

# Rules of Engagement

Regulating business in armed conflict  
Conference Report



**Nederlands instituut voor Zuidelijk Afrika**



Joint Amnesty International / Netherlands Institute for  
Southern Africa / Pax Christi initiative  
The Hague, 3 November 2002

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## Initiating Organizations

**Amnesty International** is a leading international human rights organization. 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.paxchrist.nl](http://www.paxchrist.nl)

**Netherlands Institute for Southern Africa** is a politically independent organization for the promotion of democracy in Southern Africa. It co-ordinates the international Fatal Transaction campaign. [www.niza.nl](http://www.niza.nl)

This report is a summary of the main findings. Complete speeches can be downloaded from our websites.

"To end a violent conflict it is necessary to understand and change the incentives that make violence a solution rather than a problem for significant groups." - David Keen

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## 1 Introduction

Over the past ten years it has become widely recognized that besides respecting national laws, multinational companies have an international legal obligation to promote respect for human rights and a moral obligation not to profit from war and human misery.

The common opinion among trans-national companies and their home states is that socially responsible business conduct can be best achieved through voluntary regulation. Mandatory arrangements are believed to thwart the development of socially responsible policies and to provoke defensive attitudes rather than to bring about effective action. Others, however, 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. While responsible companies may avoid socially high-risk activities, the less scrupulous ones may be rewarded with extra business opportunities.

The lack of explicit regulation is notably painful in situations of violent conflict. In war-torn countries like Sudan, Angola, Liberia and the Democratic Republic of Congo (DRC), economic interests are among the driving forces behind large scale violence. Although there are relatively few companies active in such extreme conditions, their impact on the situation can be huge

There is a wide variety of initiatives to achieve corporate social responsibility. The conference aimed to achieve a better understanding of three prominent venues to promote the corporate social responsibility and to assess their significance in situations of violent conflict:

- The Voluntary Principles on Security and Human Rights (A tripartite - business, governments, NGOs - initiative);
- The Draft Norms and Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights (a UN Sub-Commissions on Promotion and Protection of Human Rights initiative);
- The May 2002 European Parliament resolution on the Commission Green Paper on Promoting a European framework for Corporate Social Responsibility.

All three initiatives chosen have a governmental dimension, having been initiated by a United Nations institution, the European Union/European Parliament, and two permanent members of the Security Council respectively. The seminar assessed their relevance in three cases of internal conflict in Africa where there is a structure of economic incentives that sustains violence:

- Oil exploitation in Sudan
- Diamond exploitation in DR Congo
- Tropical wood exploitation in Liberia

## 2 Theoretical perspective

3 initiatives and their applicability on situations of armed conflict.

### 2.1 The Voluntary Principles

The Voluntary Principles on Security and Human Rights can be considered, of all three initiatives discusses, the most adapted to situations of armed conflict. They offer 'rules of engagement' for the extractive industry.

Bennett Freeman explained the history and content of these principles in his speech "Managing Risk and Building Trust: The Challenge of Implementing the Voluntary Principles on Security and Human Rights". The focus here was the tension between security and human rights interests; how to balance the companies legitimate need to meet real security threats in certain countries and the obligation to respect human rights.

Freeman stated that the Voluntary Principles do attempt to provide solutions to some difficult problems. However they do not try to solve all the issues the extractive sector faces and which have also been put under the harsh spotlight of international NGO's. They are work in progress and should be judged as such.

The number of companies and countries that have joined the initiative is still growing. However, Freeman emphasized that consolidation and implementation of these principles on the ground should have priority at this moment. 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. Freeman elaborated on the concrete steps companies, NGO's and governments could take to make the principles more useful and credible:

- 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.
- Second, far more interaction should take place between the companies and NGOs outside the annual plenary sessions convened by the governments.
- 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.

Freeman concluded that the Voluntary Principles can contribute to accountability on the part of both companies and security forces. The Voluntary Principles raise difficult questions about the blurred, overlapping roles and responsibilities of companies, NGO's and governments. The imperative of finding a balance between security and human rights will only increase with enhanced accountability as well.

