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**NATIONAL OIL COMPANIES
AND CORPORATE CITIZENSHIP:
A SURVEY OF TRANSNATIONAL POLICY AND PRACTICE**

BY

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ABOUT THE POLICY REPORT

THE CHANGING ROLE OF NATIONAL OIL COMPANIES IN INTERNATIONAL ENERGY MARKETS

Of world proven oil reserves of 1,148 billion barrels, approximately 77% of these resources are under the control of national oil companies (NOCs) with no equity participation by foreign, international oil companies. The Western international oil companies now control less than 10% of the world's oil and gas resource base. In terms of current world oil production, NOCs also dominate. Of the top 20 oil producing companies in the world, 14 are NOCs or newly privatized NOCs. However, many of the Western major oil companies continue to achieve a dramatically higher return on capital than NOCs of similar size and operations.

Many NOCs are in the process of reevaluating and adjusting business strategies, with substantial consequences for international oil and gas markets. Several NOCs have increasingly been jockeying for strategic resources in the Middle East, Eurasia, and Africa, in some cases knocking the Western majors out of important resource development plays. Often these emerging NOCs have close and interlocking relationships with their national governments, with geopolitical and strategic aims factored into foreign investments rather than purely commercial considerations. At home, these emerging NOCs fulfill important social and economic functions that compete for capital budgets that might otherwise be spent on more commercial reserve replacement and production activities.

The Baker Institute Policy Report on NOCs focuses on the changing strategies and behavior of NOCs and the impact NOC activities will have on the future supply, security, and pricing of oil. The goals, strategies, and behaviors of NOCs have changed over time. Understanding this transformation is important to understanding the future organization and operation of the international energy industry.

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JPEC's international collaborations cover joint research and exchange of researchers and information with oil producing countries and international institutions and support for infrastructure improvement and solving environmental problems of the petroleum industries in oil producing countries.

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NATIONAL OIL COMPANIES
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“So the question is, do corporate executives, provided they stay within the law, have responsibilities in their business activities other than to make as much money for their stockholders as possible? And my answer to that is, no they do not.”

Milton Friedman, 1976 Nobel Laureate in Economics

“Let us choose to unite the power of the market with the authority of universal ideals.”

Kofi Annan, Secretary-General of the United Nations (1997-2006)

“Business practices rooted in universal values can bring social and economic gains.”

Ban Ki-Moon, Secretary-General of the United Nations (2007-present)

INTRODUCTION

How best may transnational energy companies exercise corporate citizenship? The answer, of course, depends on one's definition of social responsibility, as well as the sphere of influence that a particular business or corporation has, or is perceived to have. Until the late twentieth century, businesses were, by and large, considered socially responsible if they obeyed the laws of the land and met the basic needs of their employees. Community involvement was, in essence, seen as a philanthropic function through which companies behaved as social actors within a particular locality. Yet, demands for socially accountable business behavior have grown steadily, alongside the emergence of a vibrant civil society sector focused on human rights and sustainable development issues. Moreover, court decisions, lawsuits, international treaties, and dialog between companies and advocacy groups have affected legal norms in areas ranging from financial transparency to environmental protection.

Many companies have sought the ability to respond to public accountability demands outside a binding legal framework. As a result, voluntary initiatives have become prominent. In this context, calls for greater social and environmental accountability from the energy sector have been especially large. A fundamental reshaping of energy companies' core values and the ways in which they conduct business—especially in areas outside the reach of U.S. and European regulation—has begun to transform political and social relationships between major international energy companies, the countries whose resources they extract, the peoples whose land they operate on, and the civil society groups that frequently monitor and comment on their conduct. However, an increasingly important part of the energy sector has not been fully

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co-opted into this robust, ongoing dialogue: state-owned, national oil and gas companies. The implications for human rights and sustainable development are enormous.

National oil companies (NOCs) have become key actors within, as well as shapers of, the international oil market. This has been the case since the wave of nationalization passed over oil-producing countries from Angola to Venezuela in the 1960s and 70s, the consolidation of state control over oil and gas companies in Russia and Central Asia, and the dynamic growth of Asian states, such as China and India. Commonly described as substantially government-owned oil and gas enterprises, national oil companies now control access to the majority of the world's most lucrative oil reserves. In the case of some major oil consuming and industrializing countries, national oil companies have been tasked with ensuring access to and production of reserves to meet the oil needs of burgeoning populations.

Given the overlay of geopolitics with geology, many of the world's most prolific and profitable basins are located in countries with limited administrative capacities and/or highly authoritarian governments. The robust and growing demand for energy by "consumer" NOCs from countries that lack major oil reserves, or whose declining reserves can no longer keep pace with domestic demand, is great enough to oftentimes outweigh concerns for social and environmental impacts. Illustrating this point, Harvard University professor and United Nations envoy for business and human rights Dr. John Ruggie states:

For my interim report last spring I examined 65 cases of the worst human rights abuses reported by NGOs over the previous few years. Two thirds were in the extractive sector. What else was striking? The 65 cases took place in 27 countries, of which all but two were low-income countries; all scored low on governance and rule of law indicators; all scored high on corruption. Clearly, there is a

negative symbiosis between weak governance and the worst corporate human rights abuses.¹

One of the twenty-first century's most pressing questions will be how peoples' legitimate, and increasing, need for affordable and accessible energy in post-industrial as well as industrializing societies can be reconciled with the human security and sustainability requirements of individuals in energy-rich, rights-poor countries.

This monograph will begin by discussing the development of corporate citizenship theory and practice. It will then analyze the experience of five national oil companies to highlight the impact of the evolving, non-binding international initiatives that attempt to shape corporations' sustainability behaviors. In conclusion, the current debate over and possible future directions for corporate citizenship will be discussed, with an emphasis on the role of national oil companies. Questions to be considered include: How can a national oil company be a good corporate citizen when operating abroad, and why does this matter? What can NOCs learn from each others' experiences and those of the major IOCs? Can voluntary measures alone set effective standards for socially responsible behavior by national oil companies? What would binding measures look like? What are the longer-term prospects for NOCs' impacts on human rights? It is important to note that this essay is not designed as a comprehensive quantitative analysis of NOCs and sustainability; rather, as a qualitative narrative, it seeks to shed light on and spark future study of an important, unfolding development in the energy industry that has

¹ John G. Ruggie, "Remarks at Public Session: National Roundtable on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries," Montreal, November 14, 2006, 7.

massive implications for world politics, human security, and the evolution of international corporate governance.²

Finally, the impact of national oil companies' transnational activities has implications for the global human rights regime and international relations overall. To take a key example, China's efforts to secure foreign oil and natural gas to meet its growing energy demand are contributing to human rights violations in Sudan and Burma. These human rights conflicts, significantly influenced by abundant oil and gas reserves, have strained U.S.-China relations. They have also complicated international efforts to create a more effective architecture to address both rights crises and conflict management over energy resources. On a multilateral basis, the United States should open a dialog with countries that have NOCs operating abroad and discuss how to enhance corporate citizenship measures by all stakeholders in the international energy market. Failure to address these matters could encourage other parties seeking scarce energy supplies to take similar compromises on human rights as they court questionable oil regimes. This development would be detrimental to international peace and security.

A Note on Terminology

The proliferation of terminology surrounding corporate citizenship requires brief introduction. Alternatives to the term corporate citizenship have included "corporate social responsibility" (CSR) and "business ethics" among others. As Andrew Crane and Dirk Matten have described, the U.S. and Europe business communities have embraced the term "citizenship" due in large part to more neutral connotations surrounding that

² An introduction to quantitative analysis of corporate citizenship is: Henry Schäfer, "International Corporate Social Responsibility Rating Systems," *Journal of Corporate Citizenship* 20 (2005): 107-120.

term, as opposed to the imputation that business is inherently irresponsible or unethical.³ Moreover, citizenship connotes both rights and duties, which corporations enjoy due to legal personality, as much as individual persons or national governments. Additional discussion regarding the definition of corporate citizenship appears in Section Three.

INTERNATIONAL VOLUNTARY MEASURES

In recent years, a number of key international mechanisms have been created to enable interested countries and companies to promote corporate citizenship. Some of these instruments address specific areas, such as transparency and corruption, and security and human rights. Others seek to provide holistic induction into the ethos of corporate citizenship. Taken together, these measures—all voluntary as of February 1, 2007—are helping energy companies to improve the ways they do business. By themselves, the voluntary measures introduced below cannot achieve perfect optimization of businesses' abilities to affect positive change in human rights protection, sustainable development, and environmental stewardship. Yet, these voluntary measures provide avenues for businesses to operate both profitably and beneficently. This body of voluntary civil regulation blends respect for the aspirations of the Universal Declaration of Human Rights with acceptance of businesses' economic imperative. In short, this movement for international corporate citizenship seeks to simultaneously increase the peace and prosperity of humankind.

Extractive Industries Transparency Initiative

British Prime Minister Tony Blair announced the creation of the Extractive Industries Transparency Initiative (EITI) at the 2002 World Summit on Sustainable

³ Andrew Crane and Dirk Matten, *Business Ethics: A European Perspective* (Oxford: Oxford University Press, 2004), 62.

Development. The EITI focuses on enhancing government capabilities and reducing corruption in countries rich in natural resources.

The EITI supports improved governance in resource-rich countries through the full publication and verification of company payments and government revenues from oil, gas and mining. Many countries are rich in oil, gas, and minerals, and studies have shown that when governance is good, these can generate large revenues to foster economic growth and reduce poverty. However when governance is weak, they may instead cause poverty, corruption, and conflict – the so called “resource curse.” The EITI aims to defeat this “curse” by improving transparency and accountability.⁴

EITI participant countries include Azerbaijan and Nigeria. Countries officially supporting the initiative are Australia, France, Germany, the Netherlands, Norway, and the United Kingdom. Major energy companies involved include BP, Chevron, ExxonMobil, Shell and Statoil. EITI has become a key mechanism through which companies have been able to support greater transparency by publishing payments to national governments.

Business Leaders Initiative on Human Rights

The Business Leaders Initiative on Human Rights (BLIHR) has made a couple notable contributions to the ongoing international discussion of corporate citizenship. (Statoil is the only company considered in this essay that participates in the Business Leaders Initiative on Human Rights.) Consisting of a range of major U.S. and European corporations, the Initiative seeks “practical ways of applying the aspirations of the Universal Declaration of Human Rights within a business context and to inspire other businesses to do likewise.”⁵ BLIHR has conducted a number of studies since its creation that primarily focus on the development, analysis, and application of operational tools, which can assist companies that seek to integrate human rights into business practice. BLIHR’s other key contribution to date is the function it serves as a forum for discussion

⁴ Extractive Industries Transparency Initiative, <http://www.eitransparency.org/section/abouteiti>.

