Transnational Corporations in the Extractive Industries Operating in Conflict States: How Far Should Corporate Citizenship Extend?

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How Far Should Corporate Citizenship Extend?*

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Most of the discussion by academics and practitioners regarding international governance has been state-centred. Little research has explored the obligations of non-state actors in conflict zones under international human rights law and international humanitarian law, although this is an issue that is particularly relevant for transnational corporations (TNCs). This research focuses on situations when TNCs in the extractive industries are operating in states that are in conflict and where there is a serious threat to human security. The evidence shows that TNCs, when operating in conflict states, may have non-binding obligations under international human rights law and international humanitarian law. The potential application of both sets of laws on TNCs is an issue that has implications for various stakeholders. These implications are outlined for TNCs to guarantee the promotion of human security under international human rights law and humanitarian law, in order to ensure the well-being and dignity of individuals.

- Transnational corporations
- Extractive industries
- Conflict states
- Human rights law
- Corporate citizenship

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There is a growing recognition that transnational corporations (TNCs) have a role to play in respecting human rights, even though states remain the primary duty holders of human rights. This is due to the economic and influential power of TNCs, which is equal to or greater than many states (Sinden 2006). In 1999, it was determined that out of the world's 100 largest economies, 51 were corporations and 49 were states (Madeley 2003).

The changing nature of conflict has also changed the operational landscape for many TNCs. Conflicts in the 21st century are no longer isolated to formal conflicts between states; rather many now involve non-state actors, such as militia groups, terrorists and illicit gangs (Maclean *et al*. 2006). This means that TNCs have to consider not only their relationships with the host government, but also the impact that non-state actors may have on human security when operating in conflict states. In particular, in oil and gas exploration and development, TNCs suffer frequent accusations of human rights abuses, corruption, environmental pollution and degradation (see, e.g. Banfield *et al*. 2003; Ruggie 2006, 2009; Cohen 2008). The United Nations Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises (SRSG), John Ruggie, illustrated this regarding the extractives sector:

> No other [sector] has so enormous and intrusive a social and environmental footprint. At local levels in poor countries no effective public institutions may be in place. The authority vacuum may compel responsible companies, faced with some of the most difficult social challenges imaginable, to perform *de facto* government roles for which they are ill equipped, while other firms take advantage of the asymmetry of power they enjoy (Ruggie 2006).

This implies the need to examine the impact of TNCs in the extractives sector on human security, when operating in conflict states, in the context of international human rights law and international humanitarian law. Accordingly, the objective of this paper is to identify the implications for TNCs when operating in conflict states. This paper draws on incidents in Myanmar, Sudan and Nigeria, where TNCs in the extractives industry have allegedly been complicit in violations of certain economic, social and cultural rights. These incidents illustrate the importance of voluntary initiatives and codes of conduct that have been created towards ensuring the human rights and human security of individuals in light of the lack of existing legal obligations.

This paper first discusses the obligations of TNCs in relation to human rights, armed conflict and natural resources. Second, a discussion of international human rights law and international humanitarian law in relation to TNCs is provided; this section serves to draw parallels between international human rights law and international humanitarian law. Third, the applicability of international human rights law and international humanitarian law for violations of economic, social and cultural rights by TNCs in the extractive industry is discussed using the three previously mentioned cases as examples. And fourth, various voluntary initiatives and codes of conduct with respect to TNCs in the extractive industry are discussed.

Obligations of TNCs

TNCs and human rights obligations

The protection of human rights has been primarily discussed at the state level. States have a duty to respect, a duty to protect and a duty to fulfil their human rights obligations. The duty to respect requires a state not to intervene with an individual's economic, social and cultural rights (ESCR) or civil and political rights (CPR) (ICJ 2008). The duty to protect requires that a state prevents third parties from unduly violating or infringing on the enjoyment of a right by an individual. The duty to fulfil is a state obligation to facilitate, provide and promote access to rights for rights-holders (ICJ 2008). These obligations are binding on states.