Co-referents Lidouine Zumpolle and Rodrigo Rojas posed some critical questions on the applicability of the Voluntary Principles. In many current conflict areas, as for example in Colombia, the presence of the state is low and the question arises, how

companies can avoid financing conflicts. The Colombian situation demonstrates this. Although Orient Petroleum works in respect of the Principles-with well trained American and governmental troops in the desired manner-the company also pays the FARC guerrillas to drive away other guerrilla movements (IRN). Thus although the Voluntary Principles are respected by Orient, very negative consequences are created as well. The FARC continues to wage war against the government.

Furthermore, one of the weaknesses of the Voluntary Principles is that local NGO's have no role in it.

According to Freeman, companies operating in so-called "weak states" risk to become surrogate governments. It is extremely difficult to judge a company's contribution to fuelling armed conflict. Maybe the clearest place to do so would be Sudan, where oil has doubled state income, allowing the government to escalate the war.

The question whether a company should even want to operate in areas of serious conflict and human rights abuses, such as in Burma and Sudan, is not conclusively answered. According to Freeman it is impossible to answer this question satisfactorily on account of the fact that there is no solid consensus, specific criteria in relation to specific countries has never been laid out. Obviously this is an issue for discussion and debate.

Regarding the verification of implementation; the question was asked whether it makes sense for international NGO's to always have a presence? Carefulness is needed in employing NGO's to do monitoring due to the delicate balance between international and national NGO's, and the fact that international rules that are generated only with involvement from NGO's are often met with criticism.

## **2.2 The Draft Norms and Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights**

Prof. G.J.H van Hoof (Utrecht University) made a theoretical case for mandatory principles by taking into account the human rights situation in conflict areas. Companies do not only have rights they also have obligations.

According to van Hoof, as the process of drafting norms has not been completed, we need further clarification on Human Rights obligations of companies. Questions that need to be answered:

- Should a draft of new norms cover all companies or just multinationals?
- Should there be binding text?

The problem of an international law making process lies in implementation and enforcement. Assuming binding rules exist, enforcement can be ensured in the following ways:

- On a national or an international level
- In a direct way, vis a vis companies, or indirectly through the state.

States have an obligation to ensure their companies respect international law. Enforcement on a national level would involve addressing the state by suing executives or lobbying the legislator. There are possibilities of litigating directly against companies guilty of violating human rights by national courts that apply national-- as well as international law.

Co-referent Hilke Molenaar (Amnesty International) asked a question about the relation between this initiative and the Global Compact. Van Hoof answered that the main difference is that the Global Compact is a non-binding voluntary guideline undertaken on behalf of companies and that the Draft norms are intended to become binding law.

Regarding the question whether there is any specific mention of use of principles in conflict zones. Van Hoof stated that this text refers mainly to peacetime operations. However provision for conflict periods also exist. The draft guidelines say companies should not profit from war times. The sub commission has not yet developed a framework on how to approach the issue of companies profiting from a wartime situation.

### **2.3 The May 2002 European Parliament resolution on the Commission Green Paper on Promoting a European framework for Corporate Social Responsibility.**

Ms Ieke van de Burg (Member of European Parliament) discussed Corporate Social Responsibility on the European level.

After elaborating on the discussion in the European Parliament with the Commission on promoting a European framework for Corporate Social Responsibility, she dealt with several aspects of CSR and Europe:

- **The mandatory versus the voluntary approach:**

Ms van de Burg made clear how, while the Parliament strives for binding rules, the European 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." However, according to Ms van de Burg there is need for both a voluntary approach and a mandatory approach. 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.

- **Mainstreaming CSR in the EU's internal and external policy:**

CSR has to be integrated into EU 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. CSR is not just for multinationals, it is equally important for the policy of states, when looking at foreign trade, development aid and other investments in less developed countries.

It is about time the EU not only calls upon multinationals to respect CSR values, but also fully incorporates them in its own external policy. Furthermore the EU should mobilize 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.

- **EU Multi-Stakeholder Forum:**

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.

Co-referent Andre Driessen (VNO NCW) was very critical about what van de Burg stated. According to him, CSR, by definition is voluntary. If you legislate CSR it ceases to be CSR. The European debate is very far removed from the zones of conflict especially where there is no government. Responsible businesses see a clear role for themselves in those areas. According to him, companies don't have time to wait for the implementation of mandatory rules; instead we need to choose the pragmatic approach of voluntary guidelines. From a business point of view standardization will kill CSR. Of course there is a limit to what voluntary mechanisms can do and there are some cases where voluntary mechanisms don't work. But governmental responsibilities cannot be transposed automatically onto businesses. It is easy to call for a mandatory approach without understanding the south. We cannot rule world from the west. The only other option would be to leave. However, from a business point of view this is not an option. We need to move away from debate on whether we should have rules and rather start from the situation in the field.

