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**Regulating Business in Zones of Conflict:
A Synthesis of Strategies**

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Acronyms and Abbreviations

AFDL Alliance of Democratic Forces for the Liberation (of Congo)
Anon. anonymous source
ASEAN Association of South East Asian Nations
CSR Corporate Social Responsibility
DRC Democratic Republic of Congo (ex-Zaire)
ECOWAS: Economic Community of West African States
EU European Union
FCO British government Foreign and Commonwealth Office
ICC: International Criminal Court
ICPO International Criminal Police Organisation
ICRC International Committee of the Red Cross
IFI International Financial Institutions (International Monetary Fund and World Bank)
IMF International Monetary Fund
ILO United Nations International Labour Organisation
KR Khmer Rouge movement, officially the Democratic Party of Kampuchea (PDK) and National Army of Democratic Kampuchea (NADK).
NIC Newly Industrialised Countries
NGO Non Governmental Organisation
OECD Organisation for Economic Co-operation and Development
OAU Organisation of African Unity
PNG: Papua New Guinea
RENAMO National Mozambican Resistance
RUF Revolutionary United Front – rebel movement in Sierra Leone.
SPDC State Peace and Development Council (military regime)
TNC Trans National Corporation
UNITA National Union for the Total Independence of Angola
UN United Nations
UNCTAD United Nations Conference on Trade and Development
UN OHCHR UN Office of the High Commissioner of the Centre for Human Rights
UNSC United Nations Security Council
WTO World Trade Organisation

1.0 Introduction

In many wars around the world today the spotlight is increasingly being placed on the activities of companies and the impact they are having on the incidence and duration of violent conflict. The link between business and conflict is only beginning to be understood. On the one hand private sector activity is fuelling and exacerbating conflict by sustaining war economies that enable belligerents to continue to fight, and in these cases business profits from conflict. This is consistent with the argument that has recently been made that the economic opportunities provided by armed conflict are in fact a principal cause of violence rather than merely a means to another end. In many cases, though, war is extremely costly for legitimate businesses. For these instances, it has been suggested that companies should be engaged, and partnered with, in conflict prevention efforts. Whether emphasising the positive or negative role of business in conflict, the international community is placing greater attention on the economic dimensions of armed conflict and devising ways in which it can address this important aspect of war in order to help promote peace and stability. Further impetus has come from the events of 11th September and the US Administration's declared "war on terrorism", which have renewed efforts to combat the financing of terrorism and its links with global criminal networks.

This growing concern about the economic dimension of conflict has been matched by initiatives to find appropriate policy responses to the issue. Spurred on by global NGO activism, a number of large multinational corporations are now beginning to address their role in conflict situations as part of a broader corporate social responsibility (CSR) agenda. International organisations such as the United Nations (UN), World Bank and OECD, as well as donor governments, are also looking at ways in which they can integrate the private sector into their conflict prevention strategies. A range of policy options are now emerging. This paper deals with one aspect of this policy debate, namely, 'regulation'.

Regulation is about the control and restraint of private sector activities in the interests of the public good; in this case public security and the absence of violent conflict. The paper therefore attempts to identify the private sector activities that are of concern in conflict situations and assess whether there are relevant regulatory instruments to address these. There are in fact no comprehensive laws or regulations specifically dealing with the role of business in conflict, but rather a range of instruments and measures related to cross-cutting concerns such as human right and corruption. An incipient regulatory framework for business operating in conflict situation is only just emerging. This paper attempts to make sense of this framework by mapping the issues and responses as a basis for making recommendations on how to fill the noted gaps.

2.0 Business and War

As a prelude to identifying the private sector activities that are of concern in conflict situations, this section provides a background as to reasons why there has been increasing scrutiny of the link between business and war in recent years.

2.1 The changing nature of conflict and focus on economic agendas

The dynamics of armed conflict have radically changed. Where as once war was characterised by contests between sovereign states, today they predominantly occur as internal conflicts between different groups in society. They may involve insurgent groups that have challenged incumbent authorities or separatist movements wishing to succede to form new nation states. In many instances, however, conflict spills over national borders and can only be understood by considering its regional dimension and the complex political interlinkages at play. In these 'new wars' the distinction between peace and war and between criminality and conflict is far less clear. The principal victims of conflict are now civilians, predominantly women and children, who make up ninety per cent of casualties.

In seeking to explain contemporary conflict, attention has begun to focus on the economic agendas of belligerents and the political economy of war.¹ It has traditionally been thought that war is intrinsically disruptive, costly and anarchic. However, by identifying war economies it has been shown that in a number of situations war is in fact very rational and indeed beneficial for those involved (Keen, 1998). As Cold War patronage for warring factions subsided from the late 1980s onwards, many groups have come to rely upon the production and marketing of local economic resources, often traded through elaborate networks onto international markets, to finance their war effort. This has highlighted the more nefarious side of globalisation that has given rise to the transnational and networked characteristics of modern wars in which illegal business has been able to access global markets (Duffield, 1998).

There are of course many economic activities in conflict situations that are not linked to violence, but instead are crucial to the livelihoods of those affected communities. Indeed, the existence of armed conflict also gives rise to 'coping economies' in which civilian populations are forced to find new sources of subsistence as markets become disrupted. However, economic activities undertaken or closely associated with combatants have been shown to support and perpetuate violence. It is important, therefore, to make a clear separation between economic factors that are an integral part of fuelling conflict and those others necessary for ameliorating the human suffering caused by conflict.

2.2 Greed versus grievance

The political economy of war thesis has begun to counter the conventional wisdom that it is political, social and ethnic 'grievance' that are the cause of war in weak states where poor governance means social tension and cleavages cannot be managed peacefully. What motivates society to endure and resort to violent conflict and what makes it feasible are separate issues. It has been suggested that the economic opportunities presented by war in fact provide a better explanation of the likelihood of violent conflict (Collier and Hoeffler, 1999). 'Greed' not only sustains and perpetuates conflict, but may even be the main incentive in many situations where belligerents prefer the status quo because of the economic benefits war brings compared to peace. Grievance is not a good explanation of conflict because of the collective action problem that would make the mobilisation necessary for rebellion unlikely. Where as groups may be motivated by deep seated economic, political and social grievances it is their greed for war-financing to sustain war economies that seem to make it last longer.

While recognising the usefulness of economic factors in helping to explain the violent conflict, it has been suggested, however, that there has been an overemphasis on the issue of greed and economic feasibility (Cliffe and Luckham, 2000). Political factors are not merely a backdrop to more pressing economic concerns, but instead a key variable in understanding why in some instances conflict can not be managed peacefully in society and people feel it necessary to resort to taking up arms. Transforming conflict is, therefore, not just about changing incentive structures and curtailing resource flows, but also about addressing the legitimate concerns of belligerents that exist despite these economic factors. As a result of this reaction, the greed versus grievance debate has begun to focus more on the interaction of two explanations of conflict rather than the dominance of one.

Nevertheless, a whole range of actors are now being called upon to address their role in the political economy of war, including business. Incidentally, the impact of aid agencies on conflict has also been scrutinised over the last decade after it was shown that assistance can easily be diverted to fund warring factions (Anderson,). As a result, a number of aid agencies are now building conflict sensitive methodologies into their planing and management procedures. In many ways the role of business on the one hand and aid agencies on the other in the political economy of war are parallel debates and, although very different in their modus operadi, each actors has a lot to learn from the other. The focus of this paper is, however the private sector.

2.2 Globalisation and socially responsible business

The current era of globalisation has been associated with the deregulation of the international financial system and the spread of neoliberal economic thinking. A few developing countries that have embarked upon economic reforms and privatisation programmes have enjoyed the growth of indigenous industries and the penetration of international markets for their exports. State-owned companies are still prevalent in many countries, though, and economic reforms have led to splintered private sectors in which the informal economy still dominates. This is often the case in fragile states experiencing violent conflict that leads to the erosion of market systems. For belligerents to fund their war effort, though, small scale local businesses and informal traders are having to link their products in complex and intricate ways with international markets.

In addition to the impact globalisation is having on the domestic economies of developing countries, it has also given rise to the seemingly inexorable rise in power (both absolute and structural) of transnational corporations vis-à-vis nation states and international bodies. In the 1970s there were only 7,000 TNCs. By 1998, this number had risen to 55,000 (UNCTAD, 1998). As developing countries have opened up their markets to foreign investment, there has been a dramatic increase in international private capital flows. While most foreign direct investment occurs between OECD countries or to a select number of middle-income countries, private sector investment now surpasses development assistance (from donor government and the international financial institutions) in most developing countries. A reality of an increasingly competitive global market, though, is that companies, especially in the extractive sector, are having to seek out productive opportunities in hostile and unstable environments, often in the midst of armed conflict or experiencing political instability

While corporations are becoming ever more powerful in international affairs and, moreover, the domestic affairs of the countries in which they operate, they are however also being called upon to act more responsibly and accountable for their actions. Globalisation may be leading companies to invest in politically unstable regions, but it is also increasing the channels of communications that highlight the consequences of them doing so to a growing number of stakeholders. Corporate responsibilities have traditionally been to their shareholders, employees and customers, but this has now extended to a broader set of stakeholders including local communities, governments, NGOs and the international community at large. Each of these actors are placing new demands of accountability on corporate behaviour. Corporate social responsibility has meant that companies are moving away from merely maximising shareholder value to taking into account the interest of a wider group of stakeholders. There is a "growing sense that if corporations are becoming as powerful as government, then OK, individuals are going to begin treating them as such and demand accountability and transparency (Klein, 2001)."

The corporate social responsibility agenda is rapidly gathering pace. Initially focused on environmental and social concerns, companies are also now beginning to be asked to consider their responsibilities in a host of other areas such as human rights and sustainable development. Conflict is in many ways different from these preceding issues as it cuts to the heart of the sovereign concerns of states, of which companies have endeavoured to stay clear. However, conflict is a real concern for companies and conflict prevention is arguably becoming an emerging issue within the field of corporate social responsibility. This requires moving from the view that conflict prevention is about mediation and diplomacy to a more holistic approach to how a company's operations can impact on conflict and be sensitised to mitigate against negative impacts. Beyond calls for companies to be morally responsible about their conduct in conflict situations, the business case for them to do so has also been highlighted (Nelson, 2000). Operating in conflict situations incurs enormous costs for companies in terms of lost revenue when operations are disrupted, security costs for their staff and property, and the reputation costs if their presence is seen to be sustaining or exacerbating the conflict.

3.0 The role of the private sector in zones of conflict

There has then been increased attention given to the link between business and war. Although concerns have been raised and particular attention given to specific cases, though, there is not yet clarity as to which private sector activities help sustain and exacerbate conflict and those others that could help bring about its resolution (IPA/FAFO, 2001). A key priority is for further research to outline the nature of the problem in more depth so that adequate policy responses can be formulated. Nevertheless there are a cluster of issues that have been highlighted concerning the role of the private sector in zones of conflict which are discussed in this section. Particular attention has been given to the financial flows that link business to belligerents and are seen as sustaining and perpetuating conflict. The following overview also includes, however, the social, political and environmental ways business interacts with conflict in recognition that companies are not only economic actors; they engage in a range of activities that are pertinent to conflict.

3.1 War commodities and commerce

It is natural resources – oil, minerals and timber – in the extractive sector that have been a key feature of the political economy of war thesis and are the primary focus of this paper.² Competing claims to the revenues from natural resources often lie at the heart of many wars. Natural resources have a potentially large commercial value and, unlike the manufacturing industry, those in the business of extracting natural resources find it difficult to relocate from conflict areas. They are also especially amenable to taxation or extortion by armed groups. Other more bootable natural resources such as diamonds and timber can easily be produced and provide a quick return from a low investment. Although there may be variation in the link between natural resources and the risk and duration of conflict (Ross, 2002) in each case they are either being congested by belligerents and/or being used to finance their war efforts.

