



THE AUSTRALIAN NATIONAL UNIVERSITY

Centre for International Governance and Justice

Peacebuilding and the Private Sector: Scoping a Research Agenda

Jolyon Ford and Kylie McKenna

Issues Paper 4

June 2008



**PEACEBUILDING AND THE PRIVATE SECTOR:
SCOPING A RESEARCH AGENDA**

Jolyon Ford and Kylie McKenna

Centre for International Governance and Justice
Regulatory Institutions Network (RegNet)
The Australian National University
Canberra ACT 0200

ISBN 978 0 9803600 3 5
ISSN 1834-7053

**CENTRE FOR INTERNATIONAL GOVERNANCE
AND JUSTICE ISSUES PAPER NO 4**

June 2008

© Centre for International Governance and Justice, Regulatory Institutions Network,
Australian National University 2008

National Library of Australia Cataloguing-in-Publication

Ford, Jolyon.

Peacebuilding and the private sector [electronic resource] : scoping a research agenda
/ Jolyon Ford, Kylie McKenna.

ISBN 9780980360035 (pdf)

Issues paper (Australian National University. Centre for International Governance and
Justice) ; 4.

Peace-building--Research.
Peace-building--Social aspects.
Peace-building--Government policy.
Public-private sector cooperation.

McKenna, Kylie.
Australian National University. Centre for International Governance and Justice.

303.66

*If you would like to make any comments on the paper please contact the authors at
Jo.Ford@anu.edu.au and Kylie.Mckenna@anu.edu.au.*

Peacebuilding and the Private Sector: **Scoping a Research Agenda**

This Issues Paper describes some common issues arising in research that the authors are conducting on the role of corporations and the private sector in peacebuilding. The Paper aims to shape research and discussion on the topic by identifying some of the social, cultural, policy, regulatory and legal issues involved. Both authors seek to maximize a positive role for these actors (and to constrain harmful practices), although this Paper notes the differing emphases and approaches of the respective research projects.

A. Background

There has been growing interest in the part that foreign corporate actors may play in increasing the risk, duration or severity of internal conflicts, as well as their potential for contributing to conflict resolution and peacebuilding.¹ Debates about the positive or negative role of foreign business in armed conflicts and their aftermath have partly been stimulated by public campaigns such as those on ‘blood diamonds’, and facilitated by initiatives such as the first ‘Policy Dialogue’ of the UN Global Compact on ‘Business in Zones of Conflict’ (UN 2001; also UNSC 2004). Such debates and initiatives have raised expectations on at least two levels in relation to conflict-affected areas: with respect to the nature and scope of governance contributions by private corporations; and in relation to the responsibility of national governments and international bodies to regulate corporate conduct in these contexts.

The new wars

¹ ‘Peacebuilding’ is variously defined, including a wider view encompassing all activities seeking to avoid conflict occurring or recurring: conflict prevention, peacekeeping and post-conflict nation-building activities. Gawerc sees it as the intention ‘to create a structure of peace that is based on justice, equity and cooperation (i.e. positive peace), thereby addressing the underlying causes of violent conflict so that they become less likely in the future’ (2006: 439). Ford is mainly concerned with post-conflict activity aimed at preventing recurrence of violence and at building conditions for sustainable peace: attempts to ‘identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict’ (UN 1992: 11, 32). For McKenna, peacebuilding is not limited to ‘post-conflict’ settings, while ‘recognition of the interdependency of conflict and societal policies and procedures, and of their linkages to human rights, and the promotion of community and civil society’ are to be seen as providing the foundations for a peace-building approach (Moshe 2002: 25).

These expectations are situated within a perceived general shift in the dynamics of armed conflicts since the end of the Cold War. That shift represents a trend towards intrastate conflicts rather than interstate wars (Kaldor 1999; Gawerc 2006: 436). Whereas previous conflicts might have been predominantly between states or actors aspiring to state power where the aim was the military capture of territory and battle between armed forces the decisive encounter (Kaldor 2007: 5), the ‘new wars’ by contrast mostly take place in the context of failing states, ‘where borders become increasingly irrelevant. They are fought by networks of state and non-state actors, where out-and-out battles are rare and violence is directed mainly against civilians or symbols of order and they are characterized by a new type of political economy involving a combination of extremist politics and criminality’ (Kaldor 2007: 5). An appreciation of these dynamics is crucial for research into engaging the private sector in peacebuilding as they illuminate the various ways in which companies may contribute to armed conflict as a result of being caught up in the political economy of that conflict. It also opens opportunities to explain, for example, for why some social groups consider companies to be legitimate targets of violent attack for reasons that go beyond hostility to the impact of their business activities.²

Debates on Business and Peace

In the last five years public policy-makers, especially in the development aid field, have come to better appreciate that rebuilding the *local* private sector can be as important to sustainable post-conflict peacebuilding as more formal institution-building activities (UN 2004 *et al*). The link between (re)-stimulating local entrepreneurial and economic activity and the likelihood of sustainable peace is made explicit in a range of policy, capacity-building and advocacy programmes and resources with titles such as *Local Business – Local Peace: the Peacebuilding Potential of the Domestic Private Sector* (International Alert 2006).

