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Bennett Freeman

Maria B. Pica

Christopher N. Camponovo

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A New Approach To Corporate Responsibility: The Voluntary Principles on Security and Human Rights

By BENNETT FREEMAN,* MARIA B. PICA** AND CHRISTOPHER N. CAMPOVOO***

The adoption of the Universal Declaration of Human Rights over half a century ago focused the international community on the rights of individuals and the responsibilities of States. Inevitably, as the human rights movement gained momentum, traditional precepts of international law have been challenged—particularly the applicability of international human rights law to non-State actors. Principal among the players in this debate are multi-national corporations (MNCs) whose activities are often alleged to raise human rights concerns, activities that have led advocates to pursue legal actions to hold these actors to international human rights standards previously thought applicable only to States.

As critical as the outcome of these cases may be to human rights advocates and MNCs alike, there is no doubt that the private sector will continue to face scrutiny over its security practices and its impact on human rights. Such scrutiny will not be tempered by interpretations of law as much as it will be driven by larger economic and political forces beyond the jurisdiction of domestic courts.

Globalization is clearly the greatest revolutionary force of our

* Former Deputy Assistant Secretary of State for Democracy, Human Rights and Labor, U.S. Department of State (April 1999 – January 2001); M.A., Oxford University; B.A., University of California, Berkeley.

** Senior Advisor, Bureau of Democracy, Human Rights and Labor, U.S. Department of State; J.D., Catholic University of America, Columbus School of Law (1997); B.A., Catholic University of America (1989).


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time, and it has heightened the visibility of the MNCs whose technology, trade and investment is bringing the world closer together economically and culturally. Yet globalization in turn has spawned a political backlash focusing on the conduct and accountability of these very MNCs as well as of the governments and international institutions charged with representing corporate interests, arguably, at the expense of others.

As a result, MNCs have been the subject of widespread criticism for human rights abuses they are alleged to have committed or to have had the ability to prevent. From remote indigenous communities in Nigeria, the Far East and Colombia to the streets of Seattle, Quebec City and Genoa, voices calling for corporate accountability have grown more persistent. MNCs in the footwear and apparel, oil and mining, food and agricultural, diamond and jewelry industries have been on the firing line most prominently in recent years, joined dramatically by the global pharmaceutical giants in recent months.

Alongside these pressures and adversarial dynamics, new patterns of dialogue and partnership are emerging as companies become more willing to acknowledge the need to engage on these issues and sometimes even deal directly with their non-governmental organization (NGO) critics.¹

As a result, we have witnessed the development of various initiatives attempting to craft guidance for MNCs in their quest to be recognized as good global citizens. Some, such as the U.N. Global Compact, the Global Sullivan Principles and the Caux Roundtable Principles, are broad and aspirational rather than specific and prescriptive. Others, such as the Global Reporting Initiative and Social Accountability 8000, focus on reporting and monitoring

conduct in the workplace and on specific issues. Still others, such as the Fair Labor Association, bring together a number of footwear and apparel companies with NGOs to address sweatshop labor practices, focussing on a defined set of issues in single or closely related sectors. If anything, the proliferation of initiatives has become so apparent in the last year or two that some companies are struggling simply to keep abreast of the latest developments; some complain that just as they are willing to focus and engage, they become overwhelmed by “code mania” or “code fatigue.”

The latest initiative to have emerged in this already crowded arena, one whose unique features may nonetheless translate into elements of a common model, is the U.S./U.K. Voluntary Principles on Security and Human Rights (“Voluntary Principles”). The Voluntary Principles, initiated and chaired by the governments of the United States and the United Kingdom, were the culmination of months of discussions and negotiations between several large oil, mining and energy MNCs, human rights NGOs, and corporate responsibility groups. It is not every day that organizations with such diverse interests come together to “recognize that security and respect for human rights can and should be consistent.” Yet this is exactly what happened on December 20, 2000 when the Voluntary Principles were announced by then U.S. Secretary of State Madeleine Albright in Washington and U.K. Foreign Secretary Robin Cook in London.4

This paper first will explain the Voluntary Principles as a response to specific concerns over the human rights implications of the operations of oil, mining and energy companies in developing countries and, against this backdrop, discuss the process through

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3. Id., pmbl.

which the Voluntary Principles were developed. Second, it will address the Principles within the context of other corporate responsibility initiatives, with an emphasis on both their unique and common features—in process, form, and substance—and suggest why this unprecedented combination and synergy offers a model for other efforts to move the corporate responsibility agenda forward.

I. Background & Development

Although the process leading to the public announcement of the Voluntary Principles only got underway in March 2000, the issues at stake have been brewing for years. No single event did more to focus the attention of human rights activists on the role and responsibility of oil companies in their uncomfortable coexistence with indigenous peoples than the execution of Ken Saro-Wiwa by Nigeria’s dictator Sani Abacha in 1995. Shell Oil was confronted with the charge that with its immense presence in the Niger Delta and enormous contribution to the regime’s revenue coffers, it could have used its influence to avert the tragedy. Indeed, these events have given rise to litigation in U.S. federal court.