### **2.4 Conclusions from the morning session:**

- The European Commission and the UN sub-commission approaches do not make special provisions for conflict situations. The Voluntary Principles do concentrate on the responsibility of corporations in conflict zones, but its real impact on the ground remains to be tested.
- The lack of a functioning state in conflict zones is one of the main problems. There is no rule of law in many places. This situation creates obligations for home states.
- The discussion on mandatory/voluntary approaches should not obscure the fact that there are already binding rules for corporations in international humanitarian law. There clearly is a need for a more pragmatic approach. We can only judge the implications of the initiatives if we have a clear idea about the main problems in these conflict areas.



### 3 Case Studies

#### 3.1 Diamond exploitation in the Democratic Republic of Congo (DRC)

According to Koen Vlassenroot (University of Gent), the limited explanation of the DRC conflict as an international struggle for natural resources includes a great risk for the current peace building process in the Great Lakes region. One should keep in mind that war economies are a result rather than a cause of conflict. The conflict in the DRC can be considered as a form of non-territorial network war that works through and around states. This new type of war is by definition associated with a process of social transformation. The situation on the ground in the DRC became one in which "economics fuels the violence, which again fuels the economics". However, 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, large parts of the population are involved as well, they are the sole mechanisms left for coping with the conditions of the present conflict. 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 might have equally disastrous effects as the present war.

#### **Conclusion: Can business be a force for peace in the DRC?**

- Not all economic activities in a conflict area should be considered bad activities.
- 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.
- Instead of sanctions, strategies are needed to introduce or improve good management over natural resources. The nature of exploitation needs to be changed, if needed by mandatory rules, enforcing transparency.

#### 3.2 Tropical Wood exploitation in Liberia

Michael Lundberg (Global Witness) led the discussion about the exploitation of timber in Liberia. Conflict timber can be defined as follows:

"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."

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

- The timber industry is what sustains President Taylor's war and corruption machine. Timber is his "pepperbush", his lifeblood.
- Many logging companies are themselves arranging and facilitating illicit arms transfers for President Taylor.
- 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.

**Conclusion: Can business be a force for peace in Liberia?**

- It is highly unlikely that a voluntary arrangement would suffice in Liberia. Moreover any legislative remedy will be very difficult to enforce, given how companies act with impunity on the ground.
- When we sanction rough diamonds we do it in a blanket fashion; we should do the same with conflict timber
- In Liberia there are no major multinationals, operating companies are mainly Liberian based. It is very hard to hold the companies that do operate in the area accountable, due to negative symbiotic relations between the government and these companies. We need to look towards European importers who are more accountable and interested in stock markets. Any awareness we can bring to consumers that the timber they purchase may be contributing to conflict regimes is vital.

### **3.3 Oil exploitation in Sudan**

#### **Conclusions of the Work Shop Sudan**

The offensives by the Government of Sudan to gain the control of oil fields from the SPLA, is one aspect of the complex conflict in Sudan, which has so far cost 2 million lives and has forcibly displaced 4 millions more.

The oil companies claim that they have no impact on the atrocities of the war waged around them. They believe they to contribute to the well-being of the population through 'social investment' projects, human rights advocacy with the Government, and economic development. However, there is a direct connection between the security needs of the oil exploitation and the killing and forces displacement of thousands of people. Voluntary approaches to assure that private company interests do not promote human suffering seem meaningless in Sudan, because there is only one choice: accept the Government's security policies, or leave. This would make Sudan a no-go area for the industry by most standards.

The international community is lacking an independent body to identify no-go areas.

It was argued that the companies have effectively lobbied for increased Government human rights awareness, that their social programmes are valuable for the communities around them, and that the promise of growing oil revenues is a major incentive for the present peace process.

Others argued that oil exploitation can have a positive impact after peace was achieved, but currently it only exacerbates war. Companies fail to use their, too limited, potential for a positive impact now, by providing poor financial transparency, not setting clear norms, ignoring the importance of revenue management, and not insisting on specific Government measures for the protection of the people in and around the concession areas.

The challenge is to make oil a force for peace. So far, the companies and their home states have seriously not taken up this challenge.