However, there appears to have been less work concerning the role of the *foreign* or transnational private sector in conflict or post-conflict areas, either in relation to policy and legal frameworks, or sociological studies on the actual impact of foreign corporate actors on local conflict dynamics. Some attention has been given to what is seen as the ‘untapped’ potential for a positive role by business as a partner in processes of conflict prevention and resolution (Nelson 2000; Wengler & Mockli 2003), as well as to the resource dimensions of civil conflict, the risks of economic activity

² For example, according to Shulze (2007: 184) the Free Aceh Movement ‘equated the extraction of natural gas with neo-colonial exploitation by Jakarta and thus saw it as legitimate to target oil companies as agents of neo-colonialism.’

contributing to prolonged and worsened conflict, and the potential for corporate complicity in 'conflict trade' (Taylor 2002; Bannon & Collier 2003; Ballentine & Nitzschke 2005; Haufler 2005; Shankleman 2006). A number of recent studies have also considered the role of external or transnational business actors on matters somewhat analogous to post-conflict scenarios and traditionally the responsibility or concern of public authorities such as the role of business in natural disaster reduction (Twigg 2001), in security sector reform (Mancini 2005), and in humanitarian relief (Binder & Witte 2007). Critical studies on the role of corporations in conflict-prone or affected zones tend to focus on the direct negative consequences foreign corporations' activities might have on local populations (for example, where security staff of a mining operation are responsible for human rights abuse), as well as on the indirect effect of their business operations (where, for example, the initiation of business activity and employment distorts local power relations, creates perverse incentives for corrupt government practices, affects landholding issues, or creates new 'winners and losers' and new fault-lines for conflict (Ballentine & Nitzschke 2005: 464)).

Our research is concerned with some of the beneficial and harmful aspects of corporate conduct in relation to violent conflict and peacebuilding. It is to be expected that at least major projects will cause some local social change: but change is inherent in societies, and not synonymous with conflict let alone armed conflict. There are of course many scenarios where corporate conduct could be harmful without making conflict more likely or more serious, or could be beneficial in ways that do not relate to building prospects for peace. The stimulus for much of the wider debate has primarily been those occasions where foreign corporations have been perceived as causing or being complicit in (or sometimes merely indifferent to) harm at a local level while often remaining immune from the social, political and legal consequences. Some of these, such as debates over Union Carbide's accountability for the Bhopal disaster, are not situated in areas where conflict is ongoing. Other high profile scenarios are directly related to conflict: companies that supported the Nazi war machine or *apartheid* South Africa, the stance of Shell Oil in Nigeria during Abacha's execution of activists, private security contractors in Iraq, and so on. At the same time, contemplation of the positive contributions that corporations may make to the social and physical environment no doubt reflects acknowledgment of the often considerable resources, skills, reach and vested interest of such actors. In the background are accountability issues associated with the relative influence of the non-state sector and patterns of increased 'outsourcing' of public services and functions generally. The wider regulatory context in which debates about a business role in conflict take place includes a range of activities: consumer campaigns; increased self-regulation and explicit community engagement by

some businesses; industry-specific codes of conduct; the UN ‘Global Compact’ voluntary initiative; multistakeholder initiatives such as the Kimberley Process on ‘conflict diamonds’ or the UK government-led ‘Extractive Industries Transparency Initiative’; consultative and educative schemes such as the national contact points system set up under the OECD *Guidelines for Multinational Enterprises*; and an increased use of targeted economic sanctions regimes on ‘conflict trade’ and of ‘name and shame’ expert panels on UN sanctions committees. In parallel, attention continues to be given to defining more clearly international norms dealing with State responsibility for the harmful conduct of corporate nationals or the parameters and content of a body of human rights norms having direct application to transnational business actors (UN 2003; Ruggie 2008).

This attention to the activities or role of companies in conflict areas has not generally focussed on their capacity to aid or undermine peacebuilding processes, and consists either of internal policy work of companies themselves, or studies that are academic in nature rather than being policy outputs of governments and international bodies involved in peacebuilding. With a focus on issues such as formal institution-building, political processes or transitional justice, the foreign private sector is not typically considered a relevant topic for ‘peacebuilders.’ The literature itself reveals a tendency to overlook this dimension, so that studies purporting to be comprehensive overviews of all aspects of peacebuilding (for example Reychler 2001; Sampson 2003; Paris 2004; Jeong 2005), fail to consider the possible role of foreign corporations not only in their normal operations but also in their ‘community outreach’ activities. There is little consideration of public-private partnerships in these processes. Despite their impact in practice, foreign companies appear not to be proper subjects for peacebuilding analysis. The paucity of policy and other studies may reflect an entrenched mindset within the UN system itself: that if the private sector is at all a partner it is primarily as a possible source of convening power for fundraising, and that the ‘Global Compact’ process and what it represents is somehow distinct from the ‘operational’ sharp-end of peacemaking, peacekeeping and peacebuilding. As McKenna’s work reveals, while attention has been given to the consequences of corporations failing to adopt conflict-sensitive business practices or additional corporate social responsibility (CSR) initiatives, less attention has been given to whether attempted or purported CSR activities themselves can exacerbate problems, or at least portend a false promise of ameliorating these.

