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**Testimony on the Human Rights Responsibilities of Business Enterprises  
in the Context of Violent Enterprises in the Context of Violent Economies in  
Africa**

**David Weissbrodt  
University of Minnesota Law School**

**First Panel, September 22, 2004**

It is an honor to appear before you today. I believe that I was invited because of my work at the United Nations Sub-Commission on the Promotion and Protection of Human Rights with 25 other experts from as many nations in drafting the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.<sup>1</sup> I should note that my expertise is in international human rights law and not so much in economics or in regard to Africa. Hence, my remarks for this first panel on the triggering factors and modes of operation of violent economies in Africa may be less helpful than my comments in the second panel on measures for combatting violent economies in Africa and on the third panel on opportunities for further action.

Nonetheless, I will try to contribute a few thoughts to the present panel discussion in the hope that any time we save from my brevity in this first panel will be compensated by a certain flexibility as to my speaking time in the later panel discussions. First, I should complement the Committee on Human Rights and Humanitarian Aid for your concern about the issue of violent economies and their relationship to human rights abuses. In investigating the causes of human rights violations, social scientists have determined that there is a significant correlation between international and non-international armed conflicts and human rights abuses by both governments and armed opponents. During periods of disorder associated with armed conflict, many human rights abuses are committed as individuals and groups settle personal, ethnic, and even entrepreneurial scores.

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<sup>1</sup> You can find the Human Rights Norms at <http://www1.umn.edu/humanrts/links/norms-Aug2003.html>. The Norms are supplemented by a Commentary which you can find at <http://www1.umn.edu/humanrts/links/commentary-Aug2003.html>.

Second, of the several armed conflict situations in Africa I will focus on the brutal war in the Democratic Republic of Congo (DRC), which has cost more than three million lives in the past seven years<sup>2</sup> and which can serve as an example of several relevant causes and potential remedies for business involvement in human rights abuses. The U.N. Panel of Experts on the Illegal Exploitation of National Resources and Other Forms of Wealth of the Democratic Republic of the Congo identified over 80 companies from OECD countries that had exploited Congolese natural resources during the war.<sup>3</sup> Some of these companies have allowed forced labour to be used in their area of operations; others have facilitated the transfer of weapons to the warring parties which have been implicated in committing war crimes. The companies were evidently motivated by the mineral wealth of the DRC. For example, mineral columbo tantaline (“coltan”) is found in the eastern DRC and tantalum can be extracted from that ore for use in the production of electronic components. Because of increases in the price of coltan in world markets, some rebel groups and unscrupulous businesses forced farmers and their families to leave their agricultural lands and compelled them to work in coltan mines. The U.N. Panel brought to the attention of banks several companies and individuals that had been engaged in illegal activities and the banks closed the relevant accounts. The U.N. Panel also worked closely with the National Contact Points of the Organization for Economic Cooperation and Development to seek information and to resolve problems that were identified. Some companies, however, were recorded as not cooperating with the inquiries, although none of those companies were from Germany.

In order to deal with the corporate responsibility for trafficking in arms and otherwise contributing to the conflict, the U.N. Panel principally recommended that the “publish what you pay” principle should be implemented. The Panel also emphasized the need to reinforce monitoring of the flow of arms and the U.N. Security Council responded to that proposal in March 2004 in its Resolution 1533 (2004) by strengthening the arms embargo as to the DRC. It does not appear, however, that the Security Council has renewed the mandate of the U.N. Panel and the final report of the U.N. Panel in October 2003 left quite a number of company inquiries and human rights problems unresolved.

In another context the chief prosecutor of the International Criminal Court has indicated that he has made the situation in the DRC one of his two first cases for investigation and prosecution. In that connection he has announced that his office is investigating the role of corporate executives in committing offences within his jurisdiction, that is, war crimes, crimes against humanity, and genocide.

The Democratic Republic of Congo also produces diamonds and the sale of those diamonds have helped to finance armed conflict in the DRC. There have been efforts through the “Kimberly Process Certification Scheme” such that so-called “blood diamonds” or “conflict diamonds” from the DRC – as well as from Angola, and Sierra Leone – are not sold to consumers. On the one hand, the Kimberly Process, although an entirely voluntary

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<sup>2</sup><http://www.globalissues.org/Geopolitics/Africa/DRC.asp>;  
<http://www.natural-resources.org/minerals/CD/other.htm#UNCongo>

<sup>3</sup> <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/567/36/IMG/N0356736.pdf?OpenElement>

approach, has a potential for success because of the high degree of concentration in the diamond industry and considerable consumer interest in the provenance of diamonds which are most often given as gifts of love and marriage. Furthermore, it should be noted that the DRC was identified in July 2004 by the Kimberly Process as a government that could not account for the origin of a number of diamonds that it had sought to export through such countries as Switzerland and the United Arab Emirates.<sup>4</sup> In August the DRC government took some measures to rectify that problem. On the other hand, it appears that there is no adequate and independent monitoring of the Kimberly Process, so that it is difficult to know whether it is actually achieving its objectives.

