isolate the population from outside influences which could be beneficial for the improvement of the situation of the civilian population.
- Much of the existing rules apply to peace time investment. It is relatively easy for companies to implement these rules in these situations. When it comes, however, to conflict situation, I think we can all agree on the basic rule, that companies should refrain from any activity that can contribute to the existing conflict, as Bennett Freeman stated, there should be no business in countries where business fuels conflicts. But then we come to the question: when do companies directly or indirectly contribute to or profit from a conflict? The answer to this question is not yet clear, there is no consensus on this. And what is the responsibility of the government where the headquarter of that corporation is established? Also that is not yet clear.
- Today we have studied the practical application of three human rights related documents in specific case studies. I think that one of the conclusions that can be drawn from the discussions today, is that a lot of work still remains to be done on how to address the issue of the regulation of business in situations of violent conflict. This conference today has helped us on the way, and I would like to express my sincere gratitude to the organisers for convening this meeting, and for its valuable outcome.

CSR is a complex issue and so far the Dutch government has played a facilitating role:

- The Dutch government only lends money if countries sign the OECD guidelines. The debate has also grown internally. For example in Lesotho the high court has convicted two companies with bribery.
- We also support civil society and trade unions through financing.

There has been a lot of movement over last three years and there is now there is a lot more commitment to CSR. EG Global Compact. This may be voluntary but it does promote discussion on exchange of principles. Movements have been made with voluntary approaches. Some countries have improved but there are still many questions:

- How far should a company go in interfering in a country? E.g. Chile where TNT almost took over. There is a risk involved in moving too far.
- Should the role of the government go beyond voluntarism? It is argued that voluntarism is not motivated by companies uniquely motivated by profit making.
- Are companies too diverse to regulate?
- Can regulations be so general they have no value?

Regarding investment in conflict areas, we have to remember that we cannot rule the world from the west. It is not enough that only Western companies are in agreement. There is often resentment in the UN that west is felt to be too much in control. Whilst companies have obligations under national law they are not subjects of international law. Regarding provisions for conflict areas this is a complicated area. All conflict areas are very distinct. There are clear situations where investment in conflict areas should be prohibited. E.g. Burma. And in general there should be no invest if companies fuel conflict countries. This leads us to new questions, e.g.

- When can companies be said to be fuelling conflict areas?
- Does the population suffer more if companies withdraw?

All situations are different. There is much discussion underway but we still need research. We need investment in the developing world and we need to make sure it is done better than it is being so now.

Let's hope that CSR has moved up the agenda.

## **Initiating Organisations**

Amnesty International, Dutch Section, Pax Christi Netherlands and the Netherlands Institute for Southern Africa are co-organising the event.

- Amnesty International is a leading international human rights organisation. It has recently enlarged its mandate to address the human rights responsibilities of commercial enterprises. [www.amnesty.nl](http://www.amnesty.nl)
- Pax Christi is the Roman Catholic peace movement. It is e.g. actively promoting peace in the Sudan. [www.paxchristi.nl](http://www.paxchristi.nl)
- The Netherlands Institute for Southern Africa is a politically independent organisation for the promotion of democracy in Southern Africa. It co-ordinates the international Fatal Transaction campaign. [www.niza.nl](http://www.niza.nl)