What have been termed "conflict commodities" are defined by their role in exacerbating and fuelling conflict. This occurs when "legally or illegally produced commodities are traded on the legitimate, but highly unregulated, global markets to obtain financial resources, weapons and other materials needed to sustain war." (Taylor, 2002: p12). Particular attention has been given to commodities such as oil, diamonds and timber because they have tangible products in developed country economies that has given rise to consumer concern about the links between these goods and the sustaining of wars. There are some conflict commodities, particularly drugs, guns and human beings, that are in general circumstances can be considered illegal by their mere consumption, trade or use unless used in prescribed ways under specified laws. The illicit production and trafficking of these goods has as a result been dealt with principally as a criminality issue, although the links with conflict are also very clear. This paper does not address these criminal activities to which a lot of attention has already been given, although the lessons which have been learnt from efforts to curtail these activities will be pertinent for tackling other conflict commodities. The focus is instead on commodities which are not necessarily illegal by nature, but through the way in which they are produced, traded and marketed that mean they support and perpetuate conflict, and are therefore are being deemed as illegal.³ This paper principally focuses on businesses dealing in goods and services that at some point are openly and legally traded on the international market

There has been particular concern about the link between the local exploitation of conflict commodities in war situations - usually by small traders or belligerents - and the trafficking of these goods through elaborate criminal networks to enable them to be sold on international markets. In Angola, for example, UNITA rebels are reported to have used the proceeds from diamond mining to purchase weapons from Eastern European arms dealers. The diamonds were trafficked by a series of middlemen and involved diplomatic access provided by political leaders in Burkina Faso and Togo to ensure their passage to European markets and elsewhere. (UNSC, 2000). The profits have been on such a scale and the links so complex that the trade in conflict commodities has even involved individuals from opposing sides. In Cambodia, for instance, officials in the Cambodian government acted as the authorising agent for Khmer Rouge timber exports to Thailand that was funding their war effort against the government. A similar story has emerged from Angola where lax controls on the licensing of diamond exports allowed UNITA to sell gems through government

channels, with handsome profits for the officials and middlemen facilitating the trade (Global Witness, 1999). In these circumstances there is a direct interest in prolonging conflict because of the profits that are being made by all concerned, which would evaporate if a solution to the war was found.

The scale of war commerce has not yet been quantified, although preliminary estimates are high. For example fifty per cent of timber imported by the EU is thought to be illegally logged (Global Witness, 2001) much of it from conflict countries. There are emerging efforts (see Box 1) to regulate this war commerce in order to break the link between the illicit production of conflict commodities and legitimate markets. The OECD, for example, has highlighted the need to "control the flow of economic and other resources which continue to fuel, can be the aim of, and stoke violent conflicts, as well as some of the corrupt and nepotistic economic practices that can help spark and thrive on them." (OECD, 2001 p73)

Box 1: Conflict diamonds and the Kimberly Process

For many years the international community has been well aware of role diamonds play in financing internal conflicts in resource-rich countries like Angola, DRC, and Sierra Leone. NGOs such as Global Witness have highlighted the negative consequences of the unregulated trade in conflict diamonds and have been at the forefront of efforts to introduce a certification scheme to ensure diamonds are 'clean' and not from war zones. In 1999, Global Witness, along with a number of other European NGOs including NIZA, Medico International and Novib launched a consumer campaign, 'Fatal Transactions', which called on the public and organisations to pressure governments and companies involved in diamond production to clean up their industry. Despite campaigner protest about what were termed 'blood diamonds', sales in the precious stone have not in fact declined and the industry has managed to avoid the kind of consumer outcry that brought the fur industry to its knees in the 1980s.

A proper functioning international certificate systems is seen as the most effective response to conflict diamonds. If such a scheme were introduced, it would mean that all diamonds could be identified by their country of origin, international standards would exist for diamond buyers and dealers, and there would be harmonised customs codes and statistics to monitor diamond movements. A key challenge in bringing about the introduction of such a scheme, however, has been the difficulty in achieving a consensus in favour of change across the industry and amongst relevant governments. South Africa, for instance, objects to the perceived hijacking of the issue by the British government and Russia is concerned that greater transparency may reveal some of the less appealing characteristics of its own diamond business. Junior diamond companies have accused De Beers, which controls 70 per cent of the uncut diamond market, of seeking commercial advantage under the guise of increased regulation.

In spite of these problems the tide of sentiment about what could be done about conflict diamonds changed in October 1999 when De Beers declared a halt to its purchase of Angolan diamonds because of concern about their link with UNITA rebels. Then, in July 2000, the biennial World Diamond Council in Antwerp agreed to take concerted action to stamp out the trade in conflict diamonds. The International Diamond Manufacturers' Association and the World Federation of Diamond Bourses, which represent twenty four diamond markets, publicly supported a nine-point plan proposed by De Beers. It was agreed that the World Diamond Council would represent the diamond industry as a whole and ways would be found to ensure rough diamonds were certified and their trade regulated. In September 2000, the diamond industry's efforts received government backing with a ministerial meeting held in Kimberley, South Africa, from which emerged the so-called 'Kimberley Process'. The initiative brings together 38 governments, representatives from the industry and NGOs. In December 2001 it reached a provisional agreement to set up a global certification scheme on conflict diamonds by 2002. The diamond industry has cautioned that success of a certification scheme depends on governments passing supporting national legislation and some NGOs have questioned whether the system will be tough enough. However the Kimberley Process has been seen as making important progress to crack down on conflict diamonds and may provide a useful model for other conflict commodities to be addressed.

3.2 Corruption and untransparent revenue flows

Large influxes of easy revenues from the exploitation of natural resources tend to invite corruption and limit proper economic and fiscal management. It is thought, for instance, that in 2000 there was \$770m of missing oil revenue unaccounted for by the Angolan government that the IMF estimates could increase to \$1.4 Bn in 2001. (Global Witness, 2002: P48). A series of research done on the so-called 'Resource Curse' has shown that the development of a natural resource paradoxically tends to lead to relative economic underdevelopment and improper functioning of political institutions (Soyza, 2000).

Good governance undermined in this way increases the risk of conflict as the state is unable to manage social tensions and differences. Mistrust develops about state misuse of national assets and the link with the financing of war. In Sudan, for instance, the oil revenue received by the Sudanese government per day is exactly the same as what it spends on its military capacity to fight the SPLA in South Sudan (Christian Aid, 2001). It has been shown that countries that are dependent on primary commodities for export revenues are more likely to suffer from conflict (Collier, 2000). A vicious circle is created in which poor governance and weak state institutions foster the exploitation of natural resources amongst ruling elites that fuels conflict and in turn leads to the loss of economic revenue, corruption and further instability (FAFO, 2002). Not only are finances made available to support the war, but a disincentive exists against the reimposition of state authorities necessary for the good governance that can help to transform conflict. (Tickell and Keen, 2000: P3)

By participating in or encountering corruption, companies are, unwittingly or intentionally, seen as contributing to this dynamic that fuels conflict. Failure to publish figures relating to payments made to the host government - that they would be required to make public in most developed countries - is seen by some as complicity in the perpetuation of conflict. (Global Witness, 2002: p3) In many respects companies favour arrangements that allow them to get on with their principal role - producing oil and other natural resources - than on dealing with issues such as corruption that they do not see as their direct concern. As William Reno puts it: 'order, however it is achieved, is more important [for businesses] than addressing the needs of citizens. Their shared aim is control, not legitimacy, a pursuit that is compatible with [a] regime's disregard for social services, while catering to the comforts of a tiny elite' (Reno, 2000: p233). A status quo is preferred because political change brings about increased uncertainty and the risk of conflict often increases during transition periods between authoritarian and democratic rule. This is not to say that companies do not have an interest in tackling corruption, only that the costs that they may have to incur in doing so mean they often find it difficult to act. In short, companies face a dilemma between maintaining political order and tackling corruption (Le Billon, 2001a).

However, efforts are beginning to be made by companies - along with other key stakeholders - to address corruption and untransparent revenue flows which fuel conflict. In 2000, the oil company BP made public the amount of money it had paid to the Angolan government in bonus payments for securing a concession to produce oil in the country. BP says it will endeavour to be transparent about further payments when it commences production in the country. The move by BP was seen as a brave attempt to act more socially responsible in a difficult environment, although the company suffered worsening relationships with the Angolan state oil company,

Sonangol, that threatened at one point to undermine its investment in the country.⁴ It has been suggested that there be a legal obligation on companies to publish what they pay to national governments (including taxes, royalties and commissions) that would be enforced through the stock exchange authorities to ensure transparency and accountability (Global Witness, 2002: P47)

A related concern exists over the ways in which revenues are distributed in society and the link this has to conflict. Greater focus is consequently being placed on revenue sharing regimes (Bennett, 2002) and how they can be designed to ensure the benefits of business operations in conflict zones are equitably distributed to help reduce the social tension and grievance often caused by the unfair allocation of natural resources. For example, under the leadership of the World Bank, a multistakeholder revenue sharing regime involving extensive consultation with civil society was achieved for a \$3.7bn Chad Cameroon oil pipeline project involving the oil companies - Exxon-Mobil, Chevron and Petronas. The World Bank's funding requirement ensured that eighty per cent of the revenue from the pipeline be spent on public services, including education and health. Despite some problems with the arrangement, the experience of the Chad Cameroon pipeline has been offered as example of best practice in the area of revenue sharing regimes and it has been suggested that a criteria or framework for lending by the World Bank and other institutions be developed to encourage its replication elsewhere

3.3 Security arrangements and militarised production

Arguably the most visible and direct link between business and war involves the security arrangements of companies operating in conflict zones. Because of grievances about the control and distribution of wealth from natural resources in many conflicts, company installations often take on military and strategic importance with staff and property being targeted by belligerents. In this way the line between economic and military activity becomes blurred as securing access to the production and shipment of resources becomes a key war objective (FAFO 2002). Attacks on company property, theft, disruption to production and most importantly the safety of staff from kidnapping or even murder is a key concern for many companies operating in hostile environments.

Corporate security arrangements involve two principal relationships: with state security forces and with private security firms. Companies may enter into agreements with or even fund government security forces to protect their installations. State security forces can and frequently do have poor human rights records and are associated with repressive acts on local communities or even aggressive acts against warring factions around company operations. There has as a result been a number of controversial cases in which foreign companies have been seen as complicit with the suspect activities of state security forces or worse still actual collusion in them. In Sudan, for example, it has been reported that logistics and airstrips of the Canadian oil company Talisman were used by the Sudanese government as part of its military campaign around the oil fields in the country which led to the forced displacement of local populations (Christian Aid, 2001). Companies have also been accused of helping to broker the import of arms into conflict zones, although this is less common.

In chronically unstable regions where state security forces are unable to ensure the protection of a company's assets, the hiring of private security firms is a more credible option or at least a necessary addition to what might be provided by the host government. A company may employ a local security company or an international firm. As with their dealing with state security forces there have been instances where a company hiring a security firm has led to repressive acts against local communities. For example, in Ghana the use of the private security firm, Planning Alliance, by the South Africa mining company Goldfields led to the forced relocation of 20,000 people and a number of casualties from the resulting confrontation (Switzer, 2001). In areas where fighting is taking place there have also been instances where the security firms hired by companies take on more of a military persona and act like private armies or mercenaries to protect company installations. These outfits may at the same time have been hired by the government as well to enhance their military ability to control and provide access to key economic assets.

In both the case of state security forces and private security firms, the concern is that commerce has become militarised. In this way, companies, or more precisely their security personnel, begin to behave more like combatants or belligerents rather than innocent bystanders. Where as companies can put in place legitimate deterrence measures, often the disproportionate use of force can aggravate violent conflicts and be the source of human rights abuses. International humanitarian law provides guidance as to the expected behaviour of combatants in armed conflict and this can be extended to company personnel (Carbonnier, 2001). There are also international law enforcement standards and guidelines that apply to state forces, which companies themselves have integrated into their security management policies and procedures. Indeed, corporate security is an area where a number of regulatory measures exist and there have been efforts to strengthen these (See section 7.5.1).