I hope these comments will provide the Committee with an insight into some of the causes of human rights abuses by businesses in the context of armed conflict and some of the potential measures for preventing or responding to such business involvement.

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<sup>4</sup> <http://news.bbc.co.uk/2/hi/africa/3889221.stm>

## **Testimony on the Human Rights Responsibilities of Business Enterprises in the Context of Violent Economies in Africa**

**David Weissbrodt**  
**University of Minnesota Law School**

**Second Panel, September 22, 2004**

In preparing for our discussion today the Committee presented a number of questions relating to four measures for combatting human rights abuses in violent economies in Africa and business complicity in those abuses. The Committee mentioned (1) the U.N. Global Compact; (2) the OECD Guidelines for Multinational Enterprises; (3) the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights; and (4) the Common Declaration of the Federal Government, Social Partners, and NGOs Concerning the International Protection of Human Rights and Economic Activities. One way of comparing those four initiatives would be simply to review what they say about human rights – particularly in the context of violent economies.

For example, in its ten brief principles the U.N. Global Compact contains two relating to human rights, stating “Business should support and respect the protection of internationally proclaimed human rights within their sphere of influence; and . . . make sure they are not complicit in human right abuses.” In the OECD Guidelines, which are considerably more detailed with over 50 substantive provisions, there is only a single sentence relating to human rights, that is: “Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.” In the 19 substantive human rights paragraphs in the U.N. Norms for Business there are two paragraphs relating particularly to human rights problems associated with violent economies and security concerns:

3. Transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law. 4. Security arrangements for transnational corporations and other business enterprises shall observe international human rights norms as well as the laws and professional standards of the country or countries in which they operate.

There are also relevant provisions in the Common Declaration of the Federal Government, Social Partners, and NGOs Concerning the International Protection of Human Rights and Economic Activities.

Each of these standard-setting instruments contributes to a very broad educational effort to encourage companies that are committed to protecting human rights and to provide them with guidance as to the content of their commitments to the Universal Declaration of Human Rights and other human rights principles. One of the basic questions in regard to corporate social responsibility, however, is whether standards should be voluntary like the Global Compact, the OECD Guidelines, or the ILO Guidelines?

Scrutiny of the activities of global businesses led many companies to adopt voluntary codes of conduct during the 1980s and 1990s and an emerging movement on corporate social responsibility led to numerous voluntary codes. But, while there is value in voluntary codes, they have to be supported and buttressed. Many codes are very vague in regard to human rights commitments. They also lack any mechanism for assuring continuity or implementation.

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. They work best for the well-intentioned, but the overwhelming majority of companies have no human rights policy and few have made explicit commitments. Most company codes of conduct do not even mention human rights. According to the latest tabulation I have seen, 77 companies include human rights commitments in their own codes. While voluntary commitments are welcome, they are not enough.

For example, the U.N. Global Compact has been very successful in educating and encouraging about 1650 companies to join, but there are about 75,000 transnational corporations in the world. What about those other 73,000 companies?

The OECD Guidelines also state that they are voluntary, but they do represent the only corporate responsibility instrument adopted by the governments of 30 developed nations plus seven other countries. Those 37 governments have agreed to promote adherence by companies and to handle complaints through National Contact Points. For example, as to the Democratic Republic of the Congo, Friends of the Earth filed a complaint with the U.S. State Department in August 2004 concerning complicity of three U.S. companies in the use of forced labor and in depriving the state mining company of its resources. The handling of such complaints by the United States and other governments, however, reflects significant disparity in the actual implementation of the OECD Guidelines; there has been no enforcement in legal proceedings; and there is often inadequate publicity given to the work of National Contact Points.

The U.N. Human Rights Norms for Business have been drafted so that they would apply to all companies and not just those that voluntarily subscribe. Although the Norms are not drafted as a legally binding treaty, they derive from the more globally representative institution of the United Nations and are similar to many other U.N. declarations, principles, norms, guidelines, standards, and resolutions which interpret existing international law and summarize international practice without reaching the status of a treaty. While the Norms as a draft presently before the Commission do not have a legal status as such, they summarize existing international legal principles that apply to governments as well as to the conduct of transnational corporations and other companies. Hence, the legal impact of the Norms derives not from the text itself, but from the underlying treaties and other instruments summarized in the document.