⁵ Business Leaders Initiative on Human Rights, <http://www.blihr.org/>.

and dialog among a grouping of large corporations from many different industries in Europe and the USA. Founded in 2003, BLIHR is a business-created, business-led group. The Initiative's participating companies envision the BLIHR as a temporary measure, with its operations scheduled to conclude in 2009. Mary Robinson, former Irish President and UN High Commissioner for Human Rights, serves as honorary chair of the initiative.

United Nations Global Compact

Launched in July 2000, the United Nations Global Compact (UNGC) is the UN's corporate citizenship initiative, which consists of participating companies that voluntarily choose to adhere to the Compact's ten principles on human rights, labor rights, environmental stewardship, and anti-corruption efforts. The Compact does not function as a mechanism to regulate participating companies' actions. Instead, it serves to gather interested companies together around core UN principles and, together, facilitate discussion and create practical guidelines and tools for operational use. In addition to business, the Compact engages with civil society organizations (AKA non-governmental organizations), organized labor, and national governments. The largest geographic area represented in the Compact is EU Europe (42 percent) followed by Asia (20 percent) and South and Central America (20 percent). In 2006, North American companies formed only 4.6 percent of the initiative's membership. Businesses from the energy, utility and mining sectors form 9 percent of the Compact's total membership.

To remain participants in good standing, companies are urged to issue annual "Communication on Progress" reports about their efforts to support Global Compact principles. Companies that do not regularly share their progress publicly become "non-communicating." If a company does not submit a report for two years, it will be relegated

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to “inactive” status and publicly listed as an inactive participant on the Global Compact website. In addition, a participant may be de-listed if “it refuses to engage in dialogue on a matter raised under the Global Compact integrity measures within three months of first being contacted by the Global Compact Office about the matter.” As participation occurs on a voluntary basis, companies may freely join or, alternatively, allow their participation to lapse. Communication on Progress reports can appear as part of a company’s annual report, or may even become the basis for a separate corporate citizenship report, e.g., Petrobras’ *Social and Environmental Report* (2005), which the Compact cites as a model among participating companies from the oil and natural gas industry.

Companies choose to join the Global Compact for many reasons, but a driving force is social legitimacy. Through active membership in the Compact, companies gain the ability to shape the discussion and direction of corporate citizenship theory and practice alongside businesses with similar interests. Via the compact’s regional and national networks, businesses from the same geographic areas can share best practices, discuss new managerial mechanisms, and develop new areas for study and implementation, as well as conduct a broader dialog with watchdog NGOs and national governments in a non-adversarial, collaborative way.

Voluntary Principles on Security and Human Rights

In December 2000, a group of four governments, together with civil society organizations and companies involved in extractive industries, announced the promulgation of a set of “Voluntary Principles on Security and Human Rights” (VPSHR) to guide operational security practices by participating corporations.⁶

⁶ The VPSHR sponsor countries are the United States, United Kingdom, the Netherlands, and Norway.

The participants recognize the importance of the promotion and protection of human rights throughout the world and the constructive role business and civil society [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.⁷

The principles concern three areas of security practice: risk assessment, operations by public security, and operations by private security. Energy company participants in the Voluntary Principles initiative include BP, Chevron, ConocoPhillips, ExxonMobil, Hess, Marathon, Norsk Hydro, Occidental, Shell, and Statoil. As described by Brookings Institution scholar David Vogel in his book *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility*, the Voluntary Principles do not entail genuine obligations, but provide watchdog organizations with grounds to closely comment upon signatories' behavior. What is more, implementing the Voluntary Principles can be challenged by inadequate articulation of the principles within a company, facts on the grounds which can shift suddenly and dangerously, and tension between protecting personnel and assets on one hand, and respecting human rights on the other.

While not the main focus of this essay, each of the voluntary corporate citizenship measures discussed above has shaped the discussion and implementation of many energy companies' policies and practices on human rights, sustainable development, and environmental protection, especially in foreign operations. In the absence of binding civil regulation at the international level, these initiatives provide the current concepts, strategies, and tools that many companies reference. Before turning to experience of the

⁷ The full list of principles is available at: <http://www.voluntaryprinciples.org/>.

NOCs themselves, this essay will next lay out the theories and practices that drive international corporate citizenship today.

CONCEPTUALIZING CORPORATE CITIZENSHIP

The Theoretical Terrain

The first decade of the twenty-first century has witnessed a proliferation of voluntary initiatives, dialogs, discussions, conferences, “social responsibility reports,” and other activity concerning corporate citizenship (CC). Difficult to define, corporate citizenship is in essence a continuum of ideas regarding a company’s engagement with society beyond its principle economic functions. “Indeed, there is a great deal of disparity of opinion as to just what socially responsible corporate conduct entails, ranging from ‘hard libertarians,’ who articulate the ‘profit maximization’ ethos [...] to more progressive theorists who call for a more public-oriented approach.”⁸ From a minimalist perspective, corporate citizenship is primarily philanthropic. A broader interpretation holds that corporate citizenship includes supporting the socio-economic welfare and natural environment for local communities in which a company operates. This view usually eschews wading into explicitly political matters, e.g. offering unsolicited advice to national governments on how best to spend oil revenues, or criticizing a relative lack of civil-political freedoms in the public sphere. A more demanding notion argues that corporate citizenship encompasses not only a company’s philanthropic and socio-economic development activities, but also the ways in which a company may function politically. This can include, for example, providing public goods in the midst of

⁸ A. Claire Cutler, “Transnational Business Civilization, Corporations, and the Privatization of Global Governance” in *Global Corporate Power*, ed. Christopher May, (London: Lynne Rienner, 2006), 200.

government failure, whether out of enlightened self-interest, the desire to establish greater social legitimacy, or a combination of these and other motives.

Scholarly opinion does diverge over the extent of corporate accountability, how it is best exercised, and what policies and practices should guide (or potentially regulate) such behavior. Yet, while debate over the ethical or moral accountability of corporations continues, a major current in academic, government and business circles now accepts that businesses *do* bear a large measure of responsibility for social and environmental impacts. Today, a common criticism of the once dominant libertarian position is that corporations enjoy the same legal personality that individual persons and nation-states do, with far less accountability. In large part, this trend reflects growing public awareness of corporations' multiple impacts upon society. The discussion over corporate citizenship at an international level has also become part of the wider debate over "global governance."⁹

In *Business Ethics: A European Perspective*, Andrew Crane and Dirk Matten argue in favor of an expansive view of corporate citizenship. Their analysis of corporate internal decision structures show that corporations "have *agency* independent of their members" and that "all companies not only have an organized corporate internal decision structure, but furthermore manifest a set of beliefs and values that lay out what is generally regarded as right or wrong in the corporation—namely, the organizational culture."¹⁰ They conclude that "corporations do indeed bear some level of moral responsibility that is more than the responsibility of the individuals constituting the

⁹ Global governance has been described as "efforts that bring more orderly and reliable responses to social and political issues that go beyond the capacities of states to address individually." Thomas G. Weiss and Leon Gordenker, "Pluralizing Global Governance: Analytical Approaches and Dimensions," in *NGOs, the UN, and Global Governance*, Thomas G. Weiss and Leon Gordenker (eds.), (New York: Lynne Rienner Publishers, 1999) 17.

¹⁰ Crane and Matten, 40.

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corporation.”¹¹ Crane and Matten suggest three models of corporate citizenship based upon their analysis of stakeholder theory and expand upon prior scholarship on corporate responsibility: (a) the “limited view” which “equates CC with corporate philanthropy,” (b) an “equivalent view” that equates CC with CSR, and (c) an “extended view” which “acknowledges the extended political role of the corporation in society.”¹² Crane and Matten argue that “the extended view of CC suggests the following definition: ‘corporate citizenship describes the corporate function for administering citizenship rights for individuals.’”¹³ In the extended view of corporate citizenship, companies may become providers of social goods, such as roads, hospitals, and education; enablers of civil rights, depending on interactions with governmental authorities; and channels for the exercise of political rights (e.g. activism against multinational corporations). In their analysis, Crane and Matten endorse the extended view of corporate citizenship because it “helps us to see better the *political role* of the corporation and clarifies the demand for *corporate accountability* that is such a prominent feature of contemporary business ethics thinking.”¹⁴

On balance, Milton Friedman argued that social welfare programs are the province of government. In his view, management is accountable to shareholders, not to the general public. The Nobel Prize-winning economist famously wrote that “[...] there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game,

¹¹ Crane and Matten, 41.

¹² Ibid, 63.

¹³ Ibid, 69.

¹⁴ Ibid, 70.

which is to say, engages in open and free competition, without deception or fraud.”¹⁵ In addition, Henry G. Manne, dean emeritus of George Mason University’s School of Law, has described the push for corporate accountability in the socio-economic sphere as a way to increase government control over private businesses:

Somehow large-scale business success, usually resulting in a publicly held company, seems mysteriously to transform the nature of numerous individuals’ private investments into assets affected with a public interest. And once these corporate behemoths are ‘affected with a public interest,’ they must either be regulated by the state or they must act as though they are owned by the public, and are therefore inferentially a part of the state.¹⁶

Industry leaders have also expressed reservations about private business becoming unduly active in the political realm, especially where systems of government are at issue. In *Statoil and Sustainable Development* (2005), a Statoil executive said that “I believe that doing business with the aim of changing the system of government in the countries where we operate falls beyond the scope of what a company legitimately can do.”¹⁷

Taking a slightly different tack, some scholars who are skeptical of corporate citizenship argue that CC must be seen as an imperfect instrument. They write that that CC should not be relied upon beyond its capabilities. To them, CC risks being seen, erroneously, as a long-term replacement in the absence of competent government, or in areas where government is a more appropriate vendor. In others words, there is a concern that CC could be seen as a robust alternative to development, when it is not really designed to be so. As J.G. Frynas has commented, “[...] there are very few examples of oil-company-funded projects which could be regarded as ‘best development practice’ along the lines advocated by the World Bank or Oxfam. After researching Nigeria’s oil

¹⁵ Milton Friedman, *Capitalism and Freedom* (Chicago: University Of Chicago Press, 1962/2002),133.

¹⁶ Henry G. Manne, “Milton Friedman Was Right: ‘Corporate social responsibility’ is Bunk,” *The Wall Street Journal*, November 24, 2006.

¹⁷ Statoil, *Statoil and Sustainable Development Report 2005*, 60.

industry for almost ten years, the author has identified only one such project: Statoil's Akassa project in Bayelsa State."¹⁸ In this context, analyses of the "resource curse"¹⁹ are clearly relevant, especially if the ability of an oil industry to "distort national economies and governments" may not be adequately mitigated by CC initiatives.²⁰ Corporate citizenship clearly remains a contested concept within the intellectual marketplace.

