



# Human Security and Transnational Corporations

The entanglement of transnational corporations in wars, human rights violations and tax evasion



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# Imprint

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The entanglement of transnational corporations in wars, human rights violations and tax evasion

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# Part 1: Introduction

## Foreword

The debate on corporate social responsibility has gained impetus over the last few years. Public criticism of transnational corporations has grown in response to more and more new environmental offences and the flouting of fundamental labour and human rights standards.

Several companies, governments and international organisations have responded to this with voluntary codes of conduct and partnership initiatives between industry and politics. The Global Compact initiated by UN Secretary General Kofi Annan between the UN and industry is the best example of a political strategy aimed predominantly at the voluntary self-regulation of industry. With the aid of best practice examples, the companies involved are to demonstrate their sense of responsibility in society, the focus being on environmental and social minimum standards.

However, industry's influence and the impacts of transnational corporate activities reach way beyond these »soft« policy fields. Overshadowed by partnership initiatives, dialogue processes and voluntary compliance, many corporations continue to ruthlessly pursue their particularistic interests in the »hard« areas of politics. Their activities affect seriously the human security of people all over the world.

Transnational corporations are entangled in wars and armed conflicts in many ways. Not only does this apply to arms manufacturers and private security companies operating at international level (»Rent-a-Cop«). More and more frequently, the asserting of economic interests on the part of the global players and access to natural resources such as crude oil are being backed up by military means. In countries like Colombia, the activities of transnational investors are whipping up internal state conflicts. However, transnational

corporations are also the beneficiaries of wars and conflicts. The reconstruction of war-torn Iraq and the privatisation of entire branches of industry in that country is a billion-dollar business for foreign companies. Military invasion is being followed there by an economic invasion.

In addition, transnational corporations have a considerable influence on fiscal policy and the revenue situation of states. Transfer pricing within globally operating corporations and transfer of profits to low-tax countries reduce state revenue, creating considerable constraints on the ability of a state to act. Tax evasion and tax avoidance deprive the public budgets of billions each year. To a large extent, it is not known how much money corporations, e.g. in the extractive industries, pay in royalties for licences and franchises to the governments of the South. This is why an international NGO campaign is calling on corporations to »publish what you pay«.

So far, the current discourse on corporate social responsibility has given little attention to this shady side of transnational business activities. Voluntary initiatives of industry ignore these areas of »hard« finance and security policies.

On the basis of concrete case studies, our documentation aims to address the influence and entanglements of transnational corporations in these fields. What is their specific role and what are the social and economic consequences of their activities for the people affected? What scope of action is there for NGOs and trade unions to take action against corporate social irresponsibility in these »hard« policy fields? Are public campaigns, litigation at national level, multistakeholder initiatives and the existing international instruments sufficient? And what are the resulting political strategies for civil society's

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world-wide corporate accountability campaign? These questions have been discussed at a conference organized by the DGB-Bildungswerk, terre des hommes Germany and World Economy, Ecology & Development (WEED) in Berlin in November 2003 and are now reflected in the contributions to

this report. It contains statements and documents presented at the Berlin conference. With our new publication we would like to contribute to the broadening of the debate about corporate accountability and the effectiveness of voluntary self-regulation of business.

April 2004

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## Human Security vs. Corporate Security —A Paradigm Shift?

Steven Staples<sup>1</sup>

The current political moment has important implications for civil society organizations calling for greater accountability by corporations. The September 11, 2001 terrorist attacks against the United States have resulted in dramatic political shifts in both international relations and domestic priorities.

While most of the post 9/11 impacts are overwhelmingly negative, including two major wars, ballooning military budgets, and security laws that undermine human rights, some political space is opening that can be seized by social movements. The Washington Consensus is being undermined, the free trade agenda has been stalled, and citizens expect more activist governing. They also expect the state to provide more security—even if that reduces corporate profits.

As a movement we are concerned about globalization and international free trade agreements that grant power to corporations without demanding corresponding responsibility. We are even more concerned that these trade agreements deny legitimate governments the policy and regulatory instruments needed for democratic governance over the conduct of corporations, especially large multinational corporations.

Can corporations be held to voluntary or self-defined standards? Many people believe the answer is no, because these corporations have not made progress in ending their own environmental abuse and human rights violations. Demands are increasing for the enforcement of existing obligations and the imposition of mandatory—not voluntary—regulatory measures. The expectation of »corporate responsibility« is thus being replaced by a requirement for »corporate accountability.«

<sup>1</sup> Steven Staples is director of the Polaris Institute Project on the Corporate-security State. This project researches the relationship between corporate globalization, militarism and security, and works with citizen organizations in Canada, the US and internationally to develop new tools for democratic social change.

In the 1990s, global trade regimes expanded rapidly and there was a »constitutionalization« of international trade law. The World Trade Organization, for example, founded in 1995, represented the culmination of the so-called Washington Consensus—an ideology of international elites that derive the greatest benefit from the free market system. The Washington Consensus demanded far-reaching rights and protections for foreign investors and business enterprises from the »free trade-distorting« government regulations that could limit their unfettered pursuit of profit.

The World Trade Organization, now comprising 146 members, became the main vehicle for implementing the Washington Consensus—although other international financial institutions also participated—as both the negotiator of free trade agreements and the court of arbitration for trade disputes between states. But behind the curtain of governments were powerful corporate interests that enjoyed access to national governments and trade negotiators, and in some cases initiated trade challenges by governments against other member governments. Corporations have played an important, if not always overt, role in the formation and conduct of the WTO, resulting in a system skewed in their favour.

For example, agricultural corporations that urged the United States to challenge the special economic development measure accorded to poorer banana-producing countries by the European Union. Using free trade rules, the WTO ruled in favour of the United States—which does not even export bananas—and handed an important victory to corporations with lucrative holdings in those developing countries negatively affected by EU preferential policies. But a price was paid by poorer countries that, in some cases, are entirely dependent on banana exports for their economy.

But since 9/11, the relationships between the world's economic and military powers have realigned around the War on Terrorism. Simultaneously, new

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In Cancun the Group of 21, resisted successfully the traditional strong-arm tactics of the North.

Military and economic interests are fused together in the Bush doctrine.

alliances are being formed in the global South to confront the unfair demands of the North in free trade negotiations.

In the lead-up to the WTO Ministerial Conference in Cancun, Mexico, in September 2003, Brazil, South Africa, India, China and other emerging countries forged an alliance to confront Northern countries on their unfair trade demands. The main issues the Southern countries raised were the devastating American and European agricultural subsidies; they also opposed the introduction of new issues, such as investment.

In Cancun the various coalitions of Southern countries, such as the Group of 21, resisted successfully the traditional strong-arm tactics of the Northern countries and the WTO talks ended in a stalemate. This left further talks without a mandate to proceed, and the entire global trading regime stalled. In the wake of the failure of the WTO talks, a watered-down framework for a Free Trade Agreement of the Americas, or FTAA, was agreed upon in Miami at the insistence of Latin American countries.

There are three important factors that have contributed to the current stalemate in global trade talks:

Social movements have opposed to the global trade liberalization and its impact on the environment, human rights and development have sprung up. This became evident in the Seattle demonstrations in 1999.

Progressive governments have been elected in several Southern countries, including Brazil, Venezuela, Argentina and Ecuador. These governments are prepared to work with other emerging countries, such as South Africa and India, to press their demands against Northern countries.

The United States has shifted its political interests to a provocative, unilateralist foreign policy causing rifts in the alliance of Northern countries. This policy, articulated in its 2002 National Security Strategy, is better known as the »Bush Doctrine«.

### The Bush Doctrine

It is the third development that bears greater examination here. The Bush doctrine contradicts previous for-

eign policy objectives in several important ways.

**First**, it marks a return to activist government, in stark contrast to the previous administration's willingness to hand power over to free markets and the private sector. While the specific actions of the state are clearly undesirable—that is, waging war even when not attacked—nonetheless its decisive reassertion of the role of the state in national affairs is auspicious.

**Second**, its unilateralist agenda, which caused such friction with the United States' traditional European allies, has created fissures in the strong Northern bloc that has so far dominated the global economic agenda. Thus the multilateral World Trade Organization has been weakened, since the United States is pursuing country-to-country or regional agreements that can better represent pure U.S. economic interests without compromise.

**Third**, military and economic interests are fused together in the Bush doctrine. The national interests of the United States, previously largely defined through economic measurements, now have a military dimension. This shifts national interest away from multinational enterprises, which have greatly benefited from multilateral trade liberalization, towards domestic corporate interests which benefit from an interventionist government.

In many ways, the Bush doctrine reveals the emergence of the Corporate-Security State, that is, the imperative for the government to provide security for its corporate interests in order to fulfill its national interest. The security functions of the state—the military, police, and security agencies—are put at the service of the domestic corporate agenda, whether it is defending investments overseas; ensuring the security of trade routes for oil, natural resources and goods; or monitoring and suppressing popular movements arising from the disaffected and excluded.

As economist Walden Bello argues, the globalization game plan has shifted in a significant way. »For the Bush people, strategic power is the ultimate modality of power. Economic power is a means to achieve strategic power. This is related to the fact that under Bush,



the dominant faction of the ruling elite is the military-industrial establishment that won the Cold war.«

Globalization will certainly continue, but only in a fashion that combines U.S. security and economic benefit. »The Bush administration has supplanted the globalist political economy of the Clinton period with a unilateralist, nationalist political economy that intends to shore up the global dominance of the U.S. corporate elite economically and that parallels the aggressive military policy that is meant to ensure the military supremacy of the United States.«

The »global capitalist elites,« as Bello describes those interests that benefited from the globalist political economy, are being disciplined to accept the Bush doctrine. »In the WTO, it's always been understood that security trumps trade,« says Joseph G. Gavin, vice-president for trade policy with the U.S. Council for International Business, a powerful corporate lobby group. Free trade, then, can progress only where it furthers U.S. national security interests, or at least where it does not interfere.

### Globalist vs. nationalist elites

The interests of the globalist political economy and the nationalist political economy are marked by contradictions. Policies that serve the interests of one group clearly clash with the other.

For one example, we can look at the United States' policy towards China. From the U.S. perspective, China could be seen as an untapped market for exports and source of low-cost labour for manufacturers, or it could be seen as a nuclear armed rival and economic, military and technological competitor to U.S. geopolitical aspirations. U.S. policies treat it as both, clearly demonstrating the schism emerging between the rival interests within the United States political and economic establishments.

The roots of the shift towards national political elites are found in the political moment after the fall of the Berlin Wall in 1989 and the end of Communism.

Until 1989, global economic integration was limited by the competition between East and West spheres of influence and by state sovereignty as demonstrated in the voluntary na-

ture of the 1949 GATT. The end of the Cold War opened the door for full global economic integration and made possible the creation of the WTO and its compulsory enforcement measures in 1995.

The first Bush presidency, from 1988 to 1992 at the end of the Cold War, was marked by triumphalism and boldness in the use of military power, underlined by the use of terms such as »The New World Order.« Paul Wolfowitz's »Defense Planning Guidance,« which was leaked to the New York Times, exposed the administration's plans for moving towards unilateralism and preemptive warfare, and other policies intended to extend U.S. power in a unipolar world.

George Bush Senior's defeat by the Clinton Democrats in 1992 effectively prevented these wide-eyed plans to promote U.S. unilateralism and hegemony from becoming overt policy, though many components, such as a more aggressive nuclear weapons policy and development of missile defenses, took shape during the Clinton years.

Thus, the George W. Bush administration's 2002 National Security Strategy of the United States of America can be viewed as an extension of the post-Cold War strategic planning of the preceding Republican administration.

The new Grand Strategy articulated in the 2002 U.S. National Security Strategy fused military and economic objectives in order to achieve the national interest. This is what makes the Bush doctrine unique.

Defense Secretary Donald Rumsfeld and his deputy secretary Paul Wolfowitz, two of the main architects of the Bush doctrine, moved quickly in pushing through reforms in the military following September 11, 2001.

Rumsfeld has been a long-time advocate for creating a leaner and meaner military, but he had faced stiff resistance from entrenched interests within the military. September 11, 2001 cleared away obstacles, and the flood of military spending largely permitted reforms to go through without cutting into billions of dollars' worth of so-called Cold War-era »legacy« military programs.

Rumsfeld and Wolfowitz are now transforming the military to adopt a

Free trade, then, can progress only where it furthers U.S. national security interests.

The new Grand Strategy fused military and economic objectives.

more aggressive posture that exploits the United States' unmatched military technology, and shaking off previous Cold War thinking to allow U.S. forces to operate without restraint in the pursuit of national economic and strategic interests. Today, the United States can largely act with impunity as a global hyperpower.

Scarcely a month had passed after the attacks when, in October 2001, the Bush administration created the Office of Force Transformation within the Pentagon and appointed retired Vice Admiral Arthur Cebrowski as its director. Cebrowski is responsible for »transforming« the U.S. military to fight the War on Terrorism. He is reviewing everything, from how the military plans to wage the U.S.'s wars to what weapons it needs to fight them with.

In a revealing speech to the right-wing think tank the Heritage Foundation in May 2003, Cebrowski laid out the profound effects the terrorist attacks had on the United States and global politics. In effect, they ushered in a new era of globalization. »Now we see the emergence of a new globalization, with new rule sets,« said Cebrowski.

According to Cebrowski, today the world map is redrawn, divided between those regions of the world whose markets are connected through globalization, and those that »resist« being connected. »We used to talk, for example, about the haves and the have-nots,« said Cebrowski. »Now we can talk about the functioning core of globalization [...] versus the non-functioning gap of globalization. We can see threats, then, in a completely different light.«

America's privileged position within globalization and the system itself must be defended. »We indeed do have a protected, a privileged position,« admits Cebrowski, noting that America counts for only 5 per cent of the world's population, but produces and consumes upwards of 25 per cent of the world's wealth.

U.S. military planners increasingly see their role as defending globalization and as closing the so-called globalization gap of nations that resist becoming part of the network of markets linked through free trade. The gap com-

prises much of central Latin America and the Caribbean, central Africa, the Middle East, and parts of South East Asia, along with North Korea. Foreign direct investment,« argues Cebrowski, »requires rules. And rules require security and someone to enforce them.«

The Bush administration's Office of Force Transformation is preparing the U.S. military to enforce the Bush doctrine. »If you are fighting globalization, if you reject the rules, if you reject connectivity, you are probably going to be of interest to the United States Department of Defense,« warned Cebrowski.

### The corporate-security state

The corporate-security state comprises three institutions: the government, the military and the corporations. Linking these three institutions is a complex set of relationships and interdependencies—each institution requires something from the others in order for it to fulfill its interests.

But these interdependent relationships can become vulnerabilities when interests come into conflict, such as when corporations invest in countries deemed to be security threats. The relationships can then become pressure points where social movements can apply pressure.

As the current quagmire in Iraq demonstrates, the best-laid plans of the U.S. military are no guarantee of success, and military and government leaders can become victims of their own ideologically filtered reading of the global situation. The cover of Newsweek magazine in November 2003 featured a photo of Bush and the headline »Bush's \$87 Billion Mess« for a story inside on the »waste, chaos and cronyism« in occupied Iraq.

The current stalemate in global trade talks and the crisis of the Washington Consensus mirror the crisis of the Bush doctrine as the United States finds itself trapped in its own unfulfillable ambitions.

This raises a question for advocates of corporate accountability: Does this current period of schisms between global and national elites and the fundamental contradictions within the corporate-security state provide us with opportunities to advance our agenda?

Now we see the emergence of a new globalization, with new rule sets.

U.S. military planners increasingly see their role as defending globalization.

Certainly the undermining of the Washington Consensus is a prerequisite to the empowerment of governments over corporations when those corporations are not acting within the perceived national interest. This is no small step. The notion of mandatory measures on corporate and economic activity is no longer politically unthinkable.

Those who advocate greater transparency of international financial rules and tax havens in order to stem corruption and tax evasion are quick to point out that after September 11, 2001, U.S. demands for financial information to track down and freeze terrorist assets proved that this information can be made available when the political will is present.

Can this security concern not be extended to encompass a range of corporate activities that could fall under national security concerns, such as the arms industry, oil and mining activities in conflict zones or failed states, and other corporate investments with governments that have links to terrorist groups or permit terrorist activity, such as Sudan, Colombia, and Myanmar? This directly turns the profit motive against the security imperative and puts the corporate-security state in conflict.

Even more, can we successfully work with the public's security concerns to greatly expand the popular definition of security, encompassing concepts of financial security, environmental security and social security? This could increase the range of areas where the public expects the government to take action to ensure that corporate interests are not allowed to undermine public security.

Throughout the 1990s social movements were arguing against the »corporate rule« of global trade and financial institutions. The corporations held all of the power and governments refused to impose any discipline on the private sector. Arguing for corporate responsibility and the voluntary measures that implied was perhaps all that was achievable then.

Now, however, the political climate is more conducive to finally achieving corporate accountability to mandatory standards of conduct defined by governments. The renewed role of the state and the increased expectations of the public for activist government in ensuring security, combined with the high-profile corporate corruption scandals of the likes of Enron and Parmalat, create the political space for new possibilities.

Even the world debate over the invasion of Iraq underscores the shift in what is politically possible today. Millions of people in the streets and overwhelming broad public opinion forced governments to override their domestic corporate interests and refuse to endorse the invasion, even in the face of tremendous pressure and economic threats from the United States.

The current crisis of the Washington Consensus and conflict between political elites, the discrediting of corporations and free market ideology, and the rising public expectations for activist government bode well for social movements wishing to build support behind demands for corporate accountability.

Can we successfully work with the public's security concerns to greatly expand the popular definition of security?

## Part 2: Obstacles to Human Security and the Role of TNCs: Case Studies from Iraq and Colombia

### Oil Companies in Iraq: a Century of Rivalry and War

James A. Paul<sup>2</sup>

The United States and the United Kingdom did not wage war on Iraq for the officially stated reasons. That much is obvious. The world's superpower and its key ally were not acting because they feared the Iraqi government's weapons of mass destruction or its ties with the terrorist group al-Qaida. Nor were they fighting to bring democracy to the Middle East, a region where the two governments had long supported reactionary monarchs and odious dictators, including Iraqi president Saddam Hussein himself.

It is time, then, to set aside the sterile discussions about »intelligence failures« and to consider the deeper reasons for the conflict. This conference on corporate responsibility offers an occasion to consider another idea—that it was a »war for oil« in which large, multinational oil companies and their host governments acted in secret concert. To consider the evidence, and answer the questions of skeptics, we must begin by reviewing the companies' power and influence over a period of many decades. Then, we will turn to the immediate events leading up to the 2003 war itself.

#### Companies' Great Size & Global Presence

By the early 20th Century, when most business firms were relatively small by modern standards and purely national in scope, Standard Oil and Royal Dutch Shell were already global companies that controlled a worldwide network of production and distribution. By 1911, they held rich pro-

duction fields in the Dutch East Indies (today's Indonesia), Romania, Russia, the United States, Venezuela and Mexico, as well as refineries, pipelines, rail cars, tankers, storage depots and other facilities in dozens of countries. Standard Oil alone had a fleet of nearly 100 ships.<sup>3</sup>

Large as they were a century ago, the oil companies have since grown mightily, due to worldwide collusion in production and pricing and to fierce backing by their host governments. For decades, the so-called »Seven Sisters,« all of them firms based in the US or the UK, dominated the industry and ruled the global oil market through a tightly-knit cartel.<sup>4</sup>

Today, a wave of mergers has given the successor firms a new and unprecedented scale, reducing the major firms to just five. In 2003, annual revenues of the leading company, ExxonMobil, were an astonishing US\$247 billion.<sup>5</sup> By way of comparison, such revenue is vastly greater than such well-known international companies as Walt Disney (US\$25 billion) and Coca Cola (US\$19 billion) and it is larger than the revenues of 185 national governments, including Brazil, Canada, Spain, Sweden and the Netherlands. Only the world's six richest countries—the US,

<sup>3</sup> See, for example, Daniel Yergin, *The Prize* (New York: Simon & Schuster, 1991).

<sup>4</sup> The Seven Sister companies arose after the federal anti-monopoly breakup of the Standard Oil Trust in 1911. They included three Standard Oil spinoffs, Standard Oil Company of New Jersey, Standard Oil Company of New York, and Standard Oil Company of California, as well as Texaco, Gulf, and the UK giants Royal Dutch Shell and British Petroleum. See Anthony Sampson, *The Seven Sisters: the great oil companies and the world they made* (London: Hodder & Staughton, 1988)

<sup>5</sup> Data from ExxonMobil web site, announcement of 2003 earnings, January 29, 2004, [http://www.exxonmobil.com/corporate/files/corporateearnings\\_4q03.pdf](http://www.exxonmobil.com/corporate/files/corporateearnings_4q03.pdf).

<sup>2</sup> James A. Paul is Executive Director of Global Policy Forum, New York.