3.5 Human rights and labour practices

The intersection between business and human rights is in many ways a separate issue to that of business and conflict, although they are often conflated. There are corporate responsibilities in relation to human rights outside conflict arenas, but also business links to human rights violations in unstable regions that have contributed to the triggering or perpetuation of conflict. While human rights abuses usually are a tragic and reprehensible consequence of war, they are not necessarily of themselves a cause of conflict. There are a number of authoritarian regimes in countries with poor human rights record that haven't necessarily fallen into conflict and have even made transitions to democracy. Prevalent human rights abuses are, however, seen as a possible structural or trigger factor in conflict analysis and have been linked to the outbreak of violence in a many instances.

In relation to companies operating in conflict zones, concerns about human rights abuses have centred around links with security forces as discussed above, the forceful displacement of populations, lack of respect for minority rights as well as more general associations with the poor human rights record of host governments with which companies have close links. Often the company has not been responsible for human rights abuses, but is nevertheless seen to be complicit in government wrongdoing. In 1995, for example, the US mining company Freeport MocMoran was seen as siding with the Indonesian government despite repressive acts carried out

against the West Papua movement. Because of their links with human rights violations, a number of companies are now facing legal claims against their actions. An American NGO has filed a lawsuit in the US against ExxonMobil on behalf of 11 Aceh people who say they have been tortured by Indonesian soldiers paid out of the funds the company provides to the Indonesian government. (Carbonnier, 2001: p948.) A similar lawsuit has been mounted against the Shell to redress grievances of the Ogoni people in Nigeria.

Corporate accountability to uphold internationally agreed labour standards has been a longstanding corporate social responsibility concern. Like human rights, labour practices are important in and of themselves but also have implications for the incidence of violent conflict. In conflict situations where identity politics and ethnicity underlie societal divisions and tensions, companies need to be aware of the impact of their hiring practices on such dynamics. (This is also true in their supply chains of contractors who may well represent different ethnic groups.) Any perceptions of impartiality or unfairness on the part of companies in their interface with local employees can have a negative impact on the conflict in which they operate and also make them more of a target. Like human rights there are a number of labour standards that are relevant to such situations.

3.6 Environmental degradation

The scale and geography placement of most large projects in the extractive sector mean that they have an unavoidable impact on the local environment. The social changes associated with the possible environmental degradation of such projects can have a negative impact on the local conflict. Deterioration in the environment, land disputes, resettlement programmes, rapid influxes of workers and new infrastructure (e.g. roads) all have the potential to increase social tensions and divisions. This is especially true in terms of who is perceived as benefiting from natural resources. New business operations represent enormous employment opportunities in once poor and desperate communities. Competition between local populations and migrants in seek of new work can be a possible source of friction. The link between environmental degradation and conflict is in many ways the opposite of the 'Resource Curse' in that it is competition over scarce resources that leads to increased tension and violence rather than side-effects of their apparent abundance (Haufler, 2001).

Ancestral claims over natural resources has caused perhaps the most grievance. The Ogoni people of the Niger Delta in Nigeria, for example, have for a long time disputed the Federal Government of Nigeria over the distribution of oil revenues from the region as well as the environmental impact of so many companies operating there. Indigenous peoples often lack the capacity and resources to adequately protect their interest in negotiations with international firms and national governments, even though constitutionally natural resources are the property of all the people of a country. Corporate approaches to community development and stakeholder consultations are, however, changing rapidly in view of these realities.

4.0 Types of Business

Not all businesses have the same impact on conflict. Many of the issues discussed above are more pertinent to certain types of business than others. For companies in

some industries violent conflict can be seen to have little operational impact. This paper only deals with companies in the extractive sector and ancillary sectors to this, including security firms that have already been mentioned and the transport and finance sectors. The transport sector plays a crucial role by providing the means by which natural resources flow to and from war economies and the financial sector makes the large projects involved in natural resource extraction commercially viable. In fact financial flows to belligerents is the common denominator in many aspects of the political economy of conflict (Le Billon, Sherman and Hartwell, 2002) and in this sense deserves investigation of their own.⁵ It is their link with specific business activities in conflict situations that is dealt with here.

Although business is the focus of this paper and the considered object of regulation, it has to be recognised that the conventional profile of a business as an organisation is not applicable to many of the kinds of entities that are involved in the political economy of war and activities discussed above. A lot of these exist in the informal economy and are a conglomeration of individuals and contacts rather than something resembling a corporate structure. The term economic actor may be a more accurate description of the type of organisations being dealt with here, although this may include relevant government institutions and even aid organisations for the reasons given early. It is important to separate out criminal groups as well. The term business is, therefore, used but with the caveat that it is imprecise and includes loosely associated private sector actors as well.

As part of the research for this paper, a survey was conducted of 110 companies and influential businessmen operating in Africa (principally Angola, DRC, Liberia and Sierra Leone) that have had a link to conflict. By looking at their profiles they can be grouped into four main types of business, according to their size and how amenable they are to regulation.

4.1 Large transnational corporations

Large transnational corporations can have a lot of political and economic influence in the countries in which they operate because of their sheer size. They are generally very cautious, though, about their investments because they have such long lead times and cannot change tack easily if conflict ignites beyond scaling down or temporarily withdrawing. The reach of large transnational corporations is even greater because of the often elaborate joint ventures and stock holding they have with other companies which increases their exposure to conflict situations. A large degree of public exposure is often associated with these large firms, however, because they are usually based in western countries with strong customer interest in their conduct. As a result they are particularly amenable to regulation and socially responsible business as part of their CSR strategies. They can also potentially influence the companies that service them through their supply chain management.

4.1 Small transnational corporations

Again most small transnational companies are based in OECD countries or emerging Asian economies. While still being appreciably large, their smaller size does mean that they do not have the public exposure of large transnational companies and are unlikely to be household names. Although probably on a weaker financial footing

they are willing, however, to move into riskier environments because they can act with greater flexibility. Their activities primarily consist in exploration and securing mineral resources, they consequently work in more hostile environments in which security considerations and links with security forces become more important. Because many small transnational corporations are less well known and may come from countries which are not so concerned about the conduct of their companies in foreign conflicts, they are more difficult to regulate.

Box 2: Businesses behaviour within the war economy and towards belligerents.

Security businesses

There are those businesses that are commercially in existence precisely because war provides a market for their goods and services. In addition to the arms industry, which is not the focus of this paper, private security and military companies have connections with companies in the extractive sector. Those offering security services to protect the staff and property of larger corporations have received less attention than military companies that may have a strategic impact in a given situation and have links with the host government. It may even be that national armies become involved in commercial activities in conflict situations, although this is not dealt with here. Usually though transport and logistics companies play a supportive function to security businesses.

Opportunistic businesses

Violent conflict provides the opportunity for particular sorts of companies to secure market access or concessions to extract natural resources. In order to get this competitive advantage, opportunistic businesses are prepared to play a direct or indirect role in the course of the conflict through their relationship with the host government or warring factions. For these less scrupulous companies conflict is not so much a disruption but an opportunity to make commercial profit by evading the law. The relative lawlessness associated with war situations fosters criminal activities as companies are business can operate with relative impunity. In terms of the war commerce, criminal business help make the link between the illegal exploitation of resources and their marketing on the global market and in so doing operate at the least regulate point in the chain of transactions.

Adaptive businesses

There are a large group of business for which war is bad and they recognise the need to adopt adaptive policies in order to continue to operate in hostile environments. Risk assessment and management is the key tool for developing preventive and reactive scenarios should the political situation worsen, promoting remedial action. For adaptive businesses managing their public affairs with host governments, ensuing adequate security arrangements, undertaking stakeholder consultations, and community development schemes are key ways to ensure that they can continue to operate in hostile environments.

4.3 Local or regional businesses

Much less is known about local and regional businesses and their impact on conflict. Many transnational companies have to operate in conjunction with state owned companies with which they form joint ventures or other agreements. These companies usually have close connections with host governments and consequently can be politically powerful compared to international firms. In addition to the larger and more well known companies, there are as might be imagined a whole host of small companies operating in the extractive sector that have played a significant role in conflict. Their links with recalcitrant governments that would suffer if regulation were imposed and fact that they operate at the margins of the formal economy mean that they are particularly difficult to regulate.

4.4 Middlemen and brokers

There are a significant number of individual middlemen and brokers with business interests in zones of conflict that deserve a category of their own. They operate in lucrative import/export markets for natural resources, linking local dealers to international markets. They rarely invest in the war-affected country but rather act as a facilitator of other business interests. Their success is based on personal connections and knowledge. Because of their elusive and low-profile character they are amongst the most difficult to regulate, although 'name and shame' campaigns and investigations into particular individuals has drawn attention to their activities..

The following table provides a snapshot of the survey and gives examples of companies in each of the companies and associated sector and issues. The numbers in brackets indicate the number of entries in the survey of 110 companies and individuals.

Table 1 – Survey of types of business in zones of conflict.

Type of business	Examples	Sector	Key issues
Large transnational corporations (16)	BP, Shell, TotalFina Elf, Chevron, Texaco, Mobil-Exxon, Rio Tinto, Anglo American Corp, De Beers	Oil, gas, coltan, minerals, diamonds	Corruption, revenue flows, human rights, security arrangements, environmental degradation
Small transnational corporations (30)	Branch Energy, Diamondworks, American Mineral Fields, Ranger Oil, Falcon Oil and Gas	Oil, minerals, diamonds	Corruption, war commerce, security and militarised production
Local or regional businesses (24)	Sierra Rutile-Nord Resources, Oriental Timber Company, Oyrx	Mining, diamonds, timber	War commerce, security and militarised production
Middlemen and brokers (40)	Fred Rindle, David Zollman, Yair Klein, Jean-Raymond Boulle, Tony Buckingham	All	War commerce

It is important that these different types of businesses are not lumped together and treated in the same vein since they play very different roles in conflict situations and raise different kinds of issues.

5.0 Regulation as a possible policy response

There are then a range of issues related to the role of the private sector in zones of conflict that are of concern as well as various types of business that interface with conflict in different ways. As noted earlier, there is the need for greater clarity as to

what constitutes harmful private sector activity in armed conflict. International policymakers have begun, however, to formulate policy responses to the issue. A range of policy options exist. The focus of this paper - regulation - is but one means or lens through which to address the problem. For some aspects of the phenomenon it may well be that other policy approaches, such as the introduction of incentives or creation of partnerships with the private sector, are more appropriate and effective. These deserve examination in their own merit.

Regulation should be seen as one policy response among many that are required to address the role of business in armed conflict.⁶ It is fundamentally about making corporations accountable for their actions that may have a negative impact on the conflict. The challenge is to develop a rationale for taking a regulatory approach for particular issues and not others. In this regard, the following section sets out some of the factors and consideration by which such as case can be made for regulation.

5.1 Costs and benefits of companies doing business in zones of conflict

Doing business in zones of conflict is on the whole costly for most companies; peace and stability are far more preferable for conducting business. There are, though, certain goods and markets for which conflict is good for business. For arms manufactures and companies providing military services, war obviously provides conditions which make them economically necessary and commercially viable. In addition, there are those "conflict commodities" discussed earlier that are associated with the financing of belligerents and therefore any business involved in the trade in these commodities will profit from conflict. (In fact profitability increases because the scarcity of the resources is greater in times of war.) Even for seemingly legitimate companies there can be indirect benefits of operating in conflict settings. It has been argued, for instance, that the politically unstable environment in which the oil company Shell operated in Nigeria regimes through much of the 1990s under successive military did not negatively affect its profitability; in fact returns were comparable if not higher than elsewhere (ICRC, 2000: P42). For large foreign companies concerned about the risk of armed conflict to their investment, the potential financial rewards of investing usually outweigh the additional costs of having to operate in an unstable environment (Berman, 1999: p5).⁷ In a number of ways then companies can be, even unwittingly and legitimately, a potential beneficiary from operating in conflict situations.