With respect to the energy industry, a potential problem with the extended view of corporate citizenship centers upon the theoretical over-reaching suggested by the extension of private business into "administering citizenship rights for individuals." Under the existing international human rights regime, governments have the obligation to respect, protect, and promote human rights in the first instance. While a corporation may certainly function as a political actor providing public goods or "citizenship rights" if a government cannot or will not, an excessive emphasis on the political role of corporations threatens to obscure the economic imperative that is energy companies' *raison d'être* and which plays a crucial part in shaping companies' approaches to social and environmental accountability. Second, few energy companies are eager to explicitly embrace a theoretical framework that defines them as major political actors in foreign operations. This is especially the case when national governments' political power over company assets means that companies' involvement in the political arena could put assets at risk.

What a company's "legitimate role" is in supporting human rights remains a matter of great debate, especially with respect to conflict zones, where international

¹⁸ J.G. Frynas, "The False Development Promise of Corporate Social Responsibility," *International Affairs* Vol. 81 No. 3 (2005):595.

¹⁹ M.L. Ross, "The Political Economy of the Resource Curse," *World Politics* 51, no. 2 (1999) and "A Closer Look at Oil, Diamonds and Civil War," *Annual Review of Political Science* (2006): 265-300.

²⁰ Frynas, 595.

politics often come into play. For example, Royal Dutch Shell Group’s human rights statement says that Shell will

respect the human rights of our employees and conduct business as responsible corporate members of society, to comply with applicable laws and regulations, to support fundamental human rights in line with the legitimate role of business, and to give proper regard to health, safety, security and the environment.²¹

Initiatives such as the Business Leaders Initiative on Human Rights and the UN Global Compact have helped to clarify and highlight what such a role may be, but—in practice—there is no universally accepted definition. Among international organizations, scholars, and businesses, efforts to achieve a comprehensive understanding of companies’ relationship with human rights continue. “The balance between the legitimate economic interests of owners and the wider social or community interest remains the key issue for the political economy of corporations.”²² In this context, it is probably premature to suggest that companies administer “citizenship rights” to individuals when the role of companies in backing human rights norms (and defining what citizenship rights in fact are) remains open to dispute.

Still, the language, ideas, and cultural milieu of corporate citizenship permeate business thinking and affect how companies relate to consumers, government, and civil society. Labor, human rights, and environmental advocacy campaigns directed at multinational corporations like Wal-Mart, Nike, or McDonalds have become staples of civil society activism. But this is evidenced not simply on a national level. Contested or not, corporate citizenship has gone global, but corporate regulation has not.

Regulating corporate behavior through multilateral international institutions, or voluntary accountability initiatives, is a growing nascent international public policy issue.

²¹ <http://www.shell.com>

²² Christopher May, ed., *Global Corporate Power* (London: Lynne Rienner, 2006), 11.

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“However, corporations remain outside the scope of international law, as like other persons they are subjects *only* of national law, even if there have been efforts to establish (non-binding) international regulatory structures of a quasi-legal character.”²³ In the absence of international regulatory structures, voluntary initiatives, NGO monitoring, and national-level court decisions have provided haphazard oversight.

IOCs and NOCs Abroad: Human Rights and Sustainability

Especially since the 1980s, some oil companies have come under scrutiny for their handling of important social and environmental practices in a range of countries, most often resource-rich developing countries. Prominent IOC examples include Shell’s response to socio-economic strife in the Niger Delta, BP’s handling of operational security in Colombia, and Total and Unocal’s projects in Burma/Myanmar. In reaction to the resulting public relations crises, lawsuits, activist criticism, and general opprobrium, international oil companies began to participate (sometimes willingly, other times under duress) in the discussion and development of mostly voluntary policies and practices—often at an international level—to inform and direct behavior on sustainability concerns. At the same time, numerous NOCs have expanded their international exploration and production operations. In most cases, this internationalization has been spurred by a need to locate new reserves to supplement maturing resource bases amid robust domestic demand. In the process, some NOCs have been criticized for producing oil in conflict zones, allegedly degrading the environment, bribery, and propping up authoritarian regimes without supporting the growth of democratic institutions.

²³ May, 4.

Since many internationalizing NOCs are state-owned or closely connected to elements of national/energy security strategy, they are better able than IOCs to withstand criticism by civil society activists. In the absence of international regulatory mechanisms, pressure on IOCs and NOCs over alleged rights violations has come through lawsuits, established international institutions, and government-to-government discussions. An additional conduit for action also has been created by shareholders. In some cases, NGOs have targeted international oil companies' stocks, forcing the companies to adopt more socially responsible practices to avoid devaluation. This tactic has proven less effective for majority state-owned NOCs, which can better resist or ignore market valuation pressure. In other cases, e.g., Total and Unocal in Myanmar, legal action in France and the U.S. led to multimillion dollar settlements to resolve allegations of human rights abuses.

From a commercial standpoint, the NOCs under consideration in this essay range from producers to primarily consuming companies. Notably, a few of the NOCs closely resemble their international counterparts in their policies and practices on sustainability. The NOCs also differ in the extent to which they have adopted norms of international corporate citizenship and learned from the examples—and added their own lessons—to the experience of the IOCs. As Scott Pegg has aptly said,

With the possible exception of the true bottom feeders, whose business models are premised upon conflict and instability, the CSR distinction between world leaders and bottom feeders is exaggerated and overblown. Rather than view corporations in terms of 'good guy' world leaders and 'bad guy' bottom feeders, it makes more sense to view them all as rational actors.²⁴

²⁴ Scott Pegg, "World Leaders and Bottom Feeders: Divergent Strategies Toward Social Responsibility and Resource Extraction" in *Global Corporate Power*, ed. Christopher May (London: Lynne Rienner, 2006), 265.

NOCs and Corporate Citizenship

Where NOCs can ignore or pay lip-service to corporate citizenship, they may obtain a competitive advantage over IOCs, or even NOCs that respect corporate citizenship norms on human rights and sustainability.

Shell's experience in Nigeria provides a glimpse into how an international oil company can learn from a major sustainability dilemma. In response to significant challenges, Shell developed policies and practices designed to address the problems, engaged in dialog with local communities, civil society and international forums, and became a participant in the development of corporate citizenship norms. Operating in the Niger Delta since the 1950s, Shell's operations there—and its political influence—came under scrutiny following the death of author-activist Ken Saro-Wiwa in 1995. Saro-Wiwa gained international attention for castigating Shell's Nigerian operations and the role of the oil industry in contributing to economic stagnation in the Delta. The pace of economic development in Nigeria has not kept pace with the growth of its oil industry, which produces over 2 million barrels of oil per day.

Inequitable distribution of oil revenues, oil spills, and high rates of poverty, combined with episodically harsh rule, helped to spur civil unrest in the Delta region. “While the people of the Niger Delta have faced the adverse effects of oil extraction, they have in general also failed to gain from the oil wealth [...]”²⁵ By galvanizing thousands of members of the local ethnic Ogoni community (some 500,000 people in all) into a protest organization named the Movement for the Survival of the Ogoni People (MSOP), Saro-Wiwa called attention to the Delta's grievances. He consistently pointed to what he saw as Shell's complicity in the status quo. Eventually, Nigeria's federal police forces initiated a crackdown on the MSOP during which many people were detained, injured, or

²⁵ The Price of Oil, *Human Rights Watch*, February 1, 1999. <http://www.hrw.org/reports/1999/nigeria/>.

killed. In 1994, nine activists including Saro-Wiwa were arrested, allegedly for the murder of four local leaders. In November 1995, all the accused were executed following court proceedings that then-UK Prime Minister John Major called “judicial murder.”²⁶

Shell’s role in the Ogoni incident is complex. The company sought clemency for the nine accused activists, and in public statements, Shell lamented “the violence and heavy handedness both sides on the Ogoni issue have displayed from time to time.”²⁷ Still, the company later disclosed that it had made “direct payments to the Nigerian security forces on at least one occasion in 1993, under duress.”²⁸ In 1996, Stephen Mills, human rights and environment campaign director for the Sierra Club, testified before the U.S. House of Representatives International Relations Subcommittee on Africa that

The Sierra Club believes that Shell should feel considerable responsibility for the death of Ken Saro-Wiwa and the other Ogoni activists. Shell's massive pollution, repeated denial of responsibility for it, its refusal to clean up the Ogoni territory, and its appeals to the Nigerian military to silence the protestors is what incited the civil unrest.²⁹

More recently, Mills wrote in a follow-up piece that

A peaceful solution to the crisis in the delta seems remote as anger grows over record oil profits amid the striking poverty. Royal Dutch Shell earned a whopping \$18.5 billion in 2004 yet some villages within sight of gleaming Shell facilities still have no electricity or running water. The campaign Ken Saro-Wiwa led to hold Shell accountable for their pollution and complicity in human rights violations has not been in vain, however. After Saro-Wiwa's death the company did adopt stronger social and environmental responsibility guidelines. It's up to communities in the delta and groups like mine to make sure that Shell and other oil companies live up to their promises.³⁰

While Shell received severe criticism for its perceived role in the events leading up to Saro-Wiwa’s death, Amnesty International recognized Shell’s willingness to discuss AI’s

²⁶ “1995: Nigeria hangs human rights activists,” *BBC News*, http://news.bbc.co.uk/onthisday/hi/dates/stories/november/10/newsid_2539000/2539561.stm

²⁷ *The Price of Oil, Human Rights Watch*

²⁸ *Ibid.*

²⁹ <http://www.sierraclub.org/human-rights/nigeria/releases/mills.asp>

³⁰ http://www.sierraclub.org/human-rights/nigeria/ken_saro.asp

NOCs and Corporate Citizenship

concerns about Shell's human rights record. In a November 1996 report, Amnesty International stated that "in its approaches in recent years to Shell and other trans-national companies with significant investments in Nigeria, Amnesty International has appealed to them to acknowledge their responsibility to do all that they can to uphold human rights under the UDHR [Universal Declaration of Human Rights]. Only Shell has done so to date."³¹ Still, some serious questions lingered about Shell's operations in the Niger Delta. In 1997, the UN Special Rapporteur of the Commission on Human Rights issued a report calling for renewed attention to oil spills in the Delta area, some of which were caused by sabotage: "deep concerns about widespread and severe environmental damage in the River Delta region on account of oil exploration and other operations of the Shell Petroleum Development Company of Nigeria (SPDC) continue."³² To address these issues, Shell undertook a major internal review.

Shell's subsequent development of human rights and sustainability policies and practices has made an important contribution to corporate citizenship in the energy industry. Today, Shell Petroleum Development Company (SPDC) conducts an annual review of its community development projects. Since 2002, Shell has encouraged transparency by publishing its revenue payments to the Nigerian government. To improve the environment, efforts to eliminate natural gas flaring are ongoing. According to Shell Nigeria's 2005 annual report, oil spills are being addressed, but sabotage remains a challenge. In the security arena, Shell is a participant in The Voluntary Principles on Security and Human Rights. Its policy includes the statement that "companies that employ private security firms have a duty to ensure that the firms are reputable and

³¹ Nigeria: Time to end the contempt for human rights, *Amnesty International*, November 6, 1996.