The »Seven Sisters« ruled the global oil market through a tightly-knit cartel.

Japan, Germany, France, Italy and the UK—had revenues above this level.<sup>6</sup>

Among the world's fifteen largest corporations listed in the 2002 »Fortune 500,« five were oil companies. After US-based Exxon came the UK giants Shell and British Petroleum (BP), the mammoth French firm Total, and the huge US-based Chevron. Compared to the large automakers, with their anemic profits, the oil companies stand out among the world's biggest corporations for their high profitability. In 2001 (and again in 2003), Exxon earned the world's highest profits. In 2003, its earnings reached a record US\$22 billion, more than General Motors, Ford, DaimlerChrysler and Toyota taken together.<sup>7</sup>

### Oil, Economy & Warfare

To understand the special »national security« status enjoyed by the oil companies, we must first consider oil's economic importance and then its central role in war. Oil provides nearly all the energy for transportation (cars, trucks, airplanes, railroad engines). Oil also has an important share of other energy inputs—it heats many buildings and fuels industrial and farm equipment, for example. Overall, oil has a 40% share in the US national energy budget. Beyond energy, oil provides lubrication and it is an essential feedstock for plastics, paint, fertilizers and pharmaceuticals. Sometime in the future, the world may switch to renewable energy and other non-oil inputs, but oil now reigns as the indispensable ingredient of the modern economy. For this reason, governments are nervous about their national oil supply.<sup>8</sup>

<sup>6</sup> Data from CIA World Factbook web site ([www.cia.gov/cia/publications/factbook](http://www.cia.gov/cia/publications/factbook)) and Fortune Global 500 ([www.fortune.com/fortune/fortune500](http://www.fortune.com/fortune/fortune500)). Note that we are comparing company revenue with government revenue, not with national GNP. The seventh richest government, the Netherlands, had a revenue in 2001 of US\$134 billion, far below Exxon's figure.

<sup>7</sup> See tables posted on the Global Policy Forum web site, based on information from Fortune and the CIA Factbook—[www.globalpolicy.org/soecon/tncs/oiltable.htm](http://www.globalpolicy.org/soecon/tncs/oiltable.htm)—[www.globalpolicy.org/soecon/tncs/oiltncs2002.htm](http://www.globalpolicy.org/soecon/tncs/oiltncs2002.htm)—[www.globalpolicy.org/soecon/tncs/tncstat2.htm](http://www.globalpolicy.org/soecon/tncs/tncstat2.htm)

<sup>8</sup> Ordinary citizens worry about having a plentiful supply of gas for their automobiles, too. On this basis, the US government has often mobilized its people around aggressive Middle East military policies.

Modern warfare particularly depends on oil, because virtually all weapons systems rely on oil-based fuel—tanks, trucks, armored vehicles, self-propelled artillery pieces, airplanes, and naval ships. For this reason, the governments and general staffs of powerful nations seek to ensure a steady supply of oil during wartime, to supply oil-hungry military forces in far-flung operational theaters. Such governments view their companies' global interests as synonymous with the national interest and they readily support their companies' efforts to control new production sources, to overwhelm foreign rivals, and to gain the most favorable pipeline routes and other transportation and distribution channels. »One of our greatest helpers has been the State Department,« mused John D. Rockefeller, founder of Standard Oil in his 1909 book, *Random Reminiscences of Men and Events*. »Our ambassadors and ministers and consuls have aided to push our way into new markets in the utmost corners of the world.«<sup>9</sup>

The oil industry gained its crucial role in military affairs during World War I. In the run-up to the war, the world's navies converted from coal to oil-fired ships, because of significant advantages in speed and range of operation. The war also marked the first military uses of the automobile, truck, tank and airplane. Belligerents on both sides faced severe oil shortages, but the Allies eventually gained the upper hand with vastly greater supplies. Lord Curzon, a member of the British War Cabinet, concluded that »the Allied cause has floated to victory upon a wave of oil.«<sup>10</sup>

Government policy makers give the highest priority to oil matters during wartime, as many historical studies show. Japanese and German officials made desperate efforts to gain oil sources during World War II while US and British leaders did their utmost to deny them this resource. But even allies could be bitter oil rivals. In many wartime meetings and cables, President Franklin Roosevelt and Prime Minister Winston Churchill wrangled over their

<sup>9</sup> John D. Rockefeller, *Random Reminiscences of Men and Events* (New York: Doubleday, 1909)

<sup>10</sup> Yergin, 183.

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Exxon earnings reached a record US\$22 billion, more than General Motors, Ford, DaimlerChrysler and Toyota taken together.

Policy makers give the highest priority to oil matters during wartime.



The oil companies need their governments' military power to secure control over global oil-fields.

countries' respective post-war shares of Middle East oil reserves.<sup>11</sup> After the war, George Kennan, Director of the US State Department's Policy Planning Division, reacted with unbridled enthusiasm at US oil companies' primacy (to the exclusion of Britain) in the newly-discovered Saudi Arabia fields. The United States, he wrote, had just acquired »the greatest material prize in world history.«<sup>12</sup>

### Oil Rents, Corruption & Conflict

Just as governments like the US and the UK need oil companies to secure fuel for their global war-making capacity, so the oil companies need their governments' military power to secure control over global oilfields and transportation routes. It is no accident, then, that the world's largest oil companies are located in the world's most powerful countries.

Power has primacy in the oil business, because of the incomparable value of key fields. Production costs vary widely from one place to another, leading to intense competition for the lowest-cost locations. The difference between cost and sales price is so large that economists sometimes refer to the gap as a »rent«—an extraordinary profit advantage enjoyed by the low-cost producer.<sup>13</sup>

All producer companies want to gain control of such lucrative profits, by fair means or foul. Company rivalry typically leads beyond ordinary market-based competition. As many studies show, companies and their sponsor governments do not shrink from backing dictatorial governments, using bribery and corruption, promoting civil violence and even resorting to war, to meet their commercial goals and best

their competitors.<sup>14</sup> The modern history of the Middle East bears witness to this process. In one notorious example, US intelligence services recruited in 1959 a young Iraqi thug named Saddam Hussein to take part in the assassination of Iraqi Prime Minister Abd el-Karim Qasim. Washington feared that the nationalist Qasim might act independently and alter the favorable terms under which their oil companies operated.<sup>15</sup> A few years earlier, in 1953, the CIA engineered a coup in Iran, overthrowing the democratic government of Mohammed Mossadegh and installing the autocratic Shah, in order to gain control over Iranian oil and redistribute British production shares to US companies.<sup>16</sup>

A recent court case in France, involving high officials of the national oil company Elf Aquitaine, provides a glimpse of more recent operations in this world of oil intrigue and covert competition between the giant companies. The case revealed bribes, espionage, mistresses, arms smuggling, civil strife and plots to overthrow governments, all with the complicity of French military and intelligence services. These actions had a terrible effect

<sup>11</sup> Michael B. Stoff, *Oil, War and American Security: the search for a national policy on foreign oil 1941-1947* (New Haven: Yale University Press, 1980), 147-50.

<sup>12</sup> Wilson D. Muscamble, George F. Kennan and the Making of American Foreign Policy (Princeton: Princeton University Press, 1992)

<sup>13</sup> Rents sometimes result from technical advances, patents, copyrights, and the like, advantages that normally disappear after a period of time. Oil rents are long-lasting and can yield far higher spreads between the normal profit rate and the rate expressed by the rent.

<sup>14</sup> Virtually all historical studies of the industry provide evidence of this kind. See Yergin (1991) and Sampson (1988) See also: Joe Stork, *Middle East Oil and the Energy Crisis* (New York: Monthly Review, 1976) and Fiona Benn, *Oil Diplomacy in the Twentieth Century* (New York: St. Martin's Press, 1986).

<sup>15</sup> Richard Sale, »Saddam Key in Early CIA Plot,« *United Press International*, April 10, 2003. Sale quotes a US operative who knew Saddam at that time saying: »He was a thug—a cut-throat.« Saddam was 22 years old at the time of the botched assassination.

<sup>16</sup> See Kermit Roosevelt, *Countercoup, the struggle for the control of Iran* (New York: McGraw-Hill, 1979), a book written by the CIA's coup-maker in Tehran, and Ervand Abrahamian, *Iran Between Two Revolutions* (Princeton: Princeton University Press, 1982).

on a number of oil-producing countries, mostly in Africa.<sup>17</sup>

### Special Government Favors and »National Security«

Those who deny oil company complicity in the Iraq War always insist that the companies have little political influence, that they are »out of the loop« in Washington, that they are just one industry group among many others. These arguments are utterly false. The oil companies have always enjoyed »insider« privileges with the US and UK governments, resulting in many special favors in the name of »national security.«

The United States government offers the companies extremely favorable tax treatment, including the »oil depletion allowance«—far more than the ordinary capital depreciation available to other companies—as well as large tax deductions for »intangible drilling costs.« In 1960, at the behest of the National Security Council, the international companies obtained the lucrative »foreign tax credit,« enabling deductions for taxes or royalties paid to foreign governments. In 1974, while the US corporate tax rate was 48%, the nineteen largest oil companies paid a tax rate of only 7.6%.<sup>18</sup>

The companies have also enjoyed unofficial immunity from anti-trust or anti-monopoly laws. Though the US government knew for decades about the international oil cartel, federal authorities took no enforcement action until 1952, when President Harry Truman ordered a criminal anti-trust suit. The companies mobilized all their legal

and political muscle to quash the case. General Omar Bradley, Chairman of the Joint Chiefs of Staff, reportedly approached the President and successfully urged that the »national security« required a softening of the government's legal stance. Shortly afterwards, the National Security Council decided on various limitations to the suit that further weakened the government's case. Though the judicial process lumbered on for fifteen years, the oil companies had nothing to fear and remained safely protected by the national security umbrella.<sup>19</sup>

US military/security policy has served the oil companies as comprehensively as have the tax and legal rulings. Virtually every US presidential security doctrine since World War II has aimed at protecting company interests in the Persian Gulf. The Truman Doctrine, the Eisenhower Doctrine, and the Nixon, Carter, and Reagan Doctrines all asserted Washington's special concerns in the oil-producing Persian Gulf region and arrogated to the United States special rights to »protect« or »defend« the area. Recently-released secret papers show that during the oil crisis and embargo of 1973, Washington seriously considered sending a military strike force to seize some of the region's richest fields—in Saudi Arabia, Kuwait and Abu Dhabi.<sup>20</sup>

In 1979, President Jimmy Carter set up the US Central Command, a permanent military force designed to intervene in the Middle East on short notice. Presidents have expanded and strengthened this force several times since. Headquartered in Florida, but with a number of bases in the Middle East, the command maintains pre-positioned supplies and heavy weapons at Diego Garcia in the Indian Ocean and it can call on strike aircraft units, global satellite intelligence, cruise missiles, rapidly deployable ground troops and carrier-based naval fleets.<sup>21</sup>

In testimony to Congress in 1999, General Anthony C. Zinni, commanding officer of the Central Command,

<sup>19</sup> Blair (1976), 71-76.

<sup>20</sup> New York Times, January 2, 2004.

<sup>21</sup> For a discussion of the Central Command as a force designed for oil-related intervention, see Michael T. Klare, *Resource Wars: the new landscape of global conflict* (New York: publisher, 2001)

<sup>17</sup> See, for example, Joseph Fitchett and David Ignatius, »Lengthy Elf Inquiry Nears Explosive Finish,« *International Herald Tribune*, February 1, 2002. Almost all the world's oil-producing countries have suffered from abusive, corrupt and undemocratic governments and an absence of durable development. Indonesia, Saudi Arabia, Libya, Iraq, Iran, Angola, Colombia, Venezuela, Kuwait, Mexico, Algeria—these and many other oil producers have a sad record, which includes dictatorships installed from abroad, bloody coups engineered by foreign intelligence services, militarization of government and intolerant right-wing nationalism.

<sup>18</sup> For a lengthy discussion of the special tax treatment of the companies see John M. Blair, *The Control of Oil* (New York: Random House, 1976), 187-203.

Oil companies have always enjoyed »insider« privileges with the US and UK governments.

Every US presidential security doctrine since World War II has aimed at protecting company interests in the Persian Gulf.



affirmed the importance of the Persian Gulf region, with its huge oil reserves. It is a »vital interest« of »long standing,« he said, and the United States »must have free access to the region's resources.«<sup>22</sup>

### Close Personal Ties between Companies and Governments

Given the close political relations between the oil companies and their governments, it should be no surprise to find close ties at the personal level binding companies and governments together. The career of Allen Dulles serves as a case in point. He began as a US diplomat in the Middle East and rose to be chief of the Near East section of the State Department. In the early 1920s, he led the campaign to win US oil firms' participation in Iraq. Later he served as a corporate lawyer at Sullivan and Cromwell, New York's leading counsel for the oil industry. After wartime intelligence service, he was named head of the CIA by President Eisenhower. As CIA chief, he arranged for the overthrow of Mossadegh, winning a place in Iran's rich oil fields for US firms. In every assignment he consistently served company interests.<sup>23</sup>

The administration of President George W. Bush represents an especially close set of personal ties between the oil companies and the government—at the very highest level. The president and his father were both longtime industry insiders from Texas and chief executives of their own oil companies. Other oil figures at the top of the administration include Vice President Dick Cheney, former CEO of Halliburton, the nation's largest oil-services company, and National Security Advisor Condoleezza Rice, a former director of Chevron Texaco, after whom the company named one of its supertankers. These very visible figures give the administration its peculiarly strong oil flavor. In the earliest days of the administration, they promoted a number of striking industry-favorable policy decisions, such as the rejection of the Kyoto Treaty on global warming, the

ouster of the head of the Intergovernmental Panel on Climate Change, and the elaboration of a strongly pro-oil national energy plan.

In the UK, close ties likewise bind companies and successive governments together. The government even held a majority stake in BP, with seats on the board, until 1987. By contrast to the United States, where the oil companies are first among such peers as General Motors, Walmart and Citigroup, in the UK, oil giants Shell and BP tower far above the next tier firms like British Telecom, Unilever and ICI.<sup>24</sup> From such heights, UK oil executives speak almost as unofficial members of government. In recent years, a number of personal ties stand out, especially the close friendship between Prime Minister Tony Blair and BP CEO John Browne (Lord Browne of Maddingley). The Blair-Browne relationship was so close that wags in the press called the company »Blair Petroleum,« though it would have been more accurate to say that Blair was the BP Prime Minister. At least a dozen BP executives held government posts or sat on official advisory committees, including Browne's immediate predecessor David Simon (Lord Simon of Highbury). Simon had stepped down as BP CEO to serve as Blair's unelected Minister for European Trade and Competitiveness from May 1997 to July 1999.<sup>25</sup> Later on, Tony Blair's longtime friend and personal assistant Anjl Hunter, director of government relations and known as »the gatekeeper« in Downing Street, joined BP as head of public relations in the summer of 2002, just as the war was actively brewing.<sup>26</sup>

After a century of closely-combined action on the global stage, company chieftains and government leaders see their relationship as coopera-

<sup>24</sup> In 2003, for example, while BP had revenues of over US\$200 billion, British Telecom had revenues of US\$29 billion, Barclays \$26 billion, Lloyds US\$22 billion, Unilever \$20 billion, BAT US\$18 billion and ICI only US\$10 billion.

<sup>25</sup> In recent decades in the UK, government ministers have nearly always been drawn from elected members of parliament, sitting in the House of Commons. Simon had just been named to the unelected House of Lords and had no parliamentary experience or popular constituency.

<sup>26</sup> On Hunter, see New York Times, August 30, 2003.

<sup>22</sup> Testimony of the senate Armed Services Committee, April 13, 1999.

<sup>23</sup> See Peter Grose, *Gentleman Spy: the life of Allen Dulles* (Boston: Houghton Mifflin, 1994)

Blair was the BP Prime Minister.

Especially close set of personal ties between the oil companies and the government.

tive and thoroughly complementary. In April 2003, shortly after the war in Iraq, Lord Browne responded tartly to critics by saying: »It is quite ethical and appropriate for a global company, based in the UK, to be supported by the British government.«<sup>27</sup> He did not, of course, go into the details.

### Box: Seven Oil Wars to Control Iraq

Before coming to the Iraq war of 2003, we will review the modern history of conflicts over Iraq. There have been a total of seven wars in the past ninety years, all closely related to oil. What follows is a thumbnail sketch of those conflicts, to suggest the constant military struggle over this oil-rich territory.

#### 1. Colonial Conquest (1914–18)

The first conflict took place during World War I, when the British captured the area from the Ottoman Empire during a bloody four-year campaign. Lord Curzon, a member of the War cabinet who became Foreign Minister immediately after the war, famously stated that the influence of oil over British policy in Iraq was »nil«. Studies by a number of historians have shown that Curzon was lying and that oil was indeed the major factor shaping British policy towards Iraq.<sup>28</sup> Sir Maurice Hankey, Secretary of the War Cabinet, even insisted enthusiastically in a private cabinet letter that oil was a »first class war aim.«<sup>29</sup> London had ordered its forces to continue fighting after the Mudros Armistice was signed, so as to gain control of Iraq's main oil-producing region. Fifteen days later, the British army seized Mosul, capital of the oil region, blocking the aspirations of the French, to whom the area had been promised earlier in the secret Sykes-Picot agreement.<sup>30</sup>

#### 2. War of Pacification (1918–1930)

To defend its oil interests, Britain fought a long war of pacification in Iraq, lasting from 1918 throughout the next decade. The British crushed a country-wide insurrection in 1920 and continued to strike at insurgents with poison gas, airplanes, incendiary bombs, and mobile armored cars, using an occupation force drawn largely from the Indian Army. This carnage killed or wounded thousands of Iraqis, burning villages and extracting colonial taxes by brutal means. Winston Churchill, as Colonial Secretary, saw the defense of Iraq's lucrative oil deposits as a test of modern weaponry and military-colonial use of force, enabling Britain to hold the oil fields at the lowest possible cost.<sup>31</sup>

#### 3. Re-Occupation (1941)

Though Britain granted nominal independence to Iraq in 1932, it maintained a sizeable military force and a large air base in the country and continued to rule »indirectly«. In 1941, fearful that Iraq might fall into the hands of the Axis, London again decided to seize direct control of the country through military force. Broad geo-strategic wartime goals drove this campaign, but not least was British concern to protect the Iraqi oil fields and keep them in British hands, free not only from German but also from US challenge.<sup>32</sup>

<sup>27</sup> As quoted in *Guardian*, April 6, 2003.

<sup>28</sup> See Helmut Mechjer, *Imperial Quest for Oil: Iraq 1910-1928* (London: Ithaca Press, 1976) and Peter Sluglett, *Britain in Iraq 1914-1932* (London: Ithaca Press, 1976).

<sup>29</sup> A note the Foreign Secretary Arthur Balfour, as quoted in Yergin, 188.

<sup>30</sup> On the seizure of Mosul, see Mechjer (1976), 42. Mechjer notes that the British also postponed the signing of the armistice to enable their forces to make more progress towards Mosul. See also Sluglett (1976).

<sup>31</sup> See, for example, David E. Omissi, *British Air Power and Colonial Control in Iraq: 1920-1925* (Manchester: Manchester University Press, 1990), Sluglett, V.G. Kiernan, *Colonial Empires and Armies: 1815-1960* (Stroud: Sutton, 1998).

<sup>32</sup> Raghid Solh, *Britain's 2 Wars with Iraq, 1941-1991* (Reading: Ithaca Press, 1996).

#### 4. Iran-Iraq War (1980–88)

In 1980, Iraq attacked its neighbor, Iran. A long war ensued through 1988, a savage conflict causing hundreds of thousands of casualties on both sides, costing tens of billions of dollars and destroying much of both countries' oilfields and vital infrastructure. Foreign governments, interested in gaining geo-strategic advantage over both nations' oil resources, promoted, encouraged and sustained the war, some arming both sides. The US and the UK supplied Iraq with arms, chemical and biological weapon precursors, military training, satellite targeting and naval support. Other powers participated as well, notably France, Germany and Russia.<sup>33</sup> The big oil companies profited mightily, as war conditions kept Iraqi and Iranian oil off the market, driving worldwide prices substantially higher. By bankrupting the two governments and ruining their oil infrastructure, the war also potentially opened the way for the return of the companies through privatization in the not-too-distant future. But after the war, when Iraq and Iran turned to Japanese oil companies for new private investments, including a Japanese role in Iraq's super-giant Majnoon field, the stage was set for yet another conflict.

