INVESTIGATING THE RELATIONSHIP BETWEEN EXTRACTIVE INDUSTRIES AND SECURITY IN CONFLICT ZONES: THE “MAGIC TRIANGLE” AS A SOLUTION FOR PEACE?

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Today, 94% of worldwide violent conflicts are intra-state wars, fought in the southern hemisphere between governments and opposing rebel and/or secessionist groups.¹ Since the end of the Cold War, and in the context of intensified globalization, some striking features of these violent conflicts, which some observers have called “new wars,” have attracted considerable attention.²

While an open confrontation between two or more states typifies conventional warfare, modern-day conflicts tend to be international or civil wars of low-intensity that involve a number of transnational connections, so that the distinctions between internal and external, aggression and repression, local and global have become difficult to ascertain. One of the most decisive aspects of new wars is the amplified role of economic factors in both causing and sustaining conflict. The end of the Cold War, with its attendant withdrawal of superpower patronage for proxy wars, has led combatants and aspiring combatants to seek out new sources of funds. The trend toward market liberalization has provided fighters with alternatives to the more traditional source of Cold War funds. In addition, while during
the twentieth century military personnel were employees of the state, wars are nowadays increasingly fought with mercenaries and people who work for security firms. Private sector funds, therefore, have also become an important source of funding for conflicts.

In order to sustain war efforts, actors embroiled in the conflict have increased competition over access to, or control of, valuable natural resources. Access to the global economy is a prerequisite for sustaining local war economies, which are rarely autarkic. As a consequence, close linkages between local conflict actors and external economic actors have developed. Therefore, it is evident that resources both finance and motivate conflict. Belligerents require local resources that they can trade on the world market to fight war: resources as a means, war fighting capability as an end. At the same time, war is fought because it allows conflict actors to exploit local resources and to profit from trading them on the world market: war as a means, resources as an end.

The private sector plays a significant and ever-growing role in contemporary violent conflicts. On the one hand, business can contribute to the outbreak of violence or to the prolongation of war by providing revenues for fighting parties. On the other hand, because war threatens citizen’s physical security and brings with it destruction and death, it has detrimental effects on the business community. Companies operating in conflict zones increasingly face pressure from customers, shareholders, the development community, and security policy-makers, compelling them to address their role in contemporary conflicts.

The literature on natural resources and conflict has identified the presence of commercially exploitable resources in developing countries as a potential cause for violent conflict. Research on the economics of war, however, neglects the interactions between weak states and multinational enterprises (MNEs). Do large mining investments operated by transnational private companies contribute to development, or do they rather fuel violence in already conflict-ridden zones? In order to answer these questions, the complex interplay of weak states,
local communities, and transnational profit-oriented corporations must be addressed.

First, the literature on resource conflicts will be reviewed, with a particular focus on the relationship between natural resources and conflict in a given territory. The behavior of extractive industries operating in conflict zones will be explained by means of a set of hypotheses concerning the impact of business on conflict dynamics. Second, two case studies that inspect the presence of extractive industries in both Nigeria and Sudan, will be used to verify whether companies have engaged in the behaviors outlined above. Finally, it will be argued that the proposed approach to security calls for a new method of intervention in contemporary conflict situations. In particular, corporations, governments, and civil society - defined here as the "magic triangle" - need to actively collaborate in order to implement solutions for generating development as a way to reduce violence. The Kimberley Process Certification Scheme (KPCS) will serve as an example of how the magic triangle can be used to resolve other conflicts where business and natural resources are involved.

BUSINESS IN CONFLICT: A LITERATURE REVIEW

The 1990s witnessed a dynamic debate on how to define security. Earlier conceptions of wars understood security in terms of European-style state-based power. Newer conceptions gave increased weight to the role played by non-state actors. Traditionalists argued that security was a fixed concept intimately connected with states and their legitimate use of violence. Opposing arguments were built on the assumption that security is a social construction, and thus who is secured and from what depends on the specific social context.

The following argument for a broadening of the security agenda beyond a traditional understanding of state-centered security, the environment, and in particular the availability of natural resources, has attracted considerable attention as a potential source of conflict. Michael Klare argues "conflict over
valuable resources has become an increasingly prominent feature of the global landscape. In this light, current academic and policy-oriented literature has usually focused upon investigating the existing relationship between conflict and natural resources.

More specifically, the academic debate has focused on security threats emerging from resource scarcity. According to political scientist Thomas Homer-Dixon, “scarcities of renewable resources will precipitate violent civil or international conflict.” However, when investigating the impact of extractive industries on conflict dynamics, resource acquisition and potential exploitation are increasingly more important than resource scarcity. Quantitative research indicates a strong correlation between natural resource abundance in a given country and the risk of armed conflict, a phenomenon that is commonly known as the “resource curse.” In 1964, economist Dudley Seers found a close connection between economic growth in oil-rich countries and rising unemployment, poverty, and inequality. Similarly, economist Terry Lynn Karl drew attention to the paradox that high revenues generated during the massive oil booms of the 1970s and early 1980s were associated with declines in welfare. In response to these findings, a number of observers have discredited the belief that resource abundance is a blessing, instead considering it as a “curse,” especially for resource-dependent, developing and fragile states.