³² [Situation of human rights in Nigeria, Report submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Soli Jehangir Sorabjee, pursuant to Commission resolution 1997/53].

uphold both international standards and domestic legal requirements.”³³ These steps, along with similar initiatives undertaken by other IOCs, represent a significant shift in energy companies’ views of human rights and sustainability norms. While much work remains to be done, much progress has been achieved.

As the evolving acceptance by IOCs of human rights and sustainability norms has been examined elsewhere, only a brief mention will be made here.³⁴ Many large oil companies publish annual or biennial reports that explain their policies on human rights and sustainability, as well as describe related projects, initiatives, and organizations that each company supports.³⁵ BP, Chevron, ExxonMobil, and Shell each published lengthy corporate citizenship reports in 2005. Taking Shell as a European example and Chevron as a U.S. one, it is clear that a signal achievement of the corporate citizenship movement (beyond the enhanced policies and practices themselves) is the increased transparency with which the major IOCs share information on human rights and sustainability matters. In 1998, Shell issued its first social report (*Profits and Principles—Does There Have to Be a Choice?*), and illuminated key contours of the corporate citizenship discussion:

The Royal Dutch/Shell group is commercial in nature and its primary responsibility has to be economic—wealth generation, meeting customer needs, providing an acceptable return to its investors, and contributing to overall economic development [...] But there is also an inseparable responsibility to

³³ <http://www.shell.com/security>

³⁴ See: “Corporations and Human Rights” in Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford: Oxford University Press, 2006); Scott Pegg, “World Leaders and Bottom Feeders: Divergent Strategies Toward Social Responsibility and Resource Extraction” in *Global Corporate Power*, ed. Christopher May (London: Lynne Rienner, 2006); Doreen McBarnet, “Corporate Responsibility: From Bottom Line to Triple Bottom Line” in *Human Rights and the Moral Obligations of Corporate and Private Sector Organizations*, ed., Tom Campbell and Seumas Miller (Dordrecht: Kulwer, 2004); Geoffrey Chandler, “Oil Companies and Human Rights,” *A European Review* 7, no. 2 (1998): 69-72.

³⁵ BP: “BP Sustainability Report 2005,” Chevron: “2005 Corporate Responsibility Report,” ExxonMobil: “2005 Corporate Citizenship Report,” Shell: “Shell Sustainability Report 2005.”

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ensure that our businesses are run in a way that is ethically acceptable to the rest of the world and in line with our own values.

Shell's on-going engagement with international human rights and environmental groups has produced fruitful results, evidenced by methodological tools, such as the *Business and Human Rights* management primer, and a training guide reviewed by Amnesty International and Pax Christi. Shell also supports the UN Global Compact and EITI, has contributed to the UN consultations on business and human rights, and allows an external review committee to audit its Sustainability Report—and publishes these comments. The committee shares its views freely. Having acknowledged evidence of Shell's "commitment to uphold human rights and ensure that its operations have a positive local impact," the 2005 review committee also expressed a desire to see greater coverage of human rights and social concerns in future reports and enhanced engagement with local stakeholders. The review concluded by commending the quality of the report, and unanimously encouraged Shell to continue its progress.

To take another example, Chevron's 2005 "Corporate Responsibility Report" mentions that it adopted a human rights statement, with the operational phase beginning in 2006. Chevron's core values include working "in a socially responsible and ethical manner." Chevron's report begins by providing key financial and operational data, and then describes the company's approach to human rights and sustainability in the wider context of its own business philosophy ("The Chevron Way"). It also explains the company's management methodology for integrating corporate responsibility into the organization. For example, in 2005, Chevron began to utilize Environmental, Social and Health Impact Assessments (ESHIA) to evaluate proposed projects in its upstream business. Furthermore, the report presents a description of past goals, measures of

achievement, and an accounting of the policies developed or action taken, as well as mentioning future goals for the coming years. Additional material covers key areas such as stakeholder consultation, community engagement, human rights, environmental management, and Chevron's response to the 2005 hurricanes along the Gulf Coast, among others. For quantitative data analysis, Chevron used the Global Reporting Initiative (GRI) and American Petroleum Institute/International Petroleum Industry Environmental Conservation Association (API/IPIECA) metrics.

Finally, the Chad-Cameroon pipeline development project by ExxonMobil, Chevron, and Malaysia's state-owned Petronas must be mentioned.³⁶ The project is notable for its attention to local concerns, company-community dialogue, and socio-economic investments,³⁷ as well as the expense to run such a committed CC initiative. As ExxonMobil describes in its 2005 CC report, the project team held 1,200 public consultation meetings in 2005 and paid \$20 million in land compensation and supplemental community compensation, while spending on health, education, and the environment exceeded \$8 million. Local content is present, too. Chadian and Cameroon nationals provide roughly 84 percent of the pipeline project's workforce. Another notable feature of the project is the International Advisory Group which monitors progress on achieving sustainability goals.

To ensure the success of the project from the environmental and social perspectives, along with respect of the commitments of all parties involved, the World Bank and the governments of Chad and Cameroon have appointed several monitoring groups, among them an independent supervisory panel: the International Advisory Group, or IAG.³⁸

³⁶ Esso-Chad/Cameroon Development Project website: <http://www.esso Chad.com/>

³⁷ http://www.exxonmobileurope.com/Europe-English/News/Eu_Speech_Chad1003.asp

³⁸ International Advisory Group on the Chad-Cameroon Petroleum Development and Pipeline Project: <http://www.gic-iag.org/>

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The IAG conducts regular statutory missions to Chad and Cameroon and publishes reports on its findings to the presidents of both countries and the World Bank.

The project has encountered some difficulties in recent years. As David Vogel has pointed out in *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility*, the Chad-Cameroon model is expensive and time-consuming. In addition, during 2006, tensions surfaced between the Chadian government and monitors overseeing the development. In January, Chad began to use some of its oil revenues on military expenditures, in violation of the terms of the development project. The World Bank then cut off its \$333 million loan to Chad. Additionally, Chad's government demanded that its original commitment to put 90 percent of its oil revenues into economic development be reduced to 70 percent. A one-year agreement reached in July 2006 allowed Chad to reduce its development allocation to 70 percent while giving Chad's government "freer reign to spend the money on things like electricity and telecommunications, rather than traditional poverty programs."³⁹ The Chad-Cameroon example shows that, even with their best efforts supported by international financial institutions, oil companies' CC projects can face modification or obviation if a host government pursues a conflicting course of action.

As discussed, a number of IOCs now express their dedication to human rights and sustainable development. They also announce this commitment transparently by publishing the reports that detail their corporate citizenship philosophies, operational practices, anecdotal stories of their CC activities, and list their cooperation with major civil society organizations (this cooperation itself is a major change from past years).

³⁹ Lydia Polgreen, "World Bank Reaches Pact with Chad Over Use of Oil Profits," *New York Times*, July 14, 2006, A8.

Standard metrics from international sustainability indicators are also used to provide information based on quantitative, empirical data. Most companies update this material at least every two years. In comparison, three of the national oil companies plus a subsidiary analyzed in this essay published their CC policies and practices in similar, transparent ways (discussed below). Two others provided very little information. Of these, one NOC did not publish information on its foreign CC activities in its English language annual report for successive years. What information it did publish amounted to half a page of text. The other NOC made accessing its 2006 annual report a lengthy task. Downloading the document required nearly eight hours, even with a high-speed, continuously active Internet connection. Available CC data from that report was not noted in the table of contents and details on foreign CC activity were minimal.

Even more than their IOC counterparts, national oil companies vary in how far they have come to adopt corporate citizenship policies and practices, especially in projects located outside their home country. Some NOCs, like India's Oil and Gas Corporation (ONGC) undertake social welfare projects but concentrate these activities within their home countries. Others, like Norway's Statoil and Brazil's Petrobras, are extremely active in promoting corporate citizenship and operate their projects in line with CC norms—with varying degrees of success—and with a wide range of motivations. A couple of NOCs, namely China National Petroleum Corporation (CNPC) and Citgo Petroleum, a wholly-owned subsidiary of *Petróleos de Venezuela*, have become caught up in the maelstrom of international politics.

NOC approaches to corporate citizenship matter because, first, while many IOCs have come to support varying levels of engagement on human rights and sustainability

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issues, a number of NOCs operating abroad have not. Of course, a few NOCs *have* come to support corporate citizenship in their foreign operations. Importantly, this shows that NOCs operating abroad are a diverse group. (Examining how domestic structures and business thinking affects NOCs abroad is an area for future research.) Still, large, especially consumer-oriented NOCs from geopolitically powerful countries may find a competitive advantage in being able to enter resource-rich countries fraught with problems if their IOC and other NOC competitors cannot, due to constraints imposed by their adoption of human rights and sustainability norms.

Moreover, while remote, the possibility of regression must be raised. If a few NOCs do not wish to conduct their foreign operations in line with basic, albeit evolving, CC norms, could this slow, or even roll back, some of the progress being made? Second, the problem of resource-rich, rights-poor petro-states remains. Energy companies, including NOCs, sometimes place different emphases on the socio-economic, environmental, and political aspects of corporate citizenship. How can NOCs operating abroad provide support for improved governance without overstepping their primary economic roles? The expanding field of global governance has brought transnational corporations firmly into the debate over the human rights, sustainability, and environmental protection obligations of non-state actors.

A final issue is whether corporate citizenship can be effective and accountable in the form of self-regulation. In particular, many oil companies resist proposals to enact binding measures to regulate their social behavior, and, in turn, actively promote voluntary initiatives to shape industry conduct at policy, management, and operational levels. In the absence of internationally binding treaties or conventions, oil companies

(especially NOCs) are free to remain outside voluntary measures, subject to national laws insofar as national authorities are committed to exercising what laws exist to regulate oil companies' social impacts in other countries. Adhering to corporate citizenship principles like those of the United Nations Global Compact thus may or may not be a competitive advantage depending on the context. A discussion of the possible future directions of international corporate citizenship architecture as an element of international relations and the role of NOCs will conclude this paper.

TRANSNATIONAL POLICIES AND PRACTICES

STATOIL

Introduction

Founded as Den Norske Stats Oljeselskap in 1972, Statoil is Norway's major majority state-owned oil company. In December 2006, the Norwegian state held 70.9% of Statoil's shares.⁴⁰ Statoil initiated a new era of partial privatization beginning in 2001, when the company was listed in Oslo and New York. Today Statoil is the 29th largest oil company in the world. It has a market capitalization of \$49.16 billion and produces 1.1 million barrels of oil per day.⁴¹ Represented in 33 countries, Statoil conducts exploration and production activities in 15 of these. Roughly 49% of its workforce of 25,644 is located outside Norway.⁴²

Statoil's move towards internationalizing its exploration and production operations may be seen as a response to the maturation of the company's primary resource base along the Norwegian continental shelf. Such a move, however, should be

⁴⁰ Prior to the announced merger with Norsk Hydro.