That charge prefigured the extent to which foreign oil as well as mining companies would become lightning rods in violent political and ethnic conflicts, from Nigeria to Indonesia to Colombia. This development was probably inevitable. The companies have been seen by their critics as local proxies for wealth and authority in the remote regions where they operate and are sometimes seen as the surrogate government; their personnel and assets are both potent


7. See Wiwa v. Royal Dutch Petroleum Co., 226 F.3d 88 (2d Cir. 2000). In Wiwa, plaintiffs have asserted various claims for relief under the Alien Tort Claims Act, 28 U.S.C. § 1350, based on, inter alia, international human rights law. Id. at 91. The Second Circuit reversed the District Court’s dismissal of the case on forum non conveniens grounds, and the U.S. Supreme Court recently denied Shell’s request for a writ of certiorari. 121 S. Ct. 1402 (2001). The merits of plaintiffs’ claims will soon be addressed by the district court on remand.
symbols and tangible targets for protest and even attack. Since Ken Saro-Wiwa’s execution, extractive sector companies have been challenged on many issues, from not making transparent their payments to governments to their presence on lands claimed by indigenous peoples.

Yet no single set of issues has become more concrete than the clash between security and human rights, i.e., between the companies’ determination to meet their legitimate security needs and the insistence of local peoples and international NGOs that human rights are also respected. Over the past several years, some companies were accused by local activists and NGOs of complicity, whether witting or unwitting, in human rights abuses. Some, particularly in the Niger Delta and the strife-torn province of Aceh in Indonesia, have been charged with responsibility for the consequences of the use of their equipment by the state security forces with which they have working relationships. Others, such as BP in Colombia, have faced scrutiny over the hiring of security forces known to have been complicit in, if not directly responsible for, abuses of human rights in surrounding communities.

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. Together they recognized an unusual dual opportunity: to undertake an initiative to strengthen respect for human rights and the rule of law for the benefit of indigenous communities while at the same time contributing to a safer and more sustainable business environment for the companies.

In March 2000, the U.K. Foreign Office and the U.S. Department of State brought a number of leading energy companies, human rights NGOs and corporate responsibility NGOs together to determine

8. See Price of Oil, supra note 5, at 82-84, 97-107, 115-122; see generally Human Rights Watch, Colombia: Human Rights Concerns Raised by the Security Arrangements of Transnational Oil Companies (1998).
whether there was a willingness to seek common ground on security and human rights issues. A second meeting at the U.S. Embassy in London in May brought additional American companies to the table, and produced a consensus that the process would aim at developing specific guidelines for companies on ways to handle their security arrangements consistent with international human rights standards. Such written guidance could capture and crystallize the emerging good policy and practice on the part of several companies in particular, enriched by NGO criticism and recommendations.

Furthermore, it was agreed that principles would be drafted to address three key substantive areas: (1) the criteria that companies take into account as they assess both the risk to their operations and to human rights before initiating operations, i.e., "risk assessment"; (2) their relationships with state security forces, both police and military—the area of primary substantive concern to the participants; and (3) their relations with private security forces (more often used by British than by U.S. companies).

At a third meeting at the State Department in Washington in July and a final meeting at the Foreign Office in September, participants worked through drafts. By the end of each day-long meeting, a surprising degree of consensus had been reached among the nearly thirty people in the room. One of the most remarkable aspects of the process was the willingness of individuals from such disparate backgrounds, whether human rights activists or company security chiefs (including a former British SAS man and a former American FBI agent), to thrash through the issues for so many hours. Discussions were spirited, but the atmosphere was congenial, borne primarily of mutual respect and a strong willingness to achieve consensus on these important issues.

After nearly three months of fine-tuning and careful consideration by the company and NGO participants as well as by the two governments, the Voluntary Principles were announced. Company and NGO participants indicated that they supported the process and welcomed the principles. Media coverage highlighted the fact that for the first time, a critical mass of extractive sector companies based in the United States and in the United Kingdom were willing to address these difficult issues.

9. Supra note 4.
10. Id.
11. See Peter Behr, Companies Sign Pact on Human Rights, WASH. POST, Dec.
Reaching this point was not easy. Now the efficacy and the durability of the Voluntary Principles will be determined on at least five fronts. First and foremost is the work of the companies in reviewing and revising as necessary their internal policies in order to integrate the Voluntary Principles, then to implement them into their regular operations. Second is the willingness of both the companies and NGOs to continue the dialogue on security and human rights, and to build trust over time permitting progress on additional issues without losing sight of their own core interests and values. Third is the continuing commitment of the two governments to sponsor and facilitate a process that has relied on their convening authority and diplomatic resources. Finally, if these principles are to make a real difference, it will be no less important for host country governments and civil society to be full partners in ensuring accountability.