By contrast, the responsibility of TNCs to respect human rights is non-binding. In other words, there are no legal obligations imposed on TNCs. This is reflected in the business and human rights framework that was created by the SRSG. The framework consists of the state duty to protect against human rights abuses by third parties; the corporate responsibility to respect human rights; and the need for access to remedies (Ruggie 2008a: Para 9).

Armed conflict, natural resources and transnational corporations

Even though TNCs have a major impact on the fulfilment or violation of human rights, the primary obligation to protect human rights rests on the shoulders of states. This is problematic because many TNCs in the extractives industry are faced with operating in challenging socio-political contexts associated with conflict states that pose unique risks to human rights (UNCHR 2005), and hence can have a major impact on human security on both micro (local) and macro (national) levels (Banfield *et al.* 2003).

On a micro level, TNCs are able to influence human security when they engage local security forces to protect their operations in the host country, through employee relations when they hire local labour and through community relations (Banfield *et al.* 2003). In these circumstances, TNCs have a responsibility to ensure that the activities of local security forces do not violate fundamental human rights and humanitarian law, that basic labour standards as outlined by the International Labour Organization (ILO) are respected and that they are aware of community concerns.

On a macro level, instability and internal conflicts over natural resources frequently occur in states where there are weak governments and corruption (Whittemore 2008). For those in power, it is often essential to maintain control over natural resources in order to reap economic benefits, such as through the uneven distribution of monies received, bribery and corruption, the indirect funding of violence, the promotion or violation of human rights and democracy, and the conservation or destruction of the environment (Whittemore 2008).

TNCs in the extractive industry are in a unique position in that they are often able to influence the activities of those in power in the host country, and have the ability to create wealth for governments through taxes and revenues received. Because natural resources form such a significant source of revenue, corruption often occurs, which reduces the accountability of government officials who favour those who are able to pay a bribe (Whittemore 2008). The lack of rule of law allows violations to be committed without sanctions or accountability. The revenue from resources makes it in the interest of those in power to control the source of revenue—the natural resources. In effect, the interest to control the flow of revenue received from natural resources is often the motivation behind ethnic conflicts (Haysom *et al.* 2009). This has been exemplified in the displacement case of Talisman in Sudan, as discussed and outlined further on in this paper.

It is because of this that warring parties in a civil conflict may turn business operations into military objectives (Gnaedinger 2008), in order to fund the illicit trade of weapons (Banfield *et al.* 2003). Thus, some natural resources have come to be known as conflict commodities, such as oil in Sudan, Colombia and Chechnya; gold and columbite-tantalite in the Democratic Republic of Congo; and diamonds in Angola, the Democratic Republic of Congo and Sierra Leone (Rauxlah 2008). For example, the Great Lakes region in Africa has experienced years of regional conflict. This has been due to regional insecurity resulting from civil wars, the exploitation and illegal sale of natural resources and the absence of a strong regional constituency for peace from civil society (Uvin *et al.* 2005). The exploitation of natural resources has created a 'war economy', where the military or political elites of particular countries have had an interest in maintaining civil war and insecurity, in order to maximise personal profits (Uvin *et al.* 2005).

TNCs, international human rights law and humanitarian law[1]

If TNCs are financiers of bloody conflicts, then Sierra Leone War Crimes Prosecutor, David Crane, believes there is a need to bring them under the scope of international human rights law and international humanitarian law (Bratspies 2005). On one hand, international humanitarian law may be applicable to TNCs operating in conflict states. On the other hand, it does not exclude the application of fundamental human rights in situations of armed conflict. Irrespective of this distinction, the interaction between international human rights law and international humanitarian law is especially relevant for TNCs operating in conflict states.

1 International humanitarian law (IHL) applies in situations of armed conflict whereas most international human rights law (IHRL) applies at all times, in war and peace alike. IHRL implementing mechanisms are complex, in contrast to IHL mechanisms (as cited in ICRC 2002).

Application of international human rights law

International human rights law is applicable in situations of armed conflicts. In 2003, the 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights' was drafted. It contained 23 articles that sought to establish human rights standards for TNCs and referred to international humanitarian law, civil and political rights, and economic, social and cultural rights.

