

NOREF Policy Brief

Economies of violence and peacebuilding: towards policy coherence

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Executive summary

International responses to conflict have highlighted the role of natural resources and other forms of wealth in helping to sustain “self-financing wars”. For over a decade there have been some attempts to come to grips with the international dimensions of the economies of conflict, but concrete efforts to grapple with the problem have been sporadic and incoherent. However, in 2011 developments at the UN and OECD have laid the foundations for a more coherent approach, one that seeks to control the irregular war economies in part by

excluding the results of unacceptable activities from global value chains. This is a step in the right direction. However, as this policy brief argues, the effectiveness and legitimacy of this approach relies on the conscious development of a strategy that defines clear norms as the basis for exclusion, builds the capacity in the public and private sector for managing the process of exclusion, and mitigates any unintended harms resulting from exclusion to vulnerable people in conflict-affected areas.

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Wars often drag on. International responses to various contemporary conflicts have highlighted the role of natural resources and other forms of wealth in helping to sustain “self-financing wars”. For over a decade there have been sporadic attempts to come to grips with the international dimensions of war economies in contemporary irregular wars, but concrete efforts have been incoherent.

If the United Nations (UN) and its member states are serious about managing, preventing and resolving conflicts, then they must get serious about shutting down the economic relations that finance them. If the UN and other multilateral bodies want to build peace in the aftermath of a war, it will be necessary to get to grips with the economic dynamics that helped sustain the fighting.

This policy brief describes the emergence in 2011 of a normative consensus on how to deal with these irregular war economies. Several core principles have been endorsed by states that overall amount to a consensus on a balance of duties and responsibilities between states and business in responding to the violence of war economies. The practical implications of these will be described below.

Firstly, it is important to understand the emerging conclusions about war economies that have helped policymakers in defining the nature of the problem. The list of ten conclusions laid out below is by no means exhaustive or final, but they reflect the key assumption of the emerging policy framework: sources of wealth help sustain violence by both state and non-state actors, and this violence can result in human rights abuse and international crimes.

Ten things we know about war economies in irregular conflicts

1. Economic activity continues during armed conflict or in situations of widespread violence, and it does so in the actual areas of conflict, not just on the margins. That is to say, economic activity that sustains households,

businesses and armed groups alike co-exists with the violence. In Afghanistan, the Democratic Republic of Congo (DRC), Iraq, Israel-Palestine, Sudan, or Mexico, regular and irregular warfare has lasted years or decades, and each area has witnessed the evolution of war economies unique to each conflict. Elsewhere – in Bahrain, Iran, Kenya, Kyrgyzstan, Libya, Syria and Yemen – civil unrest has been met with overwhelming force and in some cases protest has slid towards civil war. In all of these places the economies of contemporary irregular wars shift and consolidate as the violence comes and goes, and changes location, means and intensity.

2. Economic activities are often transformed by irregular armed conflict. Insurgency and counter-insurgency transform economic dynamics on the ground. Violence and informal economies offer an opportunity for armed groups – both state and non-state – to assume control over economic activities. Force can become an integral part of an economic activity. Examples include the control of mine sites by armed groups, the use of forced labour by government or irregular forces, or informal taxation imposed by government and rebel forces.
3. These economies are usually a necessary foundation of war-fighting capacity and therefore fundamental to the sustainability of the fighting. Indeed, wars often drag on in part because they are self-financing. External support is often present in some form, but the local economic activities of state and non-state armed groups can become vital to their tactical decisions about the use of force.
4. Revenues generated by war economies can help to both sustain vulnerable households and finance those involved in the fighting or their associates. In the DRC, elite networks began to form as the 1996-97 rebellion against Mobutu drew to a close. These transformed the illicit exploitation of natural resources in eastern DRC that for years has sustained both artisanal miners and state and non-state armed groups.