#### 5. Gulf War (1991)

Following the Iraqi invasion of Kuwait in August 1990, the US decided to intervene militarily and Washington assembled a number of secondary military partners, including the UK and France. As US President George Bush summed up the oil-centered threat posed by Saddam Hussein at the time: »Our jobs, our way of life, our own freedom and the freedom of friendly countries around the world would all suffer if control of the world's great oil reserves fell into the hands of Saddam Hussein.«<sup>34</sup> US forces heavily bombed Iraqi cities and military installations and then launched a short and decisive ground war, ending the Iraqi occupation of its neighbor. The war badly battered Iraq, destroying much of its electricity and water purification systems and claiming 50,000–100 casualties.

#### 6. Low Intensity Conflict During the Sanction Period (1991–2003)

After the armistice, the UN's pre-war embargo continued, because the US-UK used their Security Council vetoes to block its lifting. The sanctions imposed a choke-hold on Iraq's economy, restricted oil sales and kept the country's oil industry in a shambles. By blocking foreign investment and preventing reconstruction, the sanctions further ruined the country's economic base. At the same time, with Iraqi supplies largely off the market, international oil prices were supported and company profits benefited. The US and the UK declared their goal to oust Saddam and their intelligence services made many efforts to assassinate him or to overthrow his government by military coup. The US-UK also established »no-fly« zones in much of Iraqi airspace, using air patrols to launch periodic attacks on Iraqi military targets. Four times, the US-UK launched major attacks, using scores of strike aircraft and cruise missiles—in January 1993, January 1996, June 1996 and December 1998. Though oil companies from a number of other countries negotiated with the Iraqi government for production deals, none dared to challenge the sanctions (and the Anglo-American companies) by beginning production under such risky circumstances.

#### 7. Iraq War (2003)

This war, launched by the US in spite of strong opposition at the UN, overthrew the government of Saddam Hussein and brought the US-UK coalition into direct rule over Iraq and in direct control of the oil fields. The war caused further deterioration of Iraq's infrastructure, many casualties, and a chaotic and dysfunctional economy. Though the coalition rules Iraq, it has faced a tough armed resistance during many months following the main conflict. War number eight, the coalition's war of pacification, has already begun.

<sup>33</sup> Dilip Hiro, *The Longest War: the Iran-Iraq military conflict* (New York: Routledge, 1991)

<sup>34</sup> As quoted by the New York Times, August 16, 1990

## The Exceptional Lure of Iraqi Oil

Constant wars hint at the exceptional lure of Iraq's oil field. Iraq's oil is of good quality, it exists in great quantity, and it is very cheap to produce, offering the world's most extraordinary and profitable oil rents.

Officially, Iraq's reserves are stated as 112 billion barrels, the world's second largest after Saudi Arabia. According to the US Department of Energy, Iraq's real reserves may be far greater—as much as 300–4 billion barrels after further prospecting.<sup>35</sup> Iraq's Senior Deputy Oil Minister confirmed high estimates on May 22, 2002, in an interview with Platts, a leading industry information source. He said: »we will exceed 300 billion barrels when all Iraq's regions are explored,« and he went on to affirm that »Iraq will [then] be the number one holder of oil reserves in the world.«<sup>36</sup>

Iraq's oil is the world's cheapest to produce, at a cost of only about US\$1 per barrel. The gigantic »rent« on Iraq's oil, during decades of production, could yield company profits in the range of US\$4–5 trillion dollars—that is, US\$4–5 million, millions. Assuming fifty years of production and 40% royalties, Iraq could yield annual profits of US\$80–90 billion per year—more than the total annual profits of the top five companies, even in the banner year of 2003.<sup>37</sup>

<sup>35</sup> See US Department of Energy, Energy Information Administration website at <http://www.eia.doe.gov/emeu/cabs/iraq.html>

<sup>36</sup> See [www.platts.com](http://www.platts.com)

<sup>37</sup> I have arrived at this figure based on assumptions about four variables. I assume 350 billion barrels of reserves, US\$30 oil rent average in real terms, 75% recovery rate and 60% company share of the rent (the remainder going to the government). Different assumptions would yield different final estimates. For example, assumptions based on worldwide oil scarcity would drive the number up, while assumptions based on rapid conversion to sustainable energy sources would drive the number down. World Energy Outlook of 2001, published by the International Energy Agency, estimated that the total value of foreign contracts signed by the Iraqi government of Saddam Hussein might reach US\$1.1 trillion, a number consistent with mine, since the contracts covered only a fraction of Iraq's total oil potential. See »Scramble to care up Iraqi oil reserves lies behind US diplomacy,« Observer, October 6, 2002.

As the world's other oilfields seriously deplete during the next two decades, global production will increasingly depend on the enormous reserves of the Persian Gulf region. Iraq will then represent a large and increasing percentage of the world's supplies—perhaps over thirty percent. An international company must hold a serious stake in Iraq if it is to retain its status as a major player in the world's oil industry. The Anglo-American giants know they must gain the lion's share in Iraq or decline irrevocably.

Shortly before the war, industry experts described Iraq as a future »gold rush,« where the companies would battle to gain control of key reserves. At that time, a well-informed diplomat at the UN commented bluntly: »Exxon wants Majnoun and they are determined to get it.«<sup>38</sup> And a longtime industry observer said: »There is not an oil company in the world that doesn't have its eye on Iraq.«<sup>39</sup>

»There is not an oil company in the world that doesn't have its eye on Iraq.«

## Control of Reserves

Oil companies' future profits—and their current share prices and market capitalization—depend to a large degree on their control of reserves. The 1972 oil nationalizations in Iraq pushed the US and UK companies completely out of the country. Before that date, they held a three-quarter share of the Iraq Petroleum Company, including all Iraq's national reserves. After 1972, all that oil disappeared from their balance sheets.

In the 1980s and 90s, their rivals in France, Russia and even Japan and China began to make deals that led towards lucrative production sharing agreements, allowing those competitors to gain a large potential share of Iraq's oil reserves. The sanctions regime, enforced under the United Nations and maintained at the insistence of the US and UK from 1990 to 2003, prevented these deals from coming to fruition, thus protecting the future stake of the US-UK companies.

In recent years, as older fields worldwide have dwindled, the companies have faced rising replacement costs

<sup>38</sup> Author's Interview with a UN diplomat, November, 2002.

<sup>39</sup> Interview with a US-based industry observer, November, 2002.

Iraq could yield annual profits of US\$80–90 billion per year.

for their reserves. According to a 2002 report by energy consultants John S. Herold, »finding costs« for new reserves rose 61% in 2001, pushing replacement costs to US\$5.31 a barrel.<sup>40</sup> »Finding new sources of oil has become the industry's main challenge, as old fields in North America and Europe are being tapped out,« commented the Wall Street Journal in early 2003.<sup>41</sup> Imagine, then, the lure of the vast Iraqi fields, offering nearly free acquisition and a huge addition to total reserves. As Fadel Gheit of Fahnstock & Co. in New York concluded, Iraq »would be a logical place in the future for oil companies to replace their reserves.«<sup>42</sup>

### New Iraq Contracts and Moves toward War

The big US-UK companies made no secret of their strong desire for Iraqi oil. BP and Shell conducted secret negotiations with Saddam Hussein, while Exxon and Chevron took a harder line and waited for Washington to eliminate Saddam covertly. In 1997, as the sanctions lost international support, Russia's Lukoil, France's Total, China National and other companies struck deals with the government of Iraq for production sharing in some of Iraq's biggest and most lucrative fields. Lukoil reached an agreement for West Qurna, Total got Majnoun, while Chi-

na National signed on for North Rumaila, near the Kuwaiti border.<sup>43</sup> Paris, Moscow and Beijing, as Permanent Members in the UN Security Council pressed for an easing of the sanctions, with support from a growing number of other countries. Grassroots movements, concerned about Iraq's humanitarian crisis, called on the UN Security Council to end the sanctions forthwith.

In 1997–98, the US companies saw the writing on the wall. With Iranian fields already slipping into the hands of competitors, such losses in Iraq threatened to reduce them to second rank and confront them with fierce international competition and downward profit pressure. The companies stepped up their lobbying in Washington and made their wishes for Iraq oil crystal clear. »Iraq possesses huge reserves of oil and gas—reserves I'd love Chevron to have access to,« enthused Chevron CEO Kenneth T. Derr in a speech at the Commonwealth Club of San Francisco.<sup>44</sup>

Almost as soon as Iraq signed the new oil agreements, Washington began to deploy military forces near the country's borders in a very threatening forward posture. Operation Phoenix Scorpion and Operation Desert Thunder in various phases lasted almost continuously from November 1997 through December 1998. In Washington, the rhetoric grew increasingly hard-line and threatening. On January 26, 1998 members of the right-wing Project for a New American Century sent a letter to President Bill Clinton warning that the containment policy »has been steadily eroding over the past several month« and calling for »removing Saddam Hussein from power.«<sup>45</sup> CIA sources told journalists and members of Congress that Saddam was hiding large stocks of deadly weapons. Con-

<sup>40</sup> Platts website—[www.platts.com/Oil/Resources](http://www.platts.com/Oil/Resources).

<sup>41</sup> Susan Warren, »Exxon's Profit Surged in 4th Quarter,« Wall Street Journal, February 12, 2004.

<sup>42</sup> Platt's website, [www.platts.com/Oil/Resources](http://www.platts.com/Oil/Resources) A recent example, not dealing with Iraq, shows the great importance of company reserves. On January 9, 2004, Shell announced that it had revaluated its worldwide reserves downward by 20%. The firm's stock immediately declined by 7%. Shell had reduced its estimated reserves by 3.9 billion barrels, bringing the company's total to 15.4 billion barrels (Exxon's reserves were 22 billion barrels at that time). By contrast, Iraq's single super-giant Majnoun field (promised pre-war to Total) has estimated reserves of 10–30 billion barrels, while the super-giant West Qurna field (promised to Lukoil) has estimated reserves of 15–18 billion barrels. If Shell could get control of such a field in Iraq, it could more than double its total company reserves and enjoy an enormous lift in its share prices. This demonstrates clearly what is at stake in Iraq, since share valuation brings fifty years or more of future production immediately into the market capitalization of the firm.

<sup>43</sup> China had become a major player in the Middle East oil game because of its rapid economic growth and huge future oil needs, with Persian Gulf imports estimated to rise from 0.5 million barrels per day in 1997 to 5.5 million barrels per day in 2020.

<sup>44</sup> As posted on the company web site at [www.chevrontexaco.com/news/archive/chevron\\_speech/1998/98-11-05.asp](http://www.chevrontexaco.com/news/archive/chevron_speech/1998/98-11-05.asp)

<sup>45</sup> Project for a New American Century web site—[www.newamericancentury.org/iraqclintonletter.htm](http://www.newamericancentury.org/iraqclintonletter.htm)

BP and Shell conducted secret negotiations with Saddam Hussein.



gress held hearings and began drafting legislation.

On May 1, 1998, President Clinton signed a law that provided US\$5 million in funding for the Iraqi opposition and set up »Radio Free Iraq.« That was only the beginning. On May 29, the Project for a New American Century sent an open letter to Congress on Iraq, insisting that the US government was not sufficiently firm with Saddam, attacking what it called the President's »capitulation« and warning of severe »consequence« to US interests. Among the signatories of this high-profile letter were Donald Rumsfeld, Paul Wolfowitz, Richard Perle, Elliot Abrams, John Bolton and others who would later take high posts in the Bush administration.<sup>46</sup> The Clinton White House was ready to oblige. On August 14, 1998, the President signed another law (PL 105-235) that accused Iraq of building weapons of mass destruction and failing to cooperate with UN inspectors, declaring ominously: »Iraq is in material and unacceptable breach of its international obligations.« Finally, on October 31, the President signed the »Iraq Liberation Act of 1998« (PL 105-338), a text still more bellicose. »It should be the policy of the United States to support efforts to remove the regime headed by Saddam Hussein from power in Iraq,« read the key sentence. In London, government leaders made similar expressions of determination and a UK Strategic Defence Review of July 1998 affirmed readiness to use force. »Outside Europe,« the Review concluded, »the greatest risks to our national economic and political interests ... will remain in the Gulf.«<sup>47</sup>

On December 16-19, 1998, the US-UK launched Operation Desert Fox. Hundreds of strike aircraft and cruise missiles hit Baghdad and other major Iraqi targets, including an oil refinery. The attacks ended the UN arms inspection program, pre-empting any declaration that Iraq was nearly free of mass destruction weapons. Following Desert Fox, US-UK air forces patrolled the »no-fly« zones with new, more ag-

gressive rules of engagement and regular attacks on Iraqi targets.

This increasingly aggressive policy towards Iraq expressed a hardening conviction among leaders in the US and the UK that »containment« would not hold up much longer, that Saddam Hussein could not be ousted by covert means, and that invasion and direct control over Iraq's oil would now be required.

## The Bush Administration Heads for War

The new Bush administration came into office in January 2001 at this critical juncture. Revelations by former Secretary of the Treasury Paul O'Neill inform us that the new administration started planning for an invasion of Iraq almost immediately. According to O'Neill, Iraq was »Topic A« at the very first meeting of the Bush National Security Council, just ten days after the inauguration. »It was about finding a way to do it,« reports O'Neill, »That was the tone of the President, saying ›Go find me a way to do this.«<sup>48</sup>

Just a few weeks later, the hastily-organized National Energy Policy Development Group, chaired by Vice President Cheney, studied the challenge posed by French, Russian and other companies. One of the documents produced by the Cheney group, made public after a long court case, is a map of Iraq showing its major oil fields and a two-page list of »Foreign Suitors for Iraqi Oilfield Contracts.« The list showed more than 40 companies from 30 countries with projects agreed or under discussion, but not a single US deal.<sup>49</sup> The list included agreements or discussions with companies from Germany, India, Italy, Canada, Indonesia, Japan and other nations, along with the

Iraq was »Topic A« at the very first meeting of the Bush National Security Council.

<sup>46</sup> <http://www.newamericancentury.org/iraqletter1998.htm>

<sup>47</sup> UK Ministry of Defence website, White Paper, July 18, 2002 — [www.mod.uk/issues/sdr/newchapter.htm](http://www.mod.uk/issues/sdr/newchapter.htm)

<sup>48</sup> Ron Suskind, *The Price of Loyalty: George W. Bush, the White House and the Education of Paul O'Neill* (New York, Simon & Schuster, 2004) 174-75

<sup>49</sup> The Cheney documents were curiously made public in response to a law suit by a conservative organization called Judicial Watch. The administration fought the Judicial Watch case in court, but eventually lost. The »Foreign Suitors« list includes Shell, but lists no contract results with the company. Exxon, Chevron and BP are not on the list at all. Two small UK firms, Branch Energy and Pacific Resources are also to be found on the list.

Total was in negotiations with the US government »about redistribution of the oil regions.

The Heritage Foundation called for the privatization of Iraq's national oil company.

well-known French, Russian and Chinese deals. The Cheney Group's report, released in May 2001, warned ominously of US oil shortfalls that might »undermine our economy, our standard of living, our national security.«

After the events of September 11, 2001 and the US war on Afghanistan, the Bush administration was ready to move on Iraq. Oil industry publications like *Platts* and *Oil and Gas Journal* reflected the growing sense of urgency within the industry that the time for action had arrived. Early in 2002, more than a year before the conflict, Bush and Blair reportedly decided to go ahead with war plans and parallel efforts to prepare the public.

As war talk increased in Washington and at the UN, oil issues came into the open. The influential Heritage Foundation published in September a report on »The Future of a Post-Saddam Iraq« which called for the privatization of Iraq's national company and warned that competitor companies would lose their Saddam-era contracts. The companies, the Bush administration and the Iraqi opposition held many meetings over post-war oil. The *Washington Post* reported in September 2002 that the big companies were »maneuvering for a stake« in postwar Iraq and that the war could cause major »reshuffling« of world petroleum markets. Former CIA Director James Woolsey told the *Post* that the US would use access to post-war oil as a bargaining chip to win French and Russian support for the war.<sup>50</sup> Also at this time, Iraqi exile leaders said publicly that a post-Saddam government would »review« all the foreign oil agreements. Ahmad Chalabi, leader of the Iraqi National Congress, US favorite as heir to the Iraqi leadership, was quoted as saying: »American companies will have a big shot at Iraqi oil.«<sup>51</sup>

Russian officials told the London-based *Observer* newspaper that they feared a post-war nullification of the large Russian contracts, with the most lucrative deals given over to US companies. The *Observer* quoted one official in Moscow as saying that the im-

<sup>50</sup> Dan Morgan and David B. Ottaway, »In Iraqi War Scenario, Oil is Key Issue as U.S. Drillers Eye Huge Petroleum Pool,« *Washington Post*, September 15, 2002.

<sup>51</sup> Morgan and Ottaway (2002)

pending conflict could be called »an oil grab by Washington.« In France, it was reported that Total was actually in negotiations with the US government »about redistribution of the oil regions between the world's major companies.«<sup>52</sup>

On October 21 2002, Deutsche Bank added to the war-for-oil speculation by publishing a major investor-research study entitled: »Baghdad Bazaar: Big Oil in Iraq?« The report, which noted that »war drums are beating in Washington« and »Big Oil is positioning for post-sanctions Iraq,« analyzed the upward stock market potential of the oil industry in light of declining world reserves and Iraq's post-war potential. On November 1, Youssef Ibrahim of the Council on Foreign Relations, warned in the *International Herald Tribune* that the coming war was »bound to backfire,« calling it »a misguided temptation to get more oil out of the Middle East by turning a ›friendly‹ Iraq into a private American oil pumping station.«<sup>53</sup>

Meetings continued all fall and into the new year in Washington, London, Houston and elsewhere, between government officials, oil executives and Iraqi opposition leaders in various combinations. US envoys held private talks on oil in Moscow, Paris, Beijing and other capitals. In December, there was a meeting of oil company figures at a resort near Sandringham in Scotland, featuring a talk by the former head of Iraq's Military Intelligence Agency. Topics on the agenda included Iraq's future oil potential and whether post-Saddam Iraq might pull out of OPEC.<sup>54</sup> In the Pentagon, war planners were considering how to seize Iraq's oil fields in the first hours and days of the impending conflict.

## The War and After

US-UK forces invaded Iraq on March 20, 2003, seizing the major oil-

<sup>52</sup> Ed Vulliamy, Paul Webster and Nick Paton Walsh, »Scramble to Carve up Iraqi oil reserves lies behind US diplomacy,« *The Observer*, October 6, 2002.

<sup>53</sup> Youssef Ibrahim, »Bush's Iraq adventure is bound to backfire,« *International Herald Tribune*, November 1, 2002.

<sup>54</sup> Peter Beaumont and Faisal Islam, »Carve-Up of Oil Riches Begins,« *Observer*, November 3, 2002.



fields and refineries almost immediately. When coalition forces later entered Baghdad, they set a protective cordon around the Oil Ministry, while leaving all other institutions unguarded, allowing looting and burning of other government ministries, hospitals and cultural institutions. Looters sacked the National Museum and burned a wing of the National Library, but the Oil Ministry stood relatively unscathed, with its thousands of valuable seismic maps safe for future oil exploration.

President Bush quickly appointed Phil Carroll, a former high-ranking US oil executive, to assume control of Iraq's oil industry and on May 22, Bush issued Executive Order 13303 giving immunity to oil companies for all activities in Iraq and deals involving Iraqi oil. On the same day, under pressure from the US and the UK, the UN Security Council passed Resolution 1483 which lifted the former sanctions and allowed the occupation authorities to sell Iraqi oil and put the proceeds in an account they controlled. Every step in the early post-war period confirmed the centrality of oil, not as an Iraqi national resource to be protected, but as a spoil of war to be controlled. Now, many months after the war, the picture remains the same.

### **Company Bonanza or Greedy Overreach?**

Was the war a bold and successful calculation or a huge error, resulting from official hubris and company greed? The war's authors hoped to affirm a New American Century and

company pre-eminence, but the conflict instead could limit US global ambitions and set back oil company aspirations. It is too early to be certain of the outcome, but we can make a few preliminary conclusions.

The companies hoped that the Iraq war would allow them to take over Iraq's oil reserves with only a minimum of difficulty. Self-confident assurances by pro-war ideologues in Washington reinforced the widely-held conviction that the sole superpower could easily mobilize international support and that the people of Iraq would welcome the invaders and applaud the »liberation« offered by a US occupation government. The hawks expected that they could rapidly set up a pliant government and privatize the Iraqi industry or distribute production agreements speedily to US firms. But these ideas proved illusory. Instead, Bush and Blair faced enormous worldwide opposition to the war. And in spite of US forces' rapid seizure of the country, they now grapple with economic chaos and an intense and lethal resistance movement.

The companies, it should be said, are not in a great hurry. They plan and act on decades-long time horizons. They can wait out the insecurity of the present if the precious Iraqi oil fields fall dependably into their hands sometime in the next few years. But it is by no means certain that the Anglo-American giants will get their way as easily in Iraq as they did in Washington. As they wait, the violence of pacification and resistance engulfs the country. War number eight gets under way.

Coalition forces set a protective cordon around the Oil Ministry.

