

Corporate Actors in Zones of Conflicts Responsible Engagement



Corporate Actors in Zone of Conflict:

RESPONSIBLE ENGAGEMENT

"The private sector and security are linked in many ways, most obviously because thriving markets and human security go hand in hand. Global corporations can do more than simply endorse the virtue of the market, however. Their active support for better governance policies can help create environments in which both markets and human security flourish."

Kofi Annan, United Nations Secretary-General 1999

Published by Confederation of Norwegian Business and Industry (NHO)
and Peace Research Institute of Oslo (PRIO)

February 2003

Printed by GAN Grafisk AS, Oslo

ISBN 82-7511-061-0

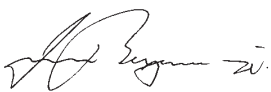
This booklet is written by researcher Lene Bomann-Larsen at PRIO. She has co-operated with senior researchers Henrik Syse and Gregory Reichberg (PRIO), International director Jon Veia (NHO), Assistant director/ Ethics and CSR Dr. Erik Lundebjerg (NHO), and advisor Inger Helen Rokseth (NHO). The project has also been discussed with a reference group of internationally engaged NHO member companies. We would like to thank the Royal Norwegian Ministry of Foreign Affairs for financial support, and Statoil, Norsk Hydro and Storebrand for their contributions to the contents of this booklet.

Social and economic development go hand in hand. Fighting poverty in developing countries requires foreign investments and profitable business and industry. Norwegian companies may contribute significantly to developing countries through transfer of capital, know-how, technology and other positive side-effects of profitable business. Should a Norwegian company find promising business opportunities in investing and establishing operations in the south, the possibilities of contributing positively to development are considerable.

Operating and investing in regions marked by war, civil war and other serious forms of political instability involve considerable risks. Political, social and economic power being challenged; life, property and rights are insecure. In this sense, companies and communities have common interests. A promising strategy could be to build general acceptance and recognition by broad groups in society by demonstrating that the company's presence means a positive contribution to the development of that society. Today people expect business corporations to consider thoroughly their responsibilities in conflict zones. Should inadequate practice be disclosed, it will threaten the company's reputation among customers, business relations, investors, authorities, and among its own employees at home.

The Confederation of Norwegian Business and Industry (NHO) and Norwegian companies recognise the social responsibility of enterprises. During the last decade NHO has provided companies with tools for building competence on Human Rights, Anti-Corruption and other subjects concerning Corporate Social Responsibility. We have had a close dialogue with the authorities and non-governmental organisations on the role of business and industry in this respect.

It is therefore in line with well established NHO policy and practice when we co-operate with the Peace Research Institute of Oslo (PRIO) to produce this booklet, with support of the Royal Norwegian Ministry of Foreign Affairs. We hope that this checklist will prove to be a useful tool for enterprises to make sure that their engagement in conflict zones is socially responsible.



Finn Bergesen jr.
Director General, NHO

■ INDEX

Corporate Actors in Zones of Conflict:

Responsible Engagement	5
Delimiting Corporate Responsibility in Zones of Conflict	5
From Constructive Engagement to Responsible Engagement ..	6
How To Assess Responsibility	7

Checklist

1. Legitimate Purpose of Business Operations

(Right Intention)	8
-------------------------	---

2. Reasonable Hope of Success	8
-------------------------------------	---

3. Direct and Indirect Responsibility (Double Effect)	9
---	---

4. Legitimate Authority	12
-------------------------------	----

5. Openness	14
-------------------	----

6. Additional Question: Corporate Identity and Integrity ..	15
---	----

Recommended Literature	16
------------------------------	----

Useful Links	16
--------------------	----

■ Corporate Actors in Zones of Conflict: Responsible Engagement

Corporations operating in developing countries and conflict zones face major ethical challenges. While the private sector can play a significant role in promoting stability and development, business activities can also have serious negative side-effects for the people and communities that they affect. This booklet focuses on measures and ways of thinking that may help enhance the positive and reduce the negative effects of international business in developing countries, with an emphasis on operations in conflict zones. Its aim is to make it easier for corporate actors to make good decisions in difficult cases.

Among private sector actors, there is increasing recognition that what is constructive for a country is also constructive for business. The long-term sustainability and profitability of business depends upon stability and development. Yet, private sector actors increasingly face criticism from nongovernmental organizations (NGOs), the media and the public over their involvement in conflict areas. How can and should companies address such criticisms?

The argument that economic engagement in itself works constructively for a country and its inhabitants is unsatisfactory. The problem is clearly more complex. What is required is responsible engagement. Responsible engagement not only takes into account the direct and positive effects of investments, it also entails acknowledging and seeking to reduce the harmful yet often indirect consequences of corporate activity in host countries. In this regard, allegations of corporate 'complicity' are particularly challenging. Such allegations accrue not only to those who engage directly in conflict and suppression, but also to those who unintentionally become implicated in such activities. But how is it possible to determine whether or when one is co-responsible in such situations?