In addition, the Norms include some basic implementation procedures and anticipate that they may eventually be supplemented by other techniques and processes. First, the Norms anticipate that companies will adopt their own internal rules of operation to assure the protections set forth in this instrument. Second, the Norms indicate that businesses are expected to assess their major activities in light of its provisions. (These first two mechanisms for implementation reflect the insight that making corporate social responsibility a part of company culture is far more effective than outside pressure. But as I mentioned before, such voluntary measures are insufficient. Accordingly) Third, compliance with the Norms is subject to monitoring that is independent, transparent, and includes input from

relevant stakeholders. Fourth, if companies violate the Norms and cause damage, the Norms call for reparations, return of property, or other compensation. Fifth, recognizing the significant responsibility of governments, the Norms call upon those governments to establish a framework for application of the Norms. Of course, these are very general implementation principles. If you are interested in more details as to how these principles might be achieved in practice, I suggest that you initially look at the Commentary that accompanied the Norms.<sup>5</sup>

The Norms were approved unanimously by the U.N. Sub-Commission on the Promotion and Protection of Human Rights on 13 August 2003 and were transmitted to the Sub-Commission's parent body, the U.N. Commission on Human Rights. The Commission on Human Rights on 20 April 2004 accepted the Sub-Commission's principal procedural recommendation, that is, to solicit comments from all interested parties, so that the Commission can further discuss the Norms in March-April 2005. Even in their present format, however, the Norms have begun to be used as the basis for action. For example, some investment institutions have begun applying the Norms as a basis for their identification of socially responsible companies. Some nongovernmental organizations, such as Amnesty International, Christian Aid, Human Rights Watch, Human Rights First, and OXFAM have already been using the Norms as the basis for their advocacy of corporate social responsibility. Some companies, such as Barclay's Bank and Novo Nordisk, as well as the International Business Leaders Forum have expressed support for the Norms as a way of understanding their commitment to the Universal Declaration of Human Rights. Several leading companies have begun to road-test the Norms in their own businesses.

I hope these comments have provided the Committee with an insight into some of the measures that have been taken or could be taken for preventing human rights abuses in the context of armed conflict and violence.

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<sup>5</sup> The Norms are supplemented by a Commentary which you can find at <http://www1.umn.edu/humanrts/links/commentary-Aug2003.html>

## **Testimony on the Human Rights Responsibilities of Business Enterprises in the Context of Violent Economies in Africa**

**David Weissbrodt**  
**University of Minnesota Law School**

**Third Panel, September 22, 2004**

The Committee has asked for advice as to how to make progress at the U.N., at the European level, and in German national policy.

At the U.N. I urge that this Committee and the German Government support the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights and the related Commentary.<sup>6</sup> As I mentioned in my previous testimony this afternoon, the Sub-Commission unanimously approved the Norms on 13 August 2003, and the Sub-Commission's parent body – the U.N. Commission on Human Rights – on 20 April 2004 accepted the Sub-Commission's principal procedural recommendation, that is, to solicit comments from all interested parties, so that the Commission can further discuss the Norms in March-April 2005. The deadline for comments to the Office of the U.N. High Commissioner for Human Rights is 30 September 2004.<sup>7</sup> In this regard, you might be interested to know that the Office of the U.N. High Commissioner for Human Rights, in cooperation with the UN Global Compact Office, will hold a one-day meeting on the topic of the responsibilities of business with regard to human rights on 22 October 2004 in Geneva. A representative of the Committee and others who are here today might want to attend the meeting.<sup>8</sup>

The Government of Germany is a member of the U.N. Commission on Human Rights and will play an active role at the 2005 session of the Commission. At the 2004 session of the Commission I had the privilege of meeting on several occasions with the German delegation. My impression from those meetings and similar encounters with other government representatives was that there was a certain division among the various ministries and other parts of governments as to corporate social responsibility, in general,

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<sup>7</sup> <http://www.business-humanrights.org/Categories/UNintlorgs/UNintergovernm%20entalorgs/UN/SubmissionstoUN-2004consultation-businesshumanrights>

<sup>8</sup> Details of the meeting and how to register are at: <http://www.ohchr.org/english/issues/globalization/business/reportbusiness.htm>.

and the Norms, in particular. The national ministries relating to development issues generally supported the basic thrust of the Norms because they recognized that developing countries need such international standards. The governments of developing countries are often confronted by very powerful transnational corporations that want exemptions from basic labour regulations, exceptions from environmental protections, and derogations from other human rights standards. Developing nations have supported the Norms because they see how such an instrument can help them in meeting the challenge of such strong companies and thus insisting that fundamental human rights principles should be maintained for the protection of their people.