Although this has not been adopted, the United Nations Security Council has shown on a number of other occasions that non-state actors have obligations under international human rights law and international humanitarian law (UNSC 1998). For example, in 1998, the Security Council reaffirmed in Resolution 1214 that all parties, including individuals in a conflict, have obligations under international humanitarian law, especially under the Geneva Conventions of 1949 (the Conventions) (UNSC 1998: 2). Further, a person who commits or commissions a breach of the Conventions is individually responsible (UNSC 1998). Based on this Resolution, it could be reasoned that a TNC, which is legally considered an individual, may be deemed to be accountable for direct or indirect breaches of international humanitarian law. Further, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) does not allow any form of suspension or derogation during armed conflict (as opposed to the International Covenant on Civil and Political Rights) (Mottershaw 2008). In support of this, General Comment No. 7 on the Right to Adequate Housing states that forced evictions in times of conflict would be a violation and General Comment No. 15 on the Right to Water prohibits the abuse of access to water as a punitive measure during armed conflict.

As such, Andrew Clapham (2006) argues that it is important not to exclude the application of international human rights law during armed conflicts for a few fundamental reasons. First, humanitarian law does not usually apply in the absence of a protracted armed conflict. Second, governments often deny the existence of a conflict whether protracted or not. Third, the human rights framework allows for a wider range of accountability mechanisms.

Application of international humanitarian law

During an armed conflict, international humanitarian law may not be derogated from (ICRC 2006). Further, the conventions of international humanitarian law do not distinguish between state and non-state actors. For example, common article 3 of the four Geneva Conventions of 1949 addresses internal conflicts and does not distinguish between the obligations of states and non-state actors. It is applicable to all parties with a link to an armed conflict (Mottershaw 2008). By contrast, in international human rights law, the primary obligation to respect human rights remains state-centred. In addition to common article 3, Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977 (Protocol II), expands on the law of internal armed conflicts.

The rights protected under international humanitarian law consist of a spectrum of rights. TNCs may be liable for violations of human rights ranging from forced relocation to the most grave of human rights violations, such as genocide, crimes against humanity and war crimes (Breed 2002). These are commonly known as *jus cogens* norms or norms of international law that cannot be derogated.

A pivotal development towards the application of humanitarian law with respect to TNCs in the extractive industry began in 2000, when the International Committee of the Red Cross (ICRC) initiated a dialogue with about 12 extractive industry corporations operating in conflict states. The aim was to sensitise firms to certain humanitarian principles and to focus on issues, such as:

- The distinction between civilians and combatants
- The prohibition of forced movement of civilians
- The protection of goods indispensable to the survival of the civilian population, especially food and water, and access to these goods
- Respect for and protection of detained persons
- Principles regarding hired security forces (Gnaedinger 2008)

This development in addressing the application of humanitarian law regarding the operations of TNCs was important for a number of reasons. First, it was a formal recognition on the part of the ICRC of the increasing socioeconomic impact that TNCs have had in conflict states. Second, TNCs were willing to have a dialogue about the applicability of humanitarian principles regarding their operations; it represented a change in corporate mentality. Finally, it was a dialogue between stakeholders in consideration of varying needs and interests, rather than the imposition of particular rules on TNCs.

Violations of economic, social and cultural rights by TNCs in the extractive industry

TNCs in the extractive industry which operate in conflict situations commonly violate the following ESCRs in the context of human rights law and international humanitarian law: the right to work (Art 6), the right to food (Art 11), the right to water (Art. 11 and 12), the right to health and a healthy environment (Art 12), and the right to housing (Art 11(1)).

Rather than being directly responsible, TNCs are more often complicit with state actors in these violations (Ruggie 2008b). There are three categories of complicity recognised (UNGC 2000). Direct complicity occurs when a corporation actively assists in human rights abuses, such as assisting in the forced relocation of individuals. Beneficial complicity occurs when a corporation

directly benefits from an act committed by another, such as benefiting from the suppression of protestors by security forces. Silent complicity occurs when a corporation fails to act, such as not questioning systematic acts of torture when dealing with authorities.