II. The Voluntary Principles

Corporate codes of conduct have extended the responsibility of the corporation from the shareholder to the communities and global marketplace where they operate. Over the past several years, many codes have emerged and have attracted the interest of companies in a number of sectors. Studies have shown that the percentage of executives in countries that subscribe to the idea that the “only goal of the corporation is to make a profit” is a minority.\(^1\) NGOs are also looking at their relationship with MNCs in a more positive light. Nearly sixty percent believe that their future relationship with MNCs will be more cooperative.\(^3\)

Two immediate questions are raised by the proliferation of corporate responsibility codes: Can a code shape corporate behavior, and what kind of code will effect positive change? Generally, three factors characterize effective corporate responsibility codes.\(^4\) First, an effective code informs corporate decision-making. Second, effective codes have as their impetus the involvement of corporations themselves. Corporations must “own” the codes. In other words,

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3. Id. at 17.
4. Id.
they must contribute to their development and integrate them into corporate structure. Finally, stakeholders must be involved in their development. When all those with an interest in the codes, including NGOs, employees, and governments, assist in their development, there is a higher likelihood of implementation and adherence.

With the exception of the United Nations Global Compact, most existing corporate responsibility codes were developed as a response to the growth of MNCs. Some have attributed the proliferation of codes to the desire of governments in the developing world to increase control over MNCs. Undoubtedly, in today's global economy, MNCs are among the most dynamic actors. Telecommunications, computer technology and services, banking, insurance, pharmaceuticals and personal products, food and beverage, extractives, and a host of other sectors directly affect the lives of the citizens in the countries where they operate. Whatever the impetus, numerous public actors including individuals, intergovernmental and regional organizations, have tried to develop standards that guide corporate conduct in the developing world.

The Voluntary Principles are significant for the combination of features that are both unique and common to these existing corporate responsibility codes, as discussed below. While the Voluntary Principles remain a work in progress and dialogue among the participants continues, it is worth examining their creation as a potential model for future corporate responsibility guidelines in other sectors.

A. Process

The process leading to the drafting of the Voluntary Principles was a unique one. It was the first government-convened dialogue that dealt with the difficult issue of security and human rights with both


corporations and civil society at the table. From the beginning, it was clear that with such sensitive issues at stake, it would take the convening power of the two home country governments to bring both the company and NGO participants together, and to ensure the success of the initiative. Intensive behind-the-scenes efforts by the two governments to facilitate the drafting and negotiating process were essential to forging eventual consensus; they also had the collateral effect of sharpening the focus of the two governments (including a number of their embassies around the world) on the problems faced by corporations dealing with security in difficult operating environments.

The development of the Voluntary Principles also involved many of the key actors necessary for their eventual integration and implementation into practice. Participating companies with security personnel and assets at risk brought their security experts as well as government relations and public affairs executives to the table. Human rights groups who work to strengthen and promote awareness of human rights issues were directly involved. Corporate responsibility groups that promote positive corporate conduct were also particularly helpful in contributing their experience. In the end, the participation of these committed individuals will ensure the continued relevance of the Principles to the daily operations of corporate security managers as well as to those in the human rights community who no doubt will continue to scrutinize company policy and conduct on these issues.

Notably, most other efforts at developing standards or codes have not been as inclusive as the process that led to the Voluntary Principles. For instance, the Reverend Leon Sullivan succeeded in persuading CEOs of several major American corporations in diverse sectors to make an unprecedented public commitment; however, he did not involve NGOs or governments in the process. And, the OECD guidelines, another often-touted corporate responsibility success story, were an inter-governmental effort that did not include private industry or civil society.

19. The OECD Guidelines were adopted in 1976 by member states of the Organisation for Economic Co-Operation and Development. Their status is that of recommendations to MNCs by the governments of OECD member states. They do
Although the Voluntary Principles were deliberately drafted without identifying particular countries in the text, they were crafted to address specific factual situations in certain countries which have posed difficult human rights concerns. Thus, the goal was to develop a set of guidelines that could be applied globally to situations where similar security and human rights issues converge. This avoided a selection process of determining which countries should be included or singled out, an exercise which could have caused problems with a number of host country governments for both the convening governments and the companies. Host country governments were not included in the dialogue, but in several instances were briefed on the broad objectives of the initiative. These process decisions were made in the interests of promoting candor and information-sharing among the participants, encouraging the companies to develop guidelines based on their experiences in a number of countries, and in avoiding unnecessary country-specific distractions which could have crippled the dialogue at any point.