Ministries concerned with human rights generally support the Norms because they provide the most comprehensive guidance as to the human rights responsibilities of companies. There are companies that say that they support the Universal Declaration of Human Rights and the two Human Rights Covenants. The Norms help translate those instruments, ILO Conventions, Geneva Conventions and Protocols, and other relevant treaties into provisions that make them understandable for businesses.

Ministries that ordinarily relate to commerce and industry had been lobbied quite forcefully by the International Chamber of Commerce (ICC) and the International Organization of Employers (IOE) that were trying unsuccessfully to kill the Norms at the 2004 session of the Commission. The principal objection of the ICC and IOE was that the Norms went beyond voluntary standards and those NGOs representing big business would only accept voluntary initiatives for corporate social responsibility. As I explained in my second contribution this afternoon, the U.N. Sub-Commission believed that solely voluntary standards provide insufficient coverage. Essentially, the ICC and IOE were communicating the idea that big business will not accept any real limits on their tremendous economic and political power. It is interesting to note, however, that no single business dared to come forward and take that bold and essentially lawless position.

The ICC and IOE also raised questions about the appropriateness of international standards applying to companies. They argued that international standards should not apply to non-state actors such as businesses, but only to governments. That argument sufficiently concerned some parts of the German Government that they asked for a legal opinion from the Max Planck Institute in Heidelberg. The Director of the Max Planck Institute responded that the Norms are consistent with trends in international law that make individuals, armed opposition groups, and businesses responsible for war crimes, crimes against humanity, genocide, and other human rights abuses. Indeed, while the OECD Guidelines and the Global Compact are voluntary, they are also examples of international standards speaking directly to companies. It should be noted in this regard that the Universal Declaration of Human Rights is one of the first human rights instrument that speaks not only to States, but also to "every individual and every organ of society."<sup>9</sup> In the environmental field there are treaties that specifically speak to the obligations of companies.<sup>10</sup> For example, the 1969 Convention on Civil Liability for Oil Pollution Damage provides that the owner of a ship (including a company) shall be liable for any pollution damage caused by it. Similarly, the 1982 UN Convention on the Law of the Sea prohibits

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<sup>9</sup> Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

<sup>10</sup> Menno Kamminga, *Corporate Obligations under International Law* (2004).



not only States but also natural and juridical persons (that is, companies) from appropriating parts of the seabed or its minerals. The Norms themselves indicate that governments have the primary responsibility to protect human rights, but companies within their respective spheres activities and influence also have human rights obligations.

I am not suggesting that the Norms are perfect as they were approved by the Sub-Commission. The Sub-Commission sent the Norms to the Commission and the ordinary practice in such standard-setting exercises is to establish an open-ended Working Group to undertake further discussion and drafting. It is encouraging that the Commission recognized in April 2004 that corporate social responsibility belongs within its mandate and so the only concrete action the German Government needs to foresee for 2005 would be to assure that the Norms remain on the Commission agenda and, when appropriate, an open-ended Working Group should be established.

Let me turn, for a moment to the European scene. I must admit that it is difficult for someone who lives on the other side of the Atlantic to comprehend all the different European institutions and procedures – particularly as there are such major changes afoot. Nonetheless, I understand that there have been efforts in the European Union to develop a regional approach to corporate social responsibility. A Green Paper of 2001 and a Communication of 2002 have been issued and a lengthy multi-stakeholder dialogue has nearly been completed. I have talked, however, with several participants in the European multi-stakeholder dialogue. While multi-stakeholder dialogues are among the approaches often proposed in developing corporate social responsibility initiatives, I have been told that the European dialogue has not been very successful. Essentially the corporate representatives have insisted that they will accept only voluntary initiatives. Human rights and environmental participants, however, have indicated that they will not accept a conclusion that fails to recognize the need for more comprehensive standards.

I have two observations on the European experience so far. First, if European standards are eventually developed, the drafters might want to look at the U.N. Human Rights Norms for Business because they were developed through an inclusive deliberative process in which many business and union participants contributed. Second, the difficulties of the European multi-stakeholder dialogue should make one rather reluctant to propose a similar procedure for the United Nations, unless one has a very good reason to believe that a dialogue in Geneva with far more diverse participants will be more likely to succeed than a discussion in Brussels.

Finally, as to national policy I must defer principally to the other panelists who are much closer to the German scene. Nonetheless, I would suggest that the Committee look at developments in France and the United Kingdom, where companies have been required to report on their activities to achieve corporate social responsibility. I would also suggest that the German Government consider how it can implement the “publish what you pay” principle as well as the other principles found in the ILO Guidelines, OECD Guidelines, the U.N. Global Compact, the U.N. Human Rights Norms for Business; and the Voluntary Principles on Security and Human Rights.

Thank you once again for this much-appreciated opportunity to contribute to your deliberations of these important issues.