Under Article 13 Additional Protocol II of the Geneva Convention, personnel of TNCs may be deemed a party to armed conflicts, if they 'directly' participate in any activity (ICRC 2006). The distinction between civilians and combatants is significant because under international humanitarian law, civilians are protected from indiscriminate and deliberate attacks (ICRC 2006). Therefore, personnel of business enterprises who directly participate in hostilities would not be privy to protection. It is, however, generally understood that 'the commission of acts, which by their nature and purpose are *intended* to cause actual harm to enemy personnel, would [materially] amount to direct participation in hostilities (emphasis added)' (ICRC 2006). However, the issue has not been resolved. There continues to be much debate and contention as to what constitutes 'direct' participation in hostilities. It should be noted that, according to the ICRC, intention is not a requirement to determine that a TNC was closely linked to a conflict (ICRC 2006). In other words, it may be the actual impact that matters, regardless of whether or not there was intent.

When comparing the application of international human rights law and humanitarian law, it appears that international human rights law has a greater reach in bringing TNCs within its judicial scope when corporations are indirectly complicit. For example, TNCs that *indirectly* participated in violations of human rights would likely be considered complicit in government activity and liable under international human rights law, while under humanitarian law, TNCs would still be considered civilians, as long as, they did not '*directly* participate in hostilities' (emphasis added). It is a stricter test with a higher burden of proof. The following case studies present the violations of ESCRs by TNCs in the extractives industry.

Case 1: Forced labour—Unocal in Myanmar

In 1992, the Myanmar military government entered into a joint venture with Unocal to construct a gas pipeline through the Tenasserim region (Rice 1999). The farmers from the Tenasserim region filed a lawsuit against Unocal under the Alien Torts Claim Act (ATCA)[2] in *Doe v. Unocal*.[3] The plaintiffs alleged they had suffered human rights abuses, such as forced labour, murder, rape and torture by the Myanmar military government during the construction of the gas pipeline. It was alleged that Unocal was complicit in the above violations because it had paid the Burmese government for security services along the pipeline. The parties reached a settlement and the case was closed on 13 April 2005 (BHRRC 2005).

2 The Alien Torts Claim Act is a United States legislation that has been used to file civil claims against corporations for tort violations of international law.

3 *Doe v. Unocal*, 963 F. Supp. 880 (C.D. Cal. 1997).

Regarding applicable standards, international human rights law refers to the ILO regarding labour standards, especially the Forced Labour Convention (No. 29) of 1930, where TNCs are prohibited from using forced labour in their operations. In humanitarian law, a general rule is that work connected to armed conflict that is unhealthy, dangerous or humiliating is prohibited (ICRC 2006). Prison labour is addressed in Articles 49–55 of Geneva Convention III for prisoners of war, but the plaintiffs in the case were villagers, not prisoners of war. Articles 40, 51 and 95 of Geneva Convention IV deal with civilians but appear to only address international occupying powers.

Article 5(1)(e) of Additional Protocol II establishes minimum working conditions and limits the type of work that may be done by civilians in internal conflicts. It appears to be the most relevant article. It states that 'Persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained . . . shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population'. However, a possible counter argument could be that the local civilian population itself was not privy to fair labour standards.

In consideration of international human rights law and international humanitarian law regarding labour standards, the scope of international human rights law appears to be wider as it incorporates ILO standards and is applicable to all individuals, regardless of whether they are prisoners of war or civilians in an occupied territory.

Case 2: Displacement—Talisman in Sudan

In 2001, a lawsuit was filed against Talisman under ATCA in *Presbyterian Church of Sudan v. Talisman Energy*.[4] Talisman, a Canadian oil company, had allegedly requested the government to ensure law and order in the region that it was exploring. Sudan had been in a civil war.[5] In turn, the government used military and government-supplied armed militias to provide the requested protection. It was alleged that Talisman was complicit in human rights violations. On 12 September 2006, the court granted Talisman's motion to dismiss. In February 2007, the plaintiffs appealed. In 2009, the Court of Appeal affirmed the dismissal of the case. In 2010, the Supreme Court ruled that it would not hear an appeal of the decision of the Court of Appeal.