It is not the availability of natural resources that creates sufficient opportunity for conflict. Rather, as Karen Ballentine and Heike Nitzschke pointed out, “critical governance failures are a mediating variable.” More directly, Joseph Siegle viewed the resource curse as a specific governance problem, concluding “democracies’ oversight mechanisms are what contribute most to the consistency and stability of their [natural resource-rich countries] development performance.” Thus, governance is becoming widely accepted as a key factor for understanding the resource-conflict dynamic and the mutually reinforcing traps in which low-income and resource-dependent countries are often caught.
Two perspectives increasingly dominate research on natural resource conflict. The first analyzes the relationship between development and civil war, as well as its implications for conflict prevention. This approach, labeled as “greed and grievance,” has been used to investigate factors that predict the onset of civil war on the basis of statistical models. The second approach focuses on the economic agendas of belligerents and the dynamics of conflict in the context of globalization, transnational networks, and development. Violence is depicted as functional and civil wars as a process of social transformation in which people adapt their behavior in order to survive, maximize opportunities, and minimize risks. As a result, conflicts are increasingly protracted and determined by economic objectives.

According to political scientist William Reno, the Cold War-era relationship between private power, commerce, and state institutions in weak states resulted in the development of internal warfare by enhancing the salience of economic interests in the equation. As a consequence, contemporary conflicts appear to be driven by powerful economic motives and agendas. War became “the continuation of economics by other means... because rebellions are no longer anti-colonial and because it is much harder than before for rebels to get assistance from the outside.”

Analysis of post-nation-state conflict is key to understanding modern war economies and can help to overcome some of the limitations of mainstream conflict analysis. The latter is dominated by the idea of conflict as temporary (resulting from a development malaise), irrational (arising from misunderstanding and communication breakdown), and backward (ensuing from the reappearance of ancient hatreds.) Traditional literature, with their pure state-centric approach, doesn’t easily accommodate contemporary conflicts. The use of such terms as internal, intra-state, or civil for describing contemporary conflicts demonstrate the failure of state-based conceptions of war to incorporate the effects of globalization and liberalization into analysis of present-day hostilities. Actors in
some modern wars no longer need to channel power through juridical or bureaucratic forms of control, or to have a fixed territory in which to operate.\textsuperscript{20}

This new awareness of the role of natural resources in fuelling conflicts and driving war economies has helped shape the context within which security-related considerations are framed. The following sections of this work will answer critical questions about whether, and under what conditions, transnational corporations represent a security threat in those countries where they operate. By doing so, the necessity for broadening the concept of security beyond pure state security will be once more confirmed. The analysis of the role that transnational corporations play in fragile, resource-rich countries of the global South will help re-define security in terms of a developing process that reduces the use of violence. Accordingly, security in conflict-ridden states can only be the result of sound partnerships bringing together the magic triangle - the private sector, civil society and governments.

Conflicts of the kind investigated in this paper operate in weak states, defined as states that are unable to “extend security or basic services, including the rule of law, to their population.”\textsuperscript{21} Foreign Policy’s Failed States Index 2009 also introduces the concept of “failed states,”\textsuperscript{22} thus offering a useful framework within which to situate this analysis.\textsuperscript{23} The Index does not quantify whether or not a state has effectively failed, but rather the risk of failure in the near future. In order to avoid any confusion between actual and potential failure, while keeping the Failed States Index’ attributes of a failed state, we will introduce a correction in the index, using the concept of weak states instead.\textsuperscript{24}

Finally, when discussing transnational corporations operating in conflict zones, a definition of conflict zone becomes necessary. In this case, conflict refers to situations in which intra-state conflict, or the potential for it, is actually present. In the latter case, the Failed States Index 2009 provides a comprehensive evaluation of the security situation of different regions of the globe, thereby presenting a useful set of indicators.
against which to assess the risk for a certain country to experience conflict. Referring to such an index, the present study will consider conflict zones in countries that are placed in the ‘critical’ zone. The term conflict will therefore be used to indicate both an actual state of conflict and the potential for it.

INVESTIGATING THE ROLE OF EXTRACTIVE INDUSTRIES IN ZONES OF CONFLICT

Since the early 1990s, transnational corporations have increasingly operated in areas where state power is weak or challenged. As instability took hold in many African and former Soviet countries after the collapse of the Soviet Union, working in something like a Hobbesian state of nature became part of corporate operations. As a consequence, corporations have begun to consider the need to devote attention to security issues, for example by strengthening their security plans in order to better adapt to the specific challenges on the ground. Whereas leading firms have mostly adopted a studiously neutral stance on civil strife, disclaiming any political agenda, their actions on the ground and in global markets have inevitably tended to favor some parties over others. The search for apolitical security options has led transnational corporations to develop a new notion of security that differs from the traditional state-based one. This raises the questions of whether, under what conditions, and with what consequences, transnational corporations constitute a security threat in the zones where they operate. How do transnational corporations impact the conflict dynamics of resource-rich but weak states? Answering this question defines a set of potential hypotheses, whose plausibility will be probed in this work by referring to the case studies of Nigeria and Sudan.

The private business sector is made up of diverse groups of actors, such as local businesses, small and medium-sized enterprises, national companies, and MNEs. The present analysis will focus on MNEs working in the extractive sector. This is because several of these extractive industries rank among the
biggest corporations in the world with resources at their disposal that dwarf those of many developing states in which they operate.