The standard rationale for introducing regulatory measures is, when practically possible, to correct market failures in the interests of the public good. From an economic perspective, when business benefits from conflict, they contribute to a public bad, namely armed conflict, and produce negative externalities for local communities in the form of increased violence. The case for and purpose of regulation is to control these market imperfections by ensuring that companies do not undermine public security and are made socially and financially responsible for their actions. Regulation provides a disincentive to profiting from conflict in terms of punitive action and penalties.

While providing a useful economic rationale for regulating business in zones of conflict, this proposition is, however, complicated in a number of ways. It is extremely difficult, if not impossible, to quantify the benefits to certain business of

operating in conflict. Not only are the factors extremely difficult to measure, but are interrelated which makes confuses the picture. For instance, while the security costs of large companies operating in conflict zones is well known, it could be argued that security arrangements can aggravate local conflict and therefore represent a negative externality as well. The potential benefits of companies undertaking peace supporting and socially responsible activities are notoriously difficult to calculate and rarely are considered in the accounting practices of companies (Haufler, 2001). In many ways the issues under consideration require qualitative rather than qualitative judgements in order to inform behaviour.

Despite these reservations, a greater understudying of the costs and benefits associated with business operating in zones of conflict would help identify those activities that require regulation as they have a negative impact on the conflict as opposed to those more benign activities. There is clearly a strong case for regulation for those more nefarious activities by which business profits solely because of the existence of armed conflict, and there can be shown to have been a direct link to its continuation. For the grey areas, though, greater identification and delineation of those private sector activities that have an impact on conflict is necessary.

5.2 Complicity and responsibility

For many of the issues discussed in section 3 companies are not seen as being directly responsible for their impact on conflict, but rather complicit in the actions of other actors, particularly host governments. It is not necessarily the fault of companies, for instance, that corruption may lead to untransparent revenue flows in host countries, although they may be viewed as complicit in such realities if they fail to make efforts to change the status quo.

The importance of the concept of complicity in international law (particularly human rights law) is only just beginning to be recognised as the responsibilities of non-state actors - such as companies - for human rights violations comes into focus. A clearer definition of what is meant by complicity is a priority to help describe and respond to what are complex issues. Three broad types of complicity, have been proposed (Jerbi and Clapham, 2001 and Clapham, 2002). First, *direct complicity* is when a company knowingly assists in human rights abuses even if it did not desire the results. A company may be held responsible even if the principle perpetrator is not. Second, *beneficial complicity* is when a company indirectly becomes tainted or benefits from the actions of others, but they can not be shown to have assisted in the action. And thirdly, *silent complicity* is when a company fails to exercise influence where human rights abuses are knowingly taking place; not to do something is not an option.

In terms of devising a regulatory framework for business operating in zones of conflict it is therefore necessary to ascertain the responsibilities of companies vis-à-vis other actors, including home and host governments, international organisations and civil society. Delineating responsibilities will have a bearing on which particular issues require company regulation and what kind of measures may be appropriate. It may be for instance that direct requirements on company conduct are stipulated by governments. Alternatively other measures may include a mixture of responsibilities for government and companies. Within this context it is also important that the intentional and unintentional activities of business on conflict need to be separated. At

present they are often thrown into together which confuses the issue and restricts solutions being found. (FAFO/IPA, 2001: p2).

5.4 Illegal versus legal, illicit versus licit

Another key function of regulation is to help draw a line between illegal and legal (and/or illicit and licit) activities. Regulation is applicable to illegal and legal activities, but what judgement is made about an activity in question will have implications for the regulatory measure that are relevant or require introducing. This distinction is important because there has been a tendency to use these terms imprecisely and pejoratively. Even if by short-hand, by naming certain natural resources such as diamonds and timber "conflict commodities" it can easily be taken that it is the physical item that is in some way illegal. It is of course not the diamonds and timber that (unlike drugs) are illegal - a large amount of the timber and diamonds in the world are legitimately produced and consumed - but rather their exploitation in conflict zones and marketing on the international markets that have fuelled and helped sustain conflict. Furthermore, many natural resources are illegally exploited or extracted in situations not necessarily experiencing armed conflict because national laws that govern natural resources use are breached.

In order to identify the legality of private sector activities in conflict situations, the link needs to be made to how specifically the exploitation of resources contributes to the fuelling and sustaining of conflict. The main area of focus thus far has been on how the exploitation of resources finances belligerents and makes it economically viable for them to fight. Trade with non-state armed groups is *prima facie* seen as being illegal while with government it is legitimate unless the government in question is subject to specific sanctions (Le Billon, Sherman and Hartwell, 2002). The recent focus on war commodities has really been an extension of the international community's delegitimisation of specific non-state armed groups, usually rebels and insurgents. The Kimberly Process (see box 1) that has addressed the issue of conflict diamonds, for instance, defines their role in sustaining conflict in such a way that it is their use by rebel groups to destabilise sovereign governments and undermine the right to self-determination that is deemed illegal. National governments on the other hand are responsible for helping to crack down on conflict diamonds and are not necessarily seen to use them illegally even if they are sustaining their war effort. The combating of war commerce is therefore a means to another end. It is important therefore to keep sight of why a belligerent group may be seen as illegitimate rather than just how they are funded since all warring factions are within their rights to support their war effort through commercial activities

Another imprecise use of the terms legal and illegal stems from the fact that, because there are few laws and regulations on private sector activity in zones of conflict, many companies are in fact operating legally when they are being criticised for not. For example, the Canadian oil company Talisman has received strong criticism for its investment in war-torn Sudan. Where as its operations may be seen as illegitimate in the eyes of some, it has not in many ways acted illegally. Similarly, poppy cultivation and opium production, although not specifically addressed here, have been considered legal in Afghanistan where as in most places they would be outlawed. This is not to say there is not the need to make some activities illegal that are not already, but that,

without legal precedence, discussion about certain activities as either legal or illegal can be inaccurate and moreover possibly lead to wrong conclusions.

For these reasons it is important that the current regulatory gaps for companies operating in zones of conflict are addressed. At present they contribute to the blurring of the definitions of licit and illicit economic activity in armed conflict (FAFO, 2002: P12). In many respects the division between licit and illicit is artificial and complicated by there being legal and illegal activities along the chain of transaction by which private actors conduct war commerce. Nevertheless, a key priority and function of regulation is to ascertain which activities should be made illegal and those others that should be considered legal.

6.0 Types of regulation: Government and voluntary regulation

Having identified some of the private sector activities that are of concern in zones of conflict and proposed factors and considerations by which a regulatory approach could be developed to address these, it is now possible to survey the relevant instruments that already exist and try to identify possible gaps. Before doing so it is important first to appreciate the types of regulation that exist and what bearing this has on companies. Broadly speaking there are two approaches to regulation: First government regulation that places specific legal requirements on companies, and second, voluntary regulation that involves companies themselves proposing rules by which they will behave. This section outlines the features of these two approaches, and the benefits and shortcomings of each.

6.1 Government regulation

Government regulation is usually articulated in national laws and legislation, and sets out specific mandatory requirements to which companies must adhere. In relation to companies operating abroad, this usually means governments acting to fulfil international obligations that are placed on them by agreements, including conventions and treaties, made with other states. Under such laws and legislation companies are normally overseen by governments and required to fulfil certain duties in order to act in accordance with the regulation. The threat of punishment and penalties is the means for ensuring compliance. By establishing clear legal frameworks and standards within which companies must act, government regulation has certain benefits over other approaches which may leave things more open to subjective interpretation. Normally hostile to government forms of regulation because of the financial burden it brings, some companies have been known to favour such approaches because it reduces ambiguity and provides them with clear direction. The mining sector for instance recently called upon governments to set standards of behaviour with respect to the environment. A level playing field is also created since all companies from a particular industry or sector must abide by the same rules. In the absence of government regulation, standards tend to fall to the lowest common denominator as any company attempting to act in a way that is socially responsible is made uncompetitive or undermined by other less scrupulous companies free riding on their efforts.

With most governments nowadays favouring neoliberal economic policies that call for the removal of state intervention in the economy, mandatory forms of government

regulation are not always the preferred option. They are usually reserved to tackle issues over which the government feels it absolutely must interfere in the economy in order to protect the public's interest. In an era of globalisation in which the responsibilities of governments and corporations is shifting this is not always clear. Government regulation is extremely costly to administer because of the scale of information gathering and monitoring that is required to ensure companies comply. Introducing a regulatory system that cannot be practically implemented and enforced will prove counter-productive. There is paradoxically a greater incentive for companies to act irresponsibly with the imposition of regulations because introducing the threat of punitive action increases the financial rewards for those that manage to evade the controls put in place. If a sufficient number of companies manage to work around the imposed system, then it will be rendered unworkable and ultimately have made the situation worse. Governments, therefore, have to weigh up whether the costs incurred by introducing regulations to the taxpayer will be outweighed by the potential benefits to the public good.

6.2 Voluntary regulation

Companies themselves are increasingly introducing different forms of voluntary regulation. The private sector has a long traditional of setting standards in technical issues, but in recent years has begun to adopt similar approaches to environmental and social concerns as part of the corporate social responsibility agenda. The strive to improve social performance, to reduce potential costs (particularly reputation) of not taking action, and to pre-empt possible government regulation are the principal drivers behind these voluntary approaches to regulation. Codes of conduct, sets of principles and industry standards have consequently proliferated. Such measures may have been prompted and been helped drafted by governments. They are usually adopted though either by companies unilaterally or by associations of companies in a particular industry or sector.

Voluntary initiatives rely on the market mechanism, rather than legal requirements, to ensure compliance. They are not as a result usually independently monitored or enforced, although there are increasing calls for them to be so. Instead they rely on public awareness and consumer pressure to ensure that those that do not introduce such measures or fail to fulfil their stated commitments will face loss of market share or public relations problems. In this way, voluntary initiatives are inherently selective in nature as they are principally applicable to consumerable goods, with recognisable brand named companies.

By using market constraints, though, voluntary regulation is less costly relative to government forms of regulation. However, it has not been adequately shown yet that socially responsible business enhances profitability. The free rider problem remedied by government forms of regulation is, therefore, a principal shortcoming of voluntary initiatives, which often are criticised as more public relations exercises than meaningful commitments to socially responsible business. Developing measures in conjunction with other companies and in consultation with the stakeholders whose concerns are attempting to be addressed has helped rectify this problem to some extent. In particular, when standards are developed at an industry-wide level, progressive companies can single themselves out from less progressive firms who will be prevented from being associated with the standards that have been set. In this way,

co-operative behaviour can lead to greater benefits for those that participate than those that don't, in so doing reducing the risk of defection and the unravelling of co-operation. Management systems and processes, awareness raising and training are essential for codes of conduct to be effectively implemented within businesses. The benefits of adopting voluntary initiatives are however not yet apparent and the penalties of them not doing so a realistic threat. Therefore some companies will continue to remain ambivalent about them (Fitzgerald, 2001: P13) and there will always be calls for more mandatory forms of government regulation.