⁴¹ Petroleum Intelligence Weekly Survey 2006

⁴² www.statoil.com (accessed August 10, 2006)

seen as a function of the oil and gas industry as a whole, rather than an NOC specific response.⁴³ Out of its various international operations, Statoil's presence in Azerbaijan and Nigeria deserves study because of the company's commitment of capital and assets in each country, the on-going "resource curse" debate in which each country is involved, and the major human rights questions that have arisen from oil development there.

Statoil is a member of the Business Leaders Initiative on Human Rights, a party to the UN Global Compact, a participant in the Voluntary Principles on Security and Human Rights, and "actively supports" the Extractive Industries Transparency Initiative.⁴⁴ Statoil has described itself as a leading company which supports the growing business-civil society discussion over economic actors' connections to human rights issues. The company's reputation took a blow in 2003-4, when investigators uncovered evidence of bribes paid to an Iranian oil official. Fined millions of dollars in Norway and the U.S., Statoil responded by replacing its chief executive, undertaking measures to repair its internal procedures, and developing stringent guidelines and situational tools for employees.

Overview of Policies

Among NOCs and the oil and gas industry writ large, Statoil projects itself as a leader in the field of corporate citizenship, particularly respect for human rights and economic development through local capacity building. The company has participated actively in shaping the dialogue between civil society and business through the UN Global Compact. At times, Statoil has found itself in the middle between conflicting interests within the government.

⁴³ Richard Gordon and Thomas Stenvoll, "Statoil" in *The Changing Role of National Oil Companies in International Energy Markets*, working paper, March 2007.

⁴⁴ www.statoil.com "Statoil and Sustainability" (2005), "Financial: Openness" (accessed August 10, 2006).

[Norway] has taken a proactive stand in the involvement of ethics in foreign policy as a contributor of aid and supporter of peace processes. On the other hand, as the primary owner of Statoil, the Norwegian government is involved in the extraction of resource wealth and the implicit subsidy of regimes that go against the very principles that Norwegian foreign policy is trying to work against.⁴⁵

In their case study on Statoil, Richard Gordon and Thomas Stenvoll cite Azerbaijan and Angola as two key examples where this contradiction occurs. Statoil also does not seem eager to engage host governments in robust discussion about human rights and sustainability concerns. According to Statoil's vice president for international exploration and production, Peter Mellbye, "Statoil's most important contribution in the countries where we operate is the value creation for which our investments lay the basis [...] I believe that doing business with the aim of changing the system of government in the countries where we operate falls beyond the scope of what a company legitimately can do."⁴⁶ However, this stance is evident across the industry, not simply for Statoil or national oil companies.

Statoil's *Sustainable Development* report (2005) states that the company's strategy for social responsibility focuses on three areas: transparency, labor rights and human rights, and local spin-offs [i.e. community development and capacity building]. Statoil's policy stresses that "breaches of laws and ethical guidelines are a threat to the group's competitiveness and reputation. It is therefore just as important to set requirements for ethical behavior as it is to set business goals."⁴⁷ Yet the "business case" for ethically observant behavior forms a key component of adherence to human rights norms. The company's policies affirm that "[...] all activities and measures must be

⁴⁵ Richard Gordon and Thomas Stenvoll, "Statoil" in *The Changing Role of National Oil Companies in International Energy Markets*, midpoint working paper, October 2006.

⁴⁶ Statoil, *Statoil and Sustainable Development Report 2005*, 60.

⁴⁷ *Ibid.* 6

based on the group's objectives and needs and the challenges it faces, as well as the needs of society.”⁴⁸

Statoil's approach to human rights has focused on integrating principles of human rights theory into everyday practice. To this end, the company partnered with Amnesty International in 2005 to provide human rights training for the daily workplace environment. The same year, the World Petroleum Council recognized Statoil with an award for best community project for the company's work with the 30,000 person Akassa clan in Nigeria. As an active member of the Business Leader's Initiative on Human Rights (BLIHR), the company helped to shape the development of “A Guide for Integrating Human Rights into Business Management,” published by BLIHR, the UN Global Compact, and the Office of the UN High Commissioner for Human Rights.⁴⁹ The guide has been disseminated to industry partners in the Initiative for comment and voluntary implementation.

Former chief executive Olav Fjell described Statoil's threefold approach to corporate citizenship as: ethical, sustainable, and socially responsible.⁵⁰ In his speech, Fjell explained Statoil's perspective on “the business case” for human rights. As “a strategy for gaining comparative advantage,” corporate citizenship can provide a commercially applicable high reputation, which in turn could attract ethically-minded investors and funds, and also entice employees eager to work for company with a high social standing.

⁴⁸ Statoil, *Statoil and Sustainable Development Report 2005*, 56.

⁴⁹ <http://www.blihr.org/>.

⁵⁰ Olav Fjell, “Social Responsibility in an International Marketplace,” [Former] Chief Executive Olav Fjell's Speech at the 16th World Petroleum Congress, Calgary, June 14, 2000. <http://www.statoil.com>.

Iranian Bribery Incident

In October 2006, Statoil reached a multimillion dollar settlement agreement with the U.S. Government for violating the U.S. Foreign Corrupt Practices Act. The company admitted paying bribes worth \$5.2 million through London-based Horton Investments to secure influence with Iranian officials and obtain a contract to develop phases 6, 7, and 8 of the Iranian South Pars Gas Field.⁵¹ In a civil proceeding, Statoil accepted a \$10.5 million fine levied by the Securities and Exchange Commission (SEC). Additionally, as part of a related criminal investigation, Statoil agreed to a penalty of \$10.5 million (minus \$3 million already fined by Norwegian investigators) to the U.S. Department of Justice.

The SEC civil “administrative order” notes that Statoil completed payment of \$5.2 million in bribes, with an initial intention to pay ten additional annual installments of \$1 million. However, Statoil halted supplementary disbursements in 2003. The SEC finding further found that

[...] Statoil employees circumvented Statoil’s internal controls and procedures that were in place to prevent illegal payments, and Statoil lacked sufficient internal controls. In addition, by mischaracterizing the payments as legitimate consulting fees, Statoil violated the books and records provisions of federal securities laws.⁵²

Signed into law in 1977, the U.S. Foreign Corrupt Practices Act is amplified on an international scale through the Organization for Economic Cooperation and Development (OECD) *Convention on Combating Bribery of Foreign Public Officials in International*

⁵¹ Bunny Nooryani, “Statoil Admits Iran Bribe; U.S. Sets \$21 Million Fine,” *Bloomberg*, October 13, 2006 <http://www.bloomberg.com/apps/news?pid=20601085&sid=aUJzllXYNSmw&refer=europe#>.

⁵² Press Release, “SEC Sanctions Statoil for Bribes to Iranian Government Official,” Securities and Exchange Commission, October 13, 2006 <http://www.sec.gov/news/press/2006/2006-174.htm>.

Business Transactions, which came into force in both the U.S. and Norway during the late 1990s.⁵³

Statoil reached a separate, three-year deferred criminal prosecution agreement with the U.S. Department of Justice. According to the U.S. Attorney's Office for the Southern District of New York, the two criminal charges against Statoil will be permanently dismissed after three years, "if the company fulfills its obligations" in the deferred prosecution agreement.⁵⁴ During the three year monitoring period, an independent assessor will report occasionally on the company's compliance. Though a Norwegian company, Statoil became liable under U.S. law due to its presence in U.S. capital markets. An assistant attorney general who oversaw the criminal proceeding remarked that "although Statoil is a foreign issuer, the Foreign Corrupt Practices Act applies to foreign and domestic companies alike, where the company's stock trades on American exchanges."⁵⁵ The official also noted Statoil's "exceptional" cooperation with U.S. authorities. According to statements from both the Securities and Exchange Commission and the Department of Justice, Statoil has undertaken remedial measures to repair its internal governance.

Then-chief executive Olav Fjell quit his position in 2003 during a nine-month probe by the Norwegian government.⁵⁶ While Fjell was later cleared of any wrongdoing, Norway's economic criminal investigator levied a 200,000 kroner (\$30,000) fine on Richard Hubbard, former head of Statoil's international unit. Norwegian authorities also

⁵³ U.S. Department of Justice, "Background," *Foreign Corrupt Practices Act: Anti-bribery Provisions*, <http://www.usdoj.gov/criminal/fraud/fcpa/dojdocb.htm> (accessed October 17, 2006); and <http://www.oecd.org/dataoecd/59/13/1898632.pdf>.

⁵⁴ Press Release, "U.S. Resolves Probe Against Oil Company that Bribed Iranian Official," U.S. Attorney's Office for the Southern District of New York, October 13, 2006. <http://www.usdoj.gov/usao/nys/pressreleases/October06/statoildeferredprosecutionagreementpr.pdf>.

⁵⁵ *Ibid.*

⁵⁶ <http://news.bbc.co.uk/2/hi/business/3849147.stm>

fined Statoil \$3 million in June 2004, an amount which U.S. officials subtracted from Statoil's fine under the Justice Department proceeding. No indictments were brought forward within Norway.

Statoil's presence in U.S. capital markets opened it up to examination and then legal action by American authorities, even though the company is majority state-owned. As NOCs pursue greater privatization, they could face similar scrutiny upon entering the United States. In this scenario, American regulations and standards might begin to carry international weight as NOCs seek to avoid both bad publicity and legal action. Further study is warranted if this possibility comes to pass.

Strategies for Social Responsibility

Statoil has worked to rebuild its reputation since the Iranian bribery imbroglio. In 2004 and 2005, Statoil ranked highest among oil and gas companies on the Dow Jones' Sustainability Index. To provide human rights context and training for its employees and stakeholders, Statoil has published not only its strategic *Sustainable Development Report* (2005) but also two instructional publications, *We in Statoil* and *Ethics in Statoil*. Revised and updated in 2004, *We in Statoil* outlines the company's core values and leadership principles. *Ethics in Statoil*, a practical guidebook for ethical behavior, appeared in 2005.

The *Sustainable Development Report* establishes Statoil's commitment to reinvigorating its values base and inculcating company values throughout the business. In sum, core corporate values are defined as "imaginative, hands-on, professional, truthful, [and] caring."⁵⁷ While *We in Statoil* employs a very simple presentation, it is designed as a statement of values rather than an exposition or a system of guidelines. Its sister

⁵⁷ *We in Statoil*, 2.

publication, *Ethics in Statoil* offers a more in-depth, systematic approach to dealing with hypothetical ethical challenges. Statoil also created a phone “hotline” to which employees can refer for additional assistance. The report notes that “our managers are evaluated and rewarded as much on the basis of the manner in which they achieve results as the results themselves.”⁵⁸ Statoil clearly recognizes connections between financial accountability and social responsibility. The introductory section of the chapter on financial performance observes, “Openness about financial transactions is an effective method of combating corruption and helps to achieve greater security and predictability.” While confidentiality clauses in contracts prohibit full disclosure, Statoil also professes a long-term commitment to forging new contracts with a higher degree of transparency.