This booklet is intended as a point of departure for understanding responsible engagement by corporations in conflict zones. Responsible engagement means an engagement that includes assessment of indirect responsibility and complicity on the part of the company. The conceptual framework introduced here is not proposed as an alternative to existing corporate social responsibility (CSR) strategies and standards. Rather, it aims to elaborate and nuance the concept of CSR. It should be stressed that CSR does not involve politicizing companies. However, it is desirable that companies take responsibility for the effects of their activities, that is, for effects that would not have come about had it not been for the presence of the company. For this purpose, we need a conceptual framework that is sufficiently general to avoid arbitrariness in our judgements, and yet that is sufficiently flexible to take into account the particularities that make each context unique, varying from area to area and, not least, over time.

■ Delimiting Corporate Responsibility in Zones of Conflict

Being a responsible actor entails asking oneself in advance what the appropriate action is in a given situation. If a company only relates to the random outcome of its operations, we find ourselves in a domain ruled by luck and coincidence rather than responsibility. Thus, it is decisive that a company considers in advance *what it aims to achieve and whether it is willing to take on responsibility for the anticipated effects.*

Situations may change rapidly. How can a company best prepare for problems that may arise under way? How can it deal with an undesirable change of affairs in the best possible manner? What defines the crucial moment at which a company should divest? Where does the company draw its boundaries? By considering such issues in advance, management will be better prepared for finding new forms of engagement when called for, and will choose the proper measures to minimize harmful side-effects as they appear. Thinking through possible eventualities in advance may also help prevent the occurrence of demands for withdrawal, or may help identify the right moment for such a withdrawal. Assuming that management is open about its strategies, a thought-out strategy provides predictability and credibility, and it displays responsibility. Such a strategy may also function as an incitement for local authorities to stabilize conditions in order to keep foreign investments ('carrot and stick').

From Constructive Engagement to Responsible Engagement

Companies that are opposed to sanctions or boycotts against specific countries frequently refer to the concept of 'constructive engagement'. They argue that they improve the situation in targeted countries merely by being there and carrying out their business activities, since in so doing they contribute to economic growth, which in turn is assumed to result in increased welfare and political reform. The problem here is that companies in such cases *only refer to the desirable and direct effects of their operations*.

That 'constructive engagement' does not necessarily lead to development and welfare, nor necessarily improve human rights situations or alleviate conflict, is well documented. Even the most benign company risks becoming involved in exacerbating a negative situation. In many countries that are rich in natural resources (e.g. oil, gas, diamonds), the government does not represent the population as a whole, but functions instead as a 'kleptocracy', enriching itself through revenues from national and multinational companies. Consequently, the presence of foreign companies leads to no real economic growth in the area. Reports from the South African Truth Commission reveal how companies violating the international boycott during the apartheid regime contributed to the perpetuation of that regime, not its fall. Reports from the International Monetary Fund (IMF) reveal that this is also the case in Burma/Myanmar, even though oil companies such as UNOCAL argue that communities in the vicinity of their pipelines benefit from their investments; in reality, the SLORC junta is simply tightening its grip on the country, and the human rights situation is constantly deteriorating¹.

The problem of kleptocratic and/or suppressive regimes enriching themselves at the expense of the general population seems to be greatest in countries that depend on unilateral export of natural resources. Thus, the scope of responsibility may be more extensive for extractive industries (who often enter into joint ventures with government-owned companies) than it is for industries that do not require the same degree of cooperation with governments, such as the clothing or telecommunications industries.

That said, in such cases, divestment is not always the most responsible choice. There is also a risk involved in abandoning problem areas to what will in all likelihood be a miserable fate. Therefore, in many cases, responsible

¹. *Legitimate Purpose of Business Operations (Right Intention)*

engagement is preferable. Only when it seems impossible to operate without harmful side-effects becoming disproportionate, and when little or nothing can be done to minimize or prevent such harmful impact, will it become necessary to withdraw.

To sum up, while *constructive engagement* only points towards the desirable and direct effects of corporate engagement, *responsible engagement* also entails assessment of harmful side-effects along with active measures to prevent or minimize these. Responsible engagement requires an overall assessment of possible or actual business activities, based on knowledge of the country or region in which the company decides to operate, as well as genuine awareness of the whole range of effects that such a business engagement will have, not least in areas of political unrest and war.

How To Assess Responsibility

When a company enters a conflict zone, it also enters a conflict: the company becomes part of the conflict situation whether it likes it or not. This is also the case when conflict breaks out in a country in which the company is already operating. Companies are compelled to actively address such a situation: How can we avoid exacerbating the conflict? In such cases, there is as yet no available legal framework that can provide an answer. Nor is it always clear what is in the best interests of the various affected parties in the long run. However, it is important that multinational companies are aware of how they affect a conflict situation – for better and for worse.

Thus, a framework is required in order to assess actions in conflict situations and in international settings where legal regulations and appropriate authorities are not in place. There exists a long tradition for such assessment, namely the *just war tradition*.² Although the just war tradition deals with interstate relations, it provides a vocabulary that is suitable for adaptation to a business context in which international private actors become unwilling partisans in a conflict.

The just war tradition relates to concrete cases, not abstract principles. Within this tradition, taking responsibility largely requires attaining knowledge of factual matters, such as the actual impact of a corporation's activities on its surroundings, the political and economical conditions of the host country (country analysis), causal effects of the business engagement, etc. But it also requires asking the right – that is, critical and sincere – questions and keeping in mind that the business engagement should benefit the whole community.

The questions provided below can be regarded as a checklist. They are based on the just war tradition's criteria for determining when war engagement is ethically warranted, but have been adapted to the challenges faced by business actors in conflict zones.³ The purpose here is not to provide a list of points that can be ticked off simply to clear one's conscience. Rather, the questions must be addressed honestly and self-critically if they are to have any value.

². The term *just war* denotes a long tradition within Western culture of reflection on the ethics of war, with regard both to the considerations that may justify resort to armed force and to the ethical limits that should be placed on actions within war. This tradition lies at the heart of much international law in the field.

³. The just war tradition's notion of *ad bellum* relates to considerations in advance, that is, to legitimate reasons for resorting to armed force, whereas the *in bello* criteria pertain to right and wrong conduct when war is already a fact. Obviously, the *ad bellum* criteria for resorting to armed force are somewhat downplayed here, but some of them might turn out to be relevant in determining whether responsible engagement is at all possible.

A survey conducted in 2000 shows that 73% of local NGO representatives in Azerbaijan consider investments by foreign oil companies as constructive for the area. They also view the oil companies as important partners in the development of civil society in Azerbaijan. (Source: <http://www.statoil.com>)

In order to assess direct and indirect effects of its activities – both positive and negative – Statoil conducted country analyses of both Angola and Azerbaijan at an early stage of its involvement. In addition, the company has access to country information through its partnership programme with Amnesty International, the Norwegian Red Cross and the Norwegian Refugee Council. (Source: Statoil)

■ Checklist

1. Legitimate Purpose of Business Operations (Right Intention)

**What are the goals of our activities in this area?
Are they acceptable from a stakeholder point of view?**

Usually, the immediate answer to this is fairly obvious: the company's main goal is economic profitability, though it may also want to contribute positively to economic development in the area, create workplaces, etc. This is what the concept of constructive engagement refers to: highlighting the positive spin-offs of a business engagement. Not that aiming for profitability is necessarily illegitimate from an ethical point of view! Indeed, creating economic value is a positive enterprise, and is usually in the interests of society at the macro level. But what if a conflict situation is aggravated or a large group of people suffer loss as a consequence of a business activity? In such cases, it is hard to see how investments can be justified. If a company benefits from a war or conflict situation without considering the effects this might have, it becomes simply a war profiteer.

2. Reasonable Hope of Success

If the company enters into an area with the aim of constructive engagement, it must consider whether it is likely to succeed in this goal: Is it realistic to assume that our engagement will work constructively?

The just war tradition presupposes that one does not resort to the use of military force unless there exist good reasons to believe that the goals of such a use of force would be successfully achieved. In a business context, 'reasonable hope of success' requires the gathering of information both before and during the investment, together with a realistic assessment of the expected impact that a proposed business activity will have on the host country; in other words, it requires risk analysis and consequence assessment for a broad spectrum of stakeholders.

Before conducting exploratory studies in Nigeria, the Statoil/BP alliance became involved in a community development project in Akassa, the local community most likely to be affected by the alliance's offshore activities. The Akassa project includes management of natural resources, health and education, poverty alleviation and capacity-building programmes. The project is run by the local community, in collaboration with NGOs, and is currently financed and monitored both by Statoil/BP and by Texaco. (Source: Statoil)

3. Direct and Indirect Responsibility (Double Effect)

Intended ends and means: What do we aim to achieve through our company's activities? What kinds of means should we choose to reach our goals? What standards should we follow in terms of protecting employees, human rights and the environment?

Side-effects: What types of harmful side-effects can we foresee? What steps can we take to prevent or minimize these?

The 'doctrine of double effect' is a central notion in the just war tradition. This doctrine – or principle – can help us to identify the scope of indirect responsibility and unintended complicity on the part of corporations in zones of conflict.

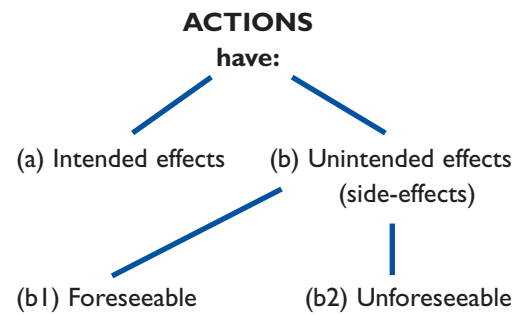
The doctrine of double effect permits one to engage in activities that are in themselves acceptable *even if it is possible to predict that these otherwise legitimate activities will also have negative side-effects*. However, the doctrine does ascribe responsibility for such side-effects to the actor. Consider the case of an illegitimate regime that is financing its military apparatus with revenue earned from the activities of an overseas oil company in the area and deploying its armed forces against political opponents or other sectors of the population. The harm inflicted on these people may be counted as an undesirable side-effect of the oil company's operations, and the company thus becomes co-responsible or unintentionally complicit in the regime's wrongdoings. To take another example, consider a situation in which there is a risk of violent attacks by rebel groups against company employees (for example, if the company is in a joint venture with the government). Here, even though the company cannot be held directly responsible for such attacks, it nevertheless has some degree of (indirect) responsibility since the attacks are a consequence of its activities in the area. That said, a corporation's activities may have side-effects that cannot reasonably be foreseen (e.g. environmental damage resulting from a plane crashing into the plant). Here, it should be noted that one cannot be held ethically responsible for the consequences of unforeseeable events.

In order for foreseeable, harmful side-effects to be permissible, certain conditions must be met:

- 1) the initial action (both ends and means) must be legitimate;
- 2) the company's sole purpose must be to achieve positive effects;
- 3) negative consequences must not be a means of achieving positive ones;
- 4) positive results must outweigh – or be proportionally greater than – negative ones;
- 5) the actor must actively seek to prevent or minimize harmful side-effects; and
- 6) the harmful side-effects must be unavoidable (i.e. there are no alternative approaches that would produce the positive effects without these negative side-effects).

Note that the third criterion specifies that the end does not justify the means. The fourth criterion is referred to as the 'principle of proportionality' (see Section 3a below).

The first criterion applies to the ends and means deliberately chosen for the business operation (the company's project). These come under the category of direct actions, for which the company is directly and wholly responsible. It is an inescapable ethical requirement that such actions are in compliance with certain norms. Knowingly withholding taxes, acting with criminal intent, or engagement



Amnesty International is inclined towards engagement, but only if such engagement is based upon active measures to prevent or minimize harm and contributes constructively to development, as in the case of the CSR strategies of Norsk Hydro and Statoil. (Source: Intsok, 2002)

in corruption or maltreatment of employees would violate this first criterion. Still, it is not this aspect of responsibility that constitutes the greatest challenge for multinational businesses, as direct actions are within the company's control. Nevertheless, many corporations that do in fact strive to operate according to ethical principles find themselves under criticism for their investments in controversial areas. In such cases, the doctrine of double effect can prove helpful, and here the fifth criterion turns out to be of particular importance.

However, to ensure that the doctrine of double effect does not simply become a blanket justification that permits companies to engage in operations that they know will have harmful consequences, the company is obliged to seriously and sincerely consider the foreseeable harmful side-effects of its operations. Further, the company must take active measures to prevent or minimize such side-effects. Not until the company shows willingness to adopt such measures – and accepts the costs thus incurred – can we ascertain that the company is not violating criteria 2 and 3.

Norsk Hydro extracts oil in Angola. Angola has suffered from many years of civil war and also shows signs of the so-called *Dutch Disease* that affects many countries that are overly dependent on the export of natural resources. A symptom of this 'disease' is lack of development in other economic sectors. Through the Quengela Agri Industrial Project, however, Hydro Agri is contributing to building up the agricultural sector in Angola with a view to long-term development. In this way, Hydro is using its agricultural competence to reduce the negative side-effects of the company's engagement in the oil sector.

In other words, the doctrine of double effect permits a certain amount of risk with respect to external parties. Within the armed-conflict framework of the just war tradition, it acknowledges a dilemma that exists in war: that even when a military operation aims at a legitimate and necessary target, there is a risk that this may involve harm to civilians as a side-effect (so-called collateral damage). It is never acceptable to target civilians directly and intentionally, but sometimes civilian losses are an inevitable and foreseeable side-effect of a military operation. If one does not accept this, any act of war becomes ethically impossible. Correspondingly, it would be impossible to do business if one did not permit any kind of side-effect harm, but responsible engagement requires that the company actively seeks to prevent or minimize such side-effects.

An assessment of double effect is not radically different from the various kinds of risk assessment undertaken by companies. However, the difference here is that the focus of the assessment is not on the risks to the company itself, but on the risks to which the company may expose others.

3.a. Proportionality

How can we make sure that harmful side-effects are not greater than the positive effects? Will the harmful effects affect one group while the positive effects affect another? In short, do we cause more harm than good in the host country?

Economic activity is necessary for development, but it may cause harmful side-effects. The criterion of proportionality requires that undesirable side-effects should not be greater than desirable results. However, a weighting of consequences in terms of proportionality is not a simple mathematical operation. It requires application of sound judgment, along with continuous and careful assessment of the situation in the host country.

The International Monetary Fund and the World Bank report that between US\$ 500 million and US\$ 1.4 billion is not accounted for in Angolan public accounts. In comparison, Angola's total GDP in 1999 was US\$ 5.9 billion. It is primarily the responsibility of the Angolan authorities to account for the missing money, but the banks and oil companies can contribute to increased transparency. Oil production represents 80–90% of Angola's total income. (Source: OECD/Human Rights Watch)

Nor is it sufficient to merely balance the positive and the negative effects against each other as if they were of equal significance. We also need to inquire into *who* is being affected by the respective effects. If the positive effects benefit one group (e.g. a kleptocratic/corrupt government), while another group (e.g. a poor and oppressed population) bears the brunt of the harmful effects, we must be on our guard. Future generations may also be affected by a company's operations, especially in cases of environmental damage and prolonged armed conflict. Long-range assessment is thus critical – not least for companies that themselves have a long-term perspective on their engagements.

3.b. Indirect Complicity ⁴

Indirect complicity may be construed as a species of double effect. Are we unintentionally complicit in someone else's wrongful acts? Do we aid and abet an oppressive and corrupt regime? Do we assist in prolonging an ongoing conflict by making it possible for one of the parties to continue its wrongdoings?

Indirect complicity may be material – in terms of producing commodities or revenues that enable the regime to continue its oppressive acts. Examples of this are arms manufacturing or helping to secure a financial platform for purchasing arms and strengthening the military apparatus. During the civil war in Angola, oil companies operating in the country were often accused of fuelling the conflict by enabling the MPLA government to continue its war against UNITA – which for its part was allegedly financed by the diamond industry. Critical voices claim that without this income from the oil and diamond industries, the war would not have been possible.

NGOs and others frequently accuse companies operating in conflict areas of complicity in the wrongdoings of others (e.g. illegitimate governments). The range of legal charges currently being brought against companies accused of complicity in the Holocaust reveal that it is not always easy to see where to draw the line. Let us look at two examples:

1. A US office supplies company is being sued for having contributed materially to slavery in Nazi Germany by selling essential equipment to German prison camps. The firm had no intentions of contributing to the atrocities. Could and should the company have foreseen that the Nazis would use the commodities supplied for this purpose?
2. Polish railway companies are threatened with a lawsuit for complicity in the Holocaust because they built railway tracks that were used to transport prisoners to concentration camps. Could and should Polish railway companies have foreseen such use?

These examples, of course, have been simplified, but they nevertheless point towards something essential: There are vast grey areas in this landscape, and it is not always easy to determine where to draw the line. When companies operating in conflict zones are uncritically accused by campaigners of complicity, this involves a risk that the companies will withdraw from such areas, which in turn may jeopardize development.

Indirect complicity can also be non-material, for example when a company assists in justifying or legitimizing an illegitimate regime or is used by a kleptocratic or repressive government to support its claims to legitimacy. However, it should be emphasized that merely 'being there' should not be sufficient to be regarded as being complicit.

In June 2002, Norwegian authorities expressed their support for 'Voluntary Principles for Security and Human Rights', a document – developed by the US and UK governments as a result of discussions with companies and nongovernmental organizations – that outlines principles for the activities of oil and mining companies. This acceptance by the Norwegian authorities means that Norwegian companies can now freely adopt these principles.

⁴. Direct complicity is not dealt with here. Direct complicity is willed and premeditated, and thus violates the first criterion of the doctrine of double effect since it represents an unacceptable act. Note also that concepts like **complicity**, **co-responsibility** and **accountability** are used in this booklet in their ethical, not their legal, senses.

In many countries that are beset with war or political and civil unrest, security risks are extremely high and companies depend on security forces to protect their staff (which is a primary responsibility for the company). Companies are in this way associated with the behaviour of such forces towards both the local population and political opposition within the country, and this represents a major challenge for them. State security forces can themselves be the source of human rights violations and other atrocities against civilians and political opponents. In such cases, companies become indirectly complicit in, or partially responsible for, human rights violations – particularly when a company contributes financially or materially to the security forces, or when it supplies them with substantive information. Hiring private security firms, however, can also pose problems. Such firms profit from the security needs of others. Do they benefit from seeing the conflict prolonged? How does their presence affect an already existing conflict? The ‘Voluntary Principles for Security and Human Rights’ document may serve as a tool for assessing what measures the company itself can take to limit its degree of complicity in human rights violations committed by security forces.

4. Legitimate Authority

Are decisions that have major social consequences made at the right level within the company? What is the corporation’s legitimate role in society, in terms of its purpose?

In the just war tradition, it is required that any important decision – both before and during a war – is made by the ‘right authority’, that is, a legitimate authority. According to the tradition, legitimate authority belongs to the person or persons who bear the responsibility for the common good.

Translated into the CSR discourse, legitimate authority can be related to two important issues. First, there is the issue of leadership and the sharing of responsibility internally; second, there is the issue of identifying the legitimate scope of corporate responsibility towards external parties, and not least where to draw the line between corporate responsibility and government responsibility. In a country like Norway, political institutions are meant to function in a way that ensures that the positive effects of business activities benefit society as a whole. In zones of conflict, however, such mechanisms are poorly developed, or often absent. This places a greater demand on corporations themselves to ensure that their activities are constructive for everyone concerned.

4.a. Leadership (Corporate Governance)

Internally, legitimate authority is about vesting responsibility in higher organs of the company, that is, with those who have the requisite competence, as well as knowledge of and focus on all of the company’s activities and interests, and not just an eye on a small field or their own personal interests. After the Bhopal accident in 1993,⁵ there were signs that local sub-leaders had been negligent with regard to Union Carbide’s official security standards. Nevertheless, the US mother-company was held accountable. In order to avoid sidestepping of responsibility, it is essential that important decisions are taken by legitimate authorities. Decisions with large consequences should not be left to local representatives or sub-leaders: consequentially, procedures for taking important decisions should be vested in the higher organs of a company, especially since these have an overview of the whole of the company’s profile and can take responsibility and be held accountable for decisions made. Good ‘corporate governance’ is thus a condition for responsible engagement.

Some US companies, among them the mining company Freeport McMoran, have appointed board members with special responsibilities for human rights and CSR issues.

To manage the legitimacy challenge, several companies have engaged in constructive three-way collaborations with NGOs and political authorities.

⁵. See ‘Voluntary Principles on Security and Human Rights’, US Department of State, Bureau of Democracy, Human Rights and Labor, 20 December 2000; available at <http://www.state.gov/drl/rls/2931.htm>.

4.b. The Corporation's Social Role in the Light of the Business

Purpose

When responsibility for the distribution of social goods is primarily ascribed to multinational companies, which are not set up for this purpose, there is a problem as far as democracy is concerned. Distribution of goods and attending to fundamental welfare rights is the primary task of political authority – even though not all governments adequately address this responsibility.

Nevertheless, companies must avoid becoming complicit in the wrongful acts of a regime that is enriching itself at the expense of the general population, and this may entail a duty to take measures directed towards community needs (see also the duty to minimize negative side-effects).

Social measures directed at minimizing harmful effects may be comprehensive, but it is important to emphasize that there should be an obvious relation between the measures taken and the harmful effects in which the corporation itself is implicated, within the sphere of the corporation's competence and legitimate sphere of influence. This is important in order to ensure that CSR measures are not seen as a way of buying oneself out of responsibility for one's own actions. CSR is thus not about taking over a government's responsibility for the well-being of society, even though measures taken may overlap with what is normally considered to be the tasks of political authorities. Nor is CSR about acts of charity. Social responsibility – first and foremost – means taking responsibility for the harm caused by the company itself, both directly and indirectly. But since the potential for harm is so much greater in so-called problem areas than, for example, in Norway, and since the consequences of business activity so much more wide-ranging and complex in problem areas, the responsibility for and scope of harm-preventing measures must equally be broader. When a regime earns revenues from a company's activities and these are not redistributed to the community, it seems reasonable that the company itself should give back something to the community in terms of education and healthcare, or should contribute to the development of industry and agriculture in the area.

'If we don't do it, someone else will.'

The above argument is frequently put forward as a justification for business engagement in controversial areas, often with the implication that this 'someone else' might turn out to be worse than us. The argument is not valid, and for several reasons. First, it is never acceptable to commit a wrongful act even though this may prevent someone else from committing an even worse act. Furthermore, company A is not responsible for preventing the negative effects of company B's activities, just as company A cannot take credit for the positive effects of company B's activities.

In 1993, Hydro Aluminium entered into a joint venture – UTKAL Alumina – with Indal and the Tata Group. The purpose was to extract bauxite in Orissa, India, an area with a large indigenous population. The project met with significant criticism from NGOs in Norway. When Hydro divested from the project in 2002, this was applauded by NGOs as a socially responsible decision. At the same time, however, Hydro was accused of choosing the easy way out, since the problems faced by the indigenous population had not been resolved and the remaining partners were less concerned with human rights. At the time of divestment, the project had not yet been operationalized. Is it right to ascribe responsibility to Hydro for protecting the rights of indigenous people in an area in which the company does not operate and to hold it accountable for the actions of other companies? (Source: Norsk Hydro)

Transparency International's corruption index for 2001, which surveys 91 countries, shows that Venezuela (69), Azerbaijan (84), Nigeria (91) and Russia (79) are all in the top part of the corruption scale. Norwegian oil companies are involved in operations in all of those countries. (Source: INTSOK, 2002)

Private individuals can be held indirectly responsible for acts of omission, that is, in cases where they do not prevent harm even if they did not actually cause this harm themselves. But we need to ask whether companies can be held accountable in the same way as persons for not intervening in cases where others are acting wrongfully. Such accountability must be evaluated in the light of the corporation's purpose. A corporation is established for limited and predefined purposes, and this must have consequences for the scope of responsibility that is incumbent upon it. It may therefore be expedient to limit CSR to the direct and indirect effects of a corporation's own activities. To be sure, when a company chooses to withdraw from an area for business (or ethical!) reasons, this should also be counted as a voluntary action, and the company is then indirectly responsible for negative side-effects resulting from the divestment. Indeed, if the company has been operating in an area for a long time, divestment may have a severe impact on the local community. In such a case, it is the duty of a company to minimize any harmful impact as far as possible (e.g. by selling to a responsible successor). One way of doing this is to be open about what the company is doing and why, in order to direct attention towards what a potential successor may do. Even though the company will not be held accountable for its successor's potential wrongdoings, the company shows by such openness that it is taking responsibility for the consequences of its own decision to divest.

Storebrand Principle Global Fund selects companies in which it will invest partly on the basis of social criteria. A company in the hotel business, for example, was excluded for firing employees who went on strike. An oil company has been excluded for complicity in the human rights violations of a government in a case involving illegitimate use of state security forces to protect company installations. The process of identifying companies that are complicit in human rights violations entails a comprehensive gathering of documentation and the exercise of judgment in each case. Dilemmas arise when companies (for example, NIKE) produce none of their own commodities, instead buying everything from sub-contractors. To what extent is NIKE responsible for human rights violations committed by its suppliers? (Source: Storebrand)

Storebrand Principle Global Fund: 'In some cases, the reluctance of a company to be open and transparent has led to its being excluded.' (Source: Storebrand)

5. Openness

What are our goals for the whole investment as well as for individual operations? What possible harmful effects can be expected? What measures should we take to prevent and/or minimize these?

It is vital that companies publicly declare their answers to these questions, and that they subsequently report whether their goals have been achieved and to what extent the measures taken had the desired effect.

5.a Public Declarations

Of course, no one will believe a business company if it claims that profits are not its goal. It is therefore essential that companies do not pretend to be other and 'better' than they are. But a company may also have additional goals, and these should be publicly declared. Through a public declaration of primary goals, social goals and planned measures for minimizing harm, a company commits itself to its own standards and exposes itself to healthy criticism. Companies should also make considerations behind investments in specific countries and areas publicly available, and should be open about considerations that may lead to disinvestment or divestment from a certain area. Where it is possible, openness regarding financial transactions with governments can lead to positive political developments.

5. b. 'Transparency Test' for Company Processes

The above requirement for openness, however, does not entail a duty to make every corporate decision public, nor does it deny a company the right to maintain 'business secrets' – such a requirement would harm a company's competitive strength. Coca-Cola, for example, has no obligation or duty to publish its recipes, but it is essential that its recipes could stand scrutiny if they were published. This means that the product cannot contain toxic or illegal substances that would be unacceptable if made public.

In other words, companies should undertake internal 'transparency tests', asking themselves whether their actions could stand publicity. The demand is hypothetical, but nevertheless vital. Reflecting upon whether a company's business activities could withstand being displayed in a showcase alongside the company's name thus provides, ethically speaking, an essential thought experiment.

5. c. Reporting

Good intentions are not enough. Companies should also undertake to document and publish the extent to which they have achieved their goals, and they should substantiate the effects of both their primary activities and their CSR measures on local communities and economies.

6. Additional Question: Corporate Identity and Integrity

What kind of company do we wish to be? What do we want people to associate with our brand name and logo? What kind of actions comply with the company's self-understanding? Is there anything we would never do or never wish to be involved in?

A corporation's identity lies in its self-imposed and acknowledged policy. It is essential that a company has a clear perception of its own identity. Reflection on how the company wants to be perceived by others, what its public image should be, and what it wants the public and its employees to associate with its brand names and logo are important aspects of identity-building.

Not wanting to harm its reputation can be an important factor in terms of motivating a company to act with integrity. Consumers are displaying increasing willingness to boycott companies they disapprove of – and have increased opportunities for doing so. And given the growing number of critical NGO campaigns and the growing numbers of socially responsible investors, the desire for long-term profitability should at least be an incentive for ethical behaviour. In the short run, however, it is important to bear in mind that not every responsible decision gives a financial return. In any event, responsibility requires thinking in the long term, and acting with integrity entails making decisions that may seem unprofitable in the short term.

In 1995, Ken Saro Wiwa and eight other human rights activists were executed in Nigeria. This provoked international condemnation of both Nigeria's military regime and the large oil companies operating in the country. In particular, Shell was criticized for not having used its influence with the regime to prevent the executions. In addition, Statoil was criticized by NGOs and the Norwegian media both for investing in Nigeria and for failing to criticize the regime. Critics felt that Statoil, through its presence in the country, lent legitimacy to the regime and also made it possible for it to stay in power, since more than 80% of the government's revenues came

Telenor conducts a corruption test with respect to its business partners. In principle, Telenor accepts gifts, but the company notifies potential givers that gifts will be displayed in a showcase together with the name of the giver. In this way, the intentions of a giver are put to the test. Givers who retrieve their gifts on such occasions can reasonably be assumed to have dishonest intentions. At the same time, Telenor avoids offending anyone by refusing to accept gifts. (Source: Telenor)

Global Witness urges oil companies to make public all revenues paid to host governments in their annual reports. (Source: www.globalwitness.org)

This checklist is part of a project at the International Peace Research Institute, Oslo (www.prio.no) on the role and responsibility of the private sector in zones of conflict and severe human rights abuse. In collaboration with the United Nations University in Tokyo (www.unu.edu), the project will result in the publication of lengthy report dealing with the problems of indirect responsibility and complicity on the part of world business.

from the oil sector. Norwegian NGOs, including the Norwegian Forum for the Freedom of Speech (NFY), instigated a postcard campaign against Statoil, in which one of the cards carried the slogan 'Oil is thicker than blood'.