Finally, the Voluntary Principles differ from other standards in that they provide for a process of continued cooperation and dialogue. Continuing dialogue and active engagement among the participants in the months following the announcement, both to air views on progress and to exchange lessons learned, sets the Principles apart from other standards. Regular exchanges between the participants in a flexible, informal environment also promotes trust among the corporations and human rights groups. Although many of the participants have distinctly separate objectives, the process has demonstrated that these objectives are not incompatible.

B. Form

Early in the process, the participants agreed that for this initiative to be a success, certain sacrifices from all parties would be necessary. For the companies, this meant opening their security practices to increased scrutiny by NGOs. The U.S. and U.K. governments, for their part, were making a commitment to assist the companies and NGOs in their relations with host governments as companies began to implement principles that would surely be

unpopular with local governments and security forces. For the NGOs, it meant accepting a set of guidelines without "teeth," i.e., they would be voluntary and non-binding.

Of course, the non-binding character of the Voluntary Principles is not unique; many corporate responsibility initiatives have taken this form. Indeed, this aspect of these codes has elicited criticism. Why, skeptics assert, should we support the adoption of voluntary principles that do not legally bind MNCs? If corporations are free to opt out of these regimes without consequence, what value do these initiatives add to the promotion and protection of human rights and fundamental freedoms? These criticisms are, in some ways, valid. In this context, however, the participants decided that several factors warranted adopting this form for the Voluntary Principles: the historical development of corporate responsibility codes, as well as the intrinsic value of increasing public awareness, promoting dialogue and forcing engagement.

The history of what we call "human rights" today is a relatively recent one. It was not until 1948, with the adoption of the Universal Declaration of Human Rights that the international community agreed on a set of rights and freedoms all states should guarantee for those individuals within their jurisdiction. Subsequently, states added detail and force to the principles reflected in the Declaration through multilateral instruments such as the International Covenant on Civil and Political Rights. However, even though these instruments are legally binding on States Parties, practice thereunder has been inconsistent; often their political and moral authority have more force than their legal effect. Against this historical backdrop, the comparatively rapid development of agreed principles of conduct by and for MNCs is impressive.

Other than the law of the locality in which they operate, heretofore, MNCs have rarely been held to any universally agreed standard of conduct. Traditionally, human rights standards adopted by states are not generally applicable to private actors, subject to certain limited exceptions. Only within the last few years have U.S.

22. See, e.g., Kadic v. Karadzic, 70 F.3d 232, 239-41 (2d. Cir. 1995) (noting that while certain types of international law violations, such as torture, must be committed
courts held that some international human rights principles may apply to non-State actors. So, given the short history of the development of human rights, the adoption of voluntary operational guidelines for MNCs, applicable wherever they operate, is a significant step forward in the progressive development of universally applicable guidelines for corporate behavior.

Voluntary, non-binding standards also raise public awareness of the activities of MNCs and, equally important, of the measures taken to minimize the potential for human rights abuses to occur. Many consumers have little awareness of the overseas activities of the companies whose products they purchase or services they use, even in this new information age. This is particularly true with regard to the energy sector—consumers have little basis for distinguishing one oil company from another, for example. However, experience shows that if consumers have access to this information, consumers do, indeed, use it to make purchasing decisions. Operational guidelines—and the Voluntary Principles, in particular—help consumers identify companies that have expressed a willingness to consider human rights in their operations, and equally important, those that have chosen to ignore these concerns. So long as MNCs, civil society, and governments ensure transparency in the review and implementation of these principles, the public is well served by their existence.

The process of developing voluntary principles and guidelines also brings parties with divergent interests to the negotiating table. As discussed above, the public release of the Voluntary Principles was the culmination of a year’s worth of negotiations between organizations with very diverse interests. Previously, discussions between these parties were limited to accusatory press releases or, at times, litigation. Through participating in this initiative, each group

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by state actors, others, such as acts of genocide, war crimes and other violations of international humanitarian law, can be committed by private individuals); see also RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §§ 404, 702 (1986).


24. Indeed, the high level of public attention given to tuna fishing practices that unnecessarily killed bottle-nosed dolphin, resulting from the “dolphin-safe tuna” movement, eventually led to increased government scrutiny and technological innovation.

25. See supra Part I.
was able to reach consensus on ways to achieve the common goal of avoiding human rights abuses in areas of operations. While there was disagreement on many issues, the impressive level of dialogue led to consensus on a number of difficult, controversial issues, and to an increased understanding of how to work together to advance each other's interests in the future.

Similarly, these initiatives demystify the "enemy": MNCs are no longer nameless, faceless organizations, and NGOs become more than slogans and protests. This consideration was particularly acute in the negotiation of the Voluntary Principles. When the people who work within organizations with seemingly diverse interests began their discussions, it became apparent that all parties share many of the same goals. It is in no one's interest for human beings to suffer, and the increase in dialogue places this common goal within reach.