The sustainability report also devotes a chapter solely to social responsibility, which Statoil understands as “transparency, labor and human rights, and local spin-offs.” A key component of Statoil’s approach to social responsibility is the development of “country plans.” Development projects have to complement the existing business plan for the country and become part of the operations the company carries out. Following the creation of country plans, in 2006 Statoil’s next step was to engage in the creation of metrics and analytical tools to measure the success of its community projects. Statoil policy recognizes the inherent challenges of doing business in countries where actual practice readily differs from international standards.

The values and principles on which Statoil’s activities are based are universal. However, compliance in practice and concrete measures will necessarily vary and must be adapted to meet the challenges and realities in the individual countries. This may prove demanding, but even in areas where our freedom of action is formally limited, Statoil’s activities may still build on respect for basic human rights.⁵⁹

⁵⁸ *Statoil and Sustainable Development*, 10.

⁵⁹ *Ibid*, 3.

The following two examples will succinctly describe how Statoil's policies have fared in practical terms. The two cases, Statoil's Akassa community development project in Nigeria and Statoil's activities in Azerbaijan, have been chosen because of the importance of Statoil's assets in these countries and Statoil's claims to conducting corporate best practices in each case.

Practices—Statoil in Nigeria: The Akassa Project

Approximately fifty years since the first commercial oil production in Nigeria, the most populous country in Africa has become thoroughly inundated by corruption rooted in oil revenue and the oil industry in general. Scholars and rights activists have actively recorded the ongoing development problems that plague the Niger Delta. While the presence of major international oil companies in Nigeria has been scrutinized widely,⁶⁰ the entry of national oil companies is cause for renewed study.

Statoil has been present in Nigeria since 1992. It operates two offshore blocks (OML 128 and 129) with Chevron as a partner, and the company also holds equity stakes in two more blocks operated by the Brazilian national oil company, Petrobras.⁶¹ As described in its sustainability report, Statoil's efforts in Nigeria have centered on (a) the human rights sector, through crime prevention, legal counseling, women's rights, and training for sharia judges (judicial officials who follow Islamic law); and (b) community development. Statoil's most notable international development project is, arguably, the Akassa Community Development Project. BP and Chevron also help fund the project. The Akassa clan, or community, numbers some 30,000 individuals in the Niger Delta.

⁶⁰ "Fueling the Niger Delta Crisis," Africa Report No. 118 (Brussels: International Crisis Group, 2006).

⁶¹ Statoil, "Nigeria," www.statoil.com.

The community has traditionally lacked sewage disposal, electricity, and “schools of any quality.”⁶² The project, which Statoil describes as a “partnership,” seeks to both improve the living standards of the Akassa peoples and assist the creation of a more self-sustainable community.⁶³

Following an environmental impact assessment of Statoil’s Nigerian offshore oil interests, in 1998 the company, along with BP, identified the Akassa region as a potential impact zone for future oil spills. “As a newcomer to the Delta, Statoil wanted to establish a reputation as a good corporate citizen from the very beginning and sought to promote understanding between the company and its primary stakeholders.”⁶⁴ Statoil’s corporate strategy seeks to minimize risk and create a safe operating environment by obtaining a holistic license to operate: not only receiving formal operating authority from the Government of Nigeria but also the genuine acceptance of company activities on the ground by the local communities in, or near, its areas of operation.⁶⁵

The Akassa Community Development Project (ACDP) aims to “achieve food security and improve living standards for the Akassa people.”⁶⁶ The program focuses on five main areas: human resources (health, literary, gender and youth issues), management of natural resources, poverty alleviation/micro-credit, infrastructure/micro-projects, and institutional development/capacity building. To date, the program is notable for its

⁶² Jan Vollset, Statoil Vice President for Global Exploration, “Corporate Social Responsibility and Local Community Development,” The East African Community. <http://www.eac.int/eapc/pdfs/confrence%20proceedings/Corporate%20Outlook/Corporate%20responsibility%20and%20contribution%20to%20local%20development%20Mr.%20Jan%20Vollset.pdf> .

⁶³ Ibid

⁶⁴ “Statoil and BP: The Akassa Community Development Project in Nigeria,” World Business Council for Sustainable Development, 2005 <http://www.wbcsd.ch> .

⁶⁵ “Corporate Social Responsibility and Local Community Development,”4.

⁶⁶ “Statoil and BP: The Akassa Community Development Project in Nigeria,” Case Study, World Business Council for Sustainable Development, 2005 http://www.wbcsd.ch/web/publications/case/statoil_bp_akassa_full_case_final_web.pdf .

multiple stakeholders, including the local community, energy companies, and civil society groups/NGOs. Conceptualized by an NGO, Pro Natura International, the project is run on a day-to-day basis by the Akassa people with assistance from Pro Natura and Voluntary Services Overseas (VSO). The energy companies provide financial support and “play a discrete monitoring role.”⁶⁷ In 2003, Statoil paid \$400,000 to the ACDP Board for operating costs, and another \$100,000 to Pro Natura.

According to Statoil, “the ACDP’s most important role has been to develop local institutions which can initiate and manage community-based activities.”⁶⁸ Described as a “work in progress” due to its long-term goals, the ACDP has been identified as contributing to accomplishments including the establishment of 18 health posts with trained employees, enhanced oversight and regulation of the Akassa Forest area, a successful pilot micro-credit program with a 100% recovery rate from 2003-04, and ongoing projects to repair infrastructure and provide training in good governance. As one local Akassa leader, Lucy Owenga, commented in a 2003 interview with the Australian Broadcasting Corporation, “The women have changed because they can now come up to air their view, give their opinions, take decisions and know what is best to be done. Unlike before when they were marginalized [...] now they argue with men and come up with a decision.”⁶⁹

In awarding Statoil its 2005 prize for best community development project (“Social Award—Large Company”), the World Petroleum Council described its evaluation criteria for social responsibility as: “innovative and far-reaching health, safety

⁶⁷ “Statoil and BP: The Akassa Community Development Project in Nigeria,” Case Study, World Business Council for Sustainable Development, 2005.

⁶⁸ Statoil, “Acclaimed for Aid Project,” www.statoil.com.

⁶⁹ Australian Broadcasting Corporation (ABC) Radio National, “Background Briefing: The Giving Game,” May 18, 2003, <http://www.abc.net.au/rn/talks/bbing/stories/s860471.htm>.

& environment programs; commitment and involvement of management and employees; development of mutually beneficial relations with communities; feasibility; wide applicability and reproducibility for the petroleum industry; and, proved or clearly demonstrable long-term results.”⁷⁰

Many analyses have lauded the Akassa project, particularly praising its focus on local community empowerment. These plaudits, though, often single out the project as one of the very few successful initiatives of its kind.⁷¹

Some community development projects, such as the Akassa project in Bayelsa State, run by the NGO Pro-Natura with oil companies Statoil, BP and Chevron Nigeria, have been effective in involving communities meaningfully, identifying priorities and implementing local solutions [...] However, many projects have failed to meet communities’ expectations [...] Community protests and conflict over such failures and broken promises have been put down with excessive force, and Shell and Chevron have admitted to their role in contributing to such violence.⁷²

Other arguments contend that even successful projects like Akassa are first and foremost about preventing discontent and addressing root causes for unrest that could disrupt oil flows.⁷³ Questions about the feasibility of applying the lessons learned from the Akassa project to other sustainability initiatives appear in discussions on development aspects of social responsibility by energy companies.

Practices—Statoil in Azerbaijan: Oil, Elections, and Governance

Corruption has emerged as a major threat to Azerbaijan’s prospects for sustainable economic development. Following the death of longtime leader Heidar Aliiev,

⁷⁰ <http://www.world-petroleum.org/excelawards/excelawards.htm>

⁷¹ Jędrzej George Frynas, “The False Developmental Promise of Corporate Social Responsibility: Evidence from the Multinational Oil Companies,” *International Affairs* 81, vol. 3 (2005): 581-598; Australian Broadcasting Corporation (ABC) Radio National, “Background Briefing: The Giving Game,” May 18, 2003, <http://www.abc.net.au/rn/talks/bbing/stories/s860471.htm>.

⁷² “Nigeria: Ten Years On—Injustice and Violence Haunt the Oil Delta,” Amnesty International, November 3, 2005:123-125.

⁷³ Sofiri Joab-Peterside, “Issues in Akassa and Management of Natural Resources: The Case of Akassa Community Forests Management and Development,” *Center for Advanced Social Science (CASS)*, Port Harcourt, Nigeria, 2006. <http://globetrotter.berkeley.edu/GreenGovernance/papers/JoabPeterside2006.pdf> .

and the succession of his son Ilham as president in 2003, the public space for political dissent has contracted measurably, while oil production and oil exports have risen. Outside observers strongly criticized elections held in 2003 and 2005, citing graft, fraud, and intimidation of opposition party supporters. Moreover, while Azerbaijan's poverty rate has fallen from as high as 49 percent in 2002 down to 29 percent in 2005,⁷⁴ the government's willingness to provide democratically-led leadership and commitment to transparent stewardship of oil revenue appears to be tenuous. As a report from the International Monetary Fund (IMF) observed, "While the rapid economic growth has resulted in a reduction in poverty, the level of poverty remains high" and IMF directors "underscored the need for intensifying fiscal reforms, in order to ensure longer-term sustainability of public finances."⁷⁵ Numerous analyses have argued that, so far, Azerbaijan's oil wealth has enriched the ruling clique while doing far less for average citizens and contributing to the stifling of civil liberties and free political participation.

Statoil's position in Azerbaijan is complicated by its relationship with the Norwegian Government as well as its various (and potentially conflicting) interests as a corporation, namely its profit-generating motive, political/operational stability, and professed ethical and human rights values. To be sure, the company has argued for the practicability of its goals to create "good financial results while at the same time maintaining high environmental standards and acting in a socially responsible way."⁷⁶ Through its ambassador, Norway has commented upon Azerbaijan's human rights problems, including alleged government interference in the 2003 elections. Norway also

⁷⁴ "Country Brief 2006—Azerbaijan," The World Bank, www.worldbank.org (accessed November 9, 2006); United Nations Development Program (UNDP) in Azerbaijan (2003) <http://www.un-az.org/UNDP/>

⁷⁵ "IMF Executive Board Concludes 2005 Article IV Consultation with the Republic of Azerbaijan," International Monetary Fund, www.imf.org.