With respect to ESCR, the main issue was the displacement of people, which amounts to a violation of the right to housing. Under international humanitarian law, civilians cannot be forcibly relocated except in limited circumstances, such as security or imperative military factors, under Article 49 of Geneva Convention IV and Article 17(1) of Additional Protocol II. Article 49 of Geneva

4 *Presbyterian Church of Sudan et al. v. Talisman Energy, Inc.* (S.D.N.Y. 2003) 244 F. Supp. 2d 289.

5 The 2005 Comprehensive Peace Agreement between the government of Sudan and the Sudan People's Liberation Movement/Army was a landmark agreement that settled the civil war as cited in Haysom and Kane (2009: 1-34 at 30).

Convention IV states that 'Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.' A contentious issue would be whether or not the area in which Talisman was operating was occupied territory. There were ethnic tensions regarding the Muslims in Southern Sudan but a case would probably not meet the test of an occupied territory. In addition, Geneva Convention IV addresses international conflicts, not civil conflicts.

Article 17(1) of Additional Protocol II states that 'the displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand.' Interestingly, if a population is displaced, the article states that certain ESCR have to be ensured, such as shelter, hygiene, health, safety and nutrition. In Sudan, the reason that the civilian population was displaced was not a result of military necessity or a military objective. The tactics used to displace the population were neither rational nor proportional. The government used tactics such as ground attacks, helicopter gunships and indiscriminate high-altitude bombardment to clear the local population from oil-rich areas (ICRC 2006). The objective was to ensure the flow of oil revenue and the cost was the violation of ESCR and humanitarian law. It appears that Article 17 of Additional Protocol II would be applicable in this situation.

Case 3: Right to housing, food, shelter and a healthy environment—Shell in Nigeria

In 1996, the Center for Constitutional Rights and Earth Right International filed lawsuits under ATCA against Royal Dutch Petroleum Company in *Wiwa v. Royal Dutch Petroleum* and Shell Transport and Trading Company in *Wiwa v. Shell Petroleum Development Company* (Center for Constitutional Rights 2010). In 2001, a third lawsuit was filed against the former managing director of Royal Dutch Shell in *Wiwa v. Anderson*.

Ken Saro-Wiwa was an Ogoni activist who was allegedly wrongfully arrested, detained, tortured and killed because he was protesting against Shell's operations. In 1992, he eloquently described the degradation of his homeland at the Unrepresented Nations and Peoples Organisation in Geneva:

> Oil exploration has turned Ogoni into a wasteland: lands, streams and creeks are totally and continually polluted; the atmosphere has been poisoned, charged as it is with hydrocarbon vapours, methane, carbon monoxide, carbon dioxide and soot emitted by gas which has been flared 24 hours a day for 33 years in very close proximity to human habitation. Acid rain, oil spillages and oil blowouts have devastated Ogoni territory. High-pressure oil pipelines crisscross the surface of Ogoni farmlands and villages dangerously (Amnesty International 2011).

In June 2009, Shell reached an out of court settlement of US$15.5 million with the Ogoni people (Vidal 2009). Even though Shell did not admit to any wrongdoing, it set a social precedent. It could have been a way for Shell to get

out of its legal woes and costs but one could also submit that it establishes a degree of TNC social accountability for violations of ESCR. There is a social and moral obligation to respect ESCR and to not be complicit in violations. Monetarily, this precedent may compel TNCs to operate responsibly in order to avoid future lawsuits.

In Nigeria, the human rights violations included the right to a safe working environment, food, self-determination, freedom from discrimination, adequate health, education, standard of living, work, development and freedom of association. The list of violations exemplifies the indivisibility of ESCR and civil and political rights, where one impacts on the other. The rights are indivisible and interdependent.