Corporate Social Responsibility, Human Rights, and Conflict

'CSR' has become recognizable shorthand for the market and other pressures placed on corporations to look beyond the profit motive. This has involved corporations making commitments towards the environment or 'society' and outside of their core business activities, albeit often for sound business reasons, such as guarding a valuable reputation. The CSR term and phenomenon is currently in vogue with corporations, governments, international organizations, non government organisations (NGOs), activists and scholars.³ Characteristics of CSR initiatives include community projects, employee volunteering programs, strategic giving, matched giving, community-business partnerships, and corporate foundation giving. NGOs or companies have initiated a number of voluntary corporate codes of conduct or corporate-NGO partnerships. Companies can also become involved in a variety of voluntary global initiatives (such as the UN Global Compact and OECD *Guidelines for Multinational Companies*) that feature recommendations to governments and companies on the social responsibilities of business, such as protection of human rights.

Related questions on the scope of 'a public role for the private sector' (Haufler 2001) are not necessarily specific to the 'conflict context' and include the extent to which corporate involvement in the provision of common goods in poorer countries and weak governance zones can, while aimed at improving social welfare, have the effect of preventing governments developing these capacities or relieve them, wrongly, of their duty to provide services. There is also a range of familiar or anticipated concerns, for example about whether CSR programmes are merely cosmetic marketing or reassurance strategies to mask 'business as usual' (eg. Christian Aid 2004).

Considerations of CSR which relate to possible human rights violations create particular dilemmas for business (Sullivan 2003). However, they take on an added particular vividness when viewed in the context of places that have experienced or are experiencing conflict, or are prone or susceptible to conflict. There is a growing discourse on the particular significance of CSR in conflict-affected zones (Haufler 2001; Bennett 2002; Bais & Huijser 2005), including options for promoting CSR (Sherman 2002), and analytical comparisons aiming to reconcile corporate codes and international standards (Smith & Feldman 2003). Finally, others remind us that from a regulatory perspective, CSR is only one regime modifying or stimulating conduct, so that to promote peace and prevent conflict it may be necessary to begin to move 'beyond voluntarism' (ICHRP 2002): there are clearly

³ It should be noted that while 'CSR' is the most commonly encountered term, other terms are in use, such as the OECD's preference for 'Responsible Business Conduct' or the recent trend towards using 'corporate responsibility' (eg Crowson 2007; Webb & Carstens 2008), connoting something wider than traditional 'CSR.' The terms are not necessarily interchangeable and may reflect differing approaches and emphases.

limits to a self-regulatory approach (Vogel 2005), and one challenge is to find synergies between voluntary and binding approaches (Gordon 2000).

An uncertain legal framework

Any attempt at assessing the propriety of CSR initiatives or at formulating a regulatory approach that seeks to move beyond self-regulation may be hampered by the fact that there is often a degree of uncertainty about the legal frameworks and norms applying in post-conflict settings generally, including where the UN is the administering authority (Korhonen 2001; Chesterman 2004; White & Klaasen 2005). The 'map' of norms possibly applying to private actors in post-conflict settings has not been definitively drawn. To what extent do analogies of the familiar laws of occupation not only apply to peacebuilding scenarios and 'transformative' occupations (Bhuta 2005; Charlesworth 2007), but in addition to non-state corporate actors, including private military companies (Chesterman & Lenhardt 2007)? Are Security Council sanctions an appropriate or effective regulatory tool once conflict has largely subsided (Bowden & Farrall 2007)?

While international law offers more opportunities for regulating corporate conduct than is often appreciated (Zirk 2006), international law is still coming to terms with the place of the corporate actor (Danielsen 2006). Although the State is sometimes responsible for the violations of its corporate nationals abroad (McCorquodale & Simons 2007), and while there are some mechanisms for holding companies liable in national courts for conduct elsewhere in breach of human rights (Ward 2001; Joseph 2004), the international legal framework on human rights responsibilities of corporate actors is still evolving (Addo 1999; Howen 2001; UN 2003; Amnesty 2004; Ruggie 2008). For example, Australian businesses operating abroad are subject to a number of Australian laws only in relation to certain types of proscribed conduct; it is difficult to hold such actors accountable in Australian courts for civil wrongs abroad. Australian companies' conduct is attributable in international law to Australia only in certain limited circumstances of agency. The *International Trade Integrity Act 2007* now deals with Australian companies doing certain business in countries where UN Security Council sanctions are in place, but large legal gaps remain in relation to the conduct of foreign non-state actors in post-conflict countries. It is against the backdrop of this uncertain or incomplete legal framework that the question of strategies for moderating, influencing or controlling the conduct of corporate actors in post-conflict settings must be asked, conscious that legal norms are only part of what be seen as a continuum of normative and other influences on corporate conduct in these contexts.