⁷⁶ *Statoil and Sustainable Development* (2005), 2.

supports the work of the Extractive Industries Transparency Initiative (EITI), promulgation of the Voluntary Principles on Security and Human Rights, and similar mechanisms.

Statoil in Azerbaijan has focused its social responsibility efforts on economic development, local industry capacity building, and civil society partnerships. Such action follows from Peter Mellbye's comments that doing business in a way that seeks to change the form of government falls outside Statoil's legitimate line of work. Statoil, though, has endeavored to foster some dialog on CC concerns. The company helped found the Business Development Alliance (BDA) in 2002 out of earlier, informal networks. Through the BDA, oil companies and NGO partners aimed to "[...] cooperate 'on the ground' with local companies to provide training, capacity building, planning and other kinds of assistance. Second, they could offer advice to the government about possible improvements in legal, regulatory and tax frameworks that could facilitate local business development."⁷⁷ While the BDA ceased functioning in 2004, parallel efforts by other companies, namely BP, may have obviated the need for multiple CC organizations.⁷⁸

The question remains: can Statoil achieve its "triple bottom line" goals without consideration of the political framework in which it operates? Statoil, "in comparison to most other oil companies, takes an active part in addressing macro CSR issues in the country" [Azerbaijan].⁷⁹ Still, without engaging in robust discussion with Azerbaijan's government about implementing energy sector reforms, Statoil, like the other oil companies, may compromise its stated long-term sustainability goals while contributing

⁷⁷ Lars. H. Gulbrandsen and Arild Moe, "Oil Company CSR Collaboration in 'New' Petro-States," *Journal of Corporate Citizenship* Winter 2005:59.

⁷⁸ Ibid.

⁷⁹ Gulbrandsen and Moe, 63.

to the social, economic, and political status quo. Moreover, Statoil has significant investments in Azerbaijan that have become key components of the company's international strategy. Antagonizing the government could put these investments at risk.

Statoil's investments in Azerbaijan are, by the company's own recognition, some of its "most important international assets."⁸⁰ Major in-country projects include the Azeri-Chirag-Gunashil oil development and exploration in the Shah Deniz, Alov, Araz, and Sharg areas in the Caspian region. Statoil owns 8.6 percent of a production sharing agreement in the ACG development, which is led by a consortium headed by BP.⁸¹ Statoil is also involved in the BTC pipeline, running from Baku, Azerbaijan, through Tbilisi, Georgia, and terminating in the port of Ceyhan, Turkey, on the Mediterranean Sea. The company is also "commercial operator" of the South Caucasus Pipeline (SCP), which transports natural gas along the same route as the BTC oil pipeline. Oil from the ACG development began flowing through the BTC pipeline in 2006. Production from the East Azeri platform in the ACG began ahead of schedule in October 2006.

As important as Azeri oil is for Statoil, oil matters even more so for the Azeri Government, which derived forty-five percent of its earnings from oil related activities in 2002.⁸² A major reason for concern about the transparent management of Azeri oil revenues stems from the influx of oil money into the country's economy, and the large amount of government funds that come from the oil sector. Human rights groups have alleged that oil revenue has been used to entrench the ruling party's hold on power through coercive or undemocratic means.

⁸⁰ <http://www.statoil.com> "Statoil: About Our Business: Azerbaijan" (accessed October 26, 2006).

⁸¹ "Azerbaijan: BP-led AIOC Begins Production from East Azeri," NEFTE Compass, Energy Intelligence Group, October 26, 2006.

⁸² www.statoil.com, "Azerbaijan," (accessed November 1, 2006).

Since 2003, to bolster its credibility in the international market, Azerbaijan has participated in the Extractive Industries Transparency Initiative (EITI). As a participating country, Azerbaijan's state oil fund is subject to periodic audit. An independent auditors' report for EITI covering the six month period from July to December 2005 concluded that "[...] the schedule of payments/allocations received during the year ended 31 December 2005 is prepared in accordance with the aforementioned requirements, is fairly stated in all material respects."⁸³ EITI covers revenue that the government receives but not how the government spends it.

Oil companies involved in Azerbaijan have (inadvertently at times) backed the Aliev government's intimidation of dissidents through outright bribery, patronizing only government-favored media or businesses, and eschewing extended contacts with the political opposition.⁸⁴ At one CC meeting with representatives from numerous companies, a suggestion was announced to "organize a meeting with the political opposition of Azerbaijan just to, for once, meet with politicians other than those from the ruling party. The initiative was met with 'less than no interest' by the oil companies."⁸⁵

Daniel Heradstveit of the Norwegian Institute of International Affairs has written that, in 2001, some Azeris opposed to the Aliev government believed parliamentary control over oil contracts would be sufficient to deter the president from taking retaliatory action against a company that spoke out against a particular government policy.

In the respondents' opinion, concern by the oil companies that Aliev may make implementation of their contracts difficult and prevent new ones, is unjustified. For example, if an oil company decided to pressurize [sic] Aliev to be more transparent and democratic, it could be asked to leave the country. However, the

⁸³ <http://www.eitransparency.org/section/countries/azerbaijan>

⁸⁴ Fred Weir, "Atop Azerbaijan's Oil Boom: Mr. Aliyev," *Christian Science Monitor*, November 2, 2006 <http://www.csmonitor.com/2006/1102/p06s01-wosc.html> (Accessed November 9, 2006).

⁸⁵ Lars. H. Gulbrandsen and Arild Moe, "Oil Company CSR Collaboration in 'New' Petro-States," *Journal of Corporate Citizenship* Winter 2005: 53-64 (59).

oil contracts are approved by parliament and as the law of the land, Aliev cannot break them.⁸⁶

As events have transpired since 2001, successive Aliev administrations have markedly increased regime control over the apparatus of government. Bearing in mind Daniel Heradstveit's observation that Azerbaijan's parliament possesses the ability to grant or deny new contracts,⁸⁷ it must be noted that widely-criticized elections in 2003 and 2005 strengthened the position of President Aliev's ruling Yeni Azerbaijan Party in parliament.

Azerbaijan's political situation provides the stability that allows for uninterrupted exports of oil and gas; however, few benefits from the country's resource wealth have reached across the citizenry. The CIA World Factbook comments "corruption is ubiquitous and the promise of widespread wealth from Azerbaijan's undeveloped petroleum wealth remains largely unfulfilled"⁸⁸ and, as one scholar has said, "the warm and cozy relations of the Azerbaijani government with trans-national oil companies ensure the flow of funds at the expense of state and democracy building in the country."⁸⁹ Accusations of widespread graft, fraud, and harsh police crackdowns during and after elections in 2003 and 2005 have not been properly addressed by the government. Indeed, the Freedom House analysis for 2006 lists Azerbaijan as "not free."

Press freedom continued to deteriorate in Azerbaijan as police violence against journalists intensified and the government clamped down on independent media ahead of the November parliamentary elections, which the international community reported were neither free nor fair. Constitutional protections for freedom of the press and a specific prohibition on censorship are not always respected.⁹⁰

⁸⁶ Daniel Heradstveit, "Democratic Development in Azerbaijan and the Role of the Western Oil Industry," *Central Asian Survey* 20, no. 3, (2001): 279.

⁸⁷ Ibid.

⁸⁸ "Azerbaijan," *CIA World Factbook*, Central Intelligence Agency, 2005, p. 39.

⁸⁹ Anar M. Valiyev, "Parliamentary Elections in Azerbaijan: A Failed Revolution," *Problems of Post-Communism* 53, no. 3, May/June 2006: 17-35:28.

⁹⁰ <http://www.freedomhouse.org/template.cfm?page=251&year=2006>.

The 2004 Human Rights Watch report *Crushing Dissent: Repression, Violence and Azerbaijan's Elections* provides graphic detail, including photographic evidence, of the Aliev government's disinclination to allow free and fair elections.

On voting day, the government carried out a well-organized campaign of fraud throughout the country to ensure a victory for Ilham Aliev, right in front of the largest international monitoring team ever deployed in the country. When post-election violence erupted, the government responded with brutal and excessive force, unleashing its security forces to beat hundreds of demonstrators unconscious, and killing at least one protestor.⁹¹

In its annual analysis of Azerbaijan's human rights situation, the U.S. Department of State argued that, despite small improvements, parliamentary elections in November 2005 failed to meet international standards. In addition, during the year, "members of the security forces committed numerous human rights abuses" while other major problems included, "torture and beatings of persons in custody, leading to four deaths," "arbitrary arrest and detention, particularly of political opponents," "pervasive corruption in the judiciary" and "excessive use of force to disperse demonstrations."⁹²

Despite sustainability goals, foreign oil companies in Azerbaijan have done little to influence the regime's policies. The entrenchment of personal, authoritarian rule in Azerbaijan may well tie oil companies like Statoil even more deeply into the ruling elites' vested interests in protecting the status quo. Since Azerbaijan's oil production is expected to peak in the mid-twenty-first century unless major new discoveries enter the picture, there is an urgent need to develop enhanced, sustainable stewardship of oil revenue for the whole country.

⁹¹ *Crushing Dissent: Repression, Violence and Azerbaijan's Elections*, Human Rights Watch, January 2004 vol. 16, no. 1(D): 2.

⁹² "Azerbaijan," *Country Reports on Human Rights Practices* (2005), U.S. Department of State, March 8, 2006, www.state.gov (accessed October 30, 2006).

Summary

Statoil has made several major, positive contributions to shaping the debate over corporate norms on human rights and social responsibility. In joining and supporting industry-led efforts to adopt minimal, currently voluntary standards regarding human rights, Statoil has helped to set the bar higher for other oil companies. Statoil's financial success also has shown that operating with social responsibility standards is not necessarily a harmful tactic. If anything, Statoil's experience with the U.S. Foreign Corrupt Practices Act revealed the cost of operating unmoored from them. Inculcating human rights norms throughout any large corporation requires time to create policies, implement best practices, and assess progress. Considering its overall reputation, Statoil has earned its plaudits for entering into projects that seek to offer local communities measurable economic and capacity development—without stepping too far into the role of government.

The larger questions—how effective social responsibility projects can be, and whether oil companies bear responsibility for supporting authoritarian governments by doing business with them—remain unresolved. This conundrum is not uniquely Statoil's. Other NOCs, with less care for social responsibility, have raised an additional question: can complying with human rights norms function as a competitive *disadvantage* for firms like Statoil? How can this scenario be mitigated at both a policy and practical level? As will be shown in the other cases, grappling with social responsibility has emerged as a legal, ethical, financial, and public relations issue both for international companies and their state-owned competitors. Among national oil companies, Statoil's experience overall provides a positive example of a national oil company not only meeting its

financial aims but also setting and striving (while sometimes stumbling) to reach goals that enhance the local communities in which it operates.