There was a second case regarding Shell in Nigeria. It was the case of *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria (*African Commission on Human and Peoples' Rights 2002). It was claimed that the operations of the state oil company, Nigerian National Petroleum (NNP), in consortium with Shell Petroleum Development Corporation (Shell), had been complicit with the military government of Nigeria in human rights violations. It was alleged that the government failed to protect its citizens from Shell and NNP, which had caused environmental degradation and violated the right to food, housing and health in Ogoni communities. The claimants relied on the ESCR contained in the African Charter.

Even though the case dealt with the issue of state responsibility with respect to a TNC, it exemplifies the ability of TNCs to violate fundamental ESCR. It also shows the relationship between governments and TNCs and the complicity of Shell in violations of ESCR. If principles of humanitarian law were to be applied in the situation of Shell in Nigeria, TNCs may be liable for environmental damage as a result of providing services to militaries, such as advising armies on how to engineer massive oil spills as part of an armed conflict (ICRC 2006). With respect to food and water, they are considered goods that are indispensable to the survival of the civilian population and must be protected (ICRC 2006). In this case, the Ogoni people's access to food and water was violated and thus, international humanitarian law may be applicable for violations of ESCR.

Voluntary initiatives and codes of conduct

The growing recognition of the impact of TNCs on human security has led to the creation and adoption of voluntary codes of conduct by TNCs. This move has been driven by stakeholders who have become cognisant of the ability of TNCs to either positively or negatively impact the human security of individuals. For example, it has been recognised by non-governmental organisations that TNCs are able to positively influence government policy and practice as a means of protecting their investments (Prosansky 2007). The following codes of conduct and voluntary initiatives establish non-binding standards for TNCs:

- Voluntary Principles on Security and Human Rights
- Sarajevo Code of Conduct for Private Security Companies
- OECD Guidelines for Multinational Enterprises
- UN Global Compact
- Global Reporting Initiative Guidelines
- UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (UN Norms)
- International Council on Mining and Metals (ICCM) Principles
- Extractive Industries Transparency Initiative (EITI)

The Voluntary Principles on Security and Human Rights (the Voluntary Principles) is of particular relevance to the issue of human security, when TNCs are operating in conflict states. In 2000, the Voluntary Principles were created to provide guidance on how extractives companies operating in conflict states or precarious situations could both ensure the security of their operations and respect fundamental human rights and freedoms. It was a joint effort between governments,[6] non-governmental organisations (NGOs),[7] organisations with observer status[8] and TNCs in the extractive industry.[9] The ICRC was an observer participant in the process that led to the adoption and promotion of the Voluntary Principles. The following paragraph from the Voluntary Principles encapsulates what this paper has tried to capture:

> *Understanding* that governments have the primary responsibility to promote and protect human rights and that all parties to a conflict are obliged to observe applicable international humanitarian law, we recognize that we share the common goal of promoting respect for human rights, particularly those set forth in the Universal Declaration of Human Rights, and international humanitarian law (Voluntary Principles 2011).

The Voluntary Principles have been divided into three categories: 1) risk assessment; 2) relations with public security; and 3) relations with private security. The Principles on Risk Assessment seek to provide guidance on how companies

6 Current member governments, as of March 2012: Canada, Netherlands, Norway, the Republic of Colombia, Switzerland, United Kingdom, and United States.

7 Current NGO participarts, as of March 2012: Amnesty International, The Fund for Peace, Human Rights Watch, Human Rights First, International Alert, IKV Pax Christi, Oxfam, Pact Inc., Partnership Africa Canada, Search for Common Ground.

8 Current organisation with observer status, as of March 2012: DCAF, International Committee of the Red Cross, International Council on Mining & Metals, International Petroleum Industry Environmental Conservation Association.