Finally, and perhaps most importantly, these initiatives contribute to the gradual development of global standards of corporate citizenship. These standards will develop with or without the participation of the MNCs whose practices will be scrutinized thereunder—at the gas pump, the jeweler or the shoe store. It is largely for this reason that MNCs have chosen to become involved in crafting these principles. Not only can they avail themselves of the public relations benefit of visible participation, but they can help shape the form these principles will eventually take. Such participation should be encouraged as it leads to the development of standards—whether voluntary or not—which are feasible, practical and saleable.

C. Substance

The Voluntary Principles both build on existing standards and crystallize emerging best practices. Of course, the participants in the Voluntary Principles process were not the first to think about security and human rights. The Voluntary Principles do, however, have several notable, distinguishable characteristics: (a) they are narrowly tailored to address substantive issues with a high level of detail, (b) they are operational rather than aspirational in nature, and (c) they

incorporate existing international human rights standards.

First, the Voluntary Principles address only one distinct issue: the intersection between corporate security and human rights standards in the extractive industries.

While only the U.N. Global Compact and the Global Reporting Initiative specifically address security, they fail to do so with sufficient detail to be effective. The Compact is the only standard that asks MNCs to prevent complicity in human rights abuses.27 Companies are asked to respect international standards for the use of force and to establish safeguards to prevent the use of their funds or equipment to violate human rights.28 The problem with these initiatives, however, is their failure to include the detail necessary to guide implementation and compliance. By breaking down the relationship between security and human rights and adding new elements to three areas of existing company activities—risk assessments, corporate interaction with public security, and corporate interaction with private security—the Voluntary Principles add the detail missing from other initiatives.

Companies regularly conduct risk assessments to examine the investment climate in countries where they are preparing to establish operations. Through the Risk Assessments section, the Voluntary Principles recognize that accurate risk assessments should consider six human rights-related factors to ensure accuracy and efficacy:

- First, the identification of security risks, with proper recognition of the possibility that company actions may heighten such risk;
- Second, the potential for violence, appraised through consultations with civil society, home and host government representatives and other sources;
- Third, the human rights records of public security forces, paramilitaries, local and national law enforcement and private security forces, as well as the capability of these entities to respond to situations of violence in a lawful manner;
- Fourth, an assessment of the capacity of the local prosecuting authority and judiciary to hold accountable those responsible for human rights abuses and violations of international

28. Id.
humanitarian law;
- Fifth, the identification and understanding of the root causes and nature of local conflicts for better management of relations between, *inter alia*, companies, local communities and host governments; and
- Sixth, the risk of lethal and non-lethal equipment transfers from companies to public and private security.

In evaluating these factors and incorporating them into risk assessments, companies are asked to examine information available from all relevant stakeholders—civil society, home and host governments, security providers, local judiciary—particularly regarding past and current practices that could impact security and human rights. In addition, companies are encouraged to collect and share this information to the extent confidentiality and security concerns allow.

The second section, "Interactions between Companies and Public Security," addresses one of the areas most frequently scrutinized by the public and civil society—the use of public police or military forces by MNCs to provide security in hostile operating environments. This section focuses on four key issues: security arrangements, deployment and conduct, consultation and advice, and responses to human rights abuses. As in the risk assessment section, stakeholders are a central focus. Companies are encouraged to communicate their expectations regarding security and human rights to host governments and use their influence to ensure that security is not provided by individuals "credibly implicated" in human rights abuses. Companies are also asked to record and report allegations of abuses to host governments while protecting the confidentiality of sources.

The most difficult provision to negotiate, and, not surprisingly, the most ground-breaking, addresses the extent to which companies ought—or ought not—to attempt to affect the actions of public security. For instance, what should a company do when it learns that individuals who have committed human rights violations in the past are providing security for them on behalf of the host government? Is it the company's role to criticize public security for excessive use of force, or for suppressing a labor demonstration or strike?

Participating NGOs argued that the Principles should take a firm stand and require companies affirmatively to prevent the kinds of
abuses referenced above. Companies took the position that this is not their appropriate role, and, indeed, if they ever took such an aggressive stance with host governments they would likely lose the ability to operate in those countries. In the end, the parties agreed on the following compromise formulation:

Companies should use their influence to promote the following principles with public security: (a) individuals credibly implicated in human rights abuses should not provide security services for Companies; (b) force should be used only when strictly necessary and to an extent proportional to the threat; and (c) the rights of individuals should not be violated while exercising the right to exercise freedom of association and peaceful assembly, the right to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.29

This formulation strikes a balance between the often sensitive and sometimes tenuous company-host government relationship and the influential role that companies can have in protecting and promoting the human rights of both employees and local communities.