The three initiatives discussed have no bearing on the delicate situation in Sudan.

### 3.4 Concluding comments

Ambassador Renee Bos Jones on behalf of Dutch ministry of foreign affairs

- The Dutch government participates actively in international activities in the field of CSR. Should the role of the government go beyond voluntarism? Is mandatory regulation the best way forward? 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?
- There is much resistance in less developed countries to international standard setting.
- When negotiating international standards for CSR, 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.
- Implementation and verification. Companies, although recognized 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. In conflict areas, this cannot be guaranteed, as there often is no government to enforce the obligations.
- There are 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 peacetime investment. When it comes, however, to conflict situation, we all agree on the basic rule that companies should refrain from any activity that can contribute to the existing conflict. But when do companies directly or indirectly contribute to or profit from a conflict? What is the responsibility of the government where the headquarter of that corporation is established?
- 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.

## 4 Main Findings

How to ensure companies are not fuelling war was the main question during this seminar. Our most important findings were:

- Neither the Voluntary Principles on Security and Human Rights nor the Draft Norms and Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights nor the May 2002 European Parliament resolution on the Commission Green Paper on Promoting a European framework for Corporate Social Responsibility provide in a framework to assure corporate respect for Human Rights in conflict situations.
- The absence of a functioning state (as in the DRC, the Sudan and Liberia) places an undeniable responsibility upon companies and their home states, to guarantee that companies do respect Human Rights and do not contribute to the continuation of the war.
- In dramatic humanitarian situations such as in the countries discussed we need binding international rules. In addition to that we also need to encourage the process of voluntary guidelines, as the DRC case shows, investments are crucial for the population to survive.
- Given that a lack of revenue transparency and disparities in distribution are common in all three case studies, transparency should be the starting point.

## 5 Annex 1: Conference Programme

### Rules of Engagement: Regulating business in armed conflict

Conference, 13 November 2002

#### Morning

Opening

**Prof. mr. C. Flinterman**

Theoretical perspective

3 initiatives and their applicability on situations of armed conflict

1. The Voluntary Principles on Security and Human Rights.

*Bennett Freeman*

*Lidouine Zumpolle: ( Pax Christi): Co-referent*

2. The Draft norms and responsibilities of trans-national corporations and other business enterprises with regard to human rights.

*Prof. mr. G.J.H. van Hoof*

*Hilke Molenaar (Amnesty International): Co-referent*

3. The European Parliament resolution on the Commission Green Paper on Promoting a European framework for Corporate Social responsibility.

*Ieke van de Burg (Member European Parliament)*

*André Driessen (VNO-NCW, employers organisation): Co-referent*

#### Afternoon

##### Workshops

- Oil exploitation in Sudan, *resource person Marina Peter, Sudan Focal Point Europe*
- Diamond exploitation in DR Congo, *resource person Dr. Koen Vlassenroot, University of Gent*
- Tropical wood exploitation in Liberia, *resource person: Michael Lundberg, Global Witness*

#### Debate

##### Concluding remarks

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

## Personal Details

**Prof. mr. C. Flinterman** is Professor of Human Rights at Utrecht University and Director of the Netherlands Institute of Human Rights. He is member of the UN Committee on the Elimination of Discrimination against Women (CEDAW)

**Gemma Crijns** is Managing Director of the Institute for Responsible Business at the University of Nijmegen

**André Driessen** is Senior Advisor International Affairs at the Confederation of Netherlands Industry and Employers (VNO NCW)

**Lidouine Zumpolle** is head of the Latin America department at Pax Christi Netherlands

**Mr Bennett Freeman** is a former United States Deputy Assistant Secretary of State for Democracy, Human Rights and Labour. He was the leader of the Voluntary Principles on Security and Human Rights on behalf of the State Department under the Clinton administration. He is presently working as a consultant on corporate responsibility and sustainable investment issues.

**Prof. mr. G.J.H. van Hoof** is Professor of Human Rights at Utrecht University and member of the UN Sub-Commission on Promotion and Protection of Human Rights

**Mr Richard Howitt** is Member of the European Parliament, since 1994, for the Labour Party, UK. He is the EP's Reporter on Corporate Social Responsibility and proposed the EP resolution on the Commission Green Paper on Promoting a European framework for Corporate Social responsibility (COM(2001) 366 - C5-0161/2002 - 2002/2069(COS))

**Marina Peter** is Sudan expert and co-ordinator of Sudan Focal Point Europe

**Dr. Koen Vlassenroot** is lecturer at the faculty of Third World Studies at the University of Gent, Belgium. His dissertation: "The making of a new order. Dynamics of conflict and dialects of war in South Kivu (D.R. Congo)" has recently been published (July 2002).