Economic chaos and an intense and lethal resistance movement.

## War Profiteering in Iraq

Pratap Chatterjee<sup>55</sup>

More than 70 American companies and individuals have won up to US\$8 billion in contracts for work in postwar Iraq and Afghanistan over the last two years, according to a new study by the Center for Public Integrity in Washington DC. Those companies donated more money to the presidential campaigns of George W. Bush than to any other politician over the last dozen years, the Center found. Yet the Center's study is just the tip of the iceberg—behind the scenes hundreds of other companies have won a staggering US\$300 billion in military contracts over the last eight years—most of which is barely even mentioned in publications outside of the military establishment because these companies do not make public campaign contributions—their work demands that the public has no idea of their existence. That is an average of US\$37.5 billion a year or one in ten dollars of the United States military expenditures of US\$336 billion in 2002 (measured in 2000 dollars).

### Military-industrial entanglement

Almost all of these companies have principal offices in Virginia, Maryland and Washington DC where they meet in secret with military officials, government servants and politicians to strike deals. The only time the media notices is when one of the contractors gets killed overseas such as Michael Pouliot, co-founder of San Diego-based Tapestry Solutions, who was killed on January 21, 2003 in Kuwait, while implementing simulation training tools for the military or when men like Karl Ackermann of Moss Beach, California, who was setting up asymmetric analysis systems for the government in Tikrit, near Saddam Hussein's hometown in October, 2003, vanish mysteriously.

For decades the United States government has hired outside contractors

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to help provide covert military supplies to the anti-communist opposition in locales as far flung as Afghanistan and Nicaragua. The men they hired in the past included a number of ex-Nazis such as Ernst Werner Glatt and Gerhard Mertens who helped provide arms to Saddam Hussein and the mujaheedin such as Osama bin Laden. Today these freelance suppliers are joined by companies set up by former military officials who provide training to foreign armies, security guards for mining and oil corporations. Today these expert contractors are now being bought up by the big computer and missile manufacturers. Military Professionals Resources Incorporated, which boasts more five-star generals per square inch of office space than the Pentagon, is now owned by L-3 Communications, which fielded the first overseer of Iraq: Jay Garner. Dyncorp, which trains the Iraqi police, is now owned by Computer Sciences Corporation while Titan corporation, which has done everything from irradiating beef to hiring Kurdish spies for the war in Iraq, is now owned by Lockheed Martin.

David Kay, the man in charge of the United States government search for Saddam Hussein's weapons of mass destruction, used to work for a multinational company called Science Applications International based in San Diego, California, who have recently won several lucrative contracts in the »war on terrorism« — such as secretly assembling a team of Iraqi exiles to run Iraq months before the war even began, and an ongoing contract to run television and radio stations in Baghdad from the palace grounds of Paul Bremer, the United States official in charge of the occupation of the country.

Science Applications International is also one of the two companies that runs the Yucca Mountain site in Nevada where United States government officials want to construct a permanent dump for the nation's high-level nuclear waste on land that is sacred by the Western Shoshone peoples. The other company running the Yucca Mountain site is Bechtel, winner of the contract for the reconstruction of Iraq.

Companies have won a staggering US\$300 billion in military contracts over the last eight years.

## And the winners are ...

Who are these companies, who do they hire to lobby for them and whom do they talk to and how do they influence our government and especially how do they shape the future of the »war on terrorism«? It has become abundantly clear, there never were any weapons of mass destruction or any link between Saddam Hussein and Osama bin Laden. Was it just a mistake or were these stories planted to provide a rationale for war and increase profits for these companies? Given the fact that we have seen the biggest military spending increase in history and the fact that a significant percentage is devoted to private contractors who are now providing us with »intelligence« to justify the war, one must question if these companies are simply justifying what their political masters want.

Indeed some of those answers are beginning to emerge: Seymour Hersh has written an excellent report in the *New Yorker* of what the intelligence community calls the »stovepiping«: filtering selected intelligence to the government to justify war and military spending. Information in the public domain indicates that a private company (Science Applications International) was hired to plan the Iraqi government in exile long before the war, we also know that Halliburton was brought in to discuss how to put out oil fires and run the Iraqi pipeline system, five months before the war because of documents uncovered by Representative Henry Waxman. Who made these decisions to fund these programs and how? There are many angry government officials in Washington DC — at the State department as well as at the Pentagon and the Central Intelligence Agency — who are angry and upset that the government is being sold lock, stock and barrel, to the highest bidder or the ones with the closest connections to the White House.

Let's go back to the reconstruction contracts: Weeks after the Hussein regime was ousted it was quickly replaced by a corporate regime from the United States: Engineers and executives from San-Francisco-based Bechtel, one of the world's largest construction firms, was selected to manage a 680-million-

dollar reconstruction deal awarded by the U.S. Agency for International Development (USAID) Apr. 17.

Within days Terry Valenzano, Bechtel's manager for Iraq reconstruction, flew to the Crowne Plaza and Hilton resort in Kuwait, where the engineering teams are based, alongside many top military officials.

Major companies were already hard at work in Iraq. Oil giants British Petroleum (BP) and Shell sent employees to southern Iraq to work for a common British boss, Major Mark Tilley, who has been appointed interim chief executive of Iraq's South Refineries by the occupying forces. Paul Vick and Scott Hayward, construction managers for Houston, Texas-based engineering company Halliburton, recently arrived in the cities of Basra and Umm Qasr respectively to oversee repairs, under the supervision of Brigadier General Robert Crear, U.S. Army Corps of Engineers. Phil Carroll, the former head of Houston-based Shell Oil and construction giant Fluor, was appointed head of a new advisory board that will oversee the activities of an oil ministry.

Halliburton, was first secretly given the contract to douse the oil fires set by Saddam Hussein's regime, hired two Houston-based companies: Boots & Coots International Well Control and Wild Well Control, to put out the fires. Now the firm is overseeing repair of the oil refineries, running the pipelines and trucking propane to Iraqi consumers. The contracts have become political hot potatoes because the administration of President George W. Bush never offered them for competitive bidding or mentioned them publicly until well after the work began, despite the fact that they were signed months before the attack even started. As I'm sure you know, Cheney was chief executive officer of Halliburton, the company that has won the most contracts in the »war on terrorism«.

Scott Saunders, a spokesman for the Corps of Engineers, says Halliburton may be permitted to export Iraqi oil in the future, so that the country can generate money to pay for the rebuilding process, unless Iraqis »can reconstitute their oil industry and bureaucracy quickly enough« to do the job themselves.

The biggest military spending increase in history.

Halliburton was brought in to discuss how to put out oil fires and run the Iraqi pipeline system, five months before the war.

Cheney was chief executive officer of Halliburton, the company that has won the most contracts in the »war on terrorism«.

A brief run-down on some of the other companies in the country: Stevedoring Services of America is hard at work rebuilding Iraqi seaports, while Airlink USA is waiting in the wings to refurbish the airports as soon as they are repaired. Of course the actual construction work is being done by Iraqi workers, who clamor for the two-dollar-a-day jobs in the stifling heat under threat of sniper fire.

Struggling to maintain law and order, the U.S. military has turned to yet another U.S. multinational to run a new Iraqi police force: Dyncorp, whose recruiters are manning phones just outside of Forth Worth, Texas, to hire »individuals with appropriate experience and expertise to participate in an international effort to re-establish police, justice and prison functions in post-conflict Iraq«.

As I mentioned earlier, many of these companies were hired even before the invasion began March 20. For example, BP engineers traveled with the troops as the war was launched, to help them seize the oil wells. Halliburton had 1,800 employees in the Kuwaiti desert setting up tent cities, providing food and washing clothes for the soldiers, five months before the invasion, while Dyncorp employees patrolled the perimeters of army bases to keep out angry civilians. Inside the Kuwaiti bases, Military Professionals Resources Incorporated (MPRI) of Alexandria, Virginia, a private company set up by ex-U.S. military generals, trained the soldiers to use weapons.

Now, the wholesale privatization of the U.S. military is not surprising given that the three bureaucrats Bush hired to run the Army, Navy and Air Force when he became president in 2000 were all plucked from corporate America: Gordon England of General Dynamics was appointed secretary of the Navy, James Roche of Northrop Grumman was appointed Air Force secretary, and Thomas White of Enron was appointed secretary of the Army.

Although all three men have resigned in the last 12 months, the two former military men recruited to run Iraq, Jay Garner and Paul Bremer, were chief executives of consulting companies to the multinationals—SY Technologies and Marsh McLellan. SY helps design mis-

siles while Marsh advises companies in crisis. Another well-know example is Richard Perle, former head of the Pentagon's Defence Policy Board, who was advising Goldman Sachs investors on Wall Street about reconstruction contracts.

### **Halliburton's government business**

But I would like to reserve the rest of my time to talk about the vice-president of the United States and his business associates. Cheney served as chief executive of Halliburton until he stepped down to become George W. Bush's running mate in the 2000 presidential race. Today he still draws compensation of US\$180,000 a year from the company, twice as much as he earns from as vice-president.

This company is a Fortune 500 construction corporation working primarily for the oil industry. From 1962 to 1972 the Pentagon paid the company tens of millions of dollars to work in South Vietnam, where they built roads, landing strips, harbors, and military bases from the demilitarized zone to the Mekong Delta. The company was one of the main contractors hired to construct the Diego Garcia air base in the Indian Ocean, according to Pentagon military histories.

In the early 1990s the company was awarded the job to study and then implement the privatization of routine army functions under then-secretary of defense Dick Cheney.

When Cheney quit his Pentagon job, he landed the job of Halliburton's CEO, bringing with him his trusted deputy David Gribbin. The two substantially increased Halliburton's government business until they quit in 2000, once Cheney was elected vice president. This included a US\$2.2 billion bill for a Brown and Root contract to support US soldiers in Operation Just Endeavor in the Balkans. Brown and Root is a business unit of Halliburton.

After Cheney and Gribbin departed, another confidante of Cheney, Admiral Joe Lopez, former commander in chief for U.S. forces in southern Europe, took over Gribbin's old job of go-between for the government and the com-

Cheney still draws compensation of US\$180,000 a year, twice as much as he earns from as vice-president.

The wholesale privatization of the U.S. military is not surprising.

pany, according to Brown and Root's own press releases.

In 2001 the company took in US\$13 billion in revenues, according to its latest annual report. Currently, Brown and Root estimates it has US\$740 million in existing U.S. government contracts (approximately 37 percent of its global business).

For example, in mid November 2001, Brown and Root was paid US\$2 million to reinforce the U.S. embassy in Tashkent, Uzbekistan, under contract with the State Department, according to the New York Times. More recently Brown and Root was paid US\$16 million by the federal government to go to Guantanamo Bay, Cuba, to build a 408-person prison for captured Taliban fighters, according to Pentagon press releases.

That is by no means all: Brown and Root employees can be found back home running support operations from Fort Knox, Kentucky, to a naval base in El Centro, California, according to company press releases.

In December 2001, Brown and Root secured a 10-year deal named the Logistics Civil Augmentation Program (LOGCAP), from the Pentagon, which has already been estimated at well over a billion dollars.

Meanwhile independent agencies are still skeptical about claimed financial savings from contracting out military support operations. According to the Government Accounting Office (GAO), a February 1997 study showed that a Brown and Root operation in Bosnia estimated at US\$191.6 million when presented to Congress in 1996 had ballooned to US\$461.5 million a year later. All told this former Yugoslavia contract has now cost the taxpayer US\$2.2 billion over the last several years.

Examples of overspending by contractors include flying plywood from the United States to the Balkans at US\$85.98 a sheet and billing the army to pay its employees' income taxes in Hungary.

A subsequent GAO report, issued September 2000, showed that Brown and Root was still taking advantage of the contract in the Balkans. Army commanders were unable to keep track of the contract because they were typi-

cally rotated out of camps after a six-month duration, erasing institutional memory, according to the report.

The GAO painted a picture of Brown and Root contract employees sitting idly most of the time. The report also noted that a lot of staff time was spent doing unnecessary tasks, such as cleaning offices four times a day.

Pentagon officials were able to identify US\$72 million in cost savings on the Brown and Root contract simply by eliminating excess power generation equipment that the company had purchased for the operation.

Brown and Root has been also been investigated for over billing the government in its domestic operations. In February 2002, Brown and Root paid out US\$2 million to settle a suit with the Justice Department that alleged the company defrauded the government during the mid-1990s closure of Fort Ord in Monterey, California.

The allegations in the case surfaced several years ago when Dammen Gant Campbell, a former contracts manager for Brown and Root turned whistleblower, charged that between 1994 and 1998 the company fraudulently inflated project costs by misrepresenting the quantities, quality, and types of materials required for 224 projects. Campbell said the company submitted a detailed »contractors pricing proposal« from an army manual containing fixed prices for some 30,000 line items.

Once the proposal was approved, the company submitted a more general »statement of work,« which did not contain a breakdown of items to be purchased. Campbell maintained the company intentionally did not deliver many items listed in the original proposal. The company defended this practice by claiming the statement of work was the legally binding document, not the original contractors pricing proposal.

In December 2001, Kellogg, Brown and Root, a subsidiary of Halliburton, secured a 10-year deal known as the Logistics Civil Augmentation Program (LOGCAP), from the Pentagon. The contract is a »cost-plus-award-fee, indefinite-delivery/indefinite-quantity service« which basically means that the federal government has an open-ended mandate and budget to send Brown

Independent agencies are still skeptical about claimed financial savings from contracting out military support operations.



## 26

The federal government has an open-ended mandate and budget to send Brown and Root anywhere in the world to run military operations for a profit.

and Root anywhere in the world to run military operations for a profit. Today Brown and Root is also supporting operations in Afghanistan, Djibouti, Georgia, Jordan and Uzbekistan.

### Kuwait

Let's discuss some of the details: KBR's work in Kuwait began in September 2002 when Joyce Taylor of the U.S. Army Materiel Command's Program Management Office, arrived to supervise approximately 1,800 Brown and Root employees to set up tent cities that would provide accommodation for tens of thousands of soldiers and officials. Within a few weeks, these Brown and Root employees helped transform Kuwait into an armed camp, to support some 80,000 foreign troops, roughly the equivalent of 10% of Kuwait's native born population. The headquarters for this effort is Camp Arifjan, where civilian and military employees have built a gravel terrace with plastic picnic tables and chairs, surrounded by a gymnasium in a tent, a PX and newly arrived fast food outlets such as Burger King, Subway and Baskin-Robbins, set up in trailers or shipping containers. Basketball hoops and volleyball nets are set up outside the mess hall.

### Turkey

North of Iraq approximately 1,500 civilians are working for Brown and Root and the United States military near the city of Adana, about an hour's drive inland from the Mediterranean coast of central Turkey, where they support approximately 1,400 US soldiers staffing Operation Northern Watch's Air Force F-15 Strike Eagles and F-16 Fighting Falcons monitoring the no-fly zone above the 36th parallel in Iraq.

The jet pilots are catered and housed at the Incirlik military base seven miles outside the city by a company named Vinnell, Brown and Root (VBR), a joint venture between Brown and Root and Vinnell corporation of Fairfax, Virginia, under a contract that was signed on

October 1, 1988, which also includes two more minor military sites in Turkey: Ankara and Izmir.

The joint venture's latest contract, which started July 1, 1999 and will expire in September 2003, was initially valued at US\$118 million. US Army officials confirm that Brown and Root has been awarded new and additional contracts in Turkey in the last year to support the »war on terrorism« although they refused to give any details.

Cheap labor is also the primary reason for outsourcing services, says Major Toni Kemper, head of public affairs at the base. »The reason that the military goes to contracting is largely because it's more cost effective in certain areas. I mean there was a lot of studies years ago as to what services can be provided via contractor versus military personnel. Because when we go contract, we don't have to pay health care and all the other things for the employees, that's up to the employer.«

Soon after the contract was signed Incirlik provided a major staging post for thousands of sorties flown against Iraq and occupied Kuwait during the Gulf war in January 1991 dropping over 3,000 tons of bombs on military and civilian targets.

Still ongoing is the first LOG-CAP contract in the »war on terrorism« which began in June 2002, when Brown and Root was awarded a US\$22 million deal to run support services at Camp Stronghold Freedom, located at the Khanabad air base in central Uzbekistan. Khanabad is one of the main US bases in the Afghanistan war that houses some 1,000 US soldiers from the Green Berets and the 10th Mountain Division. In November 2002 Brown and Root began a one-year contract, estimated at US\$42.5 million, to cover services for troops at bases in both Bagram and Kandahar. Brown and Root employees were first set to work running laundry services, showers, mess halls and installing heaters in soldiers' tents.

## Colombia, The Corporate Support for War and Anti-Union Repression

Daniel Kovalik<sup>56</sup>

### The US »War on Drugs« in Colombia

The U.S. is currently waging a war in Colombia—now the 3rd largest recipient of U.S. military aid in the world. While the U.S. is claiming to wage this war in the name of fighting drugs and terrorism, the facts show that U.S. military aid is in fact perpetuating both of these harms. Indeed, it appears that what the U.S. terms its »War on Drugs« and »War on Terrorism« in Colombia is in fact a war waged in support of corporate profits and access to strategic natural resources.

Let us first consider the so-called »War on Drugs« in Colombia. As the conservative Rand Corporation concluded years ago, it is 23 times more effective (and infinitely more humane) to deal with drug abuse in the U.S. by focusing efforts on drug treatment at home rather than on eradication of the raw materials for drugs (e.g. coca) at the source. Despite this conclusion, the U.S. has instead chosen to focus its resources on massive military aid to Colombia for the ostensible purpose of coca eradication.

Yet, since 2000, when the U.S. began its major military appropriations to Colombia, the cultivation of coca production in Colombia has actually increased, according to the U.S. State Department, from 136,200 hectares to 144,450. Indeed, coca production has increased throughout the Andean Region during this same period. Even more disturbing than these figures is the fact that the U.S. is actually funding a military in Colombia which, according to the U.S. State Department's own human rights report of March 31, 2003, is working in close connection with right-wing paramilitaries. This is significant, for the U.S. Drug Enforcement Agency (DEA) reports that the paramilitaries control 40% of Colombia's drug trade and are indeed involved in the drug trade in a way which Colom-

bia's left-wing guerilla groups (whose role is limited to taxing coca producers) are not. And a recent Washington Post article (6/26/03) entitled »Colombia's Military's Paramilitary Allies Are Major Drug Traffickers« reports that the Colombian government itself has concluded in a report by President Alvaro Uribe that »it is impossible to differentiate between the self-defense groups and narco-trafficking organizations.« Meanwhile, the U.S. does nothing to regulate the export to Colombia of chemicals needed to convert coca into cocaine.

Just as the U.S. »War on Drugs« in Colombia is at best futile in combating drugs, if not downright counterproductive, the U.S. »War on Terror« in Colombia is actually serving the interests of those who commit the most terror in Colombia—the right-wing paramilitaries. It is a consensus among human rights organizations, including Amnesty International, Human Rights Watch and the Colombian Committee of Jurists that these paramilitary groups, which the U.S. State Department itself has designated as »terrorist,« are committing 80 to 85% of the atrocities in Colombia. Yet, the U.S. continues to fund the military which it concedes is cooperating with and assisting these paramilitaries. The result is that human rights abuses in Colombia have actually increased since 2000 when the U.S. began its major military appropriations to Colombia. Thus, according to the Latin American Working Group (LAWG), political assassinations in Colombia have risen from 12 a day in the year 2000 to 19 a day in 2003.

### The role of TNCs in the war

Given the fact that the U.S. »War on Drugs« and »War on Terrorism« in Colombia appear to be neither, one naturally must ask, why the U.S. is at war in Colombia? To answer this, I would like first to share an interesting anecdote. In the February of 2000, when Congress was first debating Plan Colombia—the plan pursuant to which the U.S. is funding the Colombian mili-

The U.S. is actually funding a military in Colombia which is working in close connection with right-wing paramilitaries.

<sup>56</sup> Daniel Kovalik is Assistant General Counsel for the United Steelworkers Union.



Colombia is the most dangerous country in the world for trade unionists.

Occidental Petroleum is responsible for a number of human rights abuses in Colombia.

tary—I attended a Congressional hearing in Washington entitled, »Drugs and Social Policy in Colombia.« As the name suggests, the hearing was held ostensibly to debate the need for Plan Colombia in light of the goal of fighting drugs in Colombia. Curiously, the Vice-President of Occidental Petroleum, Lawrence Mirage, was invited to testify at this hearing—not about drugs or social policy in Colombia, but rather, about the need to protect the U.S.’s (and Occidental’s) access to oil in Colombia. As Mirage explained at this hearing, Colombia is the 8th largest supplier of oil to the U.S., and Colombia and its neighbor Venezuela together provide the U.S. with 20% of its oil. Mirage claimed that it was necessary to secure Colombia’s oil as an alternative to »the volatile Middle East.«

The primacy of the U.S.’s oil interests in Colombia is highlighted by the fact that the duty of 1 out of 4 Colombian soldiers is to protect oil pipelines in Colombia. In addition, the U.S., explicitly demonstrating its true purposes in Colombia, recently appropriated almost US\$ 100 million to the Colombian military for the express purpose of protecting Occidental’s pipelines. In January of 2003, the U.S. also sent special forces to Colombia to train Colombian troops in protecting these same pipelines. Meanwhile, Occidental Petroleum is responsible for a number of its own human rights abuses in Colombia, including the displacement of members of the indigenous U’wa tribe from their land as well as the 1998 bombing of a small hamlet, Santo Domingo, in 1998. This bombing resulted in the deaths of 17 civilians, including 7 children.

In addition to Occidental, the Alabama-based coal mining company, the Drummond Company, was also a major sponsor of Plan Colombia. Indeed, Drummond-owner, Garry Drummond, accompanied President Bill Clinton to Colombia to present the first major installment of military aid under Plan Colombia (approximately US\$ 1.3 billion) to then-President Andres Pastrana. In addition to supporting the war efforts of the U.S. in Colombia, Drummond is also directly responsible for the violation of human rights in Colombia. In particular, Drummond, as a number of other transnational companies, is re-

sponsible for the assassination of trade union leaders in Colombia. The corporate-sponsorship of trade union killings has become the subject of 2 lawsuits in the U.S. as well as an international consumer campaign.

Colombia is, in the words of the International Confederation of Free Trade Unions (ICFTU), the most dangerous country in the world for trade unionists. In its most recent human rights report, dated March 31, 2003, the State Department reports that 1,875 labor activists have been murdered in Colombia since 1991—184 last year alone. The 184 trade union assassinations in Colombia made up the vast majority of all trade union assassinations world-wide, which totaled 213. In an almost laughable understatement, the State Department concluded in its 2003 report that, for the year 2002, »violence against trade union members and antiunion discrimination were obstacles to joining unions and engaging in trade union activities.«

The State Department explains that a majority of these trade unionists have been killed at the hands of right-wing paramilitaries which, as the State Department rightly concludes, continue to receive most of their support from the Colombian military, the same military that the U.S. is funding at record levels. As the State Department notes, members of the Colombian armed services continue to collaborate with and tolerate the activities of the paramilitaries, providing the paramilitaries with intelligence and ammunition and even, in some cases, joining the ranks of the paramilitaries.

The paramilitaries, along with their military partners, are ideologically aligned with the interests of both domestic and foreign capital in Colombia and are many times assisted, both materially and morally, by corporate elites. As Amnesty International, focusing on the Department of Cesar, explained in 1997, »the systematic violation of human rights against members of popular organizations in the department of Cesar corresponds to a national strategy of undermining organizations which the [state] security forces deem to be subversive. [...] Many violations of human rights in the region are committed in order to advance and protect

the interests of economically powerful sectors. Labeling anyone who dares to challenge the interests of powerful economic sectors as subversive [...] and then targeting them for human rights violations provides a means for those sectors to protect their interests.<sup>57</sup>

Amnesty International explains in this same report that the Cesar Department is also where the collaboration between the paramilitaries and the military is especially keen: »Amnesty International has been increasingly concerned by the escalation of human rights violations carried out in the department of Cesar by members of the security forces and paramilitary groups allied to them. »Disappearances«, extrajudicial killings and other human rights violations continue to be reported as the security forces have increased their presence and paramilitary organizations have been set up and consolidated in the region, sometimes with the support of powerful economic interests.«

### The case of Drummond Coal Company

One of the most »powerful economic« actors in the Cesar Department is Drummond Coal Company, based in Birmingham, Alabama. Drummond was a major sponsor of Plan Colombia, the plan pursuant to which the U.S. has been sending military aid to Colombia since 2000. In 1994, Drummond shut down its unionized mine operations in Alabama and began mining operations in Colombia. It was around this same time that paramilitary operations began to intensify in Cesar. As *The Nation* reported »[a]ccording to a high-ranking former Colombian military officer, it was in that period that the paramilitaries began aggressive operations in Cesar province...«<sup>58</sup>. The convergence of Drummond Coal and increased violence does not appear to be a mere coincidence. As former NPR reporter Steven Dudley reported in another *Nation* article, »paramilitary leaders have told me on several occasions they protect

business interests in Colombia, especially international companies. [...] In the northeast the paramilitaries have troops around a coal mine owned by Alabama-based Drummond.«<sup>59</sup>

In March of 2001, the symbiotic relationship between Drummond and the paramilitaries turned deadly, resulting in the brutal slaying of two trade unionists—Valmore Locarno and Victor Hugo Orcasita, both employees in Drummond's mines and, respectively, the president and vice-president of the local union of SINTRAMINERGETICA. Valmore and Victor Hugo had been threatened by paramilitaries for some time prior to their assassination. These threats resulted from Drummond's characterization of the mining union as a »guerilla union,« a common tactic used by corporate elites as explained by Amnesty International in the article quoted above. While Valmore Locarno and Victor Hugo Orcasita had asked Drummond on a number of occasions for a simple safety accommodation in response to these threats—i.e., to stay in the mines overnight between shifts so that they did not have to travel the paramilitary-controlled highways at night—this request was repeatedly denied.

It should be noted that, meanwhile, Drummond provided, and continues to provide, its American-born supervisors with a compound which is protected around the clock by Colombian military forces. As the *Wall Street Journal* reported on October 6, 2003, »[m]ore than 300 Colombian army troops are stationed at La Loma, where Drummond provides them with subsidized food and fuel. The troops protect company facilities and screen employees, Drummond says.«

On the night of March 12, 2001, Valmore and Victor Hugo, after again being denied their request to stay overnight at the mines, boarded a Drummond-contracted bus to take them to their homes. A number of such buses left the mines with employees that night. Only Valmore and Victor Hugo's bus was stopped by paramilitaries that evening. These paramilitaries boarded the bus, asked for Valmore and Victor Hugo by name, and told them that

»Paramilitary leaders have told me on several occasions they protect business interests in Colombia, especially international companies.«

<sup>57</sup> Hacienda Bellacruz: »Land, Violence & Paramilitary Power«, amnesty international, 1997 (<http://web.amnesty.org/library/Index/ENGA.MR230061997?open&of=ENG-344>).

<sup>58</sup> September 2001, »It's The Real Thing: Murder«.

<sup>59</sup> August 5, 2002, »War in Colombia's Oil fields«.

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Victor Hugo was found dead the next day with evident signs of torture.

they were there to settle »a problem« that Valmore and Victor Hugo had with Drummond. They then proceeded to pull Valmore and Victor Hugo off the bus, shooting Valmore dead on the spot and taking Victor Hugo away. Victor Hugo was found dead the next day with evident signs of torture. Shortly after these murders, Drummond employee Gustavo Soler took over as President of the mining union and began negotiating on behalf of the employees. Gustavo Soler publicly opined including in his interview for the September 2001 Nation article cited above, that someone at Drummond had to have tipped the paramilitaries as to which bus Valmore and Victor Hugo were traveling on the night they were killed. Shortly after expressing this opinion, Gustavo Soler was himself dragged off a bus taking him home from the Drummond mines and murdered by paramilitaries.

### The Alien Tort Claims Act

A USWA delegation was in Colombia on the very night Valmore and Victor Hugo were murdered. Moved by the blatant murders of union activists and the escalating crisis of violence confronting trade unionists in Colombia, the USWA, along with the International Labor Rights Fund (ILRF), took the drastic step of filing a lawsuit against Drummond Company on behalf of the SINRAMIENERGETICA and the families of the slain labor leaders. The suit was filed citing provisions of the Alien Tort Claims Act and under the Torture Victims Protection Act. The Alien Tort Claims Act (»ATCA«) gives aliens the right to sue in the U.S. District Courts for torts committed in violations of the law of nations. In 1991, Congress passed the Torture Victims Protection Act (»TVPA«) which codified court decisions holding that aliens could bring suits under this law against »individuals« to redress human rights abuses committed abroad. The USWA and ILRF also filed an ATCA and TVPA case against Coca-Cola and related entities and individuals for their role in human rights abuses in Colombia. This lawsuit involves, inter alia, the 1996 slaying of trade unionist Isidro Gil within the wall of the Coca-Cola bottling plant in Carepa, Colombia by paramilitary forces. The murder of

Isidro Gil followed the threats of the plant manager to wipe out the union through the paramilitaries.

In both of these cases, the courts have denied the Defendants' motions to dismiss in large part and have made some important rulings in those decisions.<sup>60</sup> In both cases, the courts have ruled that a corporation is an »individual« subject to suit under the express terms of the TVPA. In so ruling, the courts relied upon the fact that corporations are considered »persons« under the law of the U.S. and have all the rights of »persons.« As such, they must also have the responsibilities of »persons.«

The courts in both cases also ruled that the Plaintiffs have alleged sufficient facts to demonstrate that the paramilitaries are in fact state actors in light of their collaboration with the official armed services of Colombia. This is important, for the TVPA creates a cause of action for human rights abuses committed by »[a]n individual [...] under actual apparent authority, or color of law, of any foreign nation.«

At the same time, it is important to point out that, if there is too much state action, a case can be dismissed under the »act of state doctrine« which insulates the actions committed by foreign states. The U.S. government, actively taking the side of the corporations in a number of ATCA cases, is attempting to exploit this »act of state doctrine« in furtherance of its goal of having these cases dismissed. Thus, in what we believe to be a blatant violation of the separation of powers, the U.S. State Department has been writing a number of courts and asking them to dismiss cases on the proffered grounds that they are challenging the acts of foreign nations in which the U.S. has an important foreign policy

»ATCA« gives aliens the right to sue in the U.S. District Courts for torts committed in violations of the law of nations.

<sup>60</sup> See, *Estate of Rodriguez v. Drummond Coal*, 256 F.Supp.2d 1250 (N.D. Ala. 2003); *Sinaltrainal v. Coca-Cola*, 256 F.Supp.2d 1345 (S.D.Fla. 1250).

interest.<sup>61</sup> In one case, involving the Rio Tinto mining corporation, the U.S. was successful in convincing the district court to dismiss the ATCA case on the grounds that it adversely impacted upon the U.S.'s foreign policy in Papua New Guinea. As yet, the Defendants in the Coca-Cola case have fortunately not raised this issue. And, in the Drummond case, the Judge absolutely refused to hear this argument at this point in the proceedings.

On the issue of state action, it is interesting to note that the Wall Street Journal, in its October 6, 2003 article about the case, set forth an incredible indictment of U.S. foreign policy in Colombia by noting, without comment, that Drummond's »arrangement with the army is critical to the lawsuit. The union and relatives of the murdered activists say that regular army units routinely cooperate with paramilitary fighters, some of whom wear army uniforms and function at times as regular soldiers.« If, as is indeed true, Drummond's support of the military is so critical to the human rights case against it, what does this say about the massive support of the U.S. for this very same military?

In both cases, the courts also ruled that the Plaintiffs have sufficiently pled that they do not have an adequate forum in Colombia for their human rights cases. This ruling was critical in rejecting the Defendants forum non conveniens defense as well as its defense under the TVPA which expressly provides that the court shall not exercise jurisdiction »if the claimant has not exhausted adequate and reasonable remedies in the place in which the conduct giving rise to the claim occurred.« The court's ruling in this regard should not be surprising, however, given the U.S. State

Department's own conclusion, found in its March 31, 2003 report, that impunity generally represents the biggest challenge to human rights in Colombia and that, more specifically, impunity for the murder of trade unionists in Colombia is almost absolute. Or, as former U.S. ambassador to Colombia, Myles Frechette, stated more simply to the Wall Street Journal in its October 6 article: »[t]he judicial system [in Colombia] doesn't work.«

In the Drummond case, the Judge further concluded that, as alleged in Plaintiffs' complaint, the human rights abuses at issue—i.e. the murder of three top local mining union leaders by paramilitaries who, acting at the behest of Drummond, pulled the leaders off company buses taking them home after work and then shot them—amounted to »war crimes.« The Judge also ruled, in a landmark decision, that the right to associate and organize a union constitute fundamental and internationally-recognized human rights, the violation of which are actionable under the Alien Tort Claims Act and Torture Victims Protection Act which allow suits for »violations of the law of nations.«

## Conclusion

We believe that these cases, and the recent decisions in them, are serving the purpose of challenging both U.S. government and corporate complicity in paramilitary violence in Colombia, particularly violence against trade unionists, by making it clear that the support for such violence will not go unpunished. We believe that this litigation is having some positive effect in this regard. Just one week after privately stating to a trade union colleague in Colombia that he has »had it up to here (pointing to his chin) with these lawsuits,« the Vice-President of Colombia, Francisco Santos, publicly announced that the Colombian government would no longer tolerate corporate complicity in violence against trade unionists.

Although they help shed light on atrocities, lawsuits will not reorder the domestic policies of Colombia or the foreign policy initiatives of the U.S. Real lasting change will come when concerned U.S. citizens pressure their government to bring an end to anti-union violence in Colombia. This will

Real lasting change will come when concerned U.S. citizens pressure their government to bring an end to anti-union violence in Colombia.

<sup>61</sup> It is important to note that while the Defendants in the aforesaid cases assert that these ATCA cases pose a direct challenge to U.S. foreign policy in Colombia, it is our position that these cases are consistent with the official, stated policy of the U.S. To wit, these cases are challenging paramilitary atrocities in Colombia, and the U.S. State Department has officially designated these paramilitaries as »terrorists.« These cases are in fact a challenge to terrorism in Colombia which the U.S. officially condemns. As this paper notes, the sad fact is that the U.S.'s conduct in Colombia, which is serving to support and encourage the paramilitaries, is actually undermining the U.S.'s official policy in that country.

be achieved by the combination of (1) continued lobbying in Congress to end all military aid to Colombia; (2) petitions and protests against corporations, particularly those mentioned above, involved in abuses in Colombia; (3) on the ground activism in Colombia to accompany trade unionists and human rights activists in their struggles; and (4) providing direct assistance to trade unionists to allow them to survive and continue their work.

Finally, I leave you with the words of Noam Chomsky who recently stated: »Among the mounting horrors in Colombia, few are more shocking than the attacks on trade unionists, for some years on the scale of the rest of the world combined. The District Court decision in the Coca-Cola case can be a step forward in the effort to protect courageous labor activists, and to bring awareness of what is taking place to the American people. The fate of Colombia lies in their hands, in no small measure.«

To learn more about how to participate in such efforts, and to learn more about the cases, you can visit the following websites:

[www.laborrights.org](http://www.laborrights.org)  
[www.cokewatch.org](http://www.cokewatch.org)  
[www.killercoke.org](http://www.killercoke.org)  
[www.peacebrigades.org](http://www.peacebrigades.org)



## Part 3: Tax Evasion instead of Tax Justice. How TNCs undermine the states' capabilities to act

### Pay Your Taxes! Corporate Social Responsibility and the Mining Industry in Chile.

Manuel Riesco<sup>62</sup>

#### Introduction

One of the central concerns with the dominant Corporate Social Responsibility (CSR) agenda from a developmental perspective, is that it often ignores certain corporate practices that undermine social, sustainable and economic development, such as sub-contracting, non-payment of taxes, corporate lobbying for socially and environmentally-regressive policies, and transnational corporations transfer pricing or financial flows involving off-shore affiliates. The latter, for example, has led to the indebtedness of affiliates in developing countries engaged in production and outflows of profits to service loans from financial affiliates in off-shore havens. In the case of the mining industry in Chile, these practices have been common and their effect - compounded by the important fact that the country's neo-liberal natural resources policies disregard charging royalties for their use - have contributed to a decline in commodity prices, which has had disastrous implications for the domestic economy.

This paper identifies and examines the relevance of these practices, contradictions and double standards in the case of mining companies that have taken a lead in the international CSR agenda. Companies considered include Rio Tinto and BHP Billiton. The paper analyzes the steps large mining companies in Chile have taken in relation to

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both corporate social and environmental responsibility, but puts these in the context of other trends and processes that have had negative implications for social, economic and sustainable development in Chile. The paper assesses the relevance and implications of both these sets of processes and practices for development in Chile.

The paper ends with a reflection on how corporate practices and policies might be modified to genuinely enhance their contribution to development, and what role voluntary and regulatory instruments might play in this reform. It suggests introducing royalty charges and other ground rent capturing taxing schemes as a general policy regarding natural resources, and in the case of copper mining additional regulations such as auctioning for mining districts and state capacity to regulate their exploitation, technologies, transfer prices and others. These are policies which are all widely used by more advanced countries in regard to their natural resources.

#### Chilean history, intertwined with the struggle to defend its natural resources

Towards the last part of the 19th century (1879–1881), Chile went to war against its northern neighbours Bolivia and Peru over the sovereignty of the nitrate-rich deserts in the region. Chile won the war and moved its border more than one thousand five hundred kilometers to the north, to the loss of Bolivia and Peru, thus annexing all the nitrate deposits and most of the copper reserves that were to gain importance during the following centuries. Most of the nitrate mines ended up in the hands of foreign, mainly British owners. Capital — maverick British

Corporate Social Responsibility (CSR) agenda often ignores certain corporate practices, such as non-payment of taxes.

miner-financer John Thomas North, the so called »Nitrate King«, owned many of them at one point—who financed and instigated an armed rebellion against the Chilean government in 1891, that ended in a bloody civil war and the defeat and suicide of President José Manuel Balmaceda (1889–1891), who had suggested nationalizing the nitrate mines. During the 20th century, nitrate was gradually replaced by copper as the main natural resource based export and definitively so after the 1930 crisis, when nitrate mines closed in large numbers. US companies exploited Chilean copper during most of the 20th century, until President Eduardo Frei Montalva (1964–1970), who referred to copper as »the master pillar of the Chilean economy«, established partial nationalization. President Salvador Allende (1970–1973), who said that copper was »the salary of Chile«, nationalized them in full, with the unanimous agreement of parliament, on 11 July 1971. US reaction to nationalization was, again, conspiracy with the Chilean military and rightist politicians that culminated in the bloody coup headed by Pinochet on 11 September 1973. Pinochet did not reverse Allende's nationalization of the copper mines and all other mining resources, quite to the contrary, he built upon this achievement, duplicating the size of CODELCO, the state owned corporation that was formed out of the fusion of the nationalized copper companies, during his tenure.

At the same time he implemented legal changes that allowed in the following transition to democracy during the 1990s that most of the Chilean minerals, with the exception of those owned by CODELCO, were acquired and developed by foreign companies, tripling overall output in the process. All of these companies, with two exceptions, are not paying any taxes at all—they have extracted and exported over 23 million tons of copper over the last decade, roughly the equivalent of two years of world consumption, and sold them for over US\$38 billion dollars. Meanwhile, they have payed just over US\$1.7 million dollars in taxes, while accumulating 2.7 billion dollars in tax credits, thus holding the Chilean state liable for a net US\$900 million

dollars—and over production coming mainly from Chile has resulted in the severe ongoing crisis of the world copper prices. Quite naturally in the face of such evidence, the matter of foreign control over natural resources has surfaced again in Chile as a central point on the country's political and economic agenda.

Thus, the history of Chile seems to have been intertwined with its natural resources, time and again confronting the country with the foreign companies that exploit them. Only this time, some of the largest mining operators in Chile happen as well to be world-renowned leaders in the corporate social responsibility (CSR) movement. Could it be that these CSR leaders are at the same time misbehaving in Chile avoiding their full taxing responsibilities? Or, on the contrary, are the CSR leaders showing their counterparts how to behave regarding taxing issues? Or, should a misconceived Chilean taxing scheme (supported and recommended by international financial institutions as an example to be followed) be accused as the main culprit of a situation that is now negatively affecting both the country and all actors the industry? All of the above may be true at the same time as this paper intends to show.

### **Corporate Social Responsibility (CSR) and the mining industry**

As it is well known, Corporate Social Responsibility (CSR) is one of the interesting recent developments within the mining industry as well as in international corporate self-regulation and accountability in general. The mining and minerals industry is known to face difficult challenges—and according to independent CSR studies, it is currently distrusted by many of the people it deals with day to day. It failed to convince some of its constituents and stakeholders that it has the »social licence to operate« in many parts of the world (CIP-MA 2002). Global initiatives, as well as many individual company projects have been initiated since 1999 in the area of CSR by the mining industry. Among them nine of the world's largest mining companies decided to initiate a project to examine the role of the minerals sector in sustainable develop-

All of these companies, with two exceptions, are not paying any taxes at all.



ment, and how that contribution could be increased. Through the World Business Council for Sustainable Development, they contracted with the International Institute for Environment and Development (IIED) to undertake a two-year independent process of research and consultation—the Mining, Minerals and Sustainable Development Project (MMSD). This project reviewed the CSR issues in relation with the mining industry on four continents and in over twenty countries, concluding in a comprehensive report with a series of recommendations on the issue, that address a wide range of components of CSR.

The report mentions that countries expect mining »in addition to gaining hard currency from taxes and royalties, benefits from mineral development should include employment, infrastructure such as roads and hospitals, linkages upstream to industries that supply goods and services or downstream to industries that process mineral outputs, and technology transfer«. The report acknowledges that »in some countries, however, mineral activities have not brought sustained economic development. Sudden wealth may have detrimental effects on social and political life, leading to or supporting corruption, authoritarian government, human rights abuse, or armed conflict«. It suggests that »the solution is to find better ways to capture and manage mineral wealth and to ensure that it is invested for lasting benefits in support of national, regional, and local development« (IIED 2002, xix). The report critically concludes that in many countries »the ability to manage mineral wealth effectively has lagged behind the ability to attract mineral investment. A key challenge now for many countries is to develop policy frameworks to ensure that mineral wealth is captured and creates lasting benefits for local communities and the broader population« (IIED 2002, 172). On another related matter, the report is clear to demand that »markets that welcome primary products must not discriminate against products that have been further processed in the exporting country« (IIED 2002, 181).

When it comes to Chile the report seems remarkably biased and presents

the country rather as success case and example of good practices: »Chile whose copper production accounts for 35% of world output, is now among the group of »high human development« countries (ranked 39th by UNDP). Here, too, many of the rewards have been reaped locally: the mining capital of Antofagasta is relatively prosperous and over the last 20 years unemployment has fallen despite the arrival of immigrants from other regions« (IIED 2002, 172-173). After showing a full page of optimistic graphs about the growth of supermarket and vehicle sales and others, supposedly due to the mining boom, the report applauds the Chilean copper stabilization fund and remembers that the country is a model for foreign investment friendly World Bank sponsored policies and that it is one of the few countries that does not charge mining royalties (IIED 2002, 180).

In what follows, quite a different story is told about mining in Chile and the results of such World Bank sponsored policies. If a company is going to contribute to development, it would need to do at least 5 things: a) contribute to government revenues b) generate profits that are used productively in the country, c) generate export revenues d) generate employment, and e) promote community development. One should of course also add environmental protection. As is shown below, quite a strong case can be made that the large private mining industry in Chile today is failing in most, if not all, of the above accounts.

### **How Exxon Corp. sold (for US\$1.8 billion) a mine it had operated in Chile at a loss for 23 years**

Chilean authorities, including government and parliament, as well as the press and public opinion, were quite shocked in 2002 when Exxon Corp. announced it had agreed to sell Disputada de Las Condes, a medium sized copper mine it operated up in the Andes, in the vicinity of the city Santiago, to Anglo-American, a South African company that operates Mantos Blancos and other copper mines in the

In what follows, quite a different story is told about mining in Chile.

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Exxon Corp. had operated Disputada ostensibly at a loss during 23 years

How could Exxon elude the Chilean taxing laws and declare accounting losses for a company that was highly profitable.

north of the country for US\$1.8 billion. The trouble was, of course, that Exxon Corp. had operated Disputada—it bought the mine back from the Chilean State in the mid 1970s, for some US\$80 million dollars—ostensibly at a loss during 23 years; not only did it never pay any taxes at all, but some US\$500 millions out of the agreed price with Anglo American corresponded to a tax credit Disputada had accumulated because of losses incurred during all those years. Exxon Corp. also announced that the transaction with Anglo American was to be signed in a foreign country, ostensibly to avoid paying to the Chilean state some US\$300 millions in capital gains tax.

A few academics and independent academic centres, one lonely senator and the head of the state copper giant, CODELCO, had been denouncing for years the troubling situation that foreign companies exploiting the rich Chilean copper minerals practically were not paying any taxes at all, as well as no royalties. The subsequent stimulus to over-invest in Chilean copper production was generating a world copper market glut that was busting prices, but nobody seemed to listen. But this time it was clearly too much, and the government urgently drafted a law that forced Exxon to pay capital gains taxes even if the transaction was made in a third country, and ENAMI, the state copper company that had originally sold the mine to Exxon reclaimed its entitlement, then agreed, to be first choice to buy back Disputada in the case Exxon sold it. Negotiations started between Exxon and the government, and finally the transaction took place in Chile, with Exxon paying a token tax of some US\$40 millions. But the matter had already spilled over to the press and public opinion reacted indignantly. Many political authorities, including cabinet ministers, publicly supported the establishment of a mining royalty, and the Chilean senate agreed unanimously to form a special committee to investigate taxation by mining companies, headed by the sena-

tor who had been denouncing the matter for years<sup>63</sup>. This special committee is now holding weekly hearings on the matter and at the same time pressure continues to grow towards the establishment of mining royalty charges.

How could Exxon elude the Chilean taxing laws and declare accounting losses for a company that was highly profitable as the sale price proved? This happened mainly through outflows of profits to service loans from financial affiliates in offshore havens. In this particular case, Exxon over-indebted Disputada—to the point it has been technically broke for many years, that is, its net equity has been negative—with Exxon Financials, its own Bermuda based financial branch; with huge interest payments been expatriated from Disputada to Exxon Financials over the years; the same that are subject to a 4% tax (or non at all as described further on) under Chilean law, instead of the 35% regular rate for expatriated profits. The president of Exxon Corporation himself recognized this fact in a speech to his shareholders, where he estimated real profits from Disputada to be around 20%-21% of sales (Riesco 2002). This practice has been com-

<sup>63</sup> Professor Orlando Caputo of Arcis University had calculated back in 1995 that increases in Chilean copper production that were already planned and officially accounted for the next five years, surpassed even the most optimistic increase world copper demand, so a drastic fall in prices was to be expected if no counter measures were taken by the Chilean government. In the end, Chilean copper production grew even more than then estimated, world demand grew less, and prices fell more than 50%, even more that was anticipated by the academic (Caputo 1995). Professor Caputo, together with other academics and institutions, including CENDA, publicly denounced the facts, and lobbied on the matter with every authority they could reach. ARCIS University students and academics even staged a monthly sit-in in front of the Presidential Palace to denounce the problem, but nobody seemed to listen. On the contrary, Professor Caputo's study as well as other works that supported this vision were officially disqualified by government specialists, as well as the private industry and many academics. All of them stressed that Chile was a »price taker« and had no influence in world copper prices, and they disregarded the existence of ground rent associated to copper mines. The only relevant political authority that took the matter seriously was Senator Jorge Lavandero, of the governing coalition, together with Mr Juan Villarzú, a high government official who has headed CODELCO, for many years. Both have been persistent voices urging for radical changes in Chilean mining policies.

mon in the Chilean private mining industry, whose mean debt/equity is over 3.5:1 (1997), with one company reaching 16.9:1 and another, Exxon as mentioned, carrying a negative ratio, due to negative equity (Riesco 2001). Chilean taxing laws have been quite lax in this respect, although a reform »against tax avoidance« established a limit of 3:1 to debt/equity ratio—the original government proposed limit was lower, but it was raised in parliament—over which companies must now pay 35% tax on expatriated interest payments (CENDA Cuadernos 5/2001).

Mining companies also elude taxes through over-extending the accelerated depreciation mechanisms. Chilean law allows companies to deduct depreciation from profits in an accelerated mode. All private mining companies, with the sole exception of BHP Billiton's Escondida—the only private company that has paid some taxes - use this mechanism of accelerated depreciation to reduce tax payments.

Both over-indebtedness and accelerated depreciation are mechanisms that may be used by any company in Chile, and in fact they are. In the case of private mining companies, though, their effect is grossly increased through the subterfuge of declaring themselves »Sociedades Contractuales Mineras (SCM)«, instead of regular public companies, which in Chile are called Sociedades Anónimas (SA). The SCM is a legal entity established in Chile a long time ago to promote small and medium mining, allowing any mining company that produces less than 70,000 tons of copper a year to incorporate as a SCM, instead of a regular public corporation (SA). Under their SCM status, large private mines in Chile are entitled to at least two relevant tax avoidance tricks: a) expatriated interest payments do not even pay the 4% tax that the same transfers are subject to in regular companies, and b) financial earnings calculated under normal depreciation rules may be withdrawn without paying taxes, while in regular corporations such withdrawals are taxed at 35%, even if earnings calculated with accelerated depreciation for tax purposes are negative.

Due to these two factors, long-term effective taxes have been estimated to

be 18% higher for a regular corporation (SA) than for a SCM. In this sense, according to ECLAC, mining corporations receive a huge tax subsidy in relation to other, normal corporations (Riesco 2001). This explains why, in clear violation of the spirit of this law<sup>64</sup>, large private mining companies have incorporated themselves as SCMs, even though their production hugely exceeds the mentioned amount. BHP Billiton Escondida, for example, produces over a million tons of pure copper a year, which makes it by far the largest copper mine in the world<sup>65</sup>. Still under the Chilean law it is considered a »medium mine«; and in fact, due to this fiction, all large mines in Chile are legally registered as »medium mines« with the sole exception of state owned CODELCO<sup>66</sup>.

### **Pinochet's warm luring to foreign capital**

Almost all of foreign direct investment in Chile has been lured by the generous conditions of Decreto Fuerza de Ley, or DFL 600, promulgated by Pinochet back in the early 1980s. One of the important benefits of DFL 600 is that companies may establish contracts with the Chilean State, that guarantee them equal tax treatment. This means, if the State changes tax rules, the investors who adopt this guarantee are not required to comply with the new rules, and may continue using the previous ones. In exchange for the guarantee, DFL 600 raises the tax rate on net profits from 35% to 40%. This guarantee is established in Chapter 11 bis of DFL 600.

As said above, most private mining companies used during the 1990s the

<sup>64</sup> The SCM law says that it may benefit all small and medium mining companies, but the lawmaker defined that term stating that these mines are those that produce no more than 70,000 tons a year of »refined« copper, instead of »pure copper« as it should perhaps say. Accordingly, none of the large private mines produce more than 70,000 »refined« copper, because they export the rest in the form of concentrates.

<sup>65</sup> Chuquicamata, the second largest, owned by CODELCO, produces around 600,000 tons a year.

<sup>66</sup> This loophole was partially addressed for future operations by a tax reform »against elusion« enacted in May 2002.

Some 200 million dollar in cash profits have been exported without paying taxes.

trick of incorporating themselves as *Sociedades Contractuales Mineras* to withdraw profits, and to withhold taxes. Meanwhile accelerated depreciation or other schemes allow them to present losses for taxing purposes. As also said, this exception was eliminated in 2001 through a so-called »anti-tax elusion« promoted by Chilean Finance Minister Nicolas Eyzaguirre. But, as 11 of the large private mining companies had adopted the DFL600-11-bis »tax invariability« scheme, they have continued using it to export cash dividends meanwhile they declare accounting losses due to accelerated depreciation. Some 200 million dollar in cash profits have been exported in the last five years using this mechanism, without paying taxes. Eyzaguirre has created quite a fuss lately, as he has publicly reminded the private mining companies of this fact, and has asked them to voluntarily avoid using this mechanism, because on the contrary he will not be able to sustain the government position against royalties. The Consejo Minero, an institution which groups the large mining companies, has responded with a bristling attack on the Minister, remembering him that the mechanism they are using is perfectly legal, which is of course true, as is the fact that they are abusing it (Cenda 2003a).

### **The real privilege of mining corporations that operate in Chile: We give them our raw materials for free!**

As seen above, large mining companies are able to use accounting tricks to elude normal taxation on profits, that are not available to regular corporations in Chile, and in this sense they constitute a privileged segment in relation to the latter. Nevertheless, the importance of this significant privilege pales when compared with the enormous advantage mining companies have in relation to other firms in Chile, in the sense that they do not pay for the land they use nor, and far more important, for their raw materials, that is, the mining ores that lie in the underground; these, a property of the Chil-

ean state, are delivered to the mining companies at practically zero cost<sup>67</sup>.

If any normal business wants to establish itself in any economic sector not associated with natural resources, it will have to pay for all of the factors of production, including ground rent for the land it occupies, and of course, it will pay in full for its raw materials. If the business needs to be installed on a very valuable piece of land, it will have to pay a high rent to its rightful owner for using the same, or buy it from him at a high price, and the finer the quality of its raw materials, the higher their price will be. Not in the case of corporations exploiting Chilean mines: under the current Chilean mining policy, they are entitled to use the finest raw materials on earth with no limitations and at practically zero cost, because we, the Chilean state, rightful owner of such prime raw materials, will not charge them practically nothing for them.

In this sense, there is a huge subsidy from the Chilean State in favour of firms working with natural resources, and in no other case is this so relevant as in the case of copper mines. In all cases, this subsidy stems out of the fact that the neo-liberal inspired Chilean legislation assumes that there is no difference among economic sectors, disregarding the fact some of them use scarce and in some cases deplete natural resources that generate ground rent.

The origin of this subsidy<sup>68</sup> is the reform of the mining legislation enacted by the Pinochet dictatorship, in 1981,

<sup>67</sup> In fact they pay a token royalty, called *Patente Minera* that is so low that it even allows unscrupulous traders of these rights declare in their favour and rigorously pay mining patents for areas that have no mining use what so ever, everywhere around the country, even in the urban area of Santiago; just to use those rights to hold the legitimate owners of the surface of the same areas, ransom in case they want to sell or develop the affected areas; for the whole of the country, all charges for *patentes mineras*, both for exploration and for exploitation, added up to US\$ 18.6 million dollars a year (1997/98).

<sup>68</sup> It is said that when the present legislation was drafted in 1981, one of Pinochet's ministers involved argued in favour of establishing a royalty—as sound economic theory dictates—but he was out argued by the finance minister of the time, who favoured »giving up ground rent for the time being« in grounds that the country was in the midst of a financial crisis and desperate for foreign investment at that time.

Mining companies do not pay for the land they use nor for their raw materials.



that remains unchanged up to this day. Through this reform, the Chilean state offered private investors the possibility of indefinite leases over mining districts, even though the property of the same remains »inalienably« in the hands of the Chilean state, according to original 1971 nationalization act, maintained into the present constitution, dictated by Pinochet in 1981. The resulting investment conditions, despite being unreasonably favourable as they later proved to be, did not produce the expected results, not until the dictatorship ended in 1989. Up to that time, there was only one large private project in development, Escondida and CODELCO accounted for all production in the large-scale segment. When the dictatorship ended, foreign investment came in in large quantities, and one third of it went into mining<sup>69</sup>. As a result, today CODELCO has reduced its share to one third of the total, while large private mining companies, most of them foreign, hold the other two thirds of the total. Medium and small Chilean producers<sup>70</sup> who accounted almost 7% of the total back and sold through ENAMI, another state company, are now reduced to less than 2% of the total.

### What should be done?

As it is well known, states usually charge royalties and use a whole set of mechanisms in order to capture the ground rent associated with their natural resources. Almost every mining country in the world, with the notable exception of Chile, charges royalties and/or other taxes and other charges or use other mechanisms to capture ground rent associated with mining resources.

US and Canadian states, for example, charge a varied array of royalties and tax over-charges to mining companies. Norway, among others, is frequently cited as a classic example of

<sup>69</sup> Total foreign investment in Chile from 1974 up to 2002 adds up to US\$ 51,959 million dollars, of which US\$ 18,076 have gone into mining. Of that total only US\$ 8,406 million dollars (4,206 into mining) in flowed before 1993 (Cochilco 2003).

<sup>70</sup> That is, companies that are really small and medium, not the giant and large, mostly foreign, mining companies that have been listed as »medium« for tax avoidance purposes,

a small country that has devised flexible and effective mechanisms to capture most of the ground rent associated with its underwater petroleum resources. It has used a combination of royalties on overall sales, over taxes on profits, discriminative auctioning of mining districts, state controls over production, technology, transfer prices and other factors, plus the creation of a large state company to exploit a relevant part of the resources. Recently (2003) South Africa has established royalty payments for most of its mining resources, with a variable scale is topped by 8% royalty over gross sales in the case of diamonds; copper mining will be subject of a 2% royalty over gross sales.

In the case of Chile, several studies have suggested that a basic set of ground rent capturing charges and mechanisms should be established in the case of copper. This set should include at least a generalized royalty over gross sales to capture differential ground rent in relation to world market, profit tax surcharges to capture differential ground rent within the country, auctioning of mining districts, increased state authority over production levels, transfer prices and others, forced refinement in the country etc. (Figueroa 1998).

### CODELCO, the only effective way up to now to capture some of the Copper Ground Rent for Chile

However important royalties and other special tax schemes designed for ground rent capturing, regulations and other measures may become, the Chilean experience indicates this, the most effective way small states have to make sure they will enjoy at least in part the ground rent of their natural resources, is to exploit these themselves. The state owned copper giant CODELCO<sup>71</sup> has, up to now, been the only effective way the Chilean state has devised to capture ground rent out of its copper reserves.

CODELCO was created in the early 1970s out of the fusion of four large US

<sup>71</sup> CODELCO stands for »Corporación del Cobre«.

Almost every mining country in the world, with the notable exception of Chile, charges royalties and/or other taxes.



mining companies that respectively operated four large mines — Chuquicamata, El Salvador, Andina and El Teniente. Two of these mines, Chuquicamata and El Teniente, were the two largest mines in the world at the time, the latter underground. They were nationalized by the Chilean state in 1971 under President Salvador Allende.

CODELCO has been hugely important as a source of revenue for the Chilean state. During almost two decades, from the early 1970s on and up to 1989, CODELCO was practically the sole large mining operation in Chile. During that period it practically doubled its output, surpassing one million tons of pure copper a year.

CODELCO has consistently paid a 10% royalty and a 17% over-tax on profits during almost 30 years. In addition, it has transferred most of the remaining profits to the state, and still it has retained capacity to grow and practically double its size over 30 years. Even if its costs are evidently higher than the newer, more efficient mines opened by the large private companies during the 1990s.

### Who will hang the bell on the Puma?

As mentioned above, the losses already incurred in Chile due to the present, permissive, neo-liberal inspired, mining policy have been huge. The established producers, CODELCO in the first place, and BHP Billiton and other large producers are most affected. As the five large world copper mining companies already have a significant stake in Chile, all of them stand to lose in the long run, if the present situation is not changed.

Who benefits from the present situation? Mining companies would most surely like to continue enjoying all the tax loopholes and subsidies they presently have, as well as free raw materials, but such a view is no doubt shortsighted on their part. World copper consumers would benefit as the price of their raw material continues its free fall — and some say that some of the large producers are also large consumers — and, of course, newcomers into the Chilean copper industry who do not belong to the present club of Chil-

ean producers. But they seem improbable pressure groups within Chile, vis-à-vis the large and powerful constituency of those negatively affected by the present situation, including the large established producers.

In conclusion, it would seem that there is no objective reason to maintain the present situation. Why then did the Chilean authorities, mining companies, mainstream economists, corporate lobbyists, specialized press and practically everybody in power of some sort in Chile, until recently obstinately deny the problem and adamantly oppose any changes in the present mining legislation? The answer to this question is not easy or straightforward. Who in Argentina could rationally explain, for example, the insistence of just about everybody in power, up to the bitter and catastrophic end in 2002, on supporting neo-liberal gurus and recipes such as Minister Domingo Cavallo and the one-to-one peso to dollar peg? In the end, obviously, no one benefited in Argentina from the resulting economic and political chaos. But, nonetheless, for a long time no one was able to »hang the bell on the puma«, as the old Latin American peasant saying went.

It seems that a continued campaign to win over Chilean and international public opinion, with regard to the necessity of a change in mining policy, should today be high up on the agenda of everybody who is aware of this problem in the context of the Chilean development agenda. Thus, the matter of defending the ground rent of natural resources has once again moved to the centre of the political debate in Chile, as it has been the case during most of the past century and a half.

### Conclusions

It is well known, that the historical evolution of corporate social responsibility — and the regulations that enforce it — built one of the building blocks of the modern social contract in advanced countries. In fact, it is no less than the foundation of the capacity of the modern leading social class to exest its hegemony by consent rather than by force. On the other hand, the presence, influence and behaviour of the international corporations in less developed countries — where tradition-

Defending the ground rent of natural resources has once again moved to the centre of the political debate in Chile.

al socio-economic structures and less developed political systems have still not reached the historical development required for enforcing modern corporate regulatory systems — have written no smaller part of their - not precisely socially responsible - saga, over the last two centuries.

Re-orientating the CSR concept through the enhancement of the basic consideration that the first responsibility of corporations — particularly foreign corporations operating in less developed countries — is non other than paying their taxes as they are expected to should strengthen the possibility that the movement in favour of international CSR will perhaps become an interesting development towards the improvement and international extension of the modern social contract.

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## Declaration of the Tax Justice Network

### Tax Justice Network

#### Part 1. »Only the little people pay taxes...«

1. Large corporations and wealthy individuals are increasingly avoiding their obligation to contribute to society through taxation. With the aid of governments, they are shifting the tax burden further onto ordinary citizens and smaller businesses. Governments claim that revenues are too low to achieve social justice through decent public goods and services; privatisation and cuts in social expenditure are presented as the only solutions. Instead, we argue for tax justice: to restore the ability to tax the wealthy beneficiaries of globalisation.
2. Tax avoidance now occurs on a massive global scale. Assets held offshore, beyond the reach of effective taxation, are already estimated to equal one-third of total global assets.
3. Around half of all world trade appears to pass through tax haven jurisdictions, as corporations shift profits to where they can avoid tax. Networks of banks, lawyers and accountants create complex and secret financial structures, reducing transparency and enabling tax evasion. Claims of corporate social responsibility are undermined when low corporate tax payments are exposed. Such behaviour is economically inefficient, socially destructive, and profoundly unethical.
4. Developing countries are estimated to lose revenues greater than annual aid flows. An increased return of just

half a per cent on global assets held offshore could yield sufficient revenue to finance the UN Development Goals for 2015, halving global poverty. Instead, such development is under threat from the huge tax breaks offered to attract large corporations, and from the vast outflow of funds from developing countries to tax havens.

5. These trends threaten democracy and development. A process of tax competition at the global level undermines the social contract previously set within the national arena, as states compete to offer tax exemptions to capital. Tax havens grow more numerous, the world's richest financial centres get even richer, taxes paid by large corporations fall, and ordinary citizens bear the cost. We call upon all concerned to meet this challenge, by building global and national campaigns for tax justice.

#### Part 2. A manifesto for tax justice

6. It is vital to act now, before the process of tax competition becomes even more established in the world economy. Our aims are to achieve the following:
  - to eliminate cross-border tax evasion and limit the scope for tax avoidance, so that large corporations and wealthy individuals pay tax in line with their ability to do so;
  - increase citizens' influence in the democratic control of taxation, and restrict the power of capital

- to dictate tax policy solely in its own interest;
- restore similar tax treatment of different forms of income, and reverse the shifting of the tax burden onto ordinary citizens;
  - remove the tax and secrecy incentives that encourage the outward flow of investment capital from countries most in need of economic development;
  - prevent the further privatisation and degradation of public services.
7. There are of course concerns, reservations, and difficulties in working towards such aims. However, with sufficient research, democratic dialogue, and a fair distribution of the benefits of progress on this issue, we believe that such problems can be overcome. For example: Financial secrecy and lack of information currently inhibit the research required to establish the true picture in many states. Proposals for reform will evolve in line with the results of future research. We recognise that some small island economies and certain less developed countries are heavily dependent on harmful tax practices arising from tax competition, and that such economies may suffer significant reductions in investment and economic growth. To the extent that these factors impact negatively on the general population in such countries, we propose multilateral support to assist with restructuring. Wealthy vested interests will oppose progress, but we entirely reject the economic arguments by which tax exemptions for the rich are presented as beneficial to us all. Experience demonstrates that tax cuts usually lead to increasing inequalities between rich and poor. Increases in government revenue may only deliver progress for ordinary citizens where broader society is democratically engaged in spending decisions.
8. The reasonable privacy of citizens must be distinguished from regimes of financial secrecy, from which only the wealthy and the dishonest benefit at substantial cost to the majority. Taking into account the concerns expressed above, we demand an immediate end to all regimes of financial secrecy, in every territory and state, in favour of open, honest and accessible publication of information as detailed in annex 1. This will:
- increase the data available to authorities,
  - researchers and policy-makers;
  - discourage corrupt capital flight;
  - expose criminal fortunes;
  - increase current global tax revenues.
9. In the past decade, efforts to tackle harmful tax practices have frequently consisted of attacks by industrialised countries on smaller tax haven economies. Such initiatives have not fully recognised that tax competition is also deeply embedded within the financial structure of the industrialised countries themselves, and therefore we look beyond the narrow concerns of industrialised governments. We propose the immediate initiation of a democratic global forum, to consist of representatives from governments and from citizens' groups across the world. We call for improved international tax co-operation and widespread debate on these issues, in particular to consider the appropriateness of policies such as those detailed in annex 2.
10. We propose that as citizens and as social movements from around the world, we intervene wherever and however we can, to promote awareness and debate of these issues, and to develop practical solutions. Our active participation is essential to fight for global tax justice.

## Annex 1: Immediate Measures

### Proposed

- (i) Public Disclosure of the following information, in all states and territories: all tax laws and treaties; detailed national statistics for financial services activity and public accounts data; audited accounts for all significant business entities and trusts, specifically disclosing turnover and tax paid with a breakdown for each entity and in each territory or tax jurisdiction, and other improvements to disclosure; beneficial ownership of all business entities, trusts, bank

- and investment accounts, property, and any other form of asset.
- (ii) Development of comprehensive and automatic information exchange between all tax authorities: to facilitate both assessment and collection of taxes, including imposing obligations on states to obtain information from financial institutions, lawyers, accountants, auditors, and other relevant intermediaries.
  - (iii) The provision of funding: for substantial research into the extent of, the effects of, and solutions to, tax competition, tax havens, cross-border tax evasion, and tax avoidance by wealthy individuals and large corporations; for representatives from citizens' groups and developing countries to engage in this debate with sufficient expertise to promote their interests in this process.
  - (iv) The initiation of a democratic global forum: to consist of representatives from governments and from citizens' groups across the world; to improve co-operation, to encourage debate, and to increase citizens' influence in the democratic control of taxation.

## **Annex 2: Additional measures to be urgently considered for improved international tax co-operation**

- (i) Taxation of transnational corporations on the unitary basis, allowing tax authorities to effectively reverse the false shifting of profits to low-tax jurisdictions.
- (ii) Universal application of the residency principle for corporate taxation.
- (iii) States at comparable levels of economic development, and states geographically close to each other, should co-operate to eliminate destructive effects of tax competition between themselves.
- (iv) Harmonisation of tax rates and tax bases for highly mobile capital such as that controlled by large corporations and wealthy individuals.
- (v) The possibilities for establishing regional and global tax authorities that can represent the interests of citizens.

21.3.2003



## The »Publish What You Pay« Campaign

Henry Parham<sup>72</sup>

### Introduction

Publish What You Pay is an international appeal for financial transparency and corporate accountability in the oil, gas and mining industries. In this presentation, I will discuss why the lack of financial transparency in the extractive industries is an underlying problem in resource-rich developing countries, which if not addressed will pose an enormous obstacle to efforts aiming to enhance human security, sustainable development, economic growth and poverty alleviation in these places. Most importantly, in providing an outline of this campaign, I will articulate specific recommendations and actions that should be taken by the international community to tackle the important issue of the lack of transparency over payments made by corporations to these countries. The Publish What You Pay campaign is not directly linked to international efforts to improve human security. However, transparency and good governance are an essential condition for a more prosperous and stable political, economic and social environment in resource-rich developing countries in which human security could and should be promoted.

Foreign investment in the oil, gas and mining industries is a significant source of revenue for governments of over 50 developing countries. The combined population of these countries amounts to approximately 3.5 billion people, of which 1.5 billion represent over two-thirds of the world's poorest people. These citizens should be benefiting from the financial windfall of natural resource extraction. However, it is a sad fact that natural resource wealth has not translated into economic wealth and prosperity for many of these countries. Instead, it has plunged millions of people into poverty, thrown economies into crisis, and drawn many communities into conflict. This trend has come to be known as the »paradox

of plenty« and in some cases the »resource curse«.

With investments in the extractive industries of developing countries set to escalate over the course of the coming decades, the importance of transparent and accountable management of natural resource revenues injected into these poor countries will become even more critical, which will have implications on human security. As industrialised countries search for more secure and plentiful sources for energy, such as the Gulf of Guinea in West Africa where there is an unprecedented oil boom, the international community has two choices. The first is to implement immediate and enforceable measures to ensure that revenues from the extractive industries are used for human and economic development. The second is to not act effectively and thereby watch as the political, economic and social conditions deteriorate in these countries, exacerbating poverty, threatening human security and endangering existing and future investments.

### The importance of transparency

Transparency in the extractive industries is in the enlightened self-interests of all concerned. It is about building trust between companies, governments and citizens for long-term gains. There is a very clear moral case for citizens of resource-rich-but-poor countries to have access to information on company payments. This will allow them to lobby for a democratic debate over revenue management, which is necessary in order to hold governments accountable for revenues received. Without payments transparency, companies can be perceived to be complicit in worsening corruption and social conditions even though they are conducting legitimate business transactions with these governments.

At present there are no feasible means to know precisely the amount of revenues provided by extractive companies to producer countries in the developing world. Transnational corporations that are registered in the North are not required by law to provide a country-by-country breakdown of pay-

A significant source of revenue for governments of over 50 developing countries.

<sup>72</sup> Henry Parham is the Coordinator of the »Publish What You Pay«-Campaign.

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The corrupt are protected by deficient budgetary transparency.

ments made, nor do host-governments in the south require disclosure of all the companies operating in their territory. Indeed, information on the natural resource sectors is often a state secret where contract sanctity is upheld at all costs. Whilst companies should not tell governments what to do with the revenues they provide, they should make available payments information that is routinely disclosed in the North, especially when there are so many millions of people dependent on the proper management of these revenues for their welfare.

In not being transparent about their financial dealings with the government, companies shore up corruption and poverty in the developing countries where they operate. International Financial Institutions, (e.g. World Bank, IMF and other lending agencies) have a similar impact when they provide crucial financing and loans for extractive industry investments and projects without enforcing adequate disclosure of payment and revenue information. Civil society, therefore, has no chance to monitor its government's handling of the income made from its country's natural resources. Other international bodies such as the UN, EU and G8 have not done enough to prevent the corruption and mismanagement that is bad for development and human security.

Nigeria, sub-Saharan Africa's largest oil producer, is a classic illustration of the »paradox of plenty«. Rich in proven resources (approximately 30 billion barrels of oil) and having earned an estimated US\$340 billion over the past 40 years, Nigeria's oil exports ranks only behind Saudi Arabia, Venezuela, Iran and United Arab Emirates. Oil dependence account for over 83% of federal government revenue, more than 95% of export earnings, and approximately 40% of GDP. Yet, oil wealth has done little to change the situation of the poor. More than 70% of Nigerians live on less than one dollar per day, 43% lack sanitation and clean water, and infant mortality is among the highest in the world.

The situation in Nigeria, and in many other African countries, shows that governments that are highly dependent on natural resource revenues

for income, combined with the lack of infrastructure and fundamental poor governance, may allow revenues to be embezzled for private gain by ruling elites to the detriment of human and economic development efforts. The corrupt are protected by deficient budgetary transparency, the lack of capacity of civil society to monitor income and expenditure, and in many cases, by the absence of democratic space. The revenues that companies provide can therefore be misappropriated and any benefits for the people as a whole are lost, causing mass resentment of the companies operating in those territories in the eyes of the local populations. This all amounts to an increasingly pressing call for companies to »publish what you pay« and for governments to »publish what you earn«.

### The objectives of the PWYP-campaign

The Publish What You Pay campaign, backed by a world-wide coalition of NGOs, civil society organisations and financier George Soros, was launched in 2002 with a call to extractive companies to disclose the net amount of payments (taxes, fees, royalties and other transactions) made to national governments on a disaggregated basis for all countries of operation. The goals of the campaign are in line with and a stepping-stone towards internationally agreed objectives of promoting accountable government, corporate social responsibility, a democratic debate over resource management, and energy security through a more sustainable operating environment.

The PWYP coalition advocates a regulatory approach to implementing company payments transparency and for a global and comprehensive framework incorporating a package of mandatory solutions. Previous and existing voluntary efforts by the industry to address revenue mismanagement from the extractive industries have been inadequate and have not reversed the negative effects of the paradox of plenty in all countries where it has been felt. Moreover, unilateral disclosure by companies on a voluntary basis is not a workable option. It will not provide information about total govern-

The PWYP coalition advocates a regulatory approach to implementing company payments transparency.

ment revenues from extractive industries. Moreover, unilateral action may be a risk to companies if their competitors do not follow suit and then potentially use the published information to undermine them. BP was threatened when the company announced that it would publish what it paid to the Angolan government in 2001. Publish What You Pay is not out to threaten business interests, rather to push for a level playing field for payments disclosures that would be one of the first and most important steps in bringing about positive change in all resource-rich but poor countries.

#### **Specific mandatory mechanisms that NGO coalition advocates include:**

**Disclosure rules for securities markets,** which is a simple and effective solution. Companies wishing to have their securities admitted to trading on financial markets need to provide information about their activities in a prospectus and then are obliged to report regularly about the company's financial position. Disclosure rules would override confidentiality clauses in contracts and they would have a wider application than company law since many international companies are quoted on a number of securities markets beyond those in which they are incorporated. The Publish What You Pay campaign coalitions in the US and EU are actively lobbying to incorporate provisions for payments disclosure into legislation currently under consideration that could include amendments requiring disclosure into the rules for companies listed on stock exchanges.

**Disclosure requirements in International Accounting Standards.** The standards are a set of reporting requirements for companies adopted by thirty countries. From 2005 all listed companies in the enlarged EU and Australia will report under the standards and in the longer term they are emerging globally accepted set of standards. Changes to the reporting requirements of the standards could be made through a binding Statement of Recommended Practice for Extractive Industries to include provision for tax and other payments broken down by country. The key advantage of this mechanism is the comparability of data and the timely reporting of audited data. As a mandatory requirement by home

governments, changes to the International Accounting Standards could override any confidentiality clauses.

**Export Credit Agencies** extending support to companies should require disclosure of payments as a condition of that support. A statement of business principles is already a feature of some export credit agencies. These should be amended to bring in detailed guidelines about transparency disclosure expectations.

**International Financial Institutions and donor countries** should make transparency in the extractives sector a condition of their support, where such transparency is critical to achieving poverty alleviation and sustainable growth. This would operate at the overall country assistance level and should be specific to projects in the extractive industries. If all IFIs, regional banks and donors were to implement this option, and if donors were to agree to abide by the provisions themselves, most countries would be covered.

**Oil-backed loans from banks.** The international banking industry should require transparency of revenues from extractive industries as a condition for all oil-backed loans to developing countries, particularly those loans secured by future resource revenues (and especially with regards to mortgaging of future oil revenues). Oil-backed loans from banks have, at best, undermined the work of multilateral institutions like the IMF in countries like Angola; At worst, they may have provided a whole set of parallel financing, outside of public scrutiny, for the operations of the shadow state, providing lucrative opportunities for cash diversion. Although banks can be sure of the return of their capital with high interest rates because such loans are serviced and insured by a pre-allocated share of future resource extraction, they risk rendering themselves complicit in the misappropriation of state funds if provisions to check actual loan disbursement and assure fiscal transparency are not implemented.

Finally, a **host country** should adopt best practice in transparency and require all companies operating in its territory to disclose information about payments and should at the same time declare the amounts of revenue that it receives from the extractives sector. Where contracts

contain confidentiality clauses host governments should provide their consent for the disclosure of data needed for compliance. This arrangement would ensure that all parties to any given contract were bound by the same requirements, but would only work in countries committed to this level of transparency.

The Publish What You Pay campaign has grown steadily with the increased support of NGOs and civil society organisations. The over 170 coalition members of NGOs come from over 43 countries world-wide, representing every continent with the majority of organisations being from developing countries. The issue has also captured the attention of companies, governments, international institutions and investors. As such, recognition of the campaign has been in the spotlight more as an anti-corruption and pro-corporate accountability movement, and less on issues of human security. However, recently a UN Experts Panel Report on the Democratic Republic of Congo recognised that human security and transparency of company payments in resource-rich countries are related, and in their recommendations the Panel stated that »Publish What You Pay« should be implemented. Transparency would significantly strengthen the building blocks of peace and human security in the post-war period in the country through the more responsible management of resource revenues.

### The response of Governments

A significant turning point in the international community's response to Publish What You Pay was at the G8 Evian summit this year with the release of a »Declaration on Fighting Corruption and Improving Transparency« that included its first specific statement on the importance of transparency of natural resource revenues. Publish What You Pay welcomed this statement, which set out the urgent need to provide for the disclosure of payments made by extractive companies, and for revenues received by governments in the oil, mining and gas sector world-wide. The G8 commitment is an important first step; however, as discussed, the voluntary approach to disclosure is weak - revenue transparen-

cy will not be delivered everywhere it is most needed. Moreover, the G8 also committed to the aggregation of payment information, which masks individual revenue flows from public scrutiny. Companies individually disclose their payments to the G8 governments. Aggregating the information in developing countries would set unnecessarily different standards for the North and South.

A recent statement by a group of 38 European and American institutional investors has also given full support for transparency of company payments and government revenues, stating: »[The lack of transparency] is a significant business risk, making companies vulnerable to accusations of complicity in corrupt behaviour, impairing their local and global »license to operate«, rendering them vulnerable to local conflict and insecurity, and possibly compromising their long-term commercial prospects in these markets.« The investment community is playing an increasingly important role in this issue, which is evidenced by their participation in the UK-led Extractive Industries Transparency Initiative (EITI) and the pressure some are putting on their company clients to implement payments disclosure. The PWYP coalition will be continuing to closely engage with investors in maintaining pressure on companies and working towards investment in the extractive industries being a source for growth and development.

The companies themselves have had varying reactions to Publish What You Pay. The more supportive companies on this issue, mostly European based transnationals AngloAmerican, BP, Norsk Hydro, and Shell, support the objectives of the campaign, but have not specifically given their support for mandatory solutions. Though at a recent European Parliament hearing of the Development Committee, Shell signalled its support for mandatory disclosure so long as a level playing field was guaranteed for all company payments disclosures and that their competitive advantage was not threatened. Other major international companies, particularly American ones, have been less progressive. Whilst they have given some broad public support, there has

Transparency would significantly strengthen the building blocks of peace and human security.

Shell signalled its support for mandatory disclosure so long as a level playing field was guaranteed.



been a general emphasis on voluntary endeavours led solely by host-governments and aggregation of information at country levels.

The response of governments to Publish What You Pay is best exemplified by way of the Extractive Industries Transparency Initiative. The EITI was the creation of the UK Government in response to the launch of Publish What You Pay. The UK government is especially supportive of the campaign and continues to work closely with the coalition in developing this initiative. The EITI brings together international stakeholders (governments, companies, NGOs and international organisations) to work towards implementing a practical and consistent approach to achieving payments and revenues transparency. The voluntary initiative, personally backed by Prime Minister Tony Blair, has held international meetings in 2003 to develop a common statement of principles and agreed actions for all parties involved. Reporting guidelines for companies and governments have also been developed, with one standard for the oil/gas sector and another for the mining sector. The initiative has broad support from all stakeholders and is undergoing further work led by the Department for International Development (DFID) in London.

The initiative has pledged to consider both voluntary and mandatory measures to delivering its objective. However, at present there is no indication that the process will head down the latter track. At the high-level stakeholder conference in June 2003, it was agreed that a few individual countries would pilot the EITI, including Azerbaijan, East Timor, Ghana, Nigeria, Sierra Leone and Trinidad & Tobago but there is no indication of these being applied in all countries where transparency is needed.

The EITI is the most encouraging response by the international community so far to the problems of revenue transparency and accountability of extractive corporations in developing countries. However, it is currently weak because it is not bound by any timeframe and relies on being a voluntary process, which means that there are no guarantees firmly established to ensure its success or that all stake-

holders who should be involved will be, for example state-owned corporations. It has also been proposed to pool together company payments information at national levels, thereby denying the right of local citizens to disaggregated company payments disclosures. Moreover, diplomatic and business will for the EITI to succeed in Germany and the US has been seriously lacking. The EITI is moving along slowly with some doors having been successfully opened in some places, namely Nigeria where President Obasanjo recently publicly declared here in Berlin that he was resolutely committed to it and to Publish What You Pay. But moving piece by piece and waiting for its progress will most likely not get the payments published everywhere we need them to be, nor in any reasonable short time frame.

Publish What You Pay is calling for more significant political and business will to be invested into the EITI process to make it succeed, considering its good potential. Mandatory solutions should be part of the EITI's proposed way forward in helping to shape the system for payments and revenues disclosures at national levels, incorporating the policy recommendations stated above.

Transnationals, including industry giants BP, ChevronTexaco, ExxonMobil, Shell and Total, have substantial operations in the developing world and should be proactively working in line with the objectives of PWYP and the EITI, which would significantly enhance efforts to secure operations and investments in the longer term. All too often these transnationals become targets for communities that see little benefit from oil revenue and then in some cases resort to actions that raise serious security concerns for their personnel and for local populations. As financial transparency will contribute to greater corporate accountability in developing countries, it will thereby shift the focus of civil society to calling their governments to be responsible for revenues made from extractive companies' operations and their use for economic and human development. So as vital business operations try to sustain themselves in highly volatile and increasingly dangerous places, the busi-

Mandatory solutions should be part of the EITI's.

The EITI is currently weak because it is not bound by any timeframe and relies on being a voluntary process.



ness community needs to react to protect their vested interests.

Publish What You Pay is not a fix all solution but crucial first step. Revenue transparency is not going to happen overnight but it has to be pursued with a sense of urgency by the international community. The key questions concern the methods, mechanisms and commitment that will generate real and rapid progress for the millions of people who continue to unnecessarily suffer in these resource-rich-but-poor countries. International efforts to alleviate poverty, combat corruption, improve corporate and government ac-

countability, and enhance global energy security will be hampered by the lack of revenue transparency in the extractive industries. So too may human security endeavours be adversely affected in these places. Some voluntary efforts may work in some places and this will be welcomed. But the mandatory, comprehensive and rapidly delivered approaches proposed by the Publish What You Pay coalition are needed to ensure that there is a level playing field for companies and that transparency reaches those countries most in need of change.

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## Part 4: Conclusion

### Promoting Corporate Social Responsibility through Multistakeholder Initiatives: Limits, Risks and Alternatives

Peter Utting<sup>73</sup>

#### Introduction

When I refer to Corporate Social Responsibility (CSR) I will refer to a particular set of business and regulatory practices and a particular discourse that gained ground in the build up to and after the Earth Summit in 1992, when global corporations began talking more seriously about the need to adopt so-called »voluntary initiatives« to improve their environmental management systems (EMS), occupational health and safety (OHS), as well as their human rights record and community and stakeholder relations.

CSR is often dismissed as PR, window-dressing or »greenwash«. Yes, there is a lot of this going on but CSR also has a certain momentum, content and proactivity that makes it more than defensive posturing and disinformation. We also see that it is becoming institutionalised within select corporations, as well as through the business school curriculum, the growing industry of CSR advisors and consultants, and NGOs and multistakeholder initiatives involved in CSR standard-setting, monitoring, reporting and certification.

Our main concern with CSR is that it constitutes a very narrow agenda, dealing with very specific issues, and that largely ignores some of the fundamental determinants of underdevelopment and human insecurity with which TNCs are associated.

This we have seen clearly in the developing countries where UNRISD has

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been conducting research on CSR. In all seven countries (Brazil, Chile, India, Mexico, Peru, the Philippines and South Africa) there is an emerging or vibrant CSR agenda in place, yet major development issues to do with the social effects of sub-contracting, unethical marketing practices, tax avoidance, unsustainable investment patterns, corporate lobbying for socially and environmentally regressive policies, and issues of corporate economic power in developing country markets are not seriously addressed.

But I have been asked not to talk about CSR in general but about a new set of regulatory arrangements to promote CSR. These are sometimes called multistakeholder initiatives (MSIs). They are part of a broader regulatory trend associated with »co-regulation«.

MSIs are initiatives where business associations and corporations collaborate with NGOs, government and multilateral organisations to design and implement different schemes that focus on improving the social and environmental performance of companies.

These schemes involve a combination of activities, for example, standard-setting; monitoring compliance with standards; company reporting on economic, social and environmental aspects; promoting multistakeholder consultations and dialogue on best practice; and auditing and certification.

They include:

- certification schemes like ISO14001, SA8000, the Forest Stewardship Council (FSC) and the Marine Stewardship Council;
- schemes like the Global Reporting Initiative (GRI) that promote company »triple bottom line« reporting;

CSR is often dismissed as PR, window-dressing or »greenwash«.

- initiatives like the Ethical Trading Initiative (ETI) and the U.N. Global Compact that focus heavily on dialogue and learning about best practices;
- schemes that address more specifically the issue of sweatshops in the apparel and footwear industries: Fair Labor Association (FLA), Worker Rights Consortium (WRC), Worldwide Responsible Apparel Production (WRAP), Global Alliance for Workers and Communities, and the Clean Clothes Campaign (CCC);
- and agreements between international trade (union) secretariats and TNCs, known as Global Framework Agreements, where a TNC agrees to uphold certain negotiated standards and practices throughout its global structure. For example, the International Union of Food and Allied Workers (IUF) has such agreements with Chiquita, Danone, and Carrefour.

In the following I will

- situate the emergence of MSIs in their recent historical context,
- identify some of the advantages of MSIs,
- identify some of the problems and tensions associated with MSIs
- and end with a reflection of where we might be headed in terms of the regulation of TNCs.

### The Context

Before getting into the pros and cons of MSI it is important to step back and look at the bigger picture of what has been happening in relation to CSR and corporate regulation in the context of globalisation and neo-liberalism.

MSIs represent a new development which is part and parcel of a bigger shift that is taking place towards what can be called »co-regulation« or »civil regulation« or »non-governmental regulation«, i.e. where business is regulated not by legalistic forms of government or international regulation, and not through »corporate self regulation«, but through multistakeholder institutions. These are often organised under the formal structure of a non-governmental or multilateral organisation but involve some combination of

business, NGOs, trade unions, governmental and multilateral organisations in their governance structures.

This represents a significant change from the 1960s and 1970s when many academics, activists and Third World governments regarded TNCs and foreign direct investment as the economic tentacles of the rich nations, which needed to be controlled. Many political parties, parts of the UN and trade unions supported tougher national and international regulations, and there was much talk about the need for a New International Economic Order.

This was the era that:

- generated support for international codes on the marketing of baby food and pesticides;
- began to consider a UN code of conduct on TNCs;
- and generated the OECD Guidelines and ILO Principles on Multinational Enterprises.

Things changed fairly dramatically in the 1980s and 1990s as developing country governments sought to benefit from FDI and technology transfer, and as the ideology and policies of neoliberalism spread. This new approach promoted the down-sizing of the state and de-regulation, particularly in relation to international trade and investment and labour markets.

In the build up to both the Earth Summit in 1992 and the World Social Summit in 1995, there was growing concern that globalisation was altering the structure of rights and obligations in a way that benefited TNCs unfairly. TNCs were being granted increasing benefits and rights without having to assume commensurate responsibilities and obligations.

The solution proposed by a powerful coalition of actors wasn't legalistic forms of government or international regulation but corporate self-regulation and voluntary initiatives to improve some social and environmental aspects of corporate performance.

This gave rise to CSR initiatives centred on

- company codes of conduct,
- company reporting on social and environmental aspects,

MSIs is part of a bigger shift towards »co-regulation« or »civil regulation«.

- voluntary improvements related to occupational health and safety and environmental
- management systems;
- community development projects,
- stakeholder consultations,
- and an increase in philanthropy.

In the late 1990s we see a reaction to corporate self regulation. There were growing accusations that corporations were engaging in glossy reporting, window-dressing or what was called »greenwash«. We see the rise of civil society activism, networks and movements centred on corporate responsibility issues, notably the so-called anti-sweatshop, anti-globalisation and environmental justice movements, and organisations supporting »rights-based development«. There emerged a sector of business concerned with addressing these issues in a more proactive way for a variety of political and economic reasons. There were new theories of management and governance that stressed the importance of stakeholder relations and dialogue; and reputation and risk management, particularly to protect valuable company brands. And there were new conditions in the global market place, in particular, new requirements to access export markets in the North, and for controlling the activities of firms that formed part of the lengthening value or supply chains of TNCs and northern retailers.

### Strengths and weaknesses of MSIs

The way in which MSIs seek to improve social and environmental standards and impacts varies considerably. There are very different approaches:

- one involves monitoring and/or certification related to policies and management
- systems - such as ISO 14001, AA1000, ETI;
- another involves certifying actual performance and impacts—FSC, SA8000, FLA;
- others focus more specifically on voluntary reporting: GRI and the Global Compact;
- others promote external or independent monitoring and dealing with spe-

cific cases of malpractice through complaints procedures: WRC, Global Framework Agreements and the Clean Clothes Campaign.

These different approaches all have their advantages and disadvantages.

When assessing MSIs the first thing we need to remember is that they are relatively new, and there isn't that much written about them. So the work we have done at UNRISD on this is very much a preliminary assessment.

### Some advantages

On the plus side we can note the following:

**First**, MSIs have attempted to impose a degree of order on what was becoming a confusing mass of codes of conduct and initiatives associated with self-regulation. In the early days of CSR, individual companies and business organizations would largely decide unilaterally what would constitute CSR, and would design their own standards and implementation procedures. This led to a proliferation of codes and an ad hoc response to CSR.

**Second**, MSIs have filled in some of the gaps that made self-regulatory initiatives weak and lack credibility. This is particularly apparent in relation to three areas:

- labour rights—i.e. not just dealing with OHS but also collective bargaining and freedom of association;
- external monitoring, as opposed to simply relying on internal monitoring or no monitoring at all; and
- extending CSR along the value chain to suppliers. Before CSR initiatives often extended only as far as core enterprises in TNC structures. Through MSIs, some TNCs are having to address the issue of management practices and standards throughout their supply chain.

Another advantage is that many of the MSIs have been proactive, as opposed to simply reacting to pressures and problems when they arise. And they have adapted in a flexible and pragmatic way to problems and criticisms, or engaged in what their proponents and practitioners like to call »learning by doing«. In fact virtually all the MSIs we have looked at have

A degree of order on what was becoming a confusing mass of codes of conduct.

MSIs can also be quite costly.

been through an important learning process. For example, the Forest Stewardship Council, was initially more concerned with environmental issues but subsequently paid greater attention to social and labour issues; the Marine Stewardship Council transformed its governance structure to dilute its relationship with Unilever; the Fair Labor Association had to tighten up on its standards, and introduced a complaints procedure; the United Nations Global Compact is now asking companies to report on their adherence to all nine principles in their annual reports, whereas before companies could pick and choose whatever principles they wanted to address; ISO, recently issued guidelines on how companies should report the fact that they have ISO certification; and the Worker Rights Consortium has complemented its more confrontational approach with the companies it was investigating to one of giving credit where credit is due.

### What are the disadvantages?

Proliferation of standards, codes and initiatives.

First, there are signs that some of the same problems of proliferation of standards, codes and initiatives that characterise corporate self regulation may be emerging with some types of MSIs. Hence in the apparel, footwear and forestry sectors we see several competing initiatives. In apparel and footwear, for example, there are FLA, WRC, WRAP, the Global Alliance and CCC, with companies like Nike participating in most of these. Recently there has been some attempt to harmonise and co-ordinate approaches. This has occurred both at the global level where various MSIs have joined the ISEAL Alliance and also at the country level where there is an attempt—in Turkey e.g.—to get several schemes to work together in a complementary way.

MSIs involve relatively few companies.

Secondly, MSIs involve relatively few companies. Probably the most extensive is ISO 14001, under which about 50,000 facilities have had their environmental management systems certified. This sounds a lot but we need to remember that there are nearly a million TNC affiliates and millions of suppliers. One of the best known MSIs is the Global Reporting Initiative, which claims that 313 companies now use some of its guidelines when reporting

on social and environmental aspects, and 15 use them more systematically. There are, however, 64,000 TNCs.

Third, there is the question of cost, which has various dimensions. Companies may be more reluctant to participate in times of economic downturn. The types of CSR initiatives promoted by MSIs can also be quite costly, particularly for SMEs in developing countries. Who pays the costs when suppliers are told by TNCs to raise standards? TNCs and large northern retailers have often adopted what has been called a policing approach, i.e. telling suppliers to raise standards or run the risk of having their contracts terminated. Some of the MSIs, particularly the CCC, have been promoting the principle of »shared responsibility«, insisting that TNCs assume some of the costs and not simply dictate to SMEs that they need to raise standards. The issue of costs is also an internal one. Within the corporation who pays? Are the costs of reporting, which can amount to several hundred thousand dollars for large corporations, covered by corporate headquarters or the affiliate. And which department pays? In the course of our work we visited a mine in South Africa. The environmental officer there was concerned about his company's attention to reporting, saying that reporting absorbed a lot of his time and budget, and there was less money available to actually get on with the job of improving environmental conditions in the mines.

Fourth, the methods and procedures promoted by MSIs are not only costly, they are also complicated. The GRI has identified 97 indicators - including 50 core indicators—that companies should report on. Certification has to address questions of pay, overtime, contractual relations, OHS, EMS, labour-management relations, gender relations, company-community relations, etc. Gathering such data requires multiple skills which conventional auditors often lack. They certainly can't get accurate information by quickly walking round a factory floor with a clipboard—and doing so on a day when the local management has made sure everything in the factory is spick and span.



A key question is can we realistically monitor the operations of giant corporations with hundreds or thousands of affiliates and suppliers, spread all around the world. Experience of MSIs shows that they often go through a long and sometimes painful pilot or experimental phase lasting several years, and scaling up these initiatives has proven difficult. There seems to be an important trade-off between quality and scale.

Those that reach more companies, like ISO14001, SA8000 and the Global Compact also have major weaknesses in term of their quality and implementation. Those that rank high on having more rigorous methods, like the CCC, WRC and Global Framework Agreements involve very few companies. This brings me to the final issue regarding the limits and risks of MSIs, which has to do with their credibility and legitimacy. Some MSIs suffer a credibility problem.

The purpose of an MSI isn't just to raise social and environmental standards, or to facilitate access to export markets, but to make sure that business is more in tune with society's concerns. As such they are political and regulatory instruments, as much as ethical, social or market instruments. And if they are to fulfil their political purpose they need to be credible.

Some MSIs have been heavily influenced—or are seen to be heavily influenced—by corporations. This is the case of the FLA, WRAP, Global Alliance, MSC and Global Compact. This isn't always the case, but the perception is there. A crucial element in this respect is the balance of stakeholder interests in the governance structure of the MSI, and the relative autonomy the initiative enjoys from business. Credibility isn't helped when the MSI concerned depends on corporate funding.

This is the case of the FLA, which does not include trade unions in its governance structure. There are then some fundamental questions about the feasibility and future of MSIs as effective institutional arrangements for regulating corporate activities. Can they be scaled up? Can their complexities and limitations be overcome? And given the very different approaches that exist, will there be some sort of con-

vergence around higher standards and implementation procedures?

## Alternative Approaches

These concerns have led us and others to consider some alternatives that are needed to complement the emphasis on extensive monitoring, reporting, auditing and certification systems, and voluntary approaches to CSR.

The first involves what can be called »complaints procedures« or complaints-based systems of regulation.

Here the focus shifts from trying to monitor, audit, certify and report on a vast range of corporate activities, to focus on specific instances of corporate malpractice and abuses of corporate power. Here the focus is on putting in place institutional arrangements that allow different stakeholders to be able to identify specific problems, and seek redress.

Numerous types of institutional arrangements can facilitate complaints procedures. Historically this has been the role of law and the courts. It has also been the role of trade unions through collective bargaining agreements, and more recently through global framework agreements. Watchdog NGOs and the media do this all the time through their naming and shaming practices that focus on a particular problem. Ombudsman institutions or parliamentary oversight committees or UN Special Rapporteurs, all hear complaints. And some MSIs, themselves, such as CCC, WRC and FLA, have also developed complaints procedures.

The second approach is summed up by the term corporate accountability. In recent years there have been a variety of proposals and campaigns calling for corporate accountability. Some refer to the existence of a corporate accountability movement (CAM). The notion of CA is quite different to CSR:

- Rather than saying companies should assume responsibility for their actions; this approach implies that companies must be held to account. The rights and freedoms of companies must be balanced not just by responsibilities but also obligations.
- Rather than seeing corporate self-regulation and voluntary approaches as a superior alternative to governmental and international regulation, the

Numerous types of institutional arrangements can facilitate complaints procedures.

Some MSIs have been heavily influenced by corporations.

CAM is calling for a new mix of voluntary and legal approaches.

- And, it is also saying that if CSR is to really work for development, then it is not enough for companies to improve some aspects of working conditions and EMS. Corporate responsibility cannot be separated from structural and macro-policy issues, such as perverse patterns of economic liberalisation, de-regulation, taxation, transfer pricing, consumption patterns, corporate power and political and policy influence.

An interesting development of the past 3 to 4 years has been the increasing number of actors, organisations and networks calling for corporate accountability. And we see numerous actions and proposals including:

- the strengthening of the OECD Guidelines;
- the proposed EU Code of Conduct;
- the recently drafted UN Norms for TNCs with regard to Human Rights;
- proposals for a multilateral corporate accountability convention or organisation;
- calls to extend the remit of the International Criminal Court to TNCs;
- the Publish What You Pay campaign;
- The International Right to Know campaign;
- The WHO's Framework Convention on Tobacco Control.

### Final Reflection

The following questions are often posed about the long-term future of corporate regulation:

Are corporate self-regulation and non-governmental systems of regulation a stop-gap or interim measure that will eventually become redundant when a system of multilateral regulatory institutions is eventually put in

place? Or are we seeing the construction of privatised or non-governmental systems of regulation that will constitute long-term alternatives, and indeed, displace legalistic forms of regulation?

The answer is not a technical one, based on the assessment of what system works better, and neither can we predict the future on the basis of current trends. The answer is fundamentally a political one. The dominant regulatory system and the mix of institutional forms, will reflect the balance of social forces or the relative strength of interests and coalitions are either resisting or supporting particular regulatory approaches.

At the moment, voluntary approaches are supported by a set of influential actors associated with business, civil society, academia, government and multilateral institutions. The considerable momentum that the CSR agenda has built up during the past decade reflects the fact that a fairly broad and influential coalition of interests has come together to support it. They include a somewhat unholy alliance of certain neo-liberal interests concerned with creating an enabling environment for TNCs, FDI, export-orientation and a minimalist role for the state, and elements of civil society that not only wanted globalisation with a human face, but had also lost faith in the regulatory role of the state, inter-governmental organisations and trade unions.

We are perhaps seeing a slight shift in the balance of forces as the limits of voluntary approaches become apparent and the role of the state and regulatory institutions is reassessed. Regulatory alternatives that include elements of law and liability are beginning to come back onto the agenda. For these reasons the discussion about the political agenda of civil society is particularly important.

Regulatory alternatives are beginning to come back onto the agenda.



## The North-South-Network

The North-South-Network is the development agency of DGB Bildungswerk, the training institute of the German Trade Union Federation (DGB). The North-South-Network is promoting human and trade union rights, international social and labour standards and sustainable economy.

Since its foundation in 1986, the North-South Network has supported the work and activities of union solidarity groups in Germany and co-operation projects with partners in the south. We organize seminars and international conferences and we publish materials on the issues of globalisation and north-south-relationship. We are active in international networks and campaigns like the European ‚Clean Clothes Campaign‘ or the international campaign against child labour.

We also support north-south exchange programs of trade unionists, like our women exchange program with South Africa and a program on health, safety and environment with Brazil.

Not without reason our main focus is on Brazil and South Africa: With more than 1,200 German companies in Brazil and about 500 in South Africa the German business has a strong presence in both countries. We also have lots of co-operation with churches, political foundations, development groups and human rights organisations.

Further information: [www.nord-sued-netz.de](http://www.nord-sued-netz.de)



## terre des hommes

terre des hommes, founded in 1967, is an aid organisation focussing on children and supporting about 350 projects in 28 countries. These include school and training projects, initiatives for street children, working children, child prostitutes and refugee children. It also runs food security and healthcare programmes.

terre des hommes helps people to liberate themselves from oppression and economic hardship. It seeks to empower them to try out their own ideas about a life lived in dignity. We do not send out field workers, preferring to promote local initiatives: With money, advice and networking facilities.

terre des hommes endeavours—through campaigns, lobbying and publicity—to influence German political and business circles in the interest of children suffering hunger, exploitation or the aftermath of war.

terre des hommes endeavours—through campaigns, lobbying and publicity—to influence decision makers in the interest of children suffering hunger, exploitation or the aftermath of war. terre des hommes action groups are groups of volunteers in 150 German towns and cities. They work on development-related issues at the local level, organising events, sitting on refugee councils and raising funds for projects. The regional offices of terre des hommes guarantee the direct contact to the partner organisations, efficient accompaniment and local co-ordination of projects.

Further information: [www.tdh.de](http://www.tdh.de)



## weed

### World Economy, Ecology & Development (WEED)

WEED was founded in 1990 to boost the advocacy in the Federal Republic of Germany of alleviating global poverty and resolving international environmental problems. WEED campaigns for a course correction in international economic and development policies that would put more emphasis on social justice and environmental sustainability. Its aim is to create more awareness in this respect and develop and implement concrete political alternatives. WEED systematically analyses global economic, environmental and socio-political issues, linking the vision of a socially equitable and environmentally sustainable society to action and policy reform.

WEED is active in the following areas:

- the international debt crises
- IMF & World Bank policies, projects and programmes
- reform and democratisation of international financial markets
- international trade and investment policy (WTO)
- corporate accountability
- international and European environment and development policy

Further information: [www.weed-online.org](http://www.weed-online.org)