Many of the countries most affected by poor governance and conflict are located in parts of the developing world, which are also areas of untapped natural resources in high global demand. In other words, “by virtue of geography, [extractive MNEs] are bound to operate where lucrative and strategic natural resources – such as oil, gas, precious gems and minerals - are found.” It should also be observed that extractive industries are rather undeterred by conflict. Unlike manufacturing or other secondary and tertiary industries, in fact, extractive companies do not divest or relocate when conflict erupts. The site-specific nature of natural resources, their strategic importance, the potential profits, and the capital intensive and long-term nature of their production cycles mean that extractive companies do not obey the same investment logic as other investors.

As a first step, we will try to uncover the dynamics that explain the specific behavior of extractive industries operating in conflict zones. There are five basic mechanisms by which extractive industries supposedly impact conflict. First, the financial deals that extractive companies engage in with unaccountable governments in conflict zones can exacerbate corruption and rent-seeking behavior. The fiscal opacity that often characterizes contracts between extractive companies and “shadow” governments allows for inequitable resource distribution, which in turn generates grievances and legitimacy crises that feed rebellion. Extractive companies may enter into partnerships with states that have a history of human rights violations. Moreover, in situations of conflict, mining companies may turn to private security companies or co-opt armed groups to protect their installations, contributing to further insecurity. In order to protect their investment, plants, and personnel, multinational companies also fuel war economies by engaging in bribery (for example, payments to local militia or rebel groups after extortion threats), thereby benefiting both state and non-state armed groups and guaranteeing the continuation of
hostilities. Companies may have even supplied illicit arms to various combatant groups. Finally, the drilling of oil and open-pit mining typically cause serious environmental degradation, especially in ecologically sensitive areas, such as rainforests, or in areas used intensely for subsistence agriculture. Environmental degradation is also associated with population displacement, and may contribute to grievances within local communities when compensation is not adequate.

In addition to causing violence, extractive industries may become entangled in pre-existing conflicts and contribute to their escalation: for example, in the case of disputes between the central government and the local population, or between different groups of the local populace. On the basis of these considerations, the next sections will investigate the nature of the role that Shell in Nigeria and Talisman in Sudan played to exacerbate already existing conflicts, or to contribute to the onset of violence and hostilities in these resource-rich but weak states.

Security cannot be established – or reestablished - by simply reducing the risk of a state being attacked by internal or foreign enemies and by addressing threats to state sovereignty and territory. The concept of security must include the move to decrease the resort to all types of violence, whether directed against the state or not. In the case of resource-rich and weak states, re-establishing security means putting in place a sustainable process of economic, social and political development that thoroughly addresses the underlying causes of the resource curse. This requires engaging with all the actors that can affect a particular situation: governments, extractive industries, and civil society. Positive interactions between this magic triangle, and a due legitimization by the international community, will permit a transformation of security from a logic of “them” protecting “us” into one that is based on developing processes that discourage the recourse to violence. The cases of Nigeria and Sudan will present instances where the magic triangle could develop a new form of conflict management where resource extraction is involved.
Nigeria is ranked 15th out of 177 states in the Failed States Index 2009. It received high scores in several indicators of instability, including group grievance (9.7), factionalized elites (9.6), uneven development (9.5) and security apparatus (9.4). In total, Nigeria scored 99.8, out of a total of 120. Given the fact that oil is the mainstay of its economy, Nigeria is a suitable candidate for our investigation of the role of extractive multinationals in conflict zones.

The Niger Delta is the world’s third largest wetland, has some 20 million inhabitants, 23 percent of Nigeria’s total population, and is the source of virtually all of Nigeria’s onshore crude oil reserves. Shell d’Arcy, the forerunner of the Shell Petroleum Development Company (SPDC), secured itself the exclusive exploratory rights to the whole of Nigeria in 1947. Immediately after Nigeria’s independence in 1960, Shell’s monopoly ended and other companies began prospecting for oil in the area. However, Shell’s head start in the region, in addition to the partnerships it set up with the federal government, secured the company’s prominent role. Shell is still the largest producer in the Niger Delta today, with production amounting to an average of 910,000 barrels of oil per day.

Shell and other oil companies in the region have instituted policies that have had detrimental ecological effects and destructive social impacts. In addition, the repressive behavior of the Nigerian police and military strongly linked to Shell and the Nigerian National petroleum Company (NNPC), triggered protests from the side of local activists. For example, the Ogonis, one of the groups living in the Niger Delta region and led by Ken Saro-Wiwa, formed the movement for the Survival of the Ogoni People (MOSOP). Protests were staged in many part of the world after the 1990 execution of Ken Saro-Wiwa and the penetration of eight other MOSOP leaders by the Nigerian
government. Many accused Shell of complicity in the killings. The global campaign mounted specific boycotts on Shell worldwide.\textsuperscript{30} The families of the nine executed Ogonis are currently suing the company under the Alien Tort Claims Act.