A range of actors

In our projects we seek to retain an awareness of the range of bodies covered by a term like ‘foreign corporate actors’. For one thing, it is often difficult to categorically and clearly define business actors as ‘foreign’ or ‘local’, whether in legal terms (incorporation status) or in terms of the many layers and levels there might be to many nominally foreign businesses or people abroad, or supposedly local businesses with foreign connections. Also, we are not just concerned with harm-doers: corporate actors may of course have either a negative or positive influence on the likelihood of conflict or of peace. Research is needed to establish what forces may be at work in particular settings. For example, the operations of a foreign-owned mine in an unstable region may be the catalyst for conflict, while another mining operation may represent the only real ‘island of civility’ (Kaldor 1999) in an unsafe area, and become the basis from which peace and normality can begin to be restored. Moreover, these actors have differing motives and approaches. Some foreign corporations may well be ‘war profiteers’ or at least opportunists, drawn to conflict-affected areas precisely because of the opportunities presented; other companies may be ‘spoilers’ (Rettberg 2007: 466) who calculate that overall the cessation of conflict will damage their business interests, so that they may seek to undermine or at least not support peace processes; others may be indifferent to the wax and wane of conflict, and/or largely immune from its effects, for example off-shore oil operators in Angola during the country’s long civil war. Other companies may accept the ‘business case’ for a peaceful and stable environment but not see themselves as having an opportunity or responsibility to become involved in peacebuilding; they may fear entrapment in the inevitable politics of peacebuilding, or lack the expertise, contacts, resources or community support to embark on any proactive conduct; finally, some companies may very actively and explicitly involve themselves in initiatives intended to build the peace.

All of these ‘types’ may, moreover, continually adjust their positions as conflict dynamics change. Furthermore, we believe that it is also vital to assess impacts and strategies by reference to the nuances presented by the sheer range of type, size and ‘subject matter’ of corporate actors in post-conflict settings (Bray 2005; 2006): considerations of CSR or amenability to regulatory overtures may differ markedly by sector and type of actor. Considerations will not be the same for a large, EC-listed, reputation-conscious multinational company in the extractive (oil and mining) industry involved in long-term, infrastructure-heavy investment, as for a small private operation or a state-owned company incorporated in a weak regulatory State or intended only to obtain concessions and

sell these on. What also needs to be borne in mind is that there tends, particularly for CSR-related studies, to be a focus on the conduct of large Western resource firms who happen to have explicit policies that can be measured for effect: a less rigid approach to the identity of actors in ‘international business’ and conflict would accept that there are a whole range of actors who could be so labelled – including informal and criminal networks – and whose conduct is less likely to be subject to scrutiny and analysis (for better or worse: an illegal transnational business activity may have an overall positive local impact on enabling a form of peace). A regulatory or self-regulatory approach looking to build on existing levers for modifying corporate conduct can result in researchers simply not considering unregulated sectors, or concentrating only on large public organisations, and in so doing distort the facts about the relative influence of various actors and their activities.

Some ideological debates

These ongoing research projects are partly enquiries into practical effectiveness – ‘what works in peacebuilding?’ However, our projects inevitably reveal certain assumptions and preferences, and we encounter and engage with a range of ideological issues and critical theoretical perspectives. Even if all that we sought in the research were ready-to-use practical outcomes, wider issues do need to be addressed so as to be able to be alert, in practice, to where caution is needed in shaping and implementing policy. For example, we may need to draw on a ‘varieties of capitalism’ framework (Hall & Soskice 2001) as our research will include case studies situated within different versions of capitalist economies such as ‘crony’, ‘Chinese’, ‘neo-liberal (Washington consensus)’, and ‘regulatory’ each of which indicate a different role for government regulation of business. These broader ideological conditions reveal the interdependence of changes in corporate policy and practice with changing dynamics and expectations of larger domains of society (for example, whether globalization has resulted in a weakening or strengthening of State influence and regulation). We also need to consider where our research sits in relation to the broader conflict resolution literature, for example, the debate between those who perceive conflict to be structural (issues of rights or justice: political and economic issues) and those who perceive conflict to be psychosocial/psychocultural (the emphasis being on relationships, misperceptions, fears and hostility between groups (Gawerc 2006: 437)).