6.3 Government versus voluntary regulation

The pros and cons of government and voluntary forms of regulation have led to a contentious debate about which should take priority in terms of approaches to CSR. This has occurred to the extent that some argue that one approach should take precedence over the other, usually government forms of regulation because of the inherent problems of voluntary measures. It is not, however, an either/or question: voluntary initiatives are not a substitute to government regulation but often complementary by elaborating on already existing norms and articulating how they should be applied in specific circumstances. As stated by the International Council on Human Rights:

"Even where voluntary approaches are working, however, anchoring these in a legal framework is likely to enhance their effectiveness. And where voluntary approaches are not effective, a legal framework provides powerful tools and incentives for improvement. Legal and voluntary approaches should compliment each other." (International Council on Human Rights, 2002)

The introduction of voluntary regulation by companies does not preclude, in time, the development of government forms of regulation. This paper supports the views that government and voluntary regulation should work together and feed off each other. The priority is for a multifaceted and multileveled regulatory framework that encompasses both forms of regulation to be developed to address the role of the private sector in zones of conflict. Whether it is one form or the other that takes priority will largely depend on the specific problem that is being addressed and which approach would yield the best solution. The test should be whether the measures that are introduced actually lead to better practice. A proliferation of measures that are not effectively implemented by companies and governments is the worst result.

7.0 Relevant regulatory instruments

This section surveys the regulatory instruments that are relevant to private sector activities in zones of conflict. There is currently no single comprehensive regulation dealing with the conduct of companies in conflict situations. There are a few examples of measures developed to address specific problems linking business to conflict such as recent efforts to tackle conflict diamonds. In addition to these measures, there are a range of regulatory instruments dealing with related cross cutting issues such as human rights and corruption that are also relevant to many of the issues highlighted earlier.

The survey covers both government and voluntary instruments that have emanated from a range of organisations. There are both instruments that indirectly place obligations on companies by making governments responsible for their conduct or

directly place obligations on companies where states are unable or unwilling to take action and companies are expected to. There are also those instruments that have been established internationally and those others nationally or at a company or industry level.

7.1 National legislation

National legislation is potentially the most comprehensive way of regulating companies. Most international agreements only take effect once introduced into domestic laws. And because many states do not respect their international obligations, national laws become all the more important. The legislation of the country in which an international firm operates - host country - as well as where it is registered and headquartered - home country - are both relevant.

7.1.1. Host country legislation

Foreign companies investing in developing countries must adhere to a range of domestic laws and legislation related to their investment. These usually concern technical and financial requirements as opposed to many of the social issues discussed here that are pertinent to the role of business operating in zones of conflict. In many countries experiencing violent conflict, the judicial and legal systems are often weak and only minimally enforced. Political interference and corruption in the judicial and legal systems is common. Foreign firms may ignore the prevailing laws or at least not appreciate the different standards to that which exist in their home countries. (Haufler, 2001: P13). There is an implicit assumption, though, that foreign companies will strive to apply the same standards as they have to adhere to in their home country when operating abroad. Foreign companies are often accused of double standards when they do not uphold standards and practices abroad that they would have to abide by in their home countries.

It is beyond the scope of this research to identify specific host country legislation that is relevant to the role of business in conflict. However, further examination and strengthening of host country legislation is a key priority, since this has the most direct bearing on companies operating in conflict situations.

7.1.2 Home country legislation

International firms must also abide by their home country legislation which can affect their conduct abroad in a number of ways.

7.1.2.1 Extra-territorial legislation

It is unusual that the jurisdiction of domestic laws extend beyond national borders, although this is becoming more common in western countries for issues of an international dimension. Because the legal systems are often poor in the countries in which possible misconduct is deemed to have occurred, legal cases may be taken against companies in their home country, in so doing reducing the disparity in legal requirements on companies and concerns about double standards. The Alien Tort Claim Act of 1789 in the United States (US), for example, allows aliens resident in the US to sue American companies (and their partners) in US courts for crimes

committed abroad. The Act grants ‘the district courts ... original jurisdiction in any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States’.⁸ A number of cases have been brought against US companies under the Act (see box 2) by victims and activists seeking corporate responsibility for human rights abuses and environmental damage. Similar examples exist in Europe although such explicit forms legislation do not yet exist. That these cases have involved companies operating in conflict countries means that extraterritorial laws will arguably make companies more legally accountable for their conduct in zones of conflict.

Box 2: Cases under the Alien Tort Claim Act

John Doe I v. Unocal Corp.

The plaintiff alleged that in Myanmar in the mid 1990s the American oil company, Unocal, was complicit in human rights abuses and the imposition of forced labour carried out by the Myanmar authorities that occurred during the construction of a gas pipeline that the company was involved. The US court in which the claim was brought exonerated Unocal, although the plaintiff subsequently filed state law claims to appeal against the verdict. Unocal has since removed the state cases to the US District Court and has sought a dismissal of the state claims. A decision on the removal and dismissal is pending.

Beanal v. Freeport.

The plaintiff alleged that the American gold and copper company Freeport McMoran committed environmental torts, human rights abuse and cultural genocide in Indonesia. The court concluded that "a corporation found to be a state actor can be held responsible for human rights abuses which violate international customary law". However, the plaintiff "failed to allege state action as required under the Alien Tort Statute because it failed to allege that Freeport acted under the Indonesian law." All claims were consequently dismissed.

7.1.1.2 Bilateral sanctions

Home country governments may also enact bilateral sanctions that restrict companies from investing in certain countries because of concerns of national interest or otherwise. These are instead of or in addition to international obligations to impose sanction on particular countries (see below). Bilateral sanction may include a blanket ban on investment in targeted countries, restrictions to the granting of export credit or the imposition of penalty surcharge on procurement contracts of companies investing in particular countries. The US, for instance, has forbidden US companies from investing in Sudan since 1998 because of the country's alleged involvement in international terrorism. In 1996, the Massachusetts legislature enacted the Massachusetts' Burma Selective Purchasing Law that has subsequently prevented US firms operating in Burma. The European Union's Member States also has a number of embargoes on certain countries.

7.1.1.3 Export credit guarantees

Another way that home country governments place restrictions on companies investing in certain countries is through the granting or denial of export credit guarantees. Most western countries have export credit agencies whose responsibility it is to underwrite large contracts won by companies in developing countries because of the risk that the recipient government will fail to pay. Whether a company receives export credit insurance is meant to be based on purely economic calculations of the risk that there will be a default in payments. There is not meant to be consideration of

the social and environmental impact of a project, let alone on the incidence of conflict. For example, in the case of Angola, the UK Export Credits Guarantee Department (ECGD) is "prepared to consider applications ... provided the repayment risk has been sufficiently externalised (e.g. in the case of offshore foreign currency escrow accounts) and the remaining host political risks deemed acceptable" ⁹

Western governments have traditionally resisted calls to introduce explicit social and environmental criteria on the granting of export credit. There are many instances, though, where such considerations have been implicitly made. In relation to the impact of a government-backed investments in conflict regions, for example, the US export credit agency, the Overseas Private Investment Corporation, withdrew \$100m of cover for Freeport MocMoran in Indonesia in 1995 because the company was seen as siding with the Indonesian government's repressive acts carried out against the West Papua movement (ICRC, 2000: P40). In recent years there has been a trend towards governments scrutinising more and more the support provided by them to companies operating in developing countries. The Netherlands Government, for example, has recently said that it will not provide export credit to Dutch companies wishing to invest abroad unless they have signed up to the OECD Guidelines on Multilateral Enterprises (see below). In the future, it could be that certain requirements pertaining to a company's impact on conflict are introduced in a similar fashion.

The financing or underwriting of investments in developing countries by multilateral or regional banks (particularly members of the World Bank Group) have tendered, because of their focus on poverty reduction, to incorporate environmental and social factors as part of their risk assessment for potential loans more than the export credit agencies of donor governments. For example, the International Finance Corporation - part of the World Bank Group - requires companies to meet social and environmental impact assessment standards in order to receive lending for investment in developing countries. With the World Bank's increasing recognition of the impact of conflict on its poverty reduction mandate, a similar conflict impact assessment standards may also be developed in time. This would require conflict impact assessments to be incorporated into company risk management procedures. In this regard important lessons can be taken from the use of conflict impact assessments by donor agencies that could be adapted to the private sector. ¹⁰

7.2 International law

International law embodies an array of legal instruments designed to tackle global and regional issues. They vary in how legally binding they are on those state parties that ascribe to their aims. Most international agreements rely on the implementation of legislation by members states to be enforced as there is no international mechanism for ensuring compliance. There are a number of instruments within international law relevant to the role of the private sector in zones of conflict.

7.2.1 International conventions and treaties

International conventions and treaties are legally binding on state signatories that are obliged to ratify them by introducing domestic laws.

7.2.1.1 International humanitarian law

International humanitarian law is embodied in the Geneva Conventions and their Protocols. These outline the rules of armed conflict and are designed to help reduce human suffering and protect civilians in times of war. As noted earlier international humanitarian law is particularly relevant to corporate security arrangements. When companies use security personnel in conflict situations they take on the characteristics of combatant status within international humanitarian law. The International Committee of the Red Cross (Carbonnier, 2001) has consequently sought to raise awareness about international humanitarian law amongst firms operating in conflict situations to ensure respect for its provisions. This has especially been the case for companies providing military services. Only if there is a direct chain of command between security personnel and a company, though, can they be held accountable under international humanitarian law.

7.2.1.2 OECD Convention on Combating Bribery of Foreign Public Officials

International efforts to combat corruption have gathered pace in recent years with the entry into force of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997. The Convention calls on the Members States of the OECD and a further 3 signatories to introduce national legislation that criminalises bribery abroad by foreign companies. It has been followed by a number of other regional and international corruption initiatives (e.g. the OAS Inter-American Convention against Corruption (1997), the IMF Code of Good Practices on Transparency and the Council of Europe's Criminal Law Convention on Corruption (1999)), but is the first legally binding instrument of its kind. The UN Member States are also to negotiate a legally binding convention against corruption which inter alia "may endanger the stability and security of societies." Such measures are clearly relevant to efforts to address the link between corruption and untransparent revenue flows discussed earlier. However by principally focusing on bribery these measures do not adequately deal with ensuring transparency of how revenues are distributed that are more likely to be dealt with through revenue sharing agreements.

7.2.1.3 International Convention for the Suppression of the Financing of Terrorism

In December 1999, the UN General Assembly adopted the International Convention for the Suppression of the Financing of Terrorism which is in the process of ratification by member states. The Convention is the first to deal specifically with the issue of the financing of terrorism. Because of its wide definition of terrorism it also applies to murders or physical violence perpetrated against non-combatants during armed conflict.¹¹ Businesses are affected by the Convention in three ways. First, financial institutions potentially associated with the finances of suspected terrorist groups are coming under pressure 'to utilise the most efficient measures available for the identification of their ...customers ... and report transactions suspected of stemming from criminal activities' (Para. 18.b). Second, businesses are required to cooperate with the judicial process as 'State Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy' (Para. 12.2). And third, and most importantly, a business 'commits an offence ... if [it] by any means, directly or

indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, to carry out' acts of terrorism (Para. 2.1). Any business providing funds or payments, such as taxes or facilitation fees, to belligerents with the knowledge that they are being used to carry out acts of violence against civilians could come under prosecution.¹² This is particularly relevant to how state funds, which may have been collected from foreign investors, are used to carry out military operations that may have an indiscriminate impact on civilians such as in Sudan. The terrorist attacks of September 11th in the US and international crackdown on terrorist networks that circulate large sums through formal financial networks is testing the application of the Convention to the private commercial sector (Sallam, 2000).

7.2.2 UN Security Council Sanctions

A function of the UN Security Council under the UN Charter is to call on Member States to impose sanctions on states and non-state armed groups if there is a threat to international peace and security. UN Security Council sanctions have traditionally focused on punitive actions against the financial and commercial interests of the leadership of a country in question or particular rebel groups, although they do not strictly apply to companies. The resolutions passed by the UN Security Council to bring about sanctions, however, constitute part of customary international law. In some countries UN Security Council resolutions automatically become part of national law whereas in others specific orders need to be passed for this to be the case.