Oil-related violence persists in Nigeria today. Prominent examples include fighting between Ijaw and Isekiri militias in Warri in 1999 and 2003 and the recent violence in and around Port Harcourt. More recently, in June 2008, the Nigerian government decided to replace Shell’s operation in Ogoni land with a concession to the Nigerian Petroleum Development Company (NPDC). The Ogoni, at first considering Shell’s withdrawal from their territory as a victory for the local communities’ struggle over a multinational oil company, turned then to consider the government’s unilateral engagement of a new operator as a further attempt to deny their stakeholder rights. The armed insurgency in this already conflicted region was encouraged by the government’s failure to address environmental clean up and compensation for impacted communities, as well as to respond to the wider issues of political marginalization and economic deprivation.\textsuperscript{31}

In response to the criticisms that mounted against Shell’s activities in Nigeria, the company undertook a campaign to better its reputation and engage with stakeholders, including international NGOs and the local communities in the Niger Delta. Frequently cited examples of this campaign are Memorandums of Understanding (MoU) with host communities. In the MoUs, the community promise to grant access to oil wells near their village and not to cause disturbances. In turn, the company pledges to assist the community, usually by projects such as road construction, modernizing water supplies and building medical clinics.\textsuperscript{32}

OIL AND CONFLICT IN SUDAN: THE STORY OF TALISMAN

Sudan occupies the third position in the Failed States Index 2009, preceded only by Somalia and Zimbabwe. Sudan received extremely high scores (9.8 or 9.9) in five out of 12 indicators:
delegitimization of the state; public services; security apparatus; factionalized elites; and external intervention. Sudan’s score was less than nine for only two indicators (human flight and economic decline). In total, Sudan scores 112.4, up to a total of 120, undoubtedly representing a ‘critical’ zone for the purposes of this work.

Similar to Nigeria, Sudan’s oil abundance greatly impacts the country’s political and economic situation. One of the root causes of Sudan’s poverty and civil wars is “the exploitative nature of the central state towards its rich, but uncontrolled hinterland.” Paradoxically, the discovery of oil has intensified the struggle over the control of scarce resources such as food, water and land: since 2003, according to United Nations figures, the combination of famine, disease and war has left 1.5 million people dead and more than two million displaced.

Since Sudan gained independence from the United Kingdom in 1956, it has been embroiled in civil war almost continuously. The discovery of oil in the Southern provinces during the 1970s altered the balance of power in the country and provided an additional motive for conflict. Chevron was granted a concession in 1975, started drilling in 1977, and discovered significant reserves of oil in the 1980s. In 1980, then President Nimeiri attempted to redraw the boundaries of the Upper Nile province to include the areas where oil had been discovered. In 1983, he issued an order eliminating the south’s autonomy, which had been granted by the Addis Ababa agreement of 1972, dividing it into three administrative provinces. A few months later, he transformed Sudan into an Islamic state, deciding that sharia was to be the law throughout the country. Southerners mobilized around the Sudan People’s Liberation Army (SPLA) to rebel, and the war resumed. In a 1989 coup, General Umar al-Bashir took power, and pursued the violence in name of imposing “God’s law” throughout the country. Despite this apparently straightforward characterization of the civil war in Sudan as a conflict between the Islamic north and the Christian, animist, and tribal south, the situation on the ground was much more complex. While the government’s attempt to impose Islam on
the entire country continued to fuel conflict, other factors such as the longstanding marginalization of the southern provinces, the attempt by the government to extend its control over the disputed areas, and the struggle among several groups for control over Sudan’s territory and resources, all provided the parties with important motivations to continue fighting.

Talisman Energy originated as a spin-off of the Canadian subsidiary of British Petroleum. In 1988, it was the second largest Canadian independent oil company. On August 17, 1998, Talisman and Arakis agreed to a friendly take-over: Talisman acquired the outstanding shares of Arakis, and in doing so it acquired the latter’s 25 percent interests in the Greater Nile Petroleum Operating Company (GNPOC) of Sudan. A wide spectrum of observers agree that oil discoveries and production by the GNPOC, combined with the opening of the pipeline, have had a direct effect on the war and exacerbated human rights violations. For example, a report of the Center for Strategic and International Studies on U.S. efforts to end the war affirmed that “oil shifted the balance of military power to the government in Khartoum and prompted the regime to focus its military efforts on oil operations, resulting in the forced mass displacement of civilians.”

Although disagreement remains about whether Talisman was directly complicit in human rights violations, it is certain that the company was, at least in part, responsible for increasing violations of the rights of civilians in the area, including their displacement. Arguably, Talisman’s direct responsibility stems from its decision to request protection from a regime with the Khartoum government’s history. The pernicious effects of Talisman’s operations in Sudan did not go unnoticed. Within a few months of Talisman’s takeover of Arakis, a coalition of civil society advocacy groups launched a massive campaign aimed at Canadian and American political authorities, and Talisman’s shareholders. NGOs such as Amnesty International, the American Anti-Slavery Group, the Canadian Inter-Church Coalition, and many others used the Internet to publicize both the brutal human rights violations occurring as a result of the
war in Sudan and what they felt was Talisman’s complicity in the process. In particular, they lobbied the executives and legislatures in the U.S. and Canada to take action against Sudan and Talisman, and waged what has been defined as one of the largest divestment campaigns since the efforts against the apartheid regime in South Africa. At last, SmartMoney.com ran a story asking if the mutual funds owning Talisman were supporting genocide.