A number of other broad questions need to be asked: what value preferences or assumptions, what anxieties and optimisms of external actors are revealed by an enquiry into the potential role of

companies in peacebuilding? Do evolving patterns of public-private interaction and influence differ in peacebuilding contexts? What do these relationships suggest about the evolving nature of the regulatory State and the viability of speaking strictly in terms of 'private' and 'public' sectors or actors or objectives in post-conflict situations? What does a concern for the regulatory policy of foreign public actors or the internal CSR policies of private actors suggest about the relative significance of local agency? What does an enquiry into government's regulatory options assume about the degree of public sector control over private actors in complex post-conflict settings? Does a focus on CSR-based 'governance contributions' of corporate actors attribute more significance to them than is appropriate for building participatory and people-focused societies? What are some of the boundaries and legitimacy issues in widening the corporate responsibility agenda towards governance issues and assessments of public interest (Crowson 2007)? How does an account of governmental or intergovernmental body 'top-down' regulators accommodate the plurality of influences that in fact have a regulatory effect on corporate conduct?

If we conceive of more considered, deliberative peacebuilding partnerships, in what ways are historical patterns of governmental cover or channeling for private commercial actors being reproduced in post-conflict situations, and with what implications for the kinds of societies that emerge from conflict through peacebuilding efforts by external actors? How does research dealing with the positive or negative role of corporations deal with critical accounts of peacebuilding as a form of neo-colonialism or empire-making (Chandler 2006)? What chronologies, ideological preferences and prescriptions does international law bring to bear in post-conflict settings (Marks 1999)? To what extent do international lawyers and others conceive of post-conflict settings as 'new places' devoid of the social and other norms that may in fact have survived even where formal institutions have not (cf. Daghish & Nasu 2007: 96; Grenfell 2006)?

C. Methods and Approaches

Ford's work is based on the need for overarching policy frameworks to be based on empirical analysis of the benefits and risks of deliberate engagement with the foreign private sector and on what is appropriate or even possible in partnering or regulating. It examines what has been effective in practice in enabling external public sector actors to harness, channel or influence the many positives of private sector involvement, while minimizing harmful interventions, protecting the vulnerable, and preserving and promoting 'public sector' values and imperatives. It seeks to examine opportunities for reforming societies (not just rebuilding them), or for addressing entrenched

imbalances. Ford's research aims to advance components of practical policy, governance and legislative proposals, informed by regulatory practice and by international law, for the UN and other international, regional and national authorities involved in peacebuilding.

Whilst McKenna recognizes the need to develop such overarching policy frameworks, her work also acknowledges the need to examine smaller processes of peacebuilding 'on the ground' between international companies and their host communities. This argument follows similar critiques (Braithwaite 2002) on peacebuilding where formal agreements between elites will not be enough to heal feelings of humiliation and anger that local communities experience as a result of armed conflict. It is therefore vital to consider the interplay of both local and global dynamics surrounding the potential governance contributions of corporations to peace processes.

D. McKenna: Corporate Social Responsibility in relation to war and peace

McKenna's work ('Corporations, conflict and peacebuilding') is concerned with how international companies have the capacity to ignite, stabilize or transform armed conflicts through both day-to-day business activities and their associated regulatory initiatives. Building on her previous research,⁴ McKenna seeks to theorise a typology of Corporate Social Responsibility (CSR) and Corporate Irresponsibility in relation to war and peace. This needs to be theorized on a continuum in order to account for different policies and practices at different levels of the same company. Whilst the project aims to uncover the social and cultural conditions that nurture a positive corporate role in peacebuilding, McKenna will argue that such a role cannot be advocated until the negative effects of existing corporate contributions to the community are accounted for. An empirical explanation for why these contributions have had harmful or unintended consequences in the past will be crucial in developing new policy frameworks designed to promote a 'positive' corporate role in post-conflict peacebuilding. Her project will be a comparative study that will examine three country case studies (Burma, Indonesia and Papua New Guinea) which will include the collection of new empirical data. The research will also draw on fieldwork data being collected for the Centre's ARC-funded 'Peacebuilding Compared' project coordinated by Professors John Braithwaite and Hilary Charlesworth.

⁴ McKenna, K. (2007). 'Rethinking the 'Social' in Corporate Social Responsibility: A case study of Shell Nigeria.' Honours Thesis submitted to the Department of Sociology and Social Policy, University of Sydney.

McKenna argues that in the increasing attention given to corporate responsibility in conflict or conflict-prone areas, the actual social consequences of CSR initiatives have received little attention. A key issue for McKenna's project is to account for why and how corporations have the potential to damage the very communities they seek to alleviate through community based initiatives. Her research aims to highlight the need to be conscious of the ways in which CSR strategies may in fact reproduce social, political, economic and environmental problems that exacerbate existing conflicts in host countries. McKenna has argued that this ambiguity is the result of the company's interdependence with its given specific social context – the corporation cannot operate somewhere above 'society' in order to then contribute to 'it'. Despite this, companies like Shell in Nigeria and Total in Burma have been able to draw on their social and environmental commitments in order to distance themselves from the social, political and economic problems in which many of their activities are entangled.

She argues that many companies may be seen as relying on their CSR commitments not to engage in the local community, but to 'distance themselves from the very situations in which the social responsibilities of business are crucial'. She notes that 'CSR' constitutes a complex set of relationships, and the 'social' element must not be conceived as a fixed 'thing' with its own materiality. Rather, 'it' should be viewed as an intricate set of practices involving diverse actors, institutions and organizations. McKenna seeks to build on earlier research by testing her argument through a larger comparative project and to apply it specifically to corporate contributions to armed conflicts and processes designed to promote peace.

E. Ford: Engaging and Regulating Corporate actors in Peacebuilding

Ford's research considers policy and regulatory frameworks and approaches for engaging corporate actors and for managing the benefits and risks of partnership in post-conflict settings. Ford is concerned with the problems and possibilities of enhancing collaboration while ensuring protection.

His argument is that while there are efforts by the United Nations to better strategise partnerships with the private sector (eg UN 2005), governments, regional and multilateral public bodies have not yet developed proactive and principled policies for addressing the benefits and risks of managing public-private sector relationships in post-conflict contexts, nor for designing appropriate regulatory regimes and strategies. There are some World Bank studies to date on the private sector and peacebuilding or post-conflict reconstruction (Schwartz, Hahn & Bannon 2004; Bray 2005). Aside

from the general 'business and peace' literature, what few other studies exist on corporate actors post-conflict tend to be insufficiently critical or merely prescriptive on enabling corporate activity, including by creating an attractive climate for investment (e.g., Gerson 2000; Gerson & Colletta 2002) or consist of little more than a general warning not to assume private actors are apolitical in peacebuilding (Barbara 2006), or focus on what companies – and not public authorities – ought to do more or less of in post-conflict settings (Davis 2008). Where conflict has destroyed local regulatory capacity, there are a range of possible regulators of foreign corporations, from the UN to the companies' national governments, as well as other sources of regulatory influence. Peacebuilding policy work to date does not generally deal with the authority, duty or opportunity of the UN or its agencies (or alternate 'occupying' authorities) to modify or co-opt corporate conduct. Beyond guidelines such as the 2006 OECD policy framework on promoting investment (OECD 2006) there is likewise little evidence yet of considered and public policy on the part of 'home' States in relation to their corporate nationals abroad in the particular context of post-conflict settings.

Ford contends that attempts (for example by a UN administering body), to cooperate with or control private actors in a post-conflict setting are likely to be attended by twin problems: a piecemeal and uncertain legal framework, combined with limited capacity to supervise conduct and enforce norms. Studies on the challenges of regulating private economic activity that helps to fuel civil conflicts (Lilly & Le Billon 2002; Banfield *et al* 2003; Bannon & Collier 2003; Ballentine & Nitzschke 2005) provide one template in Ford's aim to describe a continuum or range of regulatory options and tools available in relation to corporate conduct in the different dynamic of a post-conflict setting. The 'corporation' is not a monolithic entity. The diversity of actors and networks and the incentives available in post-conflict settings suggests that there are many points of entry and opportunities (Humphreys 2005) for a public sector regulator to encourage and ensure cooperation and compliance by foreign companies. Ford's view is that automatic distrust of the foreign private sector is as unsatisfying as an approach that unquestioningly embraces or unleashes such players. Against the backdrop of certain minimal standards, the regulators' responsibility becomes one of engaging in a dialogic and responsive manner (Braithwaite 2002), educating and persuading while being oriented towards the strengths and self-interest of corporate actors, including by seeking to regulate by 'working with the grain of naturally occurring systems in business' (Braithwaite 2005), and seeing corporations as themselves performing some regulatory functions in relation to which accountability can then be set (Danielsen 2006).

Any policy or regulatory approaches must be determined against the backdrop of certain protective standards derived mainly from international human rights law. The project will include a map of international or domestic legal norms possibly applying to such actors in post-conflict settings. One of Ford's suggestions, however, is that by habit international lawyers tend to focus on describing what laws are or are not applicable, or what constitutes a violation in particular cases. The view he advances is that whatever the *legal* position, if one is interested in actually modifying conduct, protecting the vulnerable, and encouraging continuous improvement, the *regulatory* problem for international law in these fragile settings (see Charlesworth & Chinkin 2004) is that simply describing or asserting the applicable norms not only raises unreal expectations and false hope, or can reveal the regulator's enforcement weakness, but also tells one nothing about the actual protective, moderating or remedial effectiveness of these norms in particular settings. An overly legalistic view perhaps obscures accounting for ways to improve compliance and inhibits the possibilities for moving beyond mere compliance with minimum legal standards to encourage best practice and continuous improvement. One aim of the research, then, is to connect the rhetoric and ideals of international law with lessons from a variety of regulatory fields.

References

- Addo (1999) *Human rights standards and the responsibility of transnational corporations* (Kluwer, Boston).
- Amnesty (2004) *Human Rights Norms for Business: Towards Legal Accountability* (Amnesty International, London).
- Bais & Huijser (2005) *The Profit of Peace: Corporate Responsibility in Conflict Regions* (Greenleaf, Sheffield).
- Ballentine & Nitzschke (2005) *Profiting from Peace: Managing the Resource Dimensions of Civil War* (Lynne Rienner, Boulder).
- Banfield, Haufler & Lilly (2003) *Transnational Corporations in Conflict Prone Zones: Public Policy Responses and a Framework for Action* (International Alert, London).
- Bannon & Collier (2003) *Natural Resources and Violent Conflict* (World Bank, Washington DC).
- Barbara (2006) 'Nation-building and the role of the private sector as a political peacebuilder' *Conflict, Security and Development* 6(4) 581.
- Bennett (2002) 'Multinational Corporations, Social Responsibility and Conflict' *Journal of International Affairs* 55(2) 393.
- Bhuta (2005) 'The Antimonies of Transformative Occupation' 16 *European Journal of International Law* 721.
- Binder & Witte (2005) *Business engagement in humanitarian relief: key trends* (ODI, London).
- Bowden & Farrall (2007) 'The Regulatory Potential of United Nations Sanctions in Post-Conflict Environments: A Research Agenda' Issues Paper # 3, June 2007, Centre for International Governance & Justice, Australian National University.
- Braithwaite (2002) *Restorative Justice and Responsive Regulation* (NYUP, New York).
- Braithwaite (2005) *Markets in Vice, Markets in Virtue* (Federation Press, Sydney).
- Bray (2005) 'International Companies and Post-Conflict Reconstruction: Cross-sectoral Comparisons' *Conflict Prevention and Reconstruction Working Paper No. 22* (World Bank, Washington DC).
- Bray (2006) 'Public-Private Partnership in State-building and Recovery from Conflict' Briefing Paper September 2006 (Royal Institute for International Affairs, London).
- Chandler (2006) *Empire in Denial: the Politics of State-building* (Pluto, London).
- Charlesworth (2007) 'Think Pieces: Law after War' *Melbourne Journal of International Law* 8(2) 833.

- Charlesworth & Chinkin (2004) ‘Regulatory Frameworks in International Law’ in Parker *et al* (eds.) *Regulating Law* (Oxford University Press, 2004).
- Chesterman (2004) *You, the People: the United Nations, Transitional Administration and State-building* (Oxford University Press).
- Chesterman & Lehnardt (2007) *From Mercenaries to Markets: The Rise and Regulation of Private Military Companies* (Oxford University Press).
- Christian Aid (2004) *Behind the Mask: The Real Face of Corporate Social Responsibility* (London).
- Clapham & Jerbi (2001) *Towards a Common Understanding of Business Complicity in Human Rights Abuses* (UN Global Compact, New York).
- Crowson (2007) ‘Adding Public Value: the Limits of Corporate Responsibility’ (Series Final Report, OPI, Oxford).
- Daglish & Nasu (2007) ‘Towards a True Incarnation of the Rule of Law in War-torn Territories: Centring Peacebuilding in the Will of the People’ 54 *Netherlands International Law Review* 81.
- Danielsen (2006) ‘Corporate Power and Global Order’ (Ch. 4) in Orford (ed.) *International Law and its Others* (Cambridge University Press).
- Davis (2008) ‘The Role of Companies in Post-Conflict Reconstruction: Learning from the Wider Debate’ (Ethical Corporation Institute, London).
- Gawerc (2006) ‘Peace-building: Theoretical and Concrete Perspectives’ *Peace & Change* 31(4) 435.
- Gerson (2000) ‘Peacebuilding: the Private Sector’s Role’ *Brown Journal of World Affairs* 7(2) 141.
- Gerson & Colletta (2002) *Privatising Peace: From Conflict to Security* (Transnational, New York).
- Gordon (2000) ‘Rules for the Global Economy: Synergies between Voluntary and Binding Approaches’ (Working Papers on International Investment #3, OECD, Paris).
- Grenfell (2006) ‘Legal Pluralism and the Rule of Law in Timor-Leste’ 19 *Leiden Journal of International Law* 305.
- Haufler (2001) *A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy* (Carnegie Endowment for International Peace, Washington DC).
- Haufler (2005) ‘Foreign Investors in Conflict Zones: New Expectations,’ in Dombrowski (ed.) *Guns and Butter: The Political Economy of International Security* (Lynne Rienner, Boulder).
- Howen (2001) *Business Wrongs and Rights: Human Rights and the Developing International Legal Obligations of Companies* (ICHRP, Geneva).
- Humphreys (2005) ‘Natural Resources and Armed Conflicts: Issues and Options’ in Ballentine & Nitzschke (eds.).