The third section, “Interactions between Companies and Private Security,” maintains many of the principles articulated in the public security section, but adds an important dimension. In this section, companies are urged to enforce the principles and guidelines through including them in contractual provisions with private security providers. In order to “minimize the risk that private security exceed their authority as providers of security, and... promote respect for human rights,” the expectations outlined in the private security section may be included by companies “as contractual provisions in agreements with private security providers.”30 Thus, where companies follow this guidance, the failure of private security to follow the guidance laid out in the Voluntary Principles could constitute grounds for terminating the contractual relationship.

The second notable feature of the Voluntary Principles is their operational, rather than aspirational, approach to guiding corporate behavior. By providing practical guidance on how to avoid human rights abuses in the future, the Principles take a “how to” approach to

30. Id.
A New Approach to Corporate Responsibility

preventing abuses. This approach can be incorporated directly into the security operations of participating companies.

Finally, the Voluntary Principles refer directly to international human rights and other standards incorporated in various U.N. instruments. These references are significant because, in one sense, they reflect an understanding by the participants that international standards negotiated and established through state action are not irrelevant to the actions of MNCs. For instance, international humanitarian law is applicable to both state and non-state parties to a conflict. Thus, where company security forces become embroiled in a local conflict, the Voluntary Principles recognize the importance of adherence to this body of law. This is equally true with regard to references to international law enforcement standards included in the Voluntary Principles.

The Voluntary Principles offer a new model for the development of guidelines to promote corporate responsibility. In contrast to existing codes and standards, the Voluntary Principles offer corporations a specific strategy through which they can address human rights in their security arrangements. It has also established an ongoing process of collaboration, information-sharing, and dialogue among home governments, corporations, and civil society. While integration and implementation of the Principles may take time, the process through which the Principles were developed should ensure their relevance and efficacy over time.

III. Conclusion

As the international community’s experience under the Universal Declaration of Human Rights has shown, the development, promotion and protection of human rights and fundamental freedoms is an incremental process. Principles that are voluntary and aspirational today become universal standards tomorrow. The international community—governments, business and civil society alike—must continue, in Kofi Annan’s words, “to unite the power of the marketplace with the authority of universal ideals.”32 The Voluntary Principles on Security and Human Rights represent a significant step forward, and the participants should be applauded for their willingness to engage in this process as well as encouraged to continue this constructive dialogue.

At the same time, the Voluntary Principles represent a model of the willingness and the ability of companies and NGOs to address and ultimately forge consensus on a complex and sensitive set of issues. This exercise will have been especially valuable if it encourages others to engage in dialogue on an issue-by-issue, sector-by-sector basis, with or without beginning as a government-convened process or ultimately taking the form of voluntary principles.

There are many opportunities to engage and much is at stake. At stake are human rights and building a constituency for human rights in the business community. At stake is the “social license to operate” of the multinational enterprise, together with the quality and durability of the business environment in which it operates around the world. At stake, even, is the future of globalization, or at least a chance to build a consensus for approaches that will serve civil society’s interest in democratic accountability and the business community’s interest in expanded trade, sustainable investment and growth. With so much at stake, and so many diverse actors with potentially converging interests, they should seek further opportunities to find common ground.

Annex

Voluntary Principles on Security and Human Rights

December 19, 2000

The Governments of the United States and the United Kingdom, companies in the extractive and energy sectors ("Companies"), and non-governmental organizations, all with an interest in human rights and corporate social responsibility, have engaged in a dialogue on security and human rights.

The participants recognize the importance of the promotion and protection of human rights throughout the world and the constructive role business and civil society (including non-governmental organizations, labor/trade unions and local communities) can play in advancing these goals. Through this dialogue, the participants have developed the following set of voluntary principles to guide Companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms. Mindful of these goals, the participants agree to the importance of continuing this dialogue and keeping under review these principles to ensure their continuing relevance and efficacy.

Acknowledging that security is a fundamental need, shared by individuals, communities, businesses and governments alike, and acknowledging the difficult security issues faced by Companies operating globally, we recognize that security and respect for human rights can and should be consistent;

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;

Emphasizing the importance of safeguarding the integrity of company personnel and property, Companies recognize a commitment to act in a manner consistent with the laws of the countries within which they are present, to be mindful of the highest applicable international standards, and to promote the observance of applicable international law enforcement principles (e.g., the U.N. Code of Conduct for Law Enforcement Officials and the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials), particularly with regard to the use of force;

Taking note of the effect that Companies’ activities may have on local communities, we recognize the value of engaging with civil society and host and home governments to contribute to the welfare of the local community while mitigating any potential for conflict where possible;

Understanding that useful, credible information is a vital component of security and human rights, we recognize the importance of sharing and understanding our respective experiences regarding, inter alia, best security practices and procedures, country human rights situations, and public and private security, subject to confidentiality constraints;

Acknowledging that home governments and multilateral institutions may, on occasion, assist host governments with security sector reform, developing institutional capacities and strengthening the rule of law, we recognize the important role Companies and civil society can play in supporting these efforts;

We hereby express our support for the following voluntary principles regarding security and human rights in the extractive sector, which fall into three categories, risk assessment, relations with public security and relations with private security:

**Risk Assessment**

The ability to assess accurately risks present in a Company’s operating environment is critical to the security of personnel, local communities and assets; the success of the Company’s short and long-term operations; and to the promotion and protection of human rights. In some circumstances, this is relatively simple; in others, it is important to obtain extensive background information from different sources; monitoring and adapting to changing, complex political, economic, law enforcement, military and social situations; and maintaining productive relations with local communities and
government officials.

The quality of complicated risk assessments is largely dependent on the assembling of regularly updated, credible information from a broad range of perspectives – local and national governments, security firms, other companies, home governments, multilateral institutions and civil society knowledgeable about local conditions. This information may be most effective when shared to the fullest extent possible (bearing in mind confidentiality considerations) between Companies, concerned civil society, and governments.

Bearing in mind these general principles, we recognize that accurate, effective risk assessments should consider the following factors:

- **Identification of security risks.** Security risks can result from political, economic, civil or social factors. Moreover, certain personnel and assets may be at greater risk than others. Identification of security risks allows a Company to take measures to minimize risk and to assess whether Company actions may heighten risk.
- **Potential for violence.** Depending on the environment, violence can be widespread or limited to particular regions, and it can develop with little or no warning. Civil society, home and host government representatives and other sources should be consulted to identify risks presented by the potential for violence. Risk assessments should examine patterns of violence in areas of Company operations for educational, predictive and preventative purposes.
- **Human rights records.** Risk assessments should consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security. Awareness of past abuses and allegations can help Companies to avoid recurrences as well as to promote accountability. Also, identification of the capability of the above entities to respond to situations of violence in a lawful manner (i.e., consistent with applicable international standards) allows Companies to develop appropriate measures in operating environments.
- **Rule of law.** Risk assessments should consider the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses and
for those responsible for violations of international humanitarian law in a manner that respects the rights of the accused.

- **Conflict analysis.** Identification of and understanding the root causes and nature of local conflicts, as well as the level of adherence to human rights and international humanitarian law standards by key actors, can be instructive for the development of strategies for managing relations between the Company, local communities, Company employees and their unions, and host governments. Risk assessments should also consider the potential for future conflicts.

- **Equipment transfers.** Where Companies provide equipment (including lethal and non-lethal equipment) to public or private security, they should consider the risk of such transfers, any relevant export licensing requirements, and the feasibility of measures to mitigate foreseeable negative consequences, including adequate controls to prevent misappropriation or diversion of equipment which may lead to human rights abuses. In making risk assessments, companies should consider any relevant past incidents involving previous equipment transfers.

**Interactions Between Companies and Public Security**

Although governments have the primary role of maintaining law and order, security and respect for human rights, Companies have an interest in ensuring that actions taken by governments, particularly the actions of public security providers, are consistent with the protection and promotion of human rights. In cases where there is a need to supplement security provided by host governments, Companies may be required or expected to contribute to, or otherwise reimburse, the costs of protecting Company facilities and personnel borne by public security. While public security is expected to act in a manner consistent with local and national laws as well as with human rights standards and international humanitarian law, within this context abuses may nevertheless occur.

In an effort to reduce the risk of such abuses and to promote respect for human rights generally, we have identified the following voluntary principles to guide relationships between Companies and public security regarding security provided to Companies:
Security Arrangements

- Companies should consult regularly with host governments and local communities about the impact of their security arrangements on those communities.
- Companies should communicate their policies regarding ethical conduct and human rights to public security providers, and express their desire that security be provided in a manner consistent with those policies by personnel with adequate and effective training.
- Companies should encourage host governments to permit making security arrangements transparent and accessible to the public, subject to any overriding safety and security concerns.

Deployment and Conduct

- The primary role of public security should be to maintain the rule of law, including safeguarding human rights and deterring acts that threaten Company personnel and facilities. The type and number of public security forces deployed should be competent, appropriate and proportional to the threat.
- Equipment imports and exports should comply with all applicable law and regulations. Companies that provide equipment to public security should take all appropriate and lawful measures to mitigate any foreseeable negative consequences, including human rights abuses and violations of international humanitarian law.
- Companies should use their influence to promote the following principles with public security: (a) individuals credibly implicated in human rights abuses should not provide security services for Companies; (b) force should be used only when strictly necessary and to an extent proportional to the threat; and (c) the rights of individuals should not be violated while exercising the right to exercise freedom of association and peaceful assembly, the right to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.
- In cases where physical force is used by public security, such
incidents should be reported to the appropriate authorities and to the Company. Where force is used, medical aid should be provided to injured persons, including to offenders.