The campaign was largely successful and resulted, inter alia, in the United States House of Representatives and the Senate to pass the Sudan Peace Act in 2002. Moreover, the United Nations had already condemned Sudan for gross violations of human rights in 1992, with the Security Council imposing diplomatic sanctions on the government in Khartoum for its involvement in terrorism in 1996. Further comprehensive sanctions were then enacted in November 1997, when President Clinton’s executive order froze all Sudanese assets in the United States and imposed a ban on bank loans, investments, and trade with that country. The Canadian government launched a very high-profile investigation of the role of oil operations in the Sudanese civil war. The resulting Harker Report, while stopping short of explicitly recommending that Talisman be sanctioned, contributed to increasing awareness of the issue among the Canadian public, and provided moral support to the advocacy groups opposing Talisman’s operations in Sudan. The divestment drive proved successful, and in 2003 the Sudan interest of Talisman Energy was acquired by ONGC Videsh, an Indian company dedicated to oil and gas exploration and production.

FINDING A WAY OUT: THE MAGIC TRIANGLE

In this section, the five aforementioned hypotheses will be explored with respect to Nigeria and Sudan. Both Shell and Talisman appear to have provided people with the chance to engage in corruption, participated in the unequal distribution of
resources, cooperated with regimes with a history of human rights violations, helped fuel war economies, and damaged the environment.

In the two countries under analysis, the presence of extractive companies largely increased the level of corruption in already corrupt nations. Nigeria generally ranks amongst the most corrupt countries in the world. In 2004, after Shell officials paid millions of dollars in bribes and kickbacks to tribal chiefs and the military in the Ogoni region, the company finally admitted its support for corruption as a means of conducting affairs with Nigerian authorities, justifying its claim by saying that “it is difficult to operate with integrity in areas of conflict like Nigeria.”

In Sudan, corruption is, and has always been, a widespread practice. Talisman Energy provided opportunities for government officials to engage in corruption through the distribution of newly privatized assets, grants of import/export licenses, and allowances for monopoly controls on strategic commodities for individuals with ties to the ruling party, the National Congress.

Inequitable resource distribution is another important consequence of the presence of Shell in Nigeria and Talisman in Sudan. Political violence against Shell was precipitated by poor governance in the country, and in particular by certain groups’ perception of an unequal distribution of oil benefits, as well as by the devastating environmental consequences of oil extraction in the Niger Delta. The combined impact led to a petro-movement in the late 1980s and early 1990s that incited violence against both the Nigerian state and oil facilities. The Ogonis, one of the groups living in the Niger Delta region and led by Ken Saro-Wiwa felt that they were not given an adequate share of the benefits derived from their land and formed the MOSOP to protest massive oil operations that extracted the valuable resource without investing in public services like electricity and water. In the same manner, the South Sudanese people were not provided with any effective opportunity to participate in decisions about the allocation and use of revenues produced by oil resources taken from their section of the country. Oil revenues were primarily conveyed
towards the north, and used by the Government of Sudan to buy weapons to continue its struggle.

Both MNEs made arrangements with human rights violators. In Nigeria, Shell initially responded to the protests against its activities by working with the government to hire security for its facilities. Though the details of the security arrangements between Shell and public and private Nigerian security forces in the 1990s are opaque, some reports claimed that “on countless occasions, oil companies have called out directly the police, the army and the navy to quell disturbances on their installations, without applying to the government for help.” The so-called Shell police were part of the supernumerary police in Nigeria. These forces were trained by the state and then assigned to and paid by the oil companies. They were also held responsible for the Umuchem massacre, during which 495 houses were destroyed and 80 people killed. Shell placed the blame with the police and did not accept any responsibility for its role in the massacre. In Sudan, Talisman Energy signed a contract with the Government of Sudan, whose authority had been widely challenged at the international level. The agreement included provisions for the government to protect oil production. Most of the attacks against Talisman’s facilities came from the SPLA, causing increased government efforts to protect oil production, and legitimizing attacks upon and displacement of civilian groups in the south. As documented by the Harker Report, security for the oil operation was provided by serving or former army, police, or security service officers who maintained close collaboration with the Sudanese Army garrison in Heglig. Furthermore, airfield and roads built, used, and operated by the oil company were often employed by the Sudanese military in attacks against civilian populations.

Oil revenues were used to fund the war economy in both Nigeria and Sudan. There are reports that Shell Petroleum Development Company of Nigeria (the Nigerian subsidiary of Royal Dutch/Shell Group of Companies) purchased weapons and used its helicopters and boats to transport the Nigerian military. Shell even admitted to having paid field allowances to
Nigerian military units associated with the disruption of popular protests. In Sudan, oil provided a steady stream of revenues to a country that was among the poorest in Africa. As many other African countries cursed by resource wealth, Sudan ranks very low in the Human Development Index, meaning that little investment has been made in crucial sectors such as health and education. The government in Khartoum instead, spent most of its oil-derived fortune on modern weapons and artillery.

As already noted, political violence against Shell was precipitated by the environmental consequences of oil extraction in the Niger Delta. Shell built pipelines across Ogoni farmland and in front of the farmers’ houses. These farmers also endured oil leaking onto their land from pipelines, and they have been forced to live with constant gas flares. This environmental assault has smothered land with oil, killed masses of fish and other aquatic life, and introduced acid rain to Ogoni territory. In Sudan, environmental degradation resulting from oil operations increased resource scarcity, by reducing grazing land used by the Nuer and Dinka pastoralists. In the case of Talisman, the company never made public its mandatory Environmental Impact Assessment and Emergency Response Plans. As far as population displacement is concerned, as mentioned in the Harker Report, in Sudan “there has been, and probably still is, major displacement of civilian populations related to oil extraction.”

Financial support from Talisman’s oil operations allowed the Sudanese government to pursue its genocidal policy against southern Sudanese people in the name of oil revenues.

The cases of Nigeria and Sudan are just two of the many examples that can be used to demonstrate the impact that transnational commodity companies have on the developing nations where they operate. We cannot predict how the situation of these countries would have been different if the two multinationals under accusation had not exploited their oil-rich territory. We have, however, demonstrated that their modus operandi had negative effects for the local communities of these already unstable and conflict-ridden countries, while profits have only benefited the government elite, who used them to buy
weapons and commit widespread atrocities. How then can these negative consequences of extractive industries’ operations in weak states be mitigated so that resources can be a blessing rather than a curse, especially for local communities?

There is little consensus among companies, governments, multilateral agencies, and NGOs as to what constitutes company responsibility in conflict zones. Two approaches prevail. The corporate social responsibility (CSR) approach is based on company capacity: because extractive multinationals are well endowed with expertise and resources, they are obliged to undertake broader social and economic functions, especially in countries where governments are weak. However, CSR has so far had only a small effect on the will or capacity of corporations to concretely deal with conflict issues. The other approach is ‘do no harm’ and rests on a notion of responsibility that is based on investigating and identifying the consequences of extractive companies’ actions, for instance, ensuring that what they are does no exacerbate conflict and negative developmental pathologies. This approach is also problematic, as some companies only engage in superficial activities (like building schools or hospitals) to clean up their consciences, without really addressing the key security and financial problems at stake. Compared to the CSR approach, ‘do no harm’ has the advantage of building from established and well-accepted global norms of anti-corruption and human rights, setting minimal and clear expectations, and has the potential of building a level playing field for private sector activity in weak governance and conflict zones.

From a theoretical point of view, and as evidence has demonstrated in many cases, extractive industry companies are ill-suited to working together due to the high stakes competition for natural resources. Moreover, extractive companies have unilaterally taking steps to improve their conduct in conflict zones, such as Talisman’s divestment from Sudan, may risk retaliation by hostile governments and competitors. It is in order to address such potential problems and to overcome the recent proliferation of company and industry codes, as well as public-
private and external standards, that the co-regulatory approach has been proposed. The concept of co-regulation starts from the assumption that it may be profitable, under certain specific circumstances, for a corporation to engage in self-regulation.\textsuperscript{59} Self-regulation is most likely when conflict is close, concentrated and severe, the government is weak and rebels are coordinated (or vice versa, depending on who controls the area of operations), the good is image-sensitive and lootable, and investment is direct as opposed to through joint ventures or the like.\textsuperscript{60} The same factors influence a company’s willingness to co-regulate, with an important addition. If a company opts for the added costs in time, effort and resources of negotiating with government, there must be a clear benefit to co-regulation. One of the services that governments may render is providing credibility to the process. Furthermore, governments can facilitate adoption of norms of conduct through subsidies, tax-credits, privileged contracts, consumer awareness and diplomatic pressure on host governments, including aid conditionality.

This trend toward co-regulation, involving the private and public sectors and even civil society, has a great potential for mitigating the negative consequences of extractive industries’ operations, as well as redirecting their behavior towards promoting human rights and a sustainable process of economic and social development in resource-rich but weak states. According to Philippe Le Billon:

“States remain the most important actor in terms of legislation and enforcement. Yet intergovernmental organizations, private businesses, and civil society groups have played an increasing role in shaping a new generation of instruments and policies defining ethical norms and mixing voluntary compliance, market-based incentives, and independent monitoring.”\textsuperscript{61}
The KPCS offers a useful illustration of how co-regulation works in practice. Like oil, diamonds have also been a curse, rather than a blessing, for some African countries. Sometimes also referred to as ‘blood diamonds,’ in the late 1990s diamonds made headlines as revenues from their sales funded violent civil wars in Angola, Sierra Leone, Liberia, Côte d’Ivoire and the Democratic Republic of the Congo (DRC). The diamond trade’s role in financing so-called African diamond wars led to the Kimberley Process, a multilateral agreement resulting from an unprecedented assemblage of national governments, NGOs, and representatives of the diamond industry. Through consensus-based negotiations, participants in the process created an import/export certification system to govern the international trade in rough diamonds. Membership to date comprises 46 countries, including five of the six previously mentioned “conflict diamond” countries, and all main diamond producers, processors, traders, and consumers.

Eight years after its inception, a comprehensive assessment of the effectiveness of the KPCS is still difficult to make. At the peak of the conflict diamond crisis, some NGOs placed conflict diamonds’ share in the world market as high as 15 percent; 2005 figures show it as less than one percent. This may be a clear achievement of the KPCS. Today, the only remaining “conflict” aspect of diamonds is their alleged financing of terrorist groups and organized crime networks such as Al Qaeda. Illicit diamonds, or diamonds that are smuggled outside the KPCS, are also linked to conflict to this day.

The KPCS represents something quite unique in the annals of international diplomacy. It is the first time that a serious attempt has been made by the international community to address the problem of the illegal exploitation of natural resources. And it is also the first time that an international agreement has been negotiated and adopted on the basis of consensus between governments, industry and civil society acting as equal partners.

The Kimberley Process has brought a discipline to the international trade of diamonds that many believed could not be
achieved. The realization within the industry that it could no longer be linked even tenuously to events in certain African countries produced a rapid change in attitude and modus operandi. Paperwork and accurate records, long anathema to the diamond industry, have become the norm under the KPCS. As a tool for international security and conflict prevention, the KPCS stands out as “a practical measure that the international community has adopted.”

The KPCS demonstrates that the magic triangle of industry, civil society, and governments can not only work, but can also contribute to producing a viable and effective solution to resource conflicts.

CONCLUSION AND RECOMMENDATIONS

This study has demonstrated that the role of the international private sector, and in particular that of extractive industries, is key when investigating contemporary forms of civil war. As the cases of Shell in Nigeria and Talisman in Sudan show, leading firms’ actions on the ground and in global markets inevitably tend to favor some parties over others, despite their claim for neutrality and impartiality. For research on this topic to make headway, it would be necessary to engage meaningfully with a range of international firms to establish how they view their own roles in civil war situations and what factors might influence them to actively support the settlement of civil wars.

While this work has provided a preliminary sketch of the mechanisms by which extractive industries impact conflict dynamics, further research is necessary to explore the specific relations between extractive industries and hosting governments, as well as between extractive industries and civil society. Natural resources do not create conflict. Rather, conflict results from the mismanagement of natural resources, be it an inefficient government or the presence of profit-oriented and unscrupulous transnational companies. If we really want to prevent and resolve resource conflicts, actors that determine how resources are managed must be engaged.
A more careful analysis of the negotiation process underlying the KPCS, considered a best practice for its demonstrated capability of reducing the level of conflict associated with natural resources, should be carried out in order to understand its points of strength and limitations. This analysis could prove useful in the development of a general model to be used for the creation of similar instruments for trade in other natural resources, with the aim of reducing their potential for conflict. For example, a KPCS-like scheme is in the agenda of the international community for addressing the very roots causes of the conflict in eastern DRC. There, the trade in the 3 T’s - tin ore (cassiterite), tantalite (coltan), tungsten (a source derived from wolframite), as well as gold—that are used in electronic devices such as cell phones and laptops—have been a major source of funding for armed groups who commit atrocities against civilians. A Conflict Minerals Trade Act has been introduced in 2009 in the United States House of Representatives, aiming at ensuring greater transparency and accountability from those companies whose products contain these mineral ores or their derivatives. Accordingly, the United States government would identify those commercial goods that could contain conflict minerals, approve a list of independent monitoring groups qualified to audit the worldwide processing facilities for these minerals, and restrict the importation of minerals to those coming from audited facilities. Importers of these goods, in turn, would have to certify on their customs declaration that their goods do not contain conflict minerals based upon the audit system. The extension of such an initiative to other countries and companies would eventually provide a crucial step toward the creation of a practical and enforceable means to ensure that the trade in Congolese minerals contributes to peace rather than war.

We conclude this work with three recommendations for further research into the conflicts of interest that arise when commodity companies operate in conflict zones. First, the behavior of private businesses in conflict-prone regions requires monitoring. Further attention should be devoted to the conflict
promoting aspect of extractive industries’ activities. This could be realized, for example, by establishing an internationally recognized monitoring and verification mechanism for corporate behavior on the ground, one that is long-term, large-scale, field-based, and conducted by an authoritative body of all relevant stakeholders.

Secondly, the financing of private businesses in conflict-prone regions should be addressed. Project finance, banking, insurance, and asset management operations can all be implicated in conflict scenarios. Due to the rapid growth of environmental and social screening of both private and public investment funds, the mining industry has had difficulty attracting finance in recent years. The capacity to cause such difficulty in attracting finance should be used as leverage to induce conflict-sensitive business behavior.

Finally, the concept of co-regulation should be further elaborated upon. Voluntary codes of conduct alone are clearly not sufficient when coping with the problem of business in conflict. Whether unique to the company, or adopted sector-wide, voluntary codes too often lack international legitimacy and result in an uneven playing field of business competition. At the same time, however, binding regulatory codes are hard to achieve. A co-regulatory approach, which lies between self-regulation and binding regulatory codes, is a viable alternative. Where policies and programs are developed collaboratively between corporations, governments, and, increasingly, civil society, there is the potential to have accountability that is lacking in the self-regulatory approach without the large scale that makes binding codes impossible to implement on an industry-wide basis. The KPCS, an innovative combination of an inter-governmental framework of national controls with industry self-regulation, serves as a concrete example to show that co-regulation and what we have here called the magic triangle, is not only an idealistic project, but can also be achieved in practice.
NOTES


3 It should be observed, however, that exploitation of and trade in lucrative natural resources is only one important source of self-financing. Others include diaspora remittances or the stealing of foreign aid, kidnapping, ‘war taxes’, smuggling, etc.