Over the last decade, the use of sanctions has increased dramatically (Cortright and Lopez, 2000). Examples of UN Security Council resolutions relevant to businesses operating in zones of conflict situations include: the imports of fuel by, and export of diamonds from, UNITA rebels in Angola; the import of fuel and export of timber and gems from the Khmer Rouge in Cambodia; government exports of oil from Iraq; the import of RUF diamonds to and export of rough diamonds from Liberia; and the import of fuel and export of diamonds from the RUF in Sierra Leone. A lack of adequate national legislation and enforcement by some governments has, however, made these efforts largely rhetorical and there have been calls to make sanctions-busting a criminally liable act. The design of sanctions has also come under increasing scrutiny because of the disproportionate impact they can have on the populations of targeted countries.

The creation of UN expert panels tasked with investigating country compliance with UN sanctions has been a welcome step. Through a policy of 'naming and shaming' these expert panels, which have had to report to the Security Council on Angola, the DRC and Sierra Leone, have at least raised awareness about who is evading sanctions. They have been criticised, though, for not having access to the necessary information to conduct their job effectively and for being swayed by political pressures. Their more dramatic recommendations, such as secondary sanctions on sanction-busting countries, though, have not been implemented.

Discussion is now underway about the possible creation of a permanent sanctions-monitoring unit under the Security Council. There is political concern, however, about the UN creating an 'intelligence' function in this way. The UN does not have a

mandate to police and enforce the international law which in most cases should reside with Member States. However, the creation of expert panels has provided a lot of public scrutiny on the activities of governments and companies in conflict situations.

7.2.3 International trade laws (WTO)

The work of the World Trade Organisation and the trade agreements that it governs do not deal with social or environmental issues *per se*. The WTO's principal mandate is to promote free trade by helping to reduce trade barriers and arbitrate trade disputes.¹³ Member States of the WTO cannot impose trade restrictions on the grounds of social concerns unless there is precedence in other aspects of international law, which in the case of business and conflict is likely to be unsubstantial. For example, Burkina Faso, a country reported by the UN to be trading in conflict diamonds threatened to evoke trade discrimination and breaches of WTO rules if measures to curtail its involvement in the diamond trade were introduced.¹⁴ To be lawful, such a move would need to be supported by a Security Council resolution or an international agreement as the one negotiated under the Kimberley Process.

Article XXb of the WTO Agreement does, however, allow restrictions of free trade on the general principle of protecting human life, as has been evoked in the case of patent breaches in the production of anti-AIDS drugs in developing countries. Article XXI also relates to the possible threat of international trade to peace and security. There would, therefore, be legal ground for arguing that trade restrictions could be made on the trade in conflict commodities that have been linked to sustaining and perpetuating conflict. This may be difficult to apply at the level of individual companies, however. The WTO's Dispute Settlement System is not mandated to regulate between private corporations and consumers. Furthermore, the WTO is not concerned with the illicit trade of goods which, as has been shown, has a strong link with conflict. In the case of conflict diamonds WTO rules have no effect on a country importing illegal diamonds nor the powers to bring them to account for failing to take adequate measures to halt imports of non-certified diamonds (WTO official, pers. com., 2000).

7.3.2 International declarations and principles

International declarations and principles are broad statements of intent by the international community to address specific concerns. Unlike conventions and treaties they are not legally binding on state parties, but do carry with them certain obligations.

7.3.2.1 The UN Declaration on Human Rights

The mostly widely sighted and universally applicable international human rights instrument is the UN Declaration on Human Rights (1948). In its preamble it refers - in addition to states and individuals - to "every organ of society". This clause has been interpreted as meaning that companies have a moral and social obligation to respect the human rights enshrined in the Declaration. While companies are not legally obliged to abide by its provisions, those that haven't, have found it costly. This reflects the growing responsibilities of companies in the area of human rights (International Council on Human Rights, 2002). A number of companies now possess public statements of principles on human rights that draw upon the UN Declaration

and other human rights instruments. The UN Global Compact (see box 3) also calls upon companies to "support and respect the protection of international human rights within their sphere of influence" and "to make sure their own corporations were not complicit in human rights abuses."¹⁵ Furthermore, a Working Group of the UN Sub-Commission on the Protection and Promotion of Human Rights has developed a set of UN Fundamental Human Rights Principles and Responsibilities for Transnational Corporations and other Business Enterprises which draw on existing state human rights instrument and sets out a clear framework for how companies should act in relation to human rights. There are then a number of relevant regulatory instrument in terms of the human rights concerns of companies operating in zones of conflict.

7.3.2.2 ILO Tripartite Declaration of Principles concerning Multilateral Enterprises and Social Policy

In 1977 the International Labour Organisation (ILO) adopted the Tripartite Declaration of Principles concerning Multilateral Enterprises and Social Policy. The Declaration incorporates relevant ILO conventions, declarations and principles (e.g. the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up) and provides a basic benchmark for the conduct of business in relation to its labour practices. The Declaration, while endorsed by governments, relies on companies to voluntarily implement. It has been amended three times, most recently in 2000, to incorporate new ILO instruments passed since it was introduced. The ILO as an international organisation also support a number of voluntary initiatives on labour standards. Provision in ILO instruments related to non-discrimination in the work place and collective bargaining and protest are most relevant to companies operating in zones of conflict.

7.3 Regional measures

In addition to agreements achieved at the international level through bodies such as the UN, there are also a number of relevant regional measures adopted by organisations such as the European Union and NAFTA in home government countries or ECOWAS and SADC in affected regions. For example, the European Commission recently published a White Paper on corporate social responsibility which *inter alia* deals with the conduct of European companies in third countries. Although comprehensive in its scope, the White Paper, however, does not mention the role of business in conflict, and emphasises the voluntary nature of CSR by fundamentally rejecting the prospect of the EU introducing mandatory regulation related to CSR for EU companies. The 'Multi-stakeholder Forum on CSR' proposed instead aims to increase business knowledge about CSR and promote best practice amongst key stakeholders. In terms of affected regions, the peace and security committee of NEPAD has explored standards for the conduct of business operating in zones of conflict which be taken forward by the recently created African Union.

7.4 Codes of conduct and guidelines

There are a whole raft of codes of conduct and guidelines that companies are called upon to voluntarily support. These measures provide ways in which companies should act and behave in order to ensure socially responsible business. A number of codes of conduct and guidelines have been developed and endorsed by multilateral and

regional organisations that have sort to provide leadership to companies. There have also been a number of initiatives by companies themselves, either unilaterally or as part of a consortium in a given industry.

7.4.1 OECD Guidelines for Multinational Enterprises

Perhaps the most well known corporate social responsibility guidelines are the OECD Guidelines for Multinational Enterprises, first introduced in 1977 but substantially revised in 2001. The Guidelines represent non-binding recommendations to companies on how they should act in key social and environmental areas made by the thirty member states of the OECD and six other countries. Along with the ILO tripartite Declaration they are the only international instruments that place direct responsibilities on companies for their implementation as opposed to indirectly through governments. Of relevance to the role of the private sector in zones of conflict are provisions within the Guidelines related to transparency and information disclosure (although not specifically on payments to host governments); employment practices on non-discrimination, bribery and contributions to political parties; respect for human rights and the environment (OECD, 2000). While not legally binding, the Guidelines represent a clear statement of public policy at inter-ministerial level of OECD Member States and include a implementation procedure close to a judicial process which is binding on governments, although not on multinational enterprises (Howen, 2001). There have been criticism, though, that the Guidelines are thin on specific details of how companies should behave. There is also no specific mention of conflict, although such a link is currently being researched in the OECD.

7.4.2 UN Code of Conduct for Law Enforcement Officials and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The UN Code of Conduct for Law Enforcement Officials (1979) and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) represent a UN initiative to develop best practice in the area of law enforcement and security. In particular they provide guidance to ensure security personnel respect the right of the individual, and only use force when absolutely necessary and to an extent proportional to the threat. While their principal focus is on state security forces, the Code of Conduct and Basic Principles are viewed as relevant to corporate security arrangements in relation to their dealings with states security forces and hiring of private security firm. As a result they are a key feature of most corporate security policies and were heavily drawn upon in the Voluntary Principles on Security and Human Rights (see below).

7.4.3 Other codes of conduct and guidelines

The above two instruments are merely two of the more well-known codes of conduct and guidelines developed by multilateral organisation to address issues related to the role of the private sector in conflict. There are a myriad of other such measures developed by companies alone or with or by NGOs that are relevant. It is beyond the scope of this paper to identify all these measures and more over assess their relevance to the business and conflict issue. A few other examples include:

- Amnesty International's (UK) Business Group Human Rights Guidelines for Companies (1998)
- The Confederation of Norwegian Business and Industry checklist on the relevance of human rights for businesses.
- The Red Cross Movement's Code of Conduct on Humanitarian Assistance (while directed at NGOs operating in developing countries there is also useful guidance to companies in terms of for instance operating impartially).

Box 4: The UN Global Compact

In July 2000 the UN Secretary-General, Kofi Annan, formally launched the Global Compact - 'to unite the powers of markets with the authority of universal ideals'. The Global Compact calls on business leaders, trade unions and NGOs to join forces behind a set of nine core values in the areas of human rights, labour standards, and the environment.¹⁶ It claims not to be 'a regulatory instrument or code of conduct, but a value based platform designed to promote institutional learning. It utilises the power of transparency and dialogue to identify and disseminate good practices based on universal principles'. Despite criticism for placing only minimal requirements on companies and allowing an easy public relations exercises for them, the Global Compact is developing into an important forum or network for promoting socially responsible business.

In order to sign up to the Global Compact, companies must express support for the nine principles in their mission statement and annual report. To safeguard the initiative, the UN reserves the right not to accept, and the power to cancel, a company's participation if it is deemed as not complying with the nine principles. As a learning forum, the Global Compact does not assess performance, but seeks to identify and promote good practice. A concrete example of progress made or lesson learnt in implementing the nine principle must be made annually by supporting companies. The Global Compact office also seeks to establish projects with participating companies and NGOs to further the aim of the initiative and facilitates policy dialogue processes on specific concerns. During 2001/2 the Global Compact concentrated on the role of business in zones of conflict as part of this issue-based dialogue between businesses, NGOs and the UN. Working groups were established on four critical issues related to the role of business in conflict - transparency, multi-stakeholder dialogues, conflict impact assessments and transparency. After a year, less than ambitious policy recommendations were formulated than first envisaged, although an important network of organisations have now been convened to work on the issue.

7.5 Principles and Standards

In addition to codes of conduct and guidelines there are also a number of principles and standards related to socially responsible business. These measures differ from codes of conduct and guidelines in that they outline specific value-based or ethical considerations - principles - that companies should abide by or a measure - standards - that serves as a benchmark to which companies should strive to conform. The differences are subtle and regulatory instruments cannot easily be put into different categories. An appreciation of the different requirements they place on companies is important however in order to understand how they impact on corporate behaviour in zones of conflict. Examples that are relevant to business and conflict, include:

7.5.1 Voluntary Principles on Security and Human Rights

The Voluntary Principles on Security and Human Rights are an initiative of the US and UK governments who during 2000 facilitated a dialogue on security and human rights between corporations in the extractive sector and human rights organisations. This led to the adoption of a set of non-binding principles in December 2000.¹⁷ The aim of the Voluntary Principles is "to guide companies in maintaining the safety and

security of their operations within an operating framework that ensures respect for human rights." Madeline Allbright, US Secretary of State at the time, heralded the Voluntary Principles as a "landmark in corporate social responsibility". The Principles reflect best practice of corporate security policies and comprise three sections: risk assessment of human rights in security arrangements; relationships with state security forces, both military and police; and the hiring of private security firms. Beyond tackling what as noted earlier is a key concern related to business and conflict, companies as part of implementing the Principles are required to conduct conflict analysis and recognise the impact of their security arrangements on the local conflict.

It was agreed that the Principles would be voluntary and non-binding. However they refer to and build upon existing international humanitarian and human rights law and law enforcement standards already mentioned. In this way they do not represent in all respects new regulation for companies, but rather an articulation of existing instruments for a particular issue and context. If the Principles were to feature in contracts with government forces or private security firms, though, then they would have legal implications.