## 6 Annex 2: Participants List

<b>Rules of Engagement: How business can be a force for peace Participant list</b>	
<b>Name</b>	<b>Organisation</b>
Gwado J. Ador	The Sudanese Concerned Community in the Netherlands
Araujo, Manuel de	Amnesty International
mevrouw H.A.M. Alders	Böhler Franken Koppe de Feijter
Bahruch,	Lundin Petroleum AB
Banfield, Jesse	International Alert
Mark Barwick	Pax Christi International
Bonzi, Jean Ives	Plan Nederland
Booms, Ludger	German Embassy, The Netherlands
Brak, Arjan	Cordaid
Brigitte Mortier	Gruppe Friedensentwicklung FriEnt
Bronkhorst, Daan	Amnesty International
Bronkhorst, Serge	Netherlands Committee for IUCN
Bruijn	ZOA Refugee Care
Brzoska, Michael	BICC
Burbach, Karen	Ministry of foreign Affairs, the Netherlands
Mr Calkin, Greg	Canadian Embassy
Doorn, Eric van	Chairman Round the Table Amnesty MNO's
Driessen, A.M.A.	Confederation of Netherlands Industry and Employers
Dube, Sihle	NiZA
Dubravka, Zarkov	Institute of Social Studies
Mr Fatih,	Ambassador Sudan
Feldt, Heidi	ERPO
Gerber, Robert W.	US Embassy, the Netherlands
Gruiters, J.	Pax Christi Nederland
Helsloot, Paul	Amnesty International
Huber, Stefan	BHP Brugger and Partners Ltd
Hund, Kirsten	NiZA
Jalloh, Hassan	ICCO
Jana, Precilla	Embassy of the Republic of South Africa, the Netherlands
Kamstra, Andre	
Kamstra, Marjan	Ministry of foreign Affairs, the Netherlands
Kesteren, Johan van	Amnesty International
Kooten, Tim van	Issue manager Shell Ned BV
Laak, J ter	Nederlands Helsinki Comite
Langemeijer, Nils	Ministry of Economic Affairs, the Netherlands
Lansu, Paul	Pax Christi International
Lasseur, C.J.	Ministry of foreign Affairs, the Netherlands
Mark Barwick	Pax Christi International
Mcdonald, Geraldine	CIDSE

## Conference report – Rules of engagement

Mr Gregg Calkin	Canadian Embassy, the Netherlands
Mrs. A Jung	Medico International
Molenaar, Hilke	Amnesty international
Nimako, Kwame	
Ogotu, B.H.O	Embassy of the Republic of Kenya, Belgium
Oldenziel, Joris	SOMO
Overeem, Pauline	Novib
Peter, Marina	Sudan Focal Point Europe
Dhr Perlot,	Clingendael
Plooijer, Nico	Pax Christi/ECOS
Pot, Anna	Investment manager Sustainable Equities, ING
Quintana, Eva	INTERMON/ OXFAM
Tim Raaymakers,	IPIS
Racké, Fred	Ministry of foreign Affairs, the Netherlands
Rahman, Youssef	Groen Links
Ruyssenaars, Jan	NOVIB
Schimmelpenninck van der Oije, P	Netherlands Red Cross
Sargentini, Judith	Fatal Transactions
Sadig, A.	Sudan Embassy, Belgium
Schuthof, Arjan	Ministry of foreign Affairs, the Netherlands
Tempelman, Annelot	SOMO
van der Putten, Frans	EIBE/Universiteit Nyenrode
Veldkamp, Anita	Ministry of foreign Affairs, the Netherlands
Ven, Johannes van de	Catholic University Couvain
Verweij, Angelique	Kerk in Actie
Verweij, Myrthe	Friends of the Earth Netherlands, Milieudefensie
Marielle Weststraten	Oneworld
Wesselink, Egbert	Pax Christi
Wortel, Eva	Amnesty International
Witmer, Kami A.	US Embassy, the Netherlands
Young, John	Amnesty International