18 David Keen, The Economic Functions of Violence in Civil Wars, Adelphi Paper No. 320 (Oxford: Oxford University Press/International Institute of Strategic Studies, 1998), 11. The prime examples of the new economics of war are considered to be the mining of diamonds by Jonas Savimbi’s UNITA movement in Angola and the creation of private commercial alliances in the vast areas of Liberia that Charles Taylor controlled before he was elected president in 1997 (so-called Taylorland).

19 Duffield, 74.

20 Following this approach, Duffield identifies two main characteristics of modern-day war economies: a) they are rarely self-sufficient or autarkic after the fashion of traditional nation-state-based war economies; and b) though controlling local asses, they are heavily reliant on all forms of external support and supplies. See: Duffield, 75.

21 Keen, 27.

22 According to the Failed States Index 2009, a “failed state” is one that has lost the physical control of its territory or the monopoly on the legitimate use of force, and in which the legitimate authority to make collective decisions has been eroded. In addition, a failed state is unable to provide reasonable public services, and to interact with other states as a full member of the international community. See: The Failed States Index 2009, <http://www.foreignpolicy.com/articles/2009/06/22/2009_failed_states_index_faq_methodology> (5 March 2010).

23 See: The Failed States Index 2009, <http://www.foreignpolicy.com/articles/2009/06/22/the_2009_failed_states_index> (5 March 2010). The index uses 12 indicators to express the risk of state failure, including extensive corruption and criminal
behaviour, inability to collect taxes or otherwise draw on citizen support, large-scale involuntary dislocation of the population, sharp economic decline, group-based inequality, institutionalized persecution of discrimination, severe demographic pressures, brain drain, and environmental decay.

24 It is also important to “distinguish between state collapse, which is essentially concerned with crumbling of institutions, and state failure, which is defined by the non-performance of key state functions”. See: Christopher Clapham, Christopher, “The Challenge to the State in a Globalized World,” in State Failure, Collapse and Reconstruction, ed. Jennifer Milliken (Malden, MA: Blackwell Publishers, 2003), 26.


26 The term “shadow state” indicates a form of state governance in which high-ranking politicians and businessmen (local or foreign) draw their authority from their ability to privately control resources in informal and illicit markets. The state apparatus and political authorities, therefore, are characterized by a high degree of unaccountability and corruption. See: William Reno, Corruption and State Politics in Sierra Leone, (Cambridge: Cambridge University Press, 1995).

27 Note that many of today’s huge – and controversial - oil and mining projects are located in such environments, e.g. the Niger Delta in Nigeria, the Sudd swamps in Sudan, or the highlands of New Guinea.

28 The rank order of the states is based on the total scores of the 12 indicators. For each indicator, the ratings are placed on a scale of 0 to 10, with 0 being the lowest intensity (most stable) and 10 being the highest intensity (least stable). The total score is the sum of the 12 indicators and is on a scale of 0–120. See: The Failed States Index 2009, <http://www.foreignpolicy.com/articles/2009/06/22/the_2009_failed_states_index> (5 March 2010).


30 The global campaign was also motivated by Shell’s plans to sink the redundant oil storage buoy ‘Brent Spar’ into the Atlantic Ocean. See: Okechukwu Ibeanu, “Oiling in the Friction: Environmental Conflict Management in the Niger Delta, Nigeria,” Environmental Change and Security Project Report 6 (2000), 21.


32 The Addis Ababa agreement provided security guarantees and some degree of political and economic autonomy to the south, which is ethnically diverse from the north of the country, and contains a large number of tribes and linguistic groups. The southern part of Sudan is primarily inhabited by Black, Christian and “Animist” tribes, while the northern provinces are primarily Arab and Muslim. See: International Crisis Group, “God, Oil, and Country: Changing the Logic of War in Sudan,” Africa Report 39 (2002), 13.

33 Meaning that Talisman Energy had only “upstream” operations (exploration, development, and production) and did not refine petroleum or own retail outlets. See: Claudia Cattaneo, “Talisman Has Resources, Experience to Tackle Sudan,” The Financial Post, 1998, p.25.


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39 Arakis Energy Corporation is a Canadian independent oil company, which in 1994 took over what had been Chevron’s concession in Sudan. As Arakis found it was not able to finance exploration, development, and construction of the pipeline on its own, in December 1996 it entered into a consortium, the Greater Nile Petroleum operating Company (GNOPC), in which it held a 25% share and was the field operator. See: Stephen J. Kobrin, “Oil and Politics: Talisman Energy and Sudan,” International Law and Politics 36 (2004), 435.


Kobrin, 435.

The article also detailed the charges against the company, noted that most of the mutual funds contracted either would not talk to the reporter or argued that divestment would not be productive, and then provided a list of the ten funds holding the largest amounts of Talisman stock, suggesting that rather than wait for the funds to move readers might want to adjust their own portfolios. See: Philip Johansson, “Talisman Challenged over Human Rights in Sudan,” Sustainability Investment News, (March 31, 2000).


Harker, 1.


Human Rights Watch, 385.


Ibeanu, 22.


Harker, 12.


Jason Switzer, Oil and Violence in Sudan, (Geneva, Switzerland: International Institute for Sustainable Development, April 15, 2002).

Harker, 15.


Bonn International Center for Conversion, 40.

Le Billon, 220.