5. War economies can serve as one site of the contest for political dominance. Control over a source of wealth can be one arena in which the struggle for power is played out. In Sudan, the struggle over how best to share oil revenues was one site in which the struggle was played out between the government and the Sudanese People's Liberation Movement over independence for South Sudan.
6. The economic interests of fighting organisations can become synonymous with the grievances or other ideational factors that help to galvanise the parties to the conflict. In Colombia, competition over control of coca-producing territory has radically transformed conflicts between the government, leftist guerrilla and right-wing paramilitaries, and the local and indigenous populations. In the Niger delta, competition over revenues and benefits from oil wealth has transformed conflicts over identity and self-determination.
7. War economies can contribute to corruption or the undermining of state effectiveness, reducing the state's ability to regulate its economy or maintain its monopoly on violence. In Afghanistan, a tenuous balance has been maintained in which a de facto NATO tolerance of certain warlords has kept the central state relatively weak, even as alliance countries seek to build the institutions of state.
8. Sources of livelihoods will change when selective violence meets informal economies. Households can become more vulnerable, certain sectors can cease to be active, while others can become more active and there can be a rise in informal economic activities. Palestinian households have had to adapt repeatedly to almost two decades of economic sanctions of varying intensity imposed as part of the counter-insurgency strategy of the Israeli Defence Forces.
9. War economies are more often than not well integrated into global market flows. This includes the injection of development and military assistance or the ballooning of the private security sector. It also includes the legally murky dynamics of illicit exploitation.

For more than a decade repeated studies and campaigns have documented how commodities – such as diamonds, timber, oil, tin, tungsten, tantalum and gold – have been laundered from conflict-affected or repressive countries into global supply chains that lead to legitimate consumer markets.

10. There is no normative or regulatory regime, at either the nation or international level, designed to address the problems of contemporary war economies. The Kimberley Process on conflict diamonds, efforts to regulate timber imports or conflict minerals, initiatives to promote responsible investment, anti-money laundering or terrorist financing laws, UN sanctions, law suits, and criminal prosecutions have all attempted to grapple with aspects of the problem of contemporary war economies, some more successfully than others. Yet there is still no dedicated set of norms clarifying the difference between permitted or prohibited economic activities in times of war or widespread violence; nor is there a coherent institutional framework to grapple with the challenges these economies present to conflict peacebuilding, international peace and security, or international law.

Norm setting and its implications: what happened in 2011?¹

In 2011 policymakers took several important steps towards a coherent position on war economies in irregular conflicts. Efforts that culminated in 2011 at the UN Human Rights Council in Geneva and the Security Council in New York, as well as at the Organisation for Economic Co-operation and Development (OECD) in Paris, laid the groundwork for an approach to war economies that balances the duties of states with the responsibilities of the private sector. This approach suggests that

1 This section draws on Mark B. Taylor, "The Ruggie Framework: polycentric regulation and the implications for corporate social responsibility", *Etikk i Praksis: Nordic Journal of Applied Ethics*, vol 5, no. 1, 2011, pp 9–30, as well as Mark B. Taylor, "Defining compliance: why recent developments in law and policy should matter to the corporate accountability movement", paper presented at the annual meeting of the International Corporate Accountability Roundtable, Washington, DC, September 2011. Both of these were produced on the basis of work completed during the Fafo Institute project Economies of Violence and Peacebuilding sponsored by NOREF in 2009-10.

it is possible to develop a coherent strategy for responding to irregular war economies, one that could be adaptable to both specific conflicts and industrial sectors. For this reason, it is possible that the norms set in 2011 will influence state and multilateral responses to irregular war economies for some years to come.

In May 2011 ministers of OECD member states signed off on the Due Diligence Guidance for Responsible Supply Chain Management of Minerals for Conflict Affected and High Risk Areas (hereafter OECD Guidance on Responsible Supply Chain Management), which is a detailed description of due diligence for the mineral sector operating in the DRC. This document was specific to the mineral sectors relevant to the DRC conflict and focused on the problem of conflict financing and grave human rights abuses found in the eastern part of that country. It was endorsed by those countries most directly involved in the trade via the International Commission on the Great Lakes Region (ICGLR) in early 2011 and was also referred to by the UN Security Council as the basis for responsible business engagement in the DRC. At the same time, the ministers approved the revision of the OECD Guidelines for Multinational Enterprises (OECD Guidelines), which for the first time include a significant amount of human rights content.

Embedded in the OECD Guidance on Responsible Supply Chain Management is the idea that the militarisation of economic activity, while not in and of itself a violation of any international law or standard,² raises the likelihood of two very real and overlapping problems: conflict financing, i.e. that licit and illicit mineral exploitation may be used to finance the warring parties and help to sustain the conflict; and threats to human rights, i.e. that in situations of armed conflict, economic activity can make people increasingly vulnerable to violence, both from the conflict itself and in the form of economic and other forms of coercion. This focus on the risks posed by militarisation marks a departure from earlier attempts to grapple with conflict commodities. For example,

the Kimberley Process definition of conflict diamonds is concerned only with those diamonds handled by rebel groups, as opposed to setting out a normative standard based on international human rights law that is applicable to both state and non-state armed groups.

The OECD Guidelines and the OECD Guidance on Responsible Supply Chain Management were both centred on the concept of due diligence by business as the basis for ensuring respect for human rights. In this focus on due diligence, the two OECD documents, the ICGLR endorsement, and the UN Security Council reports and resolutions on the DRC were giving effect to the framework developed by the special representative of the UN secretary-general (SRSG) on business and human rights, Professor John Ruggie. Thus, while the OECD Guidance on Responsible Supply Chain Management is perhaps the first description of what human rights due diligence would look like in situations of conflict or widespread violence, it is based on a normative consensus reached at the UN Human Rights Council (HRC) on the basis of Ruggie's work.

Ruggie had formulated the Protect, Respect and Remedy Framework (2008), in which he proposed that a business's responsibility for human rights arises out of its activities and relationships (its impacts) and that its ability to respect human rights depends upon its implementation of due diligence. The UN HRC welcomed the Framework in 2008, asked him to develop it further, and in June 2011 Ruggie proposed Guiding Principles to implement the Framework, which won a strong endorsement from the HRC (A/HRC/17/31).

In taking the unprecedented step of endorsing Ruggie's Guiding Principles, the HRC gave significant soft-law authority to an instrument clarifying what it means for a business to respect human rights. This was a first for any UN organisation. In general, the Guiding Principles describe a balance of duties in which states' duties to protect human rights – the first "pillar" of the Framework – make them ultimately responsible for human rights, including providing most forms of remedy (the latter separated out as a the third "pillar" of the Framework). Business responsibilities were nestled within

2 L. Lunde & M. Taylor, "Regulating business in conflict zones: challenges and options", Karen Ballentine & Heiko Nitzschke, eds, *Profiting from Peace: Managing the Resource Dimensions of Civil War*, Boulder, Lynne Rienner, 2005. However, it may be in violation of municipal law. For example, in the DRC military control of mines is against the law.

this overarching state duty as the second “pillar”. The Guiding Principles established clearly that states’ duties include the need to create legally binding rules with respect to human rights and business, where states see fit to do so within their jurisdiction.

The Guiding Principles are not specific to conflict, but they do address the problems of business activity in conflict situations. Guiding Principle number 7, under the state duty to protect pillar, is entitled “Supporting business respect for human rights in conflict-affected areas”:

7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;

(b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;

(c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;

(d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

Guiding Principle 7 is designed as a sliding scale of government engagement with business, from an early engagement to assist businesses that want to do the right thing, through to the hard law sanctions where businesses refuse to do so. The logic of this phased approach recognises that companies involved in such situations have any number of motives, from the very innocent to the

very cynical. Meeting its duty to protect human rights will require a government to engage, regulate and, where necessary, legally sanction those who do not co-operate.

The Guiding Principles recognise that few governments, if any, have policies in place today specifically designed to deal with their domiciled businesses operating in war zones abroad. Even when dealing with the worst forms of human rights abuse, the case for regulation is made far easier if government is seen to have implemented its responses as part of its overall engagement with business, and that its provision of advice and support (e.g. trade support, export credit) is balanced by its duties to ensure respect for and protect human rights.

Ruggie’s approach was guided by extensive consultation with states. Attached to the Guiding Principles report is a report entitled *Business and Human Rights in Conflict-affected Regions: Challenges and Options towards State Responses*.³ The report is a reflection of what the SRSG heard from a group of member state practitioners about the present state of policy and practice within government officialdom. The report attempts to provide some guidance as to state responses outlined in Ruggie’s Guiding Principle 7 in the body of the Guiding Principles proper. It distinguishes between “cooperative enterprises” and “uncooperative enterprises” and sets out options for state responses accordingly. States often have no policy in this regard and few have much in the way of formalised practice either, making the report a useful starting point to answering the question, What should or could states do to respond to situations where domiciled businesses are operating in a conflict zone?

Already in 2010, one state – the U.S. – had taken steps to begin to answer this question. Years of campaigning on the commercial aspects of the wars in the DRC led to the adoption in 2010 of the conflict minerals provision (1502) of the

³ A/HRC/17/32, 27 May 2011, <http://www.business-humanrights.org/ConflictPeacePortal/SpecialInitiatives/SpecialRep>. The report was prepared by Ruggie’s team with support from the author, as part of Fafo’s Economies of Violence and Peacebuilding project, with financial support from NOREF.

Dodd-Frank Wall Street Reform Act.⁴ Reference in Dodd-Frank to business due diligence marks a shift away from responses that emphasise state-based certification processes, which was the mechanism at the heart of the Kimberley Process on conflict diamonds agreed a decade ago.

In fact, the notion of business due diligence as a way to meet international and domestic legal standards – in other words, as the basis for compliance – forms the basis for a new international strategy for responding to the economies of conflict. The due diligence approach aims to separate out unacceptable activities from global value chains. This suggests a strategy that involves regulating the crossing points where local informal markets meet formal global flows and obligating legitimate businesses to ensure that they are, at the very least, not harming others or contributing to such harms through their business activities and relationships. The objective of such regulation is not to target informal economies that may help vulnerable people survive, but rather to target economic goods that are based on harmful activities for exclusion from global trade and investment flows.

Conclusion: an emerging strategy?

Since 2011 there is an emerging set of minimum international law norms that provide human rights standards against which to assess market-based activities. Although in its early stages, the first detailed description of concrete responsibilities has been made with respect to a conflict situation (DRC) and particular sectors (minerals extraction and processing).

The business due diligence responsibilities of the

⁴ The Dodd-Frank provisions remain undefined. Regulations are due for promulgation by the Securities and Exchange Commission in early 2012. The Act requires companies whose products rely on certain minerals – tantalum, tin, tungsten (the three Ts) and gold – to file disclosures of the country of origin of such minerals in their annual reporting to the Securities and Exchange Commission. Where the origin of these minerals is not known or where they originate from the DRC or certain neighbouring countries, the company would then be required to file an additional report – a “conflict minerals report” – explaining what due diligence it has exercised on its supply chain to ensure that the minerals it is using are “conflict free”.

UN’s Guiding Principles and the OECD’s Guidance on Responsible Supply Chain Management are a welcome development because they recognise some basic realities about the nature of this problem: business is far better placed to both know and deal with the risks arising from its activities (since trade is conducted by businesses and only secondarily by states). Yet there remains no definitive regulatory standard against which companies can claim to assess their own compliance. For this, states themselves will have to promulgate national legislation implementing international norms. Only in this way will companies be able to be secure in the knowledge of what it means to be in compliance when it comes to commercial activities in situations of armed conflict or widespread violence.

In addition to attempts to exclude certain specific kinds of economic activity from global value chains, the standard-setting activities of the past two years have laid the basis for a more active attempt to interrupt the activities of illicit market actors in situations of conflict. In other situations, such as those of organised crime or terrorism, this would normally be the role of law enforcement. Unfortunately, law enforcement authorities in most jurisdictions are only now coming to terms with the demands of transnational law enforcement, in particular the challenges of prosecutions. In practice, interrupting the illicit activities that sustain wars and international crimes will involve a much more systematic approach to the prosecution of key brokers of arms, money and other goods, or other business actors who find their niche in conflict situations.

The two directions described here – regulating the entry points of illicit markets to global value chains and empowering law enforcement to target the illicit economic activities of wars and international crimes – together constitute an overall regulatory strategy for dealing with the economies that sustain wars and widespread violence. Both directions of this strategy assume that generating war-fighting capacity or committing mass atrocities requires

organisational capacity.⁵ However, they both seek to target that capacity on the basis of prohibited acts rather than organisational affiliation. In this way, both parts of this emerging regulatory strategy confront the self-financing aspects of contemporary wars and the problem of “fighting for resources for fighting”.

To this end:

- Policymakers should welcome and seek to implement, both domestically and through multilateral co-operation, an increasingly coherent international approach to the problem of irregular war economies. The instruments agreed in 2011 make clear the standards against which due diligence should be conducted, namely internationally proclaimed human rights and the particular dynamics of conflict financing at work in the conflict in question. Recognising that this coherence lies principally in the normative overlap between the UN Guiding Principles, the OECD Guidelines and the OECD Guidance on Responsible Supply Chain Management documents, and UN Security Council authorisation of the latter in the context of the DRC, policymakers should seek to globalise such approaches and apply these to other conflicts and economic sectors.
- Businesses and development practitioners should welcome reliance on the notion of due diligence. The objective of due diligence is to ensure that businesses do the right thing – or at least avoid doing the wrong things – in very complex operating environments, such as situations of conflict or widespread violence. This implies that in principle business can continue in a war zone or countries run by repressive regimes, but that doing so is conditional upon doing no harm as a minimum responsibility.
- Civil society should welcome the development of minimum standards. It is far easier to get governments to fulfil their duties to

protect human rights and regulate markets if international standards are harmonised. However, far more activism is needed to push these obligations into domestic legislation and to match the obligations with the resources necessary to enforce them. This in turn will make the job of consolidating these standards as global norms far easier.

- Peacemakers and mediators should welcome the emerging normative framework as the basis for their engagement with the economies of conflict. The normative standards now emerging constitute the *minimum* standards that should guide conflict resolution and economic peacebuilding. Ultimately, the objective of conflict management in this field should be the transformation of the conflict economy into an economy that promotes an end to violence. This is far easier said than done and, while laudable, such objectives cannot be de facto cover for business as usual.
- These minimum standards require implementation by national jurisdictions. Governments must take the necessary action to put those definitions into law and policy. The state is, after all, the traditional locus for regulating markets and protecting human rights. The UN Guiding Principles and related documents spell out in clear detail what these steps might entail, both in relation to human rights in general and specifically with respect to conflict. These standards should be an integral part of government policies with respect to, for example, export promotion and export credit, as well as conflict resolution and development assistance.
- Governments should empower (and properly resource) their prosecutors or civil court systems to take on suspect business entities.⁶ This will require governments to put the legislation in place to permit prosecutions of businesses both at home and abroad and to reduce the obstacles for civil claims to be brought by victims of business-related human rights abuse.⁷ It will also require a greater

5 There is a logistical aspect that must be met for the effects of the crime to be as bad as intended. “Mass atrocities are organized crimes whose perpetrators need money, weapons, transportation, and other means to commit widespread and systematic violence against civilians” (Human Rights First, “Disrupting the supply chain for mass atrocities: how to stop third-party enablers of genocide and other crimes against humanity”, July 2011, http://www.humanrights-first.org/wp-content/uploads/pdf/Disrupting_the_Supply_Chain_July_2011.pdf).

6 Global Witness, “Simply criminal: targeting rogue business in violent conflict”, 2011, <http://www.globalwitness.org/library/simply-criminal-targeting-rogue-business-violent-conflict>. For a list of potential legal liabilities business in war zones and repressive regimes, see <http://www.redflags.info>.

7 Mark B. Taylor, Robert C. Thompson & Anita Ramasastry, *Overcoming Obstacles to Justice: Improving Access to Judicial Remedies for Business Involvement in Grave Human Rights Abuses*, Fafo Report 2010:21, Oslo, Fafo, 2010.

- willingness to list suspected businesses and businesspeople under UN sanctions regimes.⁸
- The monitoring and enforcement of cross-border traffic by state authorities are essential to limiting the laundering of illicit trade goods into licit trade flows. But states cannot do this effectively without clear obligations on business (business has greater knowledge and control of its own flows, and is often in a better position to manage them than are states). As with the Kimberley Process, public sector measures cannot be the only ones deployed to regulate the trade. To deal with the problem of globally integrated conflict trade, separate but complementary regulatory obligations on the public and private sectors is the only way forward.
 - The problem of the transparency of commercial activities will plague attempts to control the economies of conflict. There is no market-based solution to the problem of commercial secrecy: public policy will have to grapple with it sooner or later. In such areas as anti-money-laundering and anti-corruption measures, national legislation creates mechanisms for disclosure and enforcement that enable oversight by regulators, markets and civil society. Just as in these other areas, the problem of commercial secrecy and transparency will continue to obscure who is really meeting the standards set until such time as governments create obligations to report and disclose due diligence and other information vital for the oversight of irregular war economies.

8 Mark B. Taylor & Mike Davis, "Taking the gun out of extraction: UN responses to the role of natural resources in conflicts", Carl Bruch, W. Carroll Muffett & Sandra Nichols, eds, *Governance, Natural Resource and Post-conflict Peacebuilding*, vol. 6, UNEP, United Nations University, Environmental Law Institute, forthcoming August 2012, <http://www.routledge.com/books/details/9781849712354/>.