Consultation and Advice

- Companies should hold structured meetings with public security on a regular basis to discuss security, human rights and related workplace safety issues. Companies should also consult regularly with other Companies, host and home governments, and civil society to discuss security and human rights. Where Companies operating in the same region have common concerns, they should consider collectively raising those concerns with the host and home governments.

- In their consultations with host governments, Companies should take all appropriate measures to promote observance of applicable international law enforcement principles, particularly those reflected in the U.N. Code of Conduct for Law Enforcement Officials and the U.N. Basic Principles on the Use of Force and Firearms.

- Companies should support efforts by governments, civil society and multilateral institutions to provide human rights training and education for public security as well as their efforts to strengthen state institutions to ensure accountability and respect for human rights.

Responses to Human Rights Abuses

- Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. Where appropriate, Companies should urge investigation and that action be taken to prevent any recurrence.

- Companies should actively monitor the status of investigations and press for their proper resolution.

- Companies should, to the extent reasonable, monitor the use of equipment provided by the Company and to investigate properly situations in which such equipment is used in an inappropriate manner.

- Every effort should be made to ensure that information used as the basis for allegations of human rights abuses is credible and based on reliable evidence. The security and safety of
sources should be protected. Additional or more accurate information that may alter previous allegations should be made available as appropriate to concerned parties.

**Interactions Between Companies and Private Security**

Where host governments are unable or unwilling to provide adequate security to protect a Company's personnel or assets, it may be necessary to engage private security providers as a complement to public security. In this context, private security may have to coordinate with state forces, (law enforcement, in particular) to carry weapons and to consider the defensive local use of force. Given the risks associated with such activities, we recognize the following voluntary principles to guide private security conduct:

- Private security should observe the policies of the contracting Company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; emerging best practices developed by industry, civil society, and governments; and promote the observance of international humanitarian law.
- Private security should maintain high levels of technical and professional proficiency, particularly with regard to the local use of force and firearms.
- Private security should act in a lawful manner. They should exercise restraint and caution in a manner consistent with applicable international guidelines regarding the local use of force, including the U.N. Principles on the Use of Force and Firearms by Law Enforcement Officials and the U.N. Code of Conduct for Law Enforcement Officials, as well as with emerging best practices developed by Companies, civil society, and governments.
- Private security should have policies regarding appropriate conduct and the local use of force (e.g., rules of engagement). Practice under these policies should be capable of being monitored by Companies or, where appropriate, by independent third parties. Such monitoring should encompass detailed investigations into allegations of abusive or unlawful acts; the availability of disciplinary measures sufficient to prevent and deter; and procedures for reporting allegations to relevant local law enforcement authorities.
when appropriate.

- All allegations of human rights abuses by private security should be recorded. Credible allegations should be properly investigated. In those cases where allegations against private security providers are forwarded to the relevant law enforcement authorities, Companies should actively monitor the status of investigations and press for their proper resolution.

- Consistent with their function, private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities. Companies should designate services, technology and equipment capable of offensive and defensive purposes as being for defensive use only.

- Private security should (a) not employ individuals credibly implicated in human rights abuses to provide security services; (b) use force only when strictly necessary and to an extent proportional to the threat; and (c) not violate the rights of individuals while exercising the right to exercise freedom of association and peaceful assembly, to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.

- In cases where physical force is used, private security should properly investigate and report the incident to the Company. Private security should refer the matter to local authorities and/or take disciplinary action where appropriate. Where force is used, medical aid should be provided to injured persons, including to offenders.

- Private security should maintain the confidentiality of information obtained as a result of its position as security provider, except where to do so would jeopardize the principles contained herein.

To minimize the risk that private security exceed their authority as providers of security, and to promote respect for human rights generally, we have developed the following additional voluntary principles and guidelines:
Where appropriate, Companies should include the principles outlined above as contractual provisions in agreements with private security providers and ensure that private security personnel are adequately trained to respect the rights of employees and the local community. To the extent practicable, agreements between Companies and private security should require investigation of unlawful or abusive behavior and appropriate disciplinary action. Agreements should also permit termination of the relationship by Companies where there is credible evidence of unlawful or abusive behavior by private security personnel.

Companies should consult and monitor private security providers to ensure they fulfill their obligation to provide security in a manner consistent with the principles outlined above. Where appropriate, Companies should seek to employ private security providers that are representative of the local population.

Companies should review the background of private security they intend to employ, particularly with regard to the use of excessive force. Such reviews should include an assessment of previous services provided to the host government and whether these services raise concern about the private security firm's dual role as a private security provider and government contractor.

Companies should consult with other Companies, home country officials, host country officials, and civil society regarding experiences with private security. Where appropriate and lawful, Companies should facilitate the exchange of information about unlawful activity and abuses committed by private security providers.