At the time, Statoil responded by pointing out that since it had not commenced any upstream activity in Nigeria, it was not at that point making any money from its presence. Furthermore, it claimed to be involved in business, not politics, and argued that it was a small company, and as such could not exercise any influence over the regime. Later, however, Statoil initiated a constructive dialogue with several human rights organizations. (Source: Statoil)

Integrity means coherence and wholeness. If a company is to have integrity, it must act in accordance with the picture it creates of itself. To make public what the company finds important and what it would never do, and then act according to these values not only generates predictability, trust and credibility externally, but also pride and self-respect internally.

Recommended Literature

- 1 Addo, Michael K. (ed): Human Rights Standards and the Responsibility of Transnational Corporations. Haag: Kluwer Law International, 1999
- 2 Bucholz & Rosenthal: Rethinking Business Ethics – A Pragmatic Approach. The Ruffin Series in Business Ethics, New York/Oxford: Oxford University Press, 2000
- 3 Curtler, Hugh (ed): Shame, Responsibility and the Corporation. New York: Haven Publications Inc, 1986
- 4 De George, Richard T.: Competing with Integrity in International Business. New York/Oxford: Oxford University Press, 1993
- 5 Eide, Bergesen, Goyer: Human Rights and the Oil Industry. Antwerpen/Oxford/Groeningen: Intersentia, 2000
- 6 Elegido, J. M.: Fundamentals of Business Ethics – a Developing Country Perspective. Ibadan, Nigeria: Spectrum Books, 1996
- 7 French, Peter A.: Collective and Corporate Responsibility. New York: Columbia University Press, 1984
- 8 Frynas, Georg Jedrzej: Oil in Nigeria – Conflict and Litigation between Oil Companies and Village Communities. Hamburg: LIT Verlag, 2000

International Alert: The Business of Peace. The Private Sector as a Partner in Conflict Prevention and Resolution. International Alert, 1999 (can be subscribed from www.international-alert.org).
INTSOK (ed. Lene Bomann-Larsen): Corporate Social Responsibility in the Norwegian Petroleum Sector, Oslo: Intsok 2001 (can be subscribed from www.intsok.no)

Tamagno, S. & Aasland, T. (ed): Invitation to a Dialogue. Corporate Social Responsibility. Oslo: Norsk Hydro 2000 (can be subscribed from www.norskhydro.no).

International Labour Office, Geneva: Codes of conduct and Multinational Enterprises (Cd-rom)

Publications in English from the Norwegian Confederation of Business and Industry relating to foreign investment:

1. Human Rights – from the perspective of business and industry – a checklist (Oktober 1998)
2. Standpoint Corruption (2001)
3. Global Governance (2002)

KOMPakt-publications, compiled under NHO-leadership:

1. Business aspects of human rights work (1999) (Business and Human Rights, art. 1)
Workgroup leader: Jon Vea Workgroup secretary: Bjørn Otto Sverdrup
2. Socially responsible companies. What? Why? How? (Feb 2001)
Workgroup leader: Jon Vea Workgroup secretary: Erik Lundebø

Useful Links

NHO's website on corporate social responsibility
www.nho.no/csr

PRIO's homepage
www.prio.no

UN Global Compact
www.unglobalcompact.org/

Business & Human Rights: a resource website:
www.business-humanrights.org/

Control Risks Group
www.crg.com/

Ethical Investment Research Service
www.eiris.com

International Alert
www.international-alert.org/

Ethical Performance
www.ethicalperformance.com

Transparency International
www.transparency.org



Checklist

1. Legitimate Purpose of Business Operations (Right Intention)

What are the goals of our activities in this area? Are they acceptable from a stakeholder point of view?

2. Reasonable Hope of Success

If the company enters into an area with the aim of constructive engagement, it must consider whether it is likely to succeed in this goal: Is it realistic to assume that our engagement will work constructively?

3. Direct and Indirect Responsibility (Double Effect)

Intended ends and means: What do we aim to achieve through our company's activities? What kinds of means should we choose to reach our goals? What standards should we follow in terms of protecting employees, human rights and the environment?

Side-effects: What types of harmful side-effects can we foresee? What steps can we take to prevent or minimize these?

Proportionality: How can we make sure that harmful side-effects are not greater than the positive effects?

Will the harmful effects affect one group while the positive effects affect another? In short, do we cause more harm than good in the host country?

Indirect Complicity: Are we unintentionally complicit in someone else's wrongful acts? Do we aid and abet an oppressive and corrupt regime? Do we assist in prolonging an ongoing conflict by making it possible for one of the parties to continue its wrongdoings?

4. Legitimate Authority

Are decisions that have major social consequences made at the right level within the company? What is the corporation's legitimate role in society, in terms of its purpose?

5. Openness

What are our goals for the whole investment as well as for individual operations? What possible harmful effects can be expected? What measures should we take to prevent and/or minimize these?

It is vital that companies publicly declare their answers to these questions, and that they subsequently report whether their goals have been achieved and to what extent the measures taken had the desired effect.

6. Additional Question: Corporate Identity and Integrity

What kind of company do we wish to be? What do we want people to associate with our brand name and logo? What kind of actions comply with the company's self-understanding? Is there anything we would never do or never wish to be involved in?