The Principles have been viewed as a useful initiative by many participants and commentators. Key to their success has been the identification of a common problem for governments, companies and NGOs addressed by a multistakeholder approach to ensure ownership by all concerned. The support given by governments to the process also provided the necessary political weight behind it for companies to take it seriously. Since their adoption, the Principles have been integrated into company management systems and tested in a number of countries. The Netherlands government is also now part of the initiative and there are a number of other interested governments and companies, many of which already subscribe to the Principle's aims. Having established what is hoped will be an industry standard, measuring compliance is the key challenge now to advance the Principles as presently there are no means of monitoring or verification other than reviewing them by the participants. Being able to widen the group of participants (especially to southern governments and NGOs) without the diluting commitment of participants to high standards will also be difficult.

7.5.2 The Global Sullivan Principles

Inspired by the 'Sullivan Principles for South Africa' that guided corporate conduct during Apartheid South Africa, the Global Sullivan Principles provide "a positive aspiration framework against which the internal policies and practices of socially responsible companies ... can be aligned ... to achieve greater tolerance and better understanding among peoples, and advance the culture of peace." The Principles are oriented towards the end of discrimination in the workplace and the provision of basic equal rights to workers. The basic premise is the idea of self-help – that people can overcome barriers of poverty and oppression by themselves. The Principles are self-enforced and - unlike codes of conduct and guidelines - are non-prescriptive. They are of particularly relevant since they refer to the advancement of a 'culture of peace' and were developed within a conflict context where relationships within the workplace were key to social tensions. The Global Sullivan Principles have subsequently been supported by the UN Global Compact and a number of multinationals, among them Shell, Chevron, Colgate-Palmolive and General Motors.

7.5.3 Social Accountability 8000

In recognition that a number of companies are now concerned about their social as well as financial performance, the organisation Social Accountability International (SAI) has over the last few years developed a standard - Social Accountability 8000 - on labour and workplace issues. The SA 8000 standards includes discrimination in the work place and is therefore of relevance to business operating in conflict settings. SAI now independently accredits companies for SDA 8000 and applies a verification system to ensure compliance of the standards for a whole host of companies with combined sales of \$75bn. Its broad mission is to develop a range of CSR standards, with labour concerns having been the first. In the future, other standards relevant to the role of business in zones of conflict could well be developed.

7.5.4 Stock market standards and requirements

To be publicly listed and traded on most western country stock markets companies have to meet certain minimum requirements and disclosures of information. In this way, stock market regulation can assist in bringing about transparency and accountability of private sector activity. The SMART legislation brought in the UK under the Pensions Act, for example, requires pension funds to inform their customers about their commitment to social policies. It has been argued that stock markets should make it a requirement that payments to host government be made publicly available to combat untransparent revenue flows in zones of conflict.

The New York and London stock exchanges now have indexes linked to ethical investment; the Dow Jones Sustainability Index and FTSE4GOOD respectively. Indeed Socially Responsible Investment is a growth area and a potentially powerful way of promoting more socially responsible business. Such schemes are only beginning to become credible though and still receive criticism for placing only minimal requirements on companies to be considered ethical. However, in time it could be that criteria related to the role of the private sector in conflict becomes important. The problem still exists, though, that there are those financial markets for which ethical consideration for companies is not such priority.

7.5 Implementation: Reporting, Monitoring and Enforcement

The implementation of regulatory instruments is arguably as important as the measures themselves. Especially when measures are voluntary, a great deal rests on the mechanisms by which implementation of commitments can be assured. This section outlines a few of these mechanisms, including: reporting, monitoring and enforcement.

7.5.1 Reporting

There are now a number of ways in which companies can report against their social performance and become audited to measure achievement. This may be through management consultancy and accountancy firms on a bilateral basis. Hitherto, there has not been a universal benchmark. In 1997, however, the Global Reporting Initiative (GRI) was established with the aim of developing globally applicable guidelines for companies to report on their economic, environmental and social

performance. The GRI now involves a number of key stakeholders, including companies, NGOs, accountancy organisations and business associations and hopes by the end of 2002 to have established itself as a permanent, independent international body. In March 1999 the GRI announced the Sustainability Reporting Guidelines on Economic, Environmental and Social Performance for comprehensive sustainability reporting, which have subsequently been tested and revised.

7.5.2 Monitoring

In addition to reporting on social performance, monitoring by outside stakeholders is a key way in which companies can be judged in terms of the regulatory commitments they have made. Adequate monitoring is essential to ensure that regulatory measures are in fact implemented. Shareholders monitor all aspects of listed companies actions that might have an influence on their investment. Through resolutions at annual general meetings they can scrutinise boards of director's social performance and call for additional measures to be taken. Consumer watchdogs also monitor the ethical standing of companies and they can influence the purchasing of certain goods even to the extent of prompting boycotts. This kind of consumer pressure and monitoring is only relevant, however, for companies with recognisable brand names. For companies not so much in the public spotlight the monitoring of their ethical conduct is not under such scrutiny. NGO activism and campaigning helps to bring to the public's attention issues that would probably not otherwise come to the surface. NGOs often do not have the capacity to monitor all concerns and they are inherently selective in the choice of targets by only focusing on household names.

7.5.3 Enforcement

For regulatory measures that place legal requirements on companies there is of course the threat of legal enforcement to ensure implementation. Legal costs can be very high for corporate misconduct and can prove to a powerful incentive to ensure that companies adhere to relevant regulations. Legal cases are most likely to be brought in national courts as there are no international enforcement's mechanisms. The Statute of the International Criminal Court, despite a number of proposals, does not cover the actions of companies. Since it includes "accomplice liability" however there could be individual liability of company directors and managers for misconduct in the crimes addressed by the court.

This section has attempted to provide an overview of some the relevant regulatory instruments for companies operating in zones of conflict. It has done so by the type of regulation - national legislation, international law, regional measures, codes of conduct and guidelines, and principles and standards - and has in each case tried to highlight some of the relevant private sector activity in zones of conflict of concern that has been discussed earlier. The list is by no means exhaustive, but does provide a picture of the different kinds of regulations that are out there. A number of the issues discussed fall under more than one instrument and therefore it is not possible to match issue to instrument in each case. The following table, though, provides a matrix of activities against regulatory instruments to summarise the information that has been provided.

Matrix of private sector activities in zones of conflict and relevant regulatory instruments

	National legislation	International law	Codes of conduct and guidelines	Principles and standards	Implementation: reporting, monitoring and enforcement
War commodities and commerce (oil, gas, diamonds; minerals, coltan, timber, etc.)	Bilateral sanctions (e.g. US government sanctions on Sudan and the Sudan Peace Act)	UN Security Council Resolutions for Angola, Sierra Leone, DRC, Liberia and Cambodia EU Sanctions UN Convention to Combat Transnational Organized Crime (2000)		International diamond certification system through the Kimberley Process Forest Stewardship Council standard	UN Sanctions bodies UN Expert panels
Corruption and untransparent revenue flows	US Foreign Corrupt Practices Act (1977)	OECD Convention on Combating of Foreign Public Officials in International Business Transactions (1997) OAS Inter-American Convention Against Corruption Council of Europe Criminal and Civil Conventions on Corruption	IMF Code of Good Practices on Transparency Second EU Money Laundering Directive (2001) OECD Guidelines for Multinational Enterprises (2001) Corporate Integrity Pacts	Global Coalition for African Anti-Corruption Principles (1999) Wolfsburg Principles	Financial Action Task Force (FATF) Basel Committee for Banking Supervisions (BGBS) Global Reporting Initiative Group of States Against Corruption
Security arrangements and militarised production	Arms export controls	Geneva Conventions (1949) and the Additional Protocols I and II (1977)	UN Code of Conduct for Law Enforcement Officials and Basic Principles on the Use of Force and Firearms by	Security and Human Rights Voluntary Principles	ICRC monitoring

		<p>UN Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989)</p> <p>International Convention for the Suppression of the Financing of Terrorism</p>	<p>Law Enforcement Officials.</p>		
Human rights and labour practices		<p>UN Declaration on Human Rights (1948)</p> <p>ILO Tripartite Declaration of Principles concerning Multilateral Enterprises and Social Policy</p> <p>ILO Declaration on Fundamental Principles and Rights at Work</p>	<p>Amnesty International Human Rights Guidelines</p> <p>The Red Cross Movement's Code of Conduct on Humanitarian Assistance</p> <p>OECD Guidelines for Multinational Enterprises</p>	<p>UN Global Compact</p> <p>UN Fundamental Human Rights Principles for Business Enterprises (draft)</p> <p>Social Accountability 8000</p> <p>Global Sullivan Principles</p>	<p>UN Treaty Bodies</p> <p>UN ECOSOC Committees</p> <p>Special Rapporteurs and Independent Experts</p> <p>Global Reporting Initiative</p>
Environmental degradation		<p>Rio Declaration of the UN Conference on Environment and Development</p> <p>ILO Convention on Indigenous and Tribal Peoples 1989</p> <p>UN Convention on the Elimination of Racial Discrimination</p>	<p>OECD Guidelines for Multinational Enterprises</p> <p>World Bank Resettlement Guidelines</p>	<p>IFC environmental impact standards</p> <p>UN Global Compact</p>	<p>UN Forum on Forests</p> <p>UN Working Group of Indigenous Populations</p> <p>World Bank's Inspector Panel</p>

7.0 Conclusions and recommendations

This paper has discussed the role of the private sector in zones of conflict and in particular how regulatory approaches can be developed to address highlighted concerns. From mapping out the relevant issues it has attempted to match these with existing relevant regulatory instruments. From this survey, the following policy recommendations can be made

7.1 Integrate regulation with other policy responses

As the link between business and war becomes more evident, international policymakers are being required to devise new policy responses to tackle this dynamic of violent conflict. This paper has demonstrated there is a clear need for action to be taken by companies, governments and international organisations. Regulation is but one policy option at the disposal of policymakers where companies can be shown to directly profit from armed conflict and contribute to its perpetuation. The responsibilities of companies need to be separated from other actors in conflict situations with which companies may be complicit. It is important, however, that regulation be integrated with other approaches to the problems.

7.2 Regulate activities not actors

The private sector interfaces with conflict in different ways depending on the sector involved and the size of company as well as a host of other factors. This paper has highlighted, however, the need to regulate the activities by which the private sector can have a negative impact on conflict. It is not the commodities that a company may exploit that is of concern, but rather the associated activities that lead to the sustaining of conflict. A principal concern is any activity that helps finance belligerents, although there are other social, political and environmental ways that companies can interact with the conflict as well. Regulatory approaches should concentrate on clarifying and defining the private sector activity that is of concern in conflict situations and develop ways in which these can be effectively controlled.

7.3 Policy direction rather than new regulation

A great deal of effort and political will is required to introduce new forms of regulation that may be costly and difficult to enforce. The survey presented in this paper has shown that, although there is no single instrument dealing with the role of business in zones of conflict, there are a number of relevant measures because of the cross-cutting nature of the issue. It is not so much a lack of regulations that is the problem, but rather the effective implementation of those that already exist. Instead of creating a new regulation specifically dealing with the link between business and conflict, the priority is the need for policy frameworks to be developed to make sense of already existing instruments. It is unlikely, for instance, that an International Convention on conflict diamonds or the illegal exploitation of natural resources in conflict situations will be developed. The priority is for policy discussions currently taking place in the OECD, World Bank and UN to give policy direction for the application of existing instruments dealing with corruption, human rights, etc. in zones of conflict. To bring needed impetus and clarity to tackling the issue, however,

the adoption of a UN Action Plan on the role of the private sector in regions of conflict would be particularly useful

7.4 Match activities with responses

This paper has dealt with a wide range of private sector activities in regions of conflict, each which throw up different sets of issues and therefore call for different kinds of responses. There has been a tendency to talk about the role of business in conflict as if the private sector was in some way homogeneous and could be tackled in a generalised way. However, the illicit trade in conflict commodities between informal traders and non-state armed groups, and untransparent payments made by large transnational corporations to corrupt regimes are very different kinds of issues. It is important that the business and conflict issue be broken down into its constituent by for instance whether we are talking about domestic or foreign companies, illegal or legal activities, etc. Only then will it be possible to match activities with responses.

7.5 Close regulatory gaps

Although there is not the need for wide-ranging regulation to address the role of the private sector in zones of conflict, there are, however, a number of regulatory gaps that have been highlighted in this paper that could begin to be addressed in the short term. Examples of these include:

- Following on from the Kimberley Process for conflict diamonds, the introduction of further international certification systems to address other conflict commodities such as timber and coltan.
- Western governments and stock market authorities making it a mandatory requirement that companies make public the payments they make to host governments in order to improve the transparency in the revenue flows in zones of conflict.
- The export credit agencies of donor governments introducing criteria to assess the potential impact of the projects they support on the incidence of conflict.
- The International Finance Corporation of the World Bank making it a requirement that companies undertake a conflict impact assessment as part of receiving financing for their investments.
- The creation of a sanction monitoring unit by the UN Security Council.

7.5 Development of business and conflict principles by companies

Recognising their responsibilities for a range of social and environmental concerns, a number of companies now have corporate policies and principles on these issues. Public statements such as these project good corporate behaviour and are a means for shareholders and stakeholders to hold companies accountable. In the absence of clear policy direction, companies would do well to start to develop a set of principles on business and conflict. These principles would articulate the responsibilities of companies under the numerous regulatory instruments discussed earlier and moreover how they could be applied in a conflict setting.

7.6 Further research on regulatory models

This paper has been only a preliminary attempt to survey the regulation of business operating in zones of conflict. As noted already further research needs to be done in order to identify the private sector activities in conflict situations that are most of concern. Further clarification of the nature of the problem is arguably an antecedent to the development of further regulation. Where as it is quite easy to identify relevant regulatory instrument to the business operating in conflict, assessing their applicability and devising ways that could actually influence the practice of companies is a much greater task. Further research should therefore be carried out on the kinds of regulatory models that could usefully be developed to address the role of the private sector in zones of conflict.

Bibliography

Amnesty International (UK) Business Group (1998) Human Rights Guidelines for Companies

Anderson, Mary & Zandvliet, Luc Corporate Options for Breaking Cycles of Conflict Collaborative for Development Action

Bennett, Juliet (January 2001) Business in Zones of Conflict, The Role of the Multinational in Promoting Regional Stability International Peace Forum

Bennett, Juliette (April 2002) Conflict Prevention and Revenue-Sharing Regimes, paper prepared for the UN Global Compact policy dialogue on business in zones of conflict.

Berman, Jonathan Corporations and Conflict: How managers think about war Harvard International Review (Fall 2000)

Business And Peace (May 2000) Report of Conference hosted by UK Department for International Development and Foreign and Commonwealth Office, in collaboration with the PWBLF, CEP and International Alert

Business Partners For Development (1999-2000) Natural Resources Cluster, Working Papers No.1-5

Business and Human Rights: A Progress Report (January 2000) Office of the United Nations High Commissioner for Human Rights

Berdal, M. and D. Malone (2000), *Greed and Grievance: Economic Agendas in Civil War*. Boulder, CO: Lynne Rienner.

Carbonnier, Gilles, Corporate Responsibility and Humanitarian Action, IRRC December 2001 Vol.83 No844

Christian Aid, The Scorched Earth Oil and War in Sudan (March 2001)

Clapham, A. and S. Jerbi (2001) *Towards a common understanding of business complicity in human rights abuses*. Unpublished manuscript. New York: UN Global Compact.

Collier, P. and Hoeffler, A (1999) On Economic Causes of Civil War. Oxford Economic Papers 50: 563-73

Cortright, David and George A. Lopez (2000). *The sanctions decade: assessing UN strategies in the 1990s*. Boulder, CO: Lynne Rienner.

DAC Network on Conflict, Peace and Development Co-operation
DCD/DAC/CPDC(2001)1 The Organisation for Economic Co-operation and Development

Dietrich, C. (2000) The commercialisation of military deployment in Africa. *African Security Review*, 9(1).

DSE, Business in Conflict Situations, Summary Report, International Expert Meeting, November 2001, Bonn, Germany

Duffield, M Post-Modern Conflict: Warlords, Post-adjustment States and Private Protection. *Civil Wars* 1(1):66-102

Fitzgerald, E Regulating Large International Firms (November 2001) Technology, Business and Society Programme Paper Number 5, United Nations Research Institute for Social Development

Frankental, P. and F. House (2000) *Human rights – is it any of your business?* London: Amnesty International and The Prince of Wales Business Leaders Forum.

Global Witness (1998) *A rough trade: the role of companies and governments in the Angolan conflict*. London: Global Witness.

Global Witness (1999) *A crude awakening: the role of the oil and banking industries in Angola's civil war and the plunder of state assets*. London: Global Witness.

Global Witness (2002) The Devastating Story of Oil and Banking in Angola's Privatised War - All the President's Men, March 2002

Haufler, Virginia (September 2001) Countering Conflict: Corporate Social Responsibility in War Torn Societies Paper prepared for Annual Meeting of the American Political Science Association

Haufler, Virginia Is there a Role for Business in Conflict Management? Draft Paper Hertz, Noreena (2001) William Heinemann: London The Silent Takeover - Global Capitalism and the Death of Democracy

International Committee of the Red Cross, War, Money and Survival, Forum,, ICRC: Geneva, February 2000

International Council on Human Rights Policy, Beyond Voluntarism: Human Rights and the Developing International Obligations of Companies, Versoix: Switzerland, 2002

Jake Sherman, (2001) Private sector actors in zones of conflict: research challenges and policy responses, Summary Report, New York: International Peace Academy.

Jake Sherman, IPA and the Woodrow Wilson International Center for Scholars, The Economics of War: The Intersection of Need, Greed and Creed, A conference Report, September 2001.

Rhys Jenkins, Corporate Codes of Conduct: Self-Regulation in a Global Economy, Technology, Business and Society Programme Paper No. 2 (April 2001), United Nations Research Institute for Social Development.

Keen, D. (1998) *The economic functions of violence in civil wars*. Adelphi paper 320. Oxford: Oxford University Press.

Keen, D and Tickell, Business and the Humanitarian Imperative: The Humanitarian Responsibilities of Non-State Actors Operating in Conflict, paper prepared for the Centre Henri Dunant, June 2000

Klein, Naomi (2000) Flamingo London No Logo

Le Billon, P. (1999) Power is consuming the forest. The political ecology of conflict and reconstruction in Cambodia. Unpublished Ph.D., Oxford.

Le Billon, P. (2000a) *The political economy of war: what relief agencies need to know*. HPN paper 33. London: Overseas Development Institute.

Le Billon, P. (2000b) *The political economy of war: an annotated bibliography*. HPG report 1. London: Overseas Development Institute.

Mack, Andrew The Private Sector and Conflict Global Compact Policy Dialogue

Mining, Minerals and Sustainable Development: Project Draft Report for Comment, March 2002, International Institute for Environment and Development and World Business Council for Sustainable Development.

Nelson, J. (2000) *The Business of peace. The private sector as partner in conflict prevention and resolution*. London: International Alert, Council on Economic Priorities, and the Prince of Wales Business Leaders Forum.

OECD Guidelines for Multinational Enterprises OCDE/GD(97)40 (Revision 2000)

OECD Helping to Prevent Violent Conflict - Orientation for External Partners - Supplement to the DAC Guidelines on Conflict, Peace and Development Co-operation on the Threshold of the 21st Century, 2001

Reno, W. (1998) *Warlord politics and African states*. Boulder: Lynne Rienner.

Michael Ross, Oil, Diamonds and Drugs

D Shearer, D. (1999) Private armies and military intervention. Oxford: Oxford University Press.

Sherman, Jake (April 2001) Private Sector Actors in Zones of Conflict: Research Challenges and Policy Responses The FAFO Institute Programme for International Co-operation and Conflict Resolution and The International Peace Academy Economic Agendas in Civil Wars Project

Soysa, Indra de (2000), 'The Resource Curse: Are Civil Wars Driven by Rapacity or Paucity ?' in Greed and Grievance

Swanson (2002) Fuelling Conflict: The Oil Industry and Armed Conflict The FAFO Institute Programme for International Co-operation and Conflict Resolution

Switzer, Jason (July 2001) Armed Conflict and Natural Resources: The Case of the Minerals Sector Draft Discussion Paper, International Institute for Sustainable Development

Taylor, Mark (2002) Emerging Conclusions March 2002 The FAFO Institute Programme for International Co-operation and Conflict Resolution

UNCTAD (1998) World Investment Report. Geneva: UNCTAD.

UNSC (2000). Report of the panel of experts on Angola (S/2000/203). New York: United Nations Security Council.

UN OHCHR (2000) Business and Human Rights: An Update. Geneva: UN OHCHR.

United Nations Security Council (April 2001) Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of Congo S/2001/357

Endnotes

¹ For a bibliography of literature on the economics of conflict see Le Billon, 2000b.

² Businesses in large infrastructure projects, buildings and tourism as well as a host of other sectors also have implications for the prevention of violent conflict although they are not dealt with here.

³ For example conflict timber is when the chain of supply of the production of timber involves armed groups and the financing are perpetuating conflict. This contrast with illegal logging which is felling in controversial of national laws. The two concepts are not the same, although conflict timber is usually illegal as well. See logs of war

⁴ In fact the Norwegian oil company Statoil which also operates in Angola already makes tax and signature bonus payments made by subsidiary companies to host states where Statoil operates appear in annual report and accounts that are put on public record in Norway.

⁵ There has, for instance, been a lot of attention given to the financial transactions of belligerents, diaspora support funds, money laundering and a host of other issues related to financial flows in time of war which are beyond the scope of this paper.

⁶ This paper deals with the regulatory aspect of the debate in isolation from other measures, although these should strictly speaking be integrated.

⁷ There are some exceptions to this rule. For instance, the reputation damage to De Beers operating in Angola and Sierra Leone from where "conflict diamonds" were being exported obviously outweighed the financial benefits of continuing to invest in the countries.

⁸ The jurisdiction of the district courts to hear ATCA claims is limited by the constitutional requirements that the court obtain proper personal jurisdiction over the defendant: the perpetrator of the violation must be present within the territorial jurisdiction of the court or be subject to the court's long-arm jurisdiction.

⁹ ECGD director of strategy and communications, personal communication, 2000)

¹⁰ See for example, 'Conducting Conflict Assessments: Guidance Notes', DfID: London, January 2002

¹¹ The definition of the offence includes any act 'intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act' (Para. 2.1(b)).

¹² With regard to jurisdiction, the convention does not apply if the business is from the State in which the offense is committed and is present in that State and no other state has a basis to exercise jurisdiction (Para. 3).

¹³ For an analysis of WTO in relation to the evolving world economy, see (Gilpin, 2000); for a discussion of the relevance of WTO to the regulation of businesses in relation to human rights, see (Howen, 2001).

¹⁴ (FCO official, pers. com., 2001).

¹⁵ See UN Global Compact website www.unglobalcompact.org

¹⁶ Global Compact principles: see www.unglobalcompact.org

¹⁷ The participants are Chevron, Texaco, Freeport MacMoran, Conoco, Shell, BP, Rio Tinto, Human Rights Watch, Amnesty International, International Alert, Lawyers Committee for Human Rights, Fund for Peace, Prince of Wales Business Leaders Forum, International Federation of Chemical, Energy, Mine and General Workers Unions.