9 Current TNC participants, as of March 2012: AngloGold Ashanti, Anglo American, Barrick Gold Corporation, BG Group, BHP Billiton, BP, Chevron, ConocoPhillips, ExxonMobil, Freeport McMoRan Copper & Gold, Hess Corporation, Inmet Mining Corporation, Marathon Oil, Newmont Mining Corporation, Occidental Petroleum Corporation, Rio Tinto, Shell, Statoil, Talisman Energy and Total.

can 'assess accurately' security risks. Accuracy of information is critical because it will influence how companies respond to security risks, which will have an impact on the security of personnel and local communities, a company's social licence to operate and the observance of human rights. Owing to the complex nature of certain cases, the Voluntary Principles have highlighted the importance of acquiring extensive background information from various sources, being flexible and adapting to changing and complex political, economic, law enforcement, military and social situations, and upholding productive relations with local communities and government officials (Voluntary Principles 2011).

It should be noted that, in comparison with other voluntary principles that have been created, the Voluntary Principles are unique in that they include the necessity to abide by humanitarian law, as stated within the general principles: the principles regarding risk assessment, the principles regarding the relationship between companies and public security, and the principles regarding interactions between companies and private security (Voluntary Principles 2011).

2010 was the tenth anniversary of the Voluntary Principles: a testament to the necessity for such guidelines, the importance of engaging stakeholders in the drafting process and their value as a social compass for companies operating in conflict states. To mark the tenth anniversary, a vision statement was issued, which stated that it sought to further promote the framework by 'increasing [its] participants' base, strengthening accountability, and actively promoting universal respect for human rights' (Voluntary Principles 2010). This three-pronged approach reflects the importance of stakeholder participation in the continuing success of the framework, the awareness of corporate accountability and responsibility, and the role that TNCs may play in the promotion of human rights. The Voluntary Principles aims to achieve its 2010 vision by focusing on the following:

- Conduct a comprehensive assessment of human rights risks associated with security, with a particular focus on complicity
- Institute proactive human rights screenings of and trainings for public and private security forces
- Ensure that the use of force is proportional and lawful
- Develop systems for reporting and investigating allegations of human rights abuses (Voluntary Principles 2010)

What may be gleamed from this is that these are the issues that have been of most importance in the past ten years, and which corporations should consider. These initiatives represent a step in the right direction, despite the challenges, one of which is the implementation of these voluntary codes of conduct in daily business operations, especially in unstable countries with a weak judicial system (Gnaedinger 2008). A positive aspect is that they are establishing standards and principles that are able to guide TNCs in precarious situations.

Even if they are not legally binding instruments, the Voluntary Principles act as important benchmarks from which to determine whether TNCs have the moral vigour to uphold their reputational and social licence to operate.

Conclusion

The Voluntary Principles signal the dawn of a new international community. International governance continues to be primarily state-centred; however, the horizon has widened to be more inclusive of non-state actors, such as TNCs. Theoretical debates have had to come to terms with the reality that TNCs operating in conflict states have major impacts on human security and, as a result, may be accountable for their actions and/or inactions under international human rights law and international humanitarian law. These are recent developments and international law continues to develop in terms of jurisprudence, principles, standards and norms.

Violations continue to occur but there are a number of important developments towards the full realisation of human security when TNCs are operating in conflict states. First, it has been acknowledged that TNCs have an obligation to respect international human rights law. Second, there is an increased awareness of the applicability of international humanitarian law in relation to business operations in conflict states. Third, stakeholders have come together to discuss and to create principles in recognition of the link between TNCs operating in situations of armed conflict and the application of international human rights law and international humanitarian law. It is for these reasons that management needs to enshrine fundamental human rights into their Voluntary Principles or codes of conduct. This will help TNCs to incorporate fundamental human rights principles into their core operational and decision-making frameworks. Ensuring that their operations do not contravene fundamental human rights is not only good corporate citizenship, but will also help protect TNCs from a range of adverse legal, political, social, economic and reputational risks. Thus, it is essential for TNCs operating in conflict states to guarantee the promotion of economic, social and cultural rights (ESCR) and civil and political rights (CPR) under international human rights law and humanitarian law, in order to ensure the well-being and dignity of individuals and a continued social and legal licence to operate.

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