- ICHRP (2002) *Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies* (ICHRP, Geneva).
- International Alert (2006) *Local Business – Local Peace: the Peacebuilding Potential of the Domestic Private Sector* (London).
- Jeong (2005) *Peacebuilding in Post-Conflict Societies: Strategy & Process* (Lynne Rienner, Boulder).
- Joseph (2004) *Corporations and Transnational Human Rights Litigation* (Hart, Oxford).
- Kaldor, Karl & Said (2007) *Oil Wars* (Pluto, London).
- Kaldor (1999) *New and Old Wars: Organised Violence in a Global Era* (Polity, Cambridge).
- Korhonen (2001) 'International Governance in Post-Conflict Situations' 14 *Leiden Jnl of International Law* 495.
- Lilly & Le Billon (2002) *Regulating Business in Zones of Conflict: A Synthesis of Strategies* (ODI, London).
- Mancini (2005) *In Good Company: the role of business in security sector reform* (Demos, London).
- Marks (1999) 'Guarding the Gates with Two Faces: International Law and Political Reconstruction' *Indiana Journal of Global Legal Studies* 6(2) 457.
- McCorquodale & Simons (2007) 'Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law' 70 *Modern Law Review* 599.
- Moshe (2001) 'Peace building: a conceptual framework' 10 *International Journal of Social Welfare* 14.
- Nelson (2000) *The Business of Peace: The private sector as a partner in conflict prevention and Resolution* (CEP / International Alert / IBLF, London).
- Paris (2004) *At War's End* (Cambridge University Press).
- Rettberg (2007) 'The Private Sector and Peace in El Salvador, Guatemala & Colombia' 39 *Journal of Latin American Studies* 463.
- Reychler & Paffenholz (2000) *Peacebuilding: A Field Guide* (Lynne Rienner, Boulder).
- Ruggie (2008) 'Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises' (Report to the United Nations Human Rights Council, April 2008, Geneva).
- Sampson *et al* (2003) *Positive Approaches to Peacebuilding* (PACT Publishing, Washington DC).

Schwartz, Hahn & Bannon (2004) 'The Private Sector's Role in the Provision of Infrastructure in Post-conflict Countries' *Conflict Prevention and Reconstruction Working Paper No. 16* (World Bank, Washington DC).

Shankleman (2006) *Oil, Profits and Peace: does Business have a role in Peacemaking?* (United States Institute for Peace, Washington DC).

Sherman (2002) *Options for Promoting Corporate Responsibility in Conflict Zones: Perspectives from the Private Sector* (International Peace Academy, New York).

Shulze (2007) 'The Conflict in Aceh: struggle over oil?' in Kaldor, Karl & Said (eds.) *Oil Wars* (Pluto Press, London).

Smith & Feldman (2003) *Company Codes of Conduct and International Standards: an Analytical Comparison* (World Bank, Washington DC).

Sullivan (2003) *Business and Human Rights: Dilemmas and Solutions* (Greenleaf, Sheffield).

Taylor (2002) *Economies of Conflict: Private Sector Activity and Armed Conflicts* (FAFO, Oslo).

Twigg (2005) *Corporate Social Responsibility and Disaster Reduction* (University College, London).

UN & ors (2004) *Unleashing Entrepreneurship: Making Business Work for the Poor* (UNDP Commission on Private Sector Development 2004); examples include 'Private Sector Development Group' (the World Bank); 'EuropeAid and European Development Bank' (the European Commission); *Accelerating Pro-Poor Growth through Support for Private Sector Development* (OECD 2004) *Working with the Private Sector to Eliminate Poverty* (DFID White Paper, United Kingdom Government 2006) *Private Sector Development in Reintegration and Reconstruction Programmes* (GTZ Policy Paper, German Government 2006); *Australian Aid: Promoting Growth and Stability* (AusAid White Paper, Australian Government 2006).

UN (1992) *An Agenda for Peace* (United Nations Secretary General, New York).

UN (2000) *United Nations Global Compact* (New York).

UN (2003) 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises' (UN Sub-commission on Human Rights, Geneva).

UN (2005) 'Enhanced Cooperation between the United Nations and all Relevant Partners, in Particular the Private Sector (Report of the Secretary General, 10 August 2005, New York).

UNSC (2004) United Nations Security Council discussion on the Role of Business in Conflict Prevention, Peacekeeping, Post-Conflict Peace-Building (New York).

Vogel (2005) *The Market for Virtue: the Potential and Limits of Corporate Social Responsibility* (Brookings Institution, Washington DC).

Ward (2001) 'Securing Transnational Corporate Accountability through National Courts: Implications and Policy Options' *Hastings International Law Review* 24(3) 451.

Webb & Carstens (2008) 'Corporations, Institutions and Better Governance' (Ethical Corporation Institute, London).

Wengler & Mockli (2003) *Conflict Prevention: The Untapped Potential of the Business Sector* (Lynne Rienner, Boulder).

White & Klaasen (2005) *United Nations, Human Rights and Post-Conflict Situations* (Manchester University Press).

Zirk (2006) *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge University Press).

CIGJ Issues Papers Series available at <http://cijj.anu.edu.au/cijj/publications/issuespapers/index.php>



2008

Centre for International Governance and Justice
Regulatory Institutions Network (RegNet)
Coombs Building Extension (8)
The Australian National University
Canberra ACT 0200 Australia

<http://cijj.anu.edu.au/>