PETROBRAS

Introduction

Long one of Latin America's foremost energy companies, Petrobras has embraced the social responsibility goals embodied in the evolving international architecture for corporate citizenship, such as the United Nations Global Compact. Founded in October 1953, Petrobras was ranked in 2005 as the 14th largest oil company in the world by *Petroleum Intelligence Weekly* "with a net consolidated profit of R\$23.725 billion, a 13 percent growth in annual production of oil, and a reservoir reposition rate of 131 percent."⁹³ Petrobras is a publicly listed firm with minority government ownership.⁹⁴ At the end of 2006, the Brazilian Government controlled 32.2 percent of the company's shares. A leader in ultra deepwater technology, the company reached its goal of attaining petroleum self-sufficiency for Brazil when the P-50 offshore platform came online in 2006.⁹⁵ Still, like many other oil and gas firms, Petrobras has expanded its international presence to enhance competitiveness and increase reserves; it now has exploration and production activities in 16 countries, with business representation in five others.⁹⁶ In the process of internationalizing, Petrobras has encountered a few notable social responsibility and human rights-related challenges, and it in fact has admitted as much.⁹⁷ These challenges, in turn, have tested the company's commitment to corporate

⁹³ Petrobras, *Social and Environmental Report*, 2005, 2.

⁹⁴ For more information on the privatization of Petrobras, see: Steven W. Lewis, "Deregulating and Privatizing Brazil's Oil and Gas Sector," *Critical Issues in Brazil's Energy Sector*, The James A. Baker III Institute for Public Policy, Rice University, Houston, Texas, 2004 available at www.rice.edu/energy/.

⁹⁵ David G. Victor, "Learning from Brazil," *Houston Chronicle*, April 15, 2006.

⁹⁶ Petrobras, *Social and Environmental Report*, 2005, 7.

⁹⁷ *Ibid*, 22.

citizenship. This section will analyze how Petrobras has managed its activities in Ecuador in line with its stated adherence to emerging social responsibility norms about environmental protection.

Company Policies: Participation in the UN Global Compact

Petrobras' corporate vision "envisages Petrobras as an integrated energy company with a strong international presence and as a leader in Latin America, operating with a focus on profitability and environmental and social responsibility."⁹⁸ Along with Statoil, Petrobras has been an important national oil company participant in the Global Compact, since joining in 2003. Beginning with its 2003 *Social and Environmental Report*, Petrobras has issued annual statements of Communication on Process to showcase its voluntary cooperation with the Global Compact. Each report is a "rendering of accounts to society of the company's social environmental activities in Brazil and in the countries where it operates."⁹⁹ Petrobras' first system-wide social report premiered in 1998. Beyond highlighting the company's policies and achievements, the social and environmental reports also serve a management function, allowing the company to produce a "vulnerability map as a base for the work of commissions and working groups that discuss and suggest improvements in the actions of Social and Environmental Sustainability."¹⁰⁰

The company's 2005 *Social and Environmental Report* explicitly states Petrobras' adherence to the Global Compact's ten principles. Observance of social responsibility figures prominently in the company's public pronouncements. According to the report, "the company bases its social and environmental actions on these ten principles that

⁹⁸ Petrobras, 6.

⁹⁹ Ibid, 18.

¹⁰⁰ Ibid, 19.

cover themes such as transparency, labor conditions, human rights and environmental protection.”¹⁰¹ In addition to the Global Compact principles, Petrobras also employs the Global Reporting Initiative metrics that help analyze performance along a range of economic, environmental and social issues.¹⁰² The auditing firm Ernst & Young has reviewed the S&E reports each year since 2003.

To implement the Global Compact’s principles into the daily operation of the company, Petrobras’ leadership created a management committee for social and environmental responsibility in 2004. This committee then created four specifically-tasked working groups and committees (two of each) in 2005 as part of an overall redesign of the Petrobras’ corporate citizenship architecture. Moreover, out of the original Institutional Communication area, the company formed a Corporate Social Responsibility area with three subcomponents: Social Programs, Environmental Programs, and Guidelines and Practices for Social Responsibility. There are four new working groups/commissions related to corporate citizenship:

- (a) The Management Indicators and Certification working group is “to study and propose to the Management Committee for Social and Environmental Responsibility projects addressing the themes ‘Certification’ and ‘Social Responsibility Indicators.’”
- (b) The Dow Jones Sustainability Index challenge working group is “to analyze the reasons why Petrobras could not be accepted in the Dow Jones Sustainability Index until 2005.”

¹⁰¹ Petrobras, 17.

¹⁰² Petrobras, 19. For more information, see: <http://www.globalreporting.org/Home>.

- (c) The Gender Commission “is guided by Global Compact principles to comply with the third UN Millennium Development Goal—‘promote gender equity and empower women’ and is coordinated by the Ombudsman Office.”
- (d) The Commission for the Elaboration and Evaluation of Social and Environmental Reports, “coordinated by the [CSR] area, is responsible for all reports concerning Petrobras Social and Environmental Responsibility, including the Social and Environmental Report. The objective of this commission is also to establish an ongoing communication channel between the areas, units, and subsidiaries of this commission, bringing the Company reports in line with its principles and identifying opportunities to improve the Company’s management practices.”¹⁰³

The 2005 S&E report also remarks that the Company “intensified” its work to inculcate UNGC principles and S&E guidelines throughout the organization, including through a management training class (“Ethics and Social Responsibility”) at Petrobras University.

Petrobras also has been very active in international dialogs about corporate citizenship. These include, among others, UN Global Compact workshops, and the World Bank/Ethos Institute (backed by George Soros) 10th International Business Forum. The company signed onto the “Pact against Corruption Initiative” (PACI) early in 2005 at the World Economic Forum in Davos, Switzerland. In addition, Petrobras has participated in the ISO-26000 movement working to develop globally-recognized standards for Social and Environmental Responsibility by 2008.

For its policies and practices in the corporate citizenship arena, Petrobras has received worldwide recognition as a winner of the International Stevie Business Awards

¹⁰³ Petrobras, 20-21.

(2005) as “Best Company of Latin America.” The 2005 S&E report featured a quotation from the Global Compact’s chief executive, Georg Kell, who commented, “In the case of Petrobras, I am particularly by impressed by its efforts to provide opportunities for future generations, and to further research about biodiversity.”¹⁰⁴ Petrobras’ efforts to incorporate international norms into its business philosophy have made the company a leader among national oil companies that are expanding exploration and production abroad. However, Petrobras’ attempts to turn these international norms into operational practices have, at times, been criticized outside Brazil, particularly in Ecuador.

Practices—Petrobras in Ecuador: Sustainability and the Environment

Designated a United Nations Biosphere Reserve in 1989, Ecuador’s Yasuní National Park is a biodiversity hot spot, boasting 90 species of frogs and 500 kinds of birds within 2.4 million acres, twice the size of Rhode Island. It also contains major untapped reserves of crude oil, reserves that Petrobras has tried to develop. Since 2005, the company has found itself locked in a protracted dispute with Ecuador’s government and civil society groups. (Crude oil is Ecuador’s biggest export and a major source of government revenue.) This incident serves to reinforce the potential for tension between policy and practice, as well as the difficulty companies can face in allaying the concerns of multiple stakeholders without compromising its profitability imperative. It furthermore brings to mind how managing, if not resolving, the tension between energy development and environmental protection remains a critical task for all sectors concerned with sustainability.

¹⁰⁴ Petrobras, 8.

In Petrobras' 2005 S&E report, the company admitted that it had faced genuine obstacles in implementing UNGC-inspired policies, namely in Ecuador.

Petrobras also faced challenges in 2005 in terms of Global Compact principles, mainly in relation to its activities in Ecuador. The Company was criticized for the impacts caused by oil exploration in blocks 18 and 31. Some Ecuadorian social organizations considered that Petrobras was responsible for having contaminated the Coca River and condemned Company plans to start operating in the Yasuní National Park, considered one of the largest biomasses of biodiversity on the planet and home to the Huaorani Indians.¹⁰⁵

Petrobras' assets in Ecuador are located in Blocks 18 and 31. Criticism of the company centered on its plans to partially develop Block 31, which occupies 200,000 hectares within the national park; Block 31 is 70 percent located within the park. Petrobras originally proposed occupying 100 out of the 200,000 hectares in Block 31 to bring two fields into the production development stage. The company planned to drill wells, construct a pipeline, build a petroleum processing facility adjacent to the park, construct a 32-km road connecting a pier (to be built) on the Napo River with the producing wells, and assemble "administrative infrastructure" at the park's entrance."¹⁰⁶ The Government of Ecuador granted Petrobras a license to begin operations in August 2004. At the request of the licensing agency, Petrobras agreed to relocate the proposed processing facility from outside the park's perimeter to within the park's boundaries, in order to forestall unwanted development adjacent to the park.

After a new Ecuadorian minister for the environment took office in early 2005, Petrobras' operations in Block 31 came under renewed scrutiny. The Ministry placed fresh demands on the company, including additional licensing requirements. Moreover, in a sudden reversal, the newly-appointed minister "[...] also opposed the construction of

¹⁰⁵ Petrobras. 22.

¹⁰⁶ Petrobras, "Negotiations in Ecuador," *Social and Environmental Report*, 2005, 94.

the process center within the Park, as had been requested earlier, as well as the construction of the access road. Petrobras had already constructed the first 16 km, as far as the Napo River at the entrance of the Park.”¹⁰⁷ As word of Petrobras’ plans spread to the scientific community, opposition to the company’s project snowballed into a cause célèbre for the international environmental movement. Major criticism also began to come in from indigenous communities and environmental groups within Ecuador, aided by like-minded activists inside Brazil who followed the controversy on the website www.amazonia.org.br.

Dr. William F. Laurence, head of the Smithsonian’s Tropical Research Institute, commented to the *New York Times* (February 17, 2005) that “there are clearly viable alternatives, such as directional drilling or roadless methods, that can allow one access to remote oil reserves without severely degrading one of the great jewels of the Amazon.” Supported by eminent scientists like Jane Goodall and E.O. Wilson, the Association for Tropical Biology and Conservation called for Ecuador to rescind its approval of Petrobras’ 33km road in Yasuni National Park. Dr. Laurence stressed the scientific importance of Yasuni, saying, “It’s arguably the biologically richest real estate in the planet.” A few months later, the scientists’ calls for action were joined by some of Ecuador’s indigenous peoples. In July 2005, representatives of the Huaorani indigenous people protested in Quito, Ecuador’s capital, demanding a halt to the road-building scheme. Following representations at the United Nations in New York and at the U.S. Congress, Huaorani tribal leaders met with Ecuador’s secretary of state, and asked for “a 10 year moratorium on new oil projects in their territory and the immediate removal of

¹⁰⁷ Ibid.

Petrobras.”¹⁰⁸ Buffeted by pressure from scientists, environmental organizations, and indigenous people, the Government of Ecuador forced Petrobras to halt its operations.

Petrobras initially responded by filing a lawsuit against the Ministry of the Environment, only a couple days after Brazