Assessing the roles of multi-stakeholder initiatives in advancing the business and human rights agenda

Scott Jerbi
Scott Jerbi is Director of Communications of the Institute for Human Rights and Business. From 1997 to 2002 he worked in the Office of the UN High Commissioner for Human Rights, where his duties included leading the development of the Office's policies and interactions with the private sector. From 2002 to 2010 he served as Senior Advisor to Mary Robinson at Realizing Rights: the Ethical Globalization Initiative.

Abstract

Growing reliance on 'multi-stakeholder initiatives' (MSIs) aimed at improving business performance with respect to specific human rights-related challenges has become a significant dimension of the evolving corporate responsibility agenda over recent decades. A number of such initiatives have developed in direct response to calls for greater state and corporate accountability in areas of weak governance and violent conflict. This article examines the evolution of key MSIs in light of the 2011 adoption of the United Nations (UN) Guiding Principles on Business and Human Rights and addresses challenges facing these initiatives in the future.

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Growing reliance on so-called 'multi-stakeholder initiatives' (MSIs) to address governance gaps and improve business performance on human rights-related challenges has become a significant dimension of the evolving corporate responsibility agenda over recent decades. Such initiatives have taken multiple forms, with varying combinations of participation from companies, non-governmental organisations (NGOs), individual experts, and governments. Their unifying feature is a collaborative approach to the development of standards of expected conduct and systems of implementation.

A number of MSIs, such as the Voluntary Principles on Security and Human Rights, the Extractive Industries Transparency Initiative (EITI), and the Kimberley Process Certification Scheme, each of which will be discussed in this article, have developed in response to calls for greater state and corporate accountability in areas of weak governance and violent conflict. Extractive industries have been among those most involved in such efforts as they have faced particular scrutiny given their pursuit of valuable natural resources wherever they are located. Corporate relationships with repressive regimes have also led to legal cases on charges of complicity in human rights abuses. These developments have informed decisions by a small but growing number of states, major companies, and civil society actors to pursue strategies which include participation in initiatives aimed at clarifying expected conduct in challenging operating contexts.

In his 2007 report to the UN Human Rights Council, the UN Secretary-General's Special Representative on Business and Human Rights, Professor John Ruggie of Harvard University, devoted particular attention to the development of MSIs, noting that:

> Driven by social pressure, these initiatives seek to close regulatory gaps that contribute to human rights abuses. But they do so in specific operational contexts, not in any overarching manner. Moreover, recognising that some business and human rights challenges require multi-stakeholder responses, they allocate shared responsibilities and establish mutual accountability mechanisms within complex collaborative networks that can include any combination of host and home states, corporations, civil society actors, industry associations, international institutions and investors groups.[1]

This article will examine the evolution of key MSIs addressing the promotion and protection of international human rights and humanitarian law standards, in particular those initiatives of direct relevance to situations of armed conflict, violence, and fragile governance. It will do so in the light of Ruggie's work and the adoption in 2011 by the United Nations Human Rights Council of the UN Guiding Principles on Business and Human Rights.

The first section will provide a broad overview of relevant policy and academic debates concerning the turn to multi-stakeholder forms of governance.

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1   Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*, UN Doc. A/HRC/4/35, 19 February 2007, para. 53.

The second section will examine the development of three MSIs of relevance to high-risk contexts: the Voluntary Principles on Security and Human Rights, the EITI, and the Kimberley Process for certification of diamonds. The third section will explore the extent to which the UN Guiding Principles on Business and Human Rights may inform and contribute to efforts aimed at improving the overall effectiveness of these initiatives and other forms of multi-stakeholder consultation and governance. The final section of the article looks ahead at some of the potential steps that could be taken in the short term to address challenges facing MSIs and considers implications for the future of global governance.

Pursuing 'multi-stakeholderism': an overview of the debate

The increasing reliance on multi-stakeholder approaches to addressing global governance challenges is widely seen as having emerged first in the realm of international environmental policy. The UN Conference on Environment and Development held in Rio de Janeiro in 1992 and its substantive outcome, Agenda 21,[2] embedded non-state participation in international environmental policy processes and confirmed the role of non-state actors in environmental decision-making.

Debates concerning non-state involvement in environmental and development policymaking have been and continue to be framed largely in the context of public–private partnerships (PPPs). PPPs are typically understood as projects that involve governments, often acting within inter-governmental organisations (IGOs), along with multinational firms and in some cases large civil society organisations as well, with the aim of advancing specific governance objectives or addressing collective action problems. One recent study[3] points out that since the 2002 Johannesburg World Summit on Sustainable Development, hundreds of new transnational partnerships in addition to those addressing environment-related concerns have proliferated across a wide range of policy domains, including health, food safety, and disaster management. Many more such partnership initiatives were announced at the recent Rio + 20 Summit on Sustainable Development.[4]

Scholars interested in the broad trend of hybrid, privatised, and partnership-oriented forms of governance have provided a range of explanations for these developments. Some suggest that governments' 'lack of requisite technical expertise,

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2   United Nations Sustainable Development, 'United Nations Conference on Environment and Development, *Agenda 21*', Rio de Janeiro, Brazil, 3–14 June 1992, available at: www.un.org/esa/sustdev/documents/agenda21/english/Agenda21.pdf. All Internet references were accessed in 2012 unless otherwise stated.

3   Liliana B. Andonova, *Boomerang to Partnerships? Explaining State Participation in Transnational Partnerships for Sustainability*, paper prepared for Princeton University Conference on Research Frontiers in Comparative and International Environmental Politics, Niehaus Center for Globalization and Governance, December 2011, available at: www.princeton.edu/~pcglobal/conferences/environment/papers/andonova.doc.

4   See, for example, United Nations Global Compact, 'Rio + 20: action pledges by business kick off Rio drive for sustainability solutions', 18 June 2012, available at: http://unglobalcompact.org/news/246-06-18-2012.

financial resources, or flexibility to deal expeditiously with ever more complex and urgent regulatory tasks'[5] lead them to develop new governance arrangements of this kind. Others contend that non-state actors have become increasingly involved in standard-setting and public functions, 'in particular in areas where inter-governmental efforts fail, or where stakeholders, such as civil society or private business, feel that regulation by international treaty does not adequately take into account their concerns'.[6] A counter-perspective argues that states have deliberately turned away from traditional regulatory approaches in favour of new forms of collaborative governance. As one author has suggested: 'The fact that actual governments routinely obfuscate their final authority . . . is no accident. Blurring the boundary lines between public and private, indeed, is part of an intentional effort to render opaque political responsibility for the wrenching adjustments entailed in late capitalist development'.[7]

Some scholars question the potential of such governance strategies. They argue that multi-stakeholder approaches face a substantial number of challenges, including inadequate participation among all actors due to time constraints or conflicts of interest, difficulties in achieving consensus on key decisions, power and capacity imbalances across stakeholder groups, and a lack of broader social and political legitimacy. One recent critique concludes that multi-stakeholder groups may be best used 'as a means of promoting dialogue and building consensus, not as the locus of policy implementation and oversight'.[8]

Counter-perspectives suggest that in several cases, multi-stakeholder engagement has actually proved to be a more effective strategy than traditional legislative measures, resulting in enhanced standards of corporate conduct, new certification procedures, and new monitoring mechanisms, as well as in greater public awareness of corporate activities and influence. All of these combined have changed the landscape and discourse concerning the roles and responsibilities of the private sector in an increasingly global economy.[9]

Archon Fung argues that social issues involving the private sector, such as improving protection of basic labour standards, should be dealt with in a decentralised deliberative process involving NGOs, international institutions,

5   Tim Büthe and Walter Mattli, *The New Global Rulers: The Privatization of Regulation in the World Economy*, Princeton University Press, Princeton, 2001, p. 5.

6   Anne Peters, Lucy Koechlin, Till Förster, and Gretta Fenner Zinkernagel, 'Non-state actors as standard setters: framing the issue in an interdisciplinary fashion', in Anne Peters, Lucy Koechlin, Till Förster, and Gretta Fenner Zinkernagel (eds), *Non-State Actors as Standard Setters*, Cambridge University Press, Cambridge, 2009, p. 2.

7   Louis W. Pauly, 'Global finance, political authority, and the problem of legitimation', in Rodney Bruce Hall and Thomas J. Biersteker (eds), *The Emergence of Private Authority in Global Governance*, Cambridge University Press, Cambridge, 2002, p. 77.

8   Rory Truex and Tina Søreide, *Why Multi-stakeholder Groups Succeed and Fail*, World Bank Policy Research Working Paper 5495, Sustainable Development Network, Finance, Economics and Urban Development Unit, December 2010, p. 3, available at: https://openknowledge.worldbank.org/bitstream/handle/10986/3977/WPS5495.txt?sequence=2.

9   John L. Campbell, 'Why would corporations behave in socially responsible ways? An institutional theory of corporate social responsibility', in *Academy of Management Review*, Vol. 32, No. 3, 2007, pp. 946–967.

companies, workers, and consumers.[10] This approach goes against conventional methods of norm and regime formation which involve, in Fung's words, 'establishing international conventions of minimum decency, cajoling nations to adopt those conventions, and fortifying an international popular consensus to support them'.[11] He suggests that the potential effects of decentralised and multi-stakeholder approaches may 'make both conventional binding regulation and unconventional pressure for improving labor standards more compelling and effective'.[12]

Anne-Marie Slaughter, a former director of policy planning in the US State Department, a Princeton University professor, and an advocate for fostering networks of state and non-state actors to advance foreign policy objectives, has argued that:

> The most effective strategy for addressing transnational or global problems involves mixed networks of public, private and civic actors created under the rubric of public-private partnerships (PPPs), global alliances, global campaigns or collaborative networks. Although not a panacea, such arrangements can stretch scarce government resources and ensure that they leverage other contributions of money, expertise and other in-kind resources.[13]

As Slaughter suggests, PPPs have tended to come about in significant part as a response to financial or other resource constraints faced by governments and IGOs. The term 'multi-stakeholder initiative', in contrast, is generally understood to refer to efforts aimed at addressing regulatory gaps and negative impacts of corporate practices. Another key feature of MSIs can be seen in their reliance on negotiated standards and more defined governance structures, ideally based on principles such as transparency, accountability, and equitable stakeholder participation. In terms of participants, whereas PPPs by their nature always involve governments or inter-governmental organisations in prominent roles, MSI participation varies considerably. Some MSIs in the human rights domain have developed with active government involvement, while others see government representatives playing a much more limited role, as will be discussed in the next section.

MSIs and human rights: experiments in governance

Over the past decade in particular, rising attention to corporate impacts with respect to internationally agreed humanitarian, labour and human rights standards has led to a number of experiments with multi-stakeholder forms of voluntary engagement

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10 Archon Fung, 'Deliberative democracy and international labor standards', in *Governance: An International Journal of Policy, Administration and Institutions*, Vol. 16, No. 1, 2003, pp. 51–71.

11 *Ibid.*, p. 67.

12 *Ibid.*

13 Anne-Marie Slaughter, 'A grand strategy of network centrality', in Richard Fontaine and Kristin M. Lord (eds), *America's Path: Grand Strategy for the Next Administration*, Center for American Security, May 2012, p. 54, available at: www.cnas.org/files/documents/publications/CNAS_AmericasPath_FontaineAndLord.pdf.

and accountability. Given that MSIs in this area are still a relatively new innovation, multiple questions remain concerning their legitimacy and effectiveness in shaping state and corporate practices. For some observers, MSIs addressing human rights-related issues are inherently sub-optimal arrangements, in part because they may be used by companies to enhance image and keep potential litigation at bay while achieving only modest changes in corporate performance.

Advocates point out that MSIs potentially play critical roles in circumstances where government oversight and enforcement of standards is absent or deficient and can provide new platforms to advance state and corporate accountability.[14] Others suggest that such alliances are better equipped to draw on local knowledge and pool learning from the experience of diverse actors to address complex problems that governments are unable to address alone, in particular when faced with mounting financial shortfalls.[15] A recent report[16] concludes that while all such efforts begin as voluntary initiatives, over time the trend towards more formalisation, including in governmental policies and regulation, is a distinct possibility. For example, the growth in sustainable procurement guidelines for governments is seen as increasing the demand for MSI-certified products.

It is noteworthy that early MSIs addressing human rights concerns such as the Ethical Trading Initiative[17] and the Fair Labor Association (FLA)[18] – which brought together companies, NGOs, and other key societal actors committed to protecting worker rights in member company operations worldwide, focusing in particular on the garment industry – have matured in their governance arrangements. These voluntary efforts, which involved initial support from the UK and US governments respectively, have grown over the past decade into well-established institutions with limited direct government involvement. In addition, they have begun to expand their reach to address labour-related supply chain challenges for companies in a wider range of industry sectors, as can be seen in the recent decision by computer maker Apple to join the FLA.[19]

More recent efforts have seen the MSI model used in other industry sectors, such as the Global Network Initiative (GNI)[20] established in 2008 by leading information technology companies, NGOs, academics, socially responsible investors, and experts to set standards on freedom of expression and user privacy on the

14 Caroline Rees, *Corporations and Human Rights: Accountability Mechanisms for Resolving Complaints and Disputes. Report of 2nd Multi-Stakeholder Workshop, 19–20 November 2007*, Corporate Social Responsibility Initiative, Report No. 27, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, available at: www.hks.harvard.edu/m-rcbg/CSRI/publications/report_27_account-ability%20mechanisms2.pdf.

15 See, for example, Anne-Marie Slaughter, 'The future of foreign policy is public–private partnerships', in *CNN's Global Public Square Blogs*, 25 November 2011, available at: http://globalpublicsquare.blogs.cnn.com/2011/11/25/slaughter-the-future-of-foreign-policy-is-public-private-partnerships/.

16 Mariëtte van Huijstee, *Multi-Stakeholder Initiatives: a Strategic Guide for Civil Society Organizations*, Stichting Onderzoek Multinationale Ondernemingen (Center for Research on Multinational Corporations), March 2012, p. 49, available at: http://somo.nl/publications-en/Publication_3786.

17 For more information on the Ethical Trading Initiative, see: www.ethicaltrade.org.

18 See the Fair Labor Association (FLA) website: www.fairlabor.org.

19 FLA, 'Apple joins FLA', 13 January 2012, available at: www.fairlabor.org/blog/entry/apple-joins-fla.

20 For more information on the Global Network Initiative, see: www.globalnetworkinitiative.org.

Internet. This initiative took shape largely without direct government leadership, although the US State Department has been supportive of the process. The GNI developed in response to the difficult experiences of leading information technology companies in China. For example, in 2004 one of the GNI's corporate participants, the search engine firm Yahoo!, provided the Chinese government with account information connected to the e-mail address of a Chinese journalist who was imprisoned as a result. In addition to Yahoo!, Google and Microsoft, which have faced their own challenges in China, have joined GNI as well in the hope of developing shared approaches to responding to such situations in countries around the world.

Multi-stakeholder initiatives in areas of violence and armed conflict

A number of key MSIs have emerged over recent decades that are of particular relevance to situations of armed conflict, violence, and other high-risk contexts. These initiatives have notably featured more active government involvement than those mentioned previously. This section examines three leading MSIs of relevance in this area: the Voluntary Principles on Security and Human Rights, the EITI, and the Kimberley Process Certification Scheme.

The Voluntary Principles on Security and Human Rights

The Voluntary Principles on Security and Human Rights[21] were launched in 2000 with strong support from the US State Department and the UK Foreign Office. The Voluntary Principles are a multi-stakeholder initiative that brings together major companies in the extractive and energy sectors, along with a number of governments and NGOs, for the purpose of guiding companies in maintaining the safety and security of their operations consistent with respect for human rights and fundamental freedoms.

The events that led to the development of the Voluntary Principles are widely viewed as being linked directly to growing activist concerns during the 1990s about the responsibilities of major oil and mining companies operating in conflict or weak governance zones. For example, companies such as BP faced growing scrutiny during this period over the hiring of security forces in Colombia known to have been complicit in abuses of human rights in communities where the company operated.[22] Similarly, Shell faced strong criticisms of its operations in the Niger Delta, including alleged complicity in the 1995 execution by a Nigerian military

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21 For more information on the Voluntary Principles on Security and Human Rights, see: www.voluntaryprinciples.org.
22 See, for example, Jon Mitchell, 'British Petroleum finds oil – plus a war: Colombian rebels frequently target pipelines and rigs', in *Christian Science Monitor*, 29 January 1997, available at: www.csmonitor.com/1997/0129/012997.econ.econ.1.html.

tribunal of activist Ken Saro-Wiwa, who had led a campaign protesting against the negative impacts of oil companies in the region.[23]

As Bennett Freeman, a senior official in the US State Department in the Clinton administration and a key figure in the development of the Voluntary Principles, has noted:

> These allegations, whether right or wrong, fair or unfair, have attracted the attention not only of NGOs and the media, but also of the home governments of the companies involved – including the United States and the United Kingdom. Those two governments have shared a concern over the risk to the operations and reputations of their flag companies. They have also shared an economic and political stake in ensuring that those companies are able and willing to continue to operate in key countries such as Nigeria, Indonesia and Colombia. And, most importantly, they share a common commitment to the protection and promotion of human rights throughout the world.[24]

The Voluntary Principles are framed around three sets of issues. The first involves criteria that companies should consider in assessing the risk of complicity in human rights abuses in connection with their security arrangements, including their relationships with local communities and diverse other stakeholders. The second set of issues concerns company relations with state security forces, both military and police. The third area addresses direct company relations with private security forces. The overall aim is to provide practical guidance to companies on how to incorporate respect for international human rights standards into their policies and operational decision-making around the world.

Over its first decade of existence, the Voluntary Principles Initiative has faced a range of criticisms largely around lack of progress by companies in implementing the principles on the ground, lack of significant monitoring and reporting requirements, and an absence of clear admission criteria for new participants.[25] Some studies have concluded that expectations for the Voluntary Principles have been unreasonable, noting that while more could be done to improve corporate performance with respect to the principles, 'broader issues including conflicts over property rights and the (re)distribution of economic and political resources . . . will not be solved by the prevailing managerial approach to the governance of business and human rights'.[26]

23 See, for example, Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities*, January 1999, available at: www.hrw.org/legacy/reports/1999/nigeria/nigeria0199.pdf.

24 Bennett Freeman, Maria B. Pica, and Christopher N. Camponovo, 'A new approach to corporate responsibility: the Voluntary Principles on Security and Human Rights', in *Hastings International & Comparative Law Review*, Vol. 24, 2000–01, p. 427.

25 Gilles Carbonnier, Fritz Brugger, and Jana Krause, 'Global and local policy responses to the resource trap', in *Global Governance: A Review of Multilateralism and International Organizations*, Vol. 17, No. 2, 2011, p. 252.

26 Tanja A. Börzel and Jana Hönke, *From Compliance to Practice: Mining Companies and the Voluntary Principles on Security and Human Rights in the Democratic Republic of Congo*, SFB-Governance Working Paper Series, No. 25, Research Center (SFB) 700, Berlin, October 2011, p. 29, available at: www.sfb-governance.de/publikationen/sfbgov_wp/wp25/wp25.pdf?1325771404.

Information available on the Voluntary Principles website includes initial assessments of company efforts to implement the principles.[27] It shows that although participating companies believe the initiative has provided critical guidance and its multi-stakeholder nature has contributed significantly to the credibility of the effort, a number of weaknesses are evident as well. These include lack of clarity in the text of some of the principles, difficulties in monitoring and auditing performance against the standards, and a perception of the initiative being an 'exclusive club', which undermines efforts to make the principles widely known and used by a range of business sectors experiencing security and human rights-related challenges.

The addition of a number of other governments in the initiative, including Canada, Colombia, the Netherlands, Norway, and Switzerland, and renewed commitment by the Obama administration to push its mission forward, have led to further steps aimed at strengthening the Voluntary Principles' governance and effectiveness. This can be seen in the outcomes of the September 2011 plenary meeting in Ottawa at which participants adopted a set of new Governance Rules[28] for the initiative, decided to pursue the formation of a legal entity for the initiative based in the Netherlands,[29] and committed to prioritising host government outreach and in-country implementation through the creation of a Host Government Outreach Working Group to facilitate dialogue and engagement with potential government participants.[30] At the annual Voluntary Principles plenary meeting in March 2012, an independent pilot project by oil, gas, and mining companies to develop indicators intended to measure the ways these participants fulfil their commitments as part of the initiative was discussed.[31]

These steps, along with the recent additions of a new participating company – Total – and civil society participants – Global Rights and the Pearson

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27 See Voluntary Principles on Security and Human Rights, 'Overview of company efforts to implement the Voluntary Principles', Information Working Group, Company Implementation Report, available at: http://voluntaryprinciples.org/files/vp_company_efforts.pdf.

28 See Voluntary Principles on Security and Human Rights, 'The Initiative of the Voluntary Principles on Security and Human Rights: Governance Rules', as approved by the Plenary on 16 September 2011, available at: www.voluntaryprinciples.org/files/VPs_Governance_Rules_Final.pdf.

29 The Voluntary Principles Association, a non-profit organisation based in the Netherlands, was announced on 21 November 2012. The Association is intended to address administrative needs of the Voluntary Principles Initiative 'in order to enhance the Initiative's capacity to pursue its objective of facilitating the collaborative work of companies, governments, and non-governmental organizations seeking to find solutions to complex security and human rights challenges'. See Voluntary Principles on Security and Human Rights, 'The Voluntary Principles Initiative announces the formation of the Voluntary Principles Association: new organization will facilitate efforts by extractive sector companies to protect human rights', available at: www.voluntaryprinciples.org/files/Voluntary_Principles_Association_Press_Release_-_November_21_2012.pdf.

30 See Voluntary Principles on Security and Human Rights, 'Summary of Proceedings, Voluntary Principles on Security and Human Rights, Extraordinary Plenary Session', Ottawa, Ontario, 16 September 2011, pp. 1–2, available at: www.voluntaryprinciples.org/files/FHE-DC-130591-v1-VPs_Summary_of_Proceedings_Extraordinary_Plenary_Meeting.pdf.

31 See Voluntary Principles on Security and Human Rights, 'Chair's Summary of Proceedings, Voluntary Principles on Security and Human Rights, Annual Plenary Meeting', Ottawa, Ontario, 29 March 2012, p. 1, available at: www.voluntaryprinciples.org/files/Summary_of_Proceedings_VPs_Plenary_March_2012.pdf.

Centre – indicate the continuing interest in the Voluntary Principles Initiative. Only time will tell whether current reform measures are successful in bolstering the initiative's legitimacy and effectiveness.

The Extractive Industries Transparency Initiative

A second key MSI relating to the extractive sector that is also of particular relevance to conflict and post-conflict situations is the Extractive Industries Transparency Initiative (EITI).[32] The proposal for the EITI was initially presented by UK Prime Minister Tony Blair at the 2002 World Summit on Sustainable Development in Johannesburg. The EITI seeks to encourage greater transparency and accountability in resource-rich developing countries largely dependent on revenues from oil, gas, and mining. The initiative is centred on the conviction that greater public knowledge of company payments to governments will serve to improve public financial management and will in turn help foster more equitable and sustainable long-term economic growth.

Since 2006, the initiative has been overseen by a board comprising an independent chair (currently Clare Short, former UK State Secretary for International Development) and twenty representatives from implementing countries, supporting countries, civil society organisations, industry, and investment companies. A small international secretariat based in Oslo and hosted by the Norwegian government is accountable to the board. A World Bank-managed multi-donor trust fund provides technical assistance to countries in EITI implementation.

In contrast to the Voluntary Principles, in which companies are the primary actors in terms of agreeing to implement the principles and monitor progress, the EITI involves a system whereby governments themselves commit to meeting a range of requirements concerning revenue transparency. To move from 'candidate' (implementing but not yet meeting all requirements) to 'compliant' (meeting all requirements) status within the initiative, countries must complete an independent assessment known as the EITI validation every five years. This quality assurance mechanism is not an audit but seeks to evaluate, in consultation with relevant stakeholders, the implementation of the EITI global standard at the national level. The EITI board has established a network of accredited EITI validators who are selected by participating countries to work with key stakeholders in reviewing national-level performance. To date, 16 countries[33] have achieved 'compliant' status and 21 countries[34] are listed in the 'candidate' category, indicating involvement in the initiative but not yet meeting all requirements.

32 More information on the Extractive Industries Transparency Initiative is available at: http://eiti.org/.
33 As of November 2012, these include Azerbaijan, the Central African Republic, Ghana, the Kyrgyz Republic, Liberia, Mali, Mauritania, Mongolia, Mozambique, Niger, Nigeria, Norway, Peru, Timor-Leste, Yemen, and Zambia. See: http://eiti.org/countries.
34 As of November 2012, these include Afghanistan, Albania, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, the Democratic Republic of Congo, Gabon, Guatemala, Guinea, Indonesia, Iraq, Kazakhstan, the Republic of the Congo, São Tomé and Principe, Sierra Leone, the Solomon Islands, Tanzania, Togo, and Trinidad and Tobago. See: http://eiti.org/countries.

The benefits of the EITI for the stakeholders are straightforward. Participating governments see their involvement as signalling that their countries are taking the steps necessary to achieve a stable investment climate, including by committing to more accountable and transparent governance. For the many companies and investors involved, the EITI is seen as a useful structure to help mitigate reputational risks faced when operating in countries where revenue payments to governments have been questioned. Civil society actors benefit from the initiative in that it provides them with added legitimacy in their dealings with governments and companies, as well as more public information about the revenues states receive, which they can use in their own advocacy aimed at holding public officials accountable for their performance.

In March 2011, the EITI's global conference brought together over 1,000 participants from 80 countries, clearly indicating strong support for the initiative. An independent evaluation of the initiative completed in 2011 concluded that the EITI has established itself as an important international brand with impressive support from governments, the private sector, and civil society.[35] Its focus on financial transparency has been seen as a strategic entry point for strengthening global consensus around greater democratic control of resources, and its multi-stakeholder approach has been widely credited with enhancing the voice and legitimacy of civil society in countries around the world.

In highlighting a number of shortcomings in the implementation of the EITI to date, the evaluation report points out that while the initiative has fostered greater transparency, accountability does not appear to have been improved, in part because of the lack of progress in areas of political, legal, and institutional reforms and capacity development in multiple countries involved in the initiative. The EITI has been criticised as being a tool used by Western donors to link calls for democratisation and good governance with those for economic liberalisation.[36] As one commentator has noted,[37] this in part explains why countries such as Angola, Algeria, Iran, and Saudi Arabia, which represent an estimated 90% of the global production of oil and gas, are not participating in the initiative. Similarly, only a small number of state-owned oil companies are participants in the EITI.[38] Powerful nations including China and Russia have not joined. US President Barack Obama announced in September 2011 that the US will implement the EITI.[39]

35 See Scanteam, *Achievements and Strategic Options: Evaluation of the Extractive Industries Transparency Initiative, Final Report*, Oslo, May 2011, available at: http://eiti.org/files/2011-EITI-evaluation-report.pdf.
36 See, for example, Sarah Bracking, *Hiding Conflict over Industry Returns: a Stakeholder Analysis of the Extractive Industries Transparency Initiative*, Brooks World Poverty Institute, Working Paper 91, University of Manchester, May 2009, available at: www.bwpi.manchester.ac.uk/resources/Working-Papers/bwpi-wp-9109.pdf.
37 Liliane C. Mouan, 'Exploring the potential benefits of Asian participation in the Extractive Industries Transparency Initiative: the case of China', in *Business Strategy and the Environment*, Vol. 19, No. 6, 2010, pp. 367–376.
38 *Ibid.*
39 See EITI, 'President Obama: The US will implement the EITI', 20 September 2011, available at: http://eiti.org/news-events/president-obama-us-will-implement-eiti#.

The 2011 evaluation report concludes that as the EITI approaches its tenth anniversary in 2013, central challenges include the need for a broader agenda and strengthened certification scheme, combined with a more rigorous results framework for tracking performance. Such steps will require political leadership and increased capacity but are seen as being crucial to maintaining the EITI's relevance and building on its success.

The Kimberley Process

A third MSI of relevance to conflict situations is the Kimberley Process for certification of diamonds.[40] This initiative has its origins in the late 1990s, when the UN Security Council began to highlight the links between trade in rough diamonds and continuing conflicts in Africa. Security Council resolutions calling for national certification schemes for the diamond trade in Angola, Sierra Leone, and Liberia proved to be ineffective in breaking the connection between the sale of rough diamonds and the continuation of conflict in these countries.[41]

In 2000, corporate fears over the potential for consumer backlash against the entire industry, combined with the concerns of all diamond-producing countries, led to the decision to develop a multi-stakeholder process to address the issue of so-called 'conflict diamonds'. Industry and civil society participants were given full participation rights alongside state representatives in the negotiations, which were essentially aimed at developing a system for certifying the origin of rough diamonds from conflict-free sources and thereby preventing rebel groups from financing their efforts through the sale of diamonds. The initial 2000 event in South Africa launched a series of Kimberley Process meetings, which gained support from a large number of countries involved in the diamond trade. UN backing for the initiative, including a 2000 General Assembly resolution (55/56)[42] and a 2003 Security Council resolution (1459),[43] and an exemption from the World Trade Organisation,[44] were seen as crucial in legitimising the Kimberley Process that officially launched in early 2003.

Over 70 countries are now involved in the Kimberley Process, which commits participating governments to passing national legislation and under-going peer review. In addition to such requirements on states, the initiative also includes provisions for industry self-regulation based on a system of warranties and verification by independent auditors of individual companies as well as internal penalties set by industry, all with the aim of helping facilitate the full traceability of rough diamond transactions by government authorities.

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40 For more information on the Kimberly Process initiative, see: www.kimberleyprocess.com.

41 See, for example, UNSC Res. S/RES/1173, 12 June 1998 (concerning Angola), and S/RES/1306, 5 July 2000 (concerning Sierra Leone and Liberia).

42 UNGA Res. A/RES/55/56, 29 January 2001, on 'The role of diamonds in fuelling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts'.

43 UNSC Res. S/RES/1459, 28 January 2003.

44 World Trade Organisation, 'Waiver concerning Kimberley Process Certification Scheme for rough diamonds', Doc. G/C/W/432/Rev.1, 24 February 2003.

As Amy Lehr has noted:

> The Kimberley Process is arguably an example of a co-dependent system . . . Its multi-layered system denotes the benefits of multi-stakeholder approaches and mutual learning when addressing supply chain challenges. The certification scheme . . . was developed with the participation and expertise of NGOs and companies as well as governments. Those stakeholders continue to have a seat at the table of Kimberley Process meetings, and to exert considerable pressure on the direction that the initiative takes. In addition, the industry's system of warranties acts as a backup to the government certification scheme. . . . Conflict minerals cannot be addressed unless governments draw upon their traditional national government functions, such as customs inspections. The certification scheme's quality would falter without industry's input and pressure from NGOs, but its implementation would not occur without governments acting in their traditional roles as well.[45]

The Kimberley Process has been credited with helping to reduce the trade in conflict diamonds to less than 1% of the world's total rough diamond trade. Yet despite its successes, the initiative has faced strong criticism in recent years, including from civil society stakeholders who played critical roles in its creation. In December 2011, Global Witness announced[46] that it was withdrawing from the Kimberley Process over what it viewed as a series of failures on the part of the initiative concerning specific country situations, most notably in Zimbabwe. This followed a decision[47] by the Kimberley Process to authorise exports from two companies operating in the Marange diamond fields in Zimbabwe despite widespread violence and brutal repression of opponents of Zimbabwe's President Robert Mugabe. Global Witness called for

> all existing contracts in the Marange fields to be cancelled and retendered with terms of reference which reflect international best practice on revenue sharing, transparency, oversight by and protection of the affected communities . . . The diamond industry must finally take responsibility for its supply chains and prove that the stones it sells are clean.[48]

At the heart of these criticisms is a seemingly straightforward question: what is a conflict diamond? The current political situation in Zimbabwe failed to

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45 Amy Lehr, 'Old and new governance approaches to conflict minerals: all are better than one', in *Harvard International Law Journal Online*, Vol. 52, Article Series: November 2010, p. 159, available at: www.harvardilj.org/2010/11/online_52_lehr/.

46 Global Witness, 'Why we are leaving the Kimberley Process – a message from Global Witness Founding Director Charmian Gooch', 5 December 2011, available at: www.globalwitness.org/library/why-we-are-leaving-kimberley-process-message-global-witness-founding-director-charmian-gooch.

47 Kimberley Process Administrative Decision on Marange (Zimbabwe), Doc. 001/2011, 1 November 2011, available at: www.kimberleyprocess.com/documents/10540/40001/2011%20-%20AD31%20Marange%20%28Zimbabwe%29.pdf?version=1.1&t=1327595170000.

48 Global Witness, 'Global Witness leaves Kimberley Process, calls for diamond trade to be held accountable', Press Release, 5 December 2011, available at: www.globalwitness.org/library/global-witness-leaves-kimberley-process-calls-diamond-trade-be-held-accountable.

rise to the current definition of the term used by the Kimberley Process – 'rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments'.[49] Restrictions in this case were therefore deemed to be unwarranted.

Media reports[50] from the June 2012 inter-sessional meeting of the Kimberley Process in Washington D.C. indicate that the US government in its role as chair of the initiative during 2012 is attempting to address the question of definitions. It has made a proposal that is said to remove from the current definition of conflict diamonds references such as 'rebel movements' and to add terms such as 'situations of violence'.[51] Such changes, if approved, could potentially cover country situations such as Zimbabwe.

As the 2012 Chair of the Kimberley Process, US Ambassador Gillian Milovanovic, put it in her remarks to the Washington DC meeting:

> Fundamentally, we believe that carefully crafted, agreed updates to definitions, and to the procedures through which they will be invoked and applied, are central to addressing the concern of unfairness and inconsistency and also to keeping the [Kimberley Process] relevant and effective for decades to come.[52]

These and other challenges facing the Kimberley Process will likely be the subject of further intensive discussions during the initiative's tenth anniversary in 2013.

MSIs and the UN Guiding Principles on Business and Human Rights

The previous section highlighted the diverse approaches taken and the challenges faced by three leading MSIs involved in conflict or fragile governance-related situations. This section will examine the extent to which the 2011 adoption by the UN Human Rights Council of the Guiding Principles on Business and Human Rights,[53] the result of John Ruggie's six-year mandate as UN Special Representative, may be of relevance to the future of these and other MSIs in the human rights domain.

This issue should be considered first from the perspective of the approach that Ruggie took in developing the Guiding Principles and how governments and

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49 Kimberley Process Certification Scheme Core Document, Section I, 'Definitions', available at: www.kimberleyprocess.com/documents/10540/11192/KPCS%20Core%20Document?version=1.0&t=1331826363000.

50 See, for example, Naren Karunakaran and Ahona Ghosh, 'Diamond trade versus human rights', in *Economic Times*, 19 June 2012, available at: http://articles.economictimes.indiatimes.com/2012-06-19/news/32317729_1_conflict-diamonds-blood-diamonds-kimberley-process-certification-scheme.

51 *Ibid.*

52 Kimberley Process, p. 4, available at: www.kimberleyprocess.com/documents/10540/49668/Milovanovic.pdf.

53 UN Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, UN Doc. A/HRC/17/31, 21 March 2011, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/90/PDF/G1112190.pdf?OpenElement.

other stakeholders have reacted to his methodology. In the resolution endorsing the Guiding Principles and establishing the mandate of a follow-up expert working group to lead on the dissemination and implementation of the Guiding Principles, the UN Human Rights Council emphasised 'the importance of multi-stakeholder dialogue and analysis to maintain and build on the results achieved to date and to inform further deliberations of the Human Rights Council on business and human rights'.[54] Indeed, as the Norwegian government, which led the cross-regional group of core sponsors of the Special Representative's mandate, stated just prior to the adoption of the 2011 resolution:

> It is the view of the main sponsors that the success of the outgoing mandate holder results to a large extent from the inclusiveness of his approach and his ability to develop open communications with all stakeholders. We believe it is time to institutionalize this multi-stakeholder involvement and create a forum for dialogue and cooperation to support and strengthen the Working Group.[55]

The Human Rights Council resolution established a multi-stakeholder Forum on Business and Human Rights under the guidance of the Working Group for the purpose of promoting dialogue and cooperation on issues linked to business and human rights, notably 'including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices'.[56]

The Forum meets for the first time in December 2012. It is too soon to predict whether Ruggie's emphasis on multi-stakeholder consultations in reaching broad consensus and the strong support of some governments for this approach will impact the way the Human Rights Council takes forward its own work in this area, or for that matter how companies will pursue their individual and collective efforts to implement the UN Guiding Principles. For its part, the new UN Working Group on Business and Human Rights has made clear its intentions to build on this approach:

> The Working Group recognizes that the final measure of success of its mandate will be the extent to which the Guiding Principles are mainstreamed into 'business-as-usual' for all stakeholders in business activities – whether they influence, lead or participate in, or are affected by the same. This places the principle of multi-stakeholder consultation and input at the core of the philosophy of the Working Group, with the aim of garnering the widest degree of support by stakeholders for both the process and the outcomes of the mandate.[57]

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54 UN Human Rights Council Resolution on 'Human rights and transnational corporations and other business enterprises', UN Doc. A/HRC/RES/17/4, 6 July 2011, para. 5.
55 Norway's statement is available at: www.business-humanrights.org/media/documents/ruggie/statements-norway-uk-business-human-rights-16-jun-2011.pdf.
56 See UN Human Rights Council, above note 54.
57 Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, UN Doc. A/HRC/20/29, 10 April 2012, para. 75.

But beyond the importance of broad consultation with all relevant actors, what do the Guiding Principles have to say about multi-stakeholder initiatives themselves? In fact, direct references to MSIs in the Guiding Principles are found only in the context of the so-called 'Remedy' pillar of the Protect, Respect and Remedy Framework on business and human rights, which the Guiding Principles are meant to operationalise. Guiding Principle 30 states: 'Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available'.[58] The Commentary to this principle states, in part:

> The legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms. The mechanisms could be at the level of individual members, of the collaborative initiative, or both. These mechanisms should provide for accountability and help enable the remediation of adverse human rights impacts.[59]

These statements are important, as existing MSIs have generally not placed emphasis on grievance or alternative dispute resolution mechanisms. It should be noted, however, that initiatives such as the FLA have instituted third-party complaint processes as a last resort for individuals and groups alleging serious abuses that have not been adequately addressed through other channels.[60] Similarly, MSIs currently in development, such as the Code of Conduct for Private Security Service Providers, have included grievance mechanisms as part of their founding governance documents.[61]

Specific references to grievance mechanisms in the UN Guiding Principles are critical but may raise questions as to why other aspects of MSI governance are not included as well. However, a number of additional issues covered in the Guiding Principles are of direct relevance and should be considered in this context. One example concerns the issue of corporate public reporting. Guiding Principle 21 affirms that business enterprises should communicate externally how they address the human rights-related impacts of their operations, in particular when operating in contexts that pose risks of severe human rights impacts. Disclosure of performance continues to be a key challenge for many MSIs. The Guiding Principles provide clear statements in this area that should inform future practice.

Guiding Principle 16, concerning corporate policy commitments to respect human rights, and Principle 17, on the need for ongoing human rights due diligence processes to assess actual and potential human rights impacts and steps to integrate and act upon the findings of such assessments, are critical baseline expectations which should also be factored into MSI governance and efforts aimed at increasing legitimacy and effectiveness.

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58   See UN Human Rights Council, above note 53, Principle 30, p. 26.
59   *Ibid.*, Principle 30, Commentary.
60   See FLA, 'Third party complaint process', available at: www.fairlabor.org/third-party-complaint-process.
61   See Charter for the Oversight Mechanism for the International Code of Conduct for Private Security Service Providers, 2013, available at: http://www.icoc-psp.org/uploads/ICoC_Articles_of_Association.pdf.

Recommendations in the Guiding Principles to state duties are also of relevance to MSIs, in particular with respect to conflict situations. Guiding Principle 7 states:

> 7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:
>
> a)   engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
> b)   providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
> c)   denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
> d)   ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

Clearly, these recommendations suggest that companies and governments involved in MSIs such as those discussed in the previous section should now be reviewing their own policies and actions in light of the UN Guiding Principles, which are widely viewed as the most authoritative global standard in the area of business and human rights.

Looking ahead: fulfilling the promise of multi-stakeholder governance

Despite competing views concerning their utility and effectiveness, the development of MSIs addressing private sector responsibilities in conflict and fragile governance areas has already significantly altered the playing field for many major corporations and marked an evolution in how some states view the need for more innovative strategies to address key human rights-related challenges. Though only a relatively small number of states and companies have involved themselves in such efforts to date, these experiments in governance have clearly made an impact on the global policy agenda.

Given their recent history, it is not surprising that each of the MSIs discussed in this article features different forms of interaction and power relations between participants, employs different governance arrangements, and has achieved different levels of implementation and evaluation of performance to date. Despite their still experimental forms, there is a growing sense of urgency regarding the legitimacy and impact of such efforts should be addressed; these include the still limited involvement by many corporations, governments, and civil society actors, as

well as the lack of uniform standards, monitoring, and penalties for non-compliance.

What practical steps can be taken in the short term to address the challenges and shortcomings facing existing MSIs? One clear area where more work is needed concerns greater attention to the roles of governments in such efforts. As John Ruggie stressed when addressing participants in the Voluntary Principles on Security and Human Rights in 2011:

> When operating in difficult environments, companies need granular advice and assistance from home and host states alike. They need to be able to count on the in-country government-to-government interface that is a critical component of the Voluntary Principles . . . In my experience, most embassies are not well instructed or equipped for these tasks. In addition, home governments of companies need to be honest with them when their activities approach critical thresholds, and promote corrective measures if they are crossed.[62]

Encouraging participating governments to exert proactive leadership within existing initiatives, consistent with the state duty to protect human rights as affirmed in the UN Guiding Principles, is a clear priority in the time ahead. Other governance-related challenges need greater attention and more consistent approaches by all stakeholders as well. Issues such as how MSI secretariats should be established and funded, what the implications are for participating companies in terms of their relationships with suppliers, distributors, and subsidiaries, and how effective complaints mechanisms should be established are all critical in bolstering the legitimacy of existing and planned initiatives.

A number of lessons on these and other governance questions facing MSIs addressing human rights related concerns could potentially be drawn from related examples such as the work of the International Social and Environmental Accreditation and Labelling (ISEAL) Alliance.[63] This collaborative project was formed in the late 1990s by four certification organisations with the aim of establishing a global association of sustainability standards. ISEAL's work covers industry sectors such as agriculture, forestry, and fisheries, with plans for standards on additional sectors under way. Its codes of good practice on issues of impact and assurance may benefit the efforts of MSIs discussed in this article. An additional relevant effort can be seen in the developing activities of the Institute for Multi-Stakeholder Initiative Integrity (MSI Integrity), which aims to examine the impact and value of voluntary business-related human rights initiatives.[64]

Another resource that MSIs should seek to engage is the new UN Working Group on Business and Human Rights, through its mandate to disseminate and foster implementation of the UN Guiding Principles. The Working Group could, for

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62   John G. Ruggie, 'Keynote Remarks at Extraordinary Plenary Voluntary Principles on Security & Human Rights Department of Foreign Affairs & International Trade, Ottawa, Canada, 15 September 2011', available at: http://voluntaryprinciples.org/files/Ruggie_Speech_VPs_September_2011.pdf.
63   See the ISEAL Alliance website at: www.isealalliance.org.
64   See the MSI Integrity website at: http://www.msi-integrity.org/.

example, be asked to convene representatives of major MSIs in the field to share lessons learned and discuss how relevant provisions of the Guiding Principles should best be integrated into existing and planned initiatives. Equally important, it and other independent human rights bodies such as national human rights institutions could play vital roles by assisting MSIs in resolution of disputes, and potentially investigating and issuing authoritative opinions in cases where disputes could not be resolved through mediation.

Greater involvement by these UN expert bodies will undoubtedly point out the significant constraints facing MSIs and other organisations working in this area, a subject that John Ruggie addressed repeatedly as part of his mandate. Ruggie proposed the establishment of a voluntary fund for business and human rights, with the primary purpose of addressing capacity-related needs in implementing the UN Guiding Principles. His proposal envisioned a fund that could receive contributions by states and private sources and be overseen by a multi-stakeholder steering committee dedicated to supporting strategies at all levels for encouraging uptake of the Guiding Principles.[65] To date, the only UN follow-up to this proposal has been a request by the UN Human Rights Council for a 'feasibility study' on the possibility of establishing such a fund,[66] although the UN Working Group or the Office of the High Commissioner for Human Rights could conceivably pursue additional actions in this area as well.

Critics of multi-stakeholder approaches will likely continue to point to the danger of such efforts becoming little more than exercises in corporate public relations and a diversion from the real task of creating verifiable and legally enforceable regulatory frameworks. Defending against such criticisms will require that those involved in MSIs, in particular companies and governments, take further concerted steps to strengthen the legitimacy and effectiveness of these initiatives, including by ensuring real power-sharing and genuine involvement of stakeholder groups from civil society and from local communities impacted by corporate operations, as well as by involving other constituent groups in decision-making processes and evaluation of impact. MSIs will also need to demonstrate their ability to involve more corporate and state actors while continuing to foster greater ownership, expertise, and innovation, which can produce positive impacts over time.

As the examples in this article highlight, many questions remain about the viability of MSIs as a form of global governance that can contribute to preventing and ending situations of violence, armed conflict, and wide-scale abuse of human rights. Despite these uncertainties, what is clear is that MSIs, operating

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65 Mandate of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, 'Recommendations on follow-up to the mandate', 11 February 2011, available at: http://business-humanrights.org/media/documents/ruggie/ruggie-special-mandate-follow-up-11-feb-2011.pdf.

66 UN Human Rights Council, UN Doc. A/HRC/RES/21/5, 16 October 2012, para. 11 requests 'the Secretary-General to undertake a feasibility study to explore the establishment of a global fund to enhance the capacity of stakeholders to advance the implementation of the Guiding Principles . . . the conclusions should be presented to the Human Rights Council and included in the report of the Secretary-General in June 2014'.

outside formal institutional structures and processes, continue to be seen by a range of actors as a viable form of global governance based on a growing body of practice in select industry and operating contexts. This collective knowledge and experience will inevitably make them a key determinant of how any new international standards aimed at clarifying the responsibilities of multiple actors in the human rights domain will be developed both substantively and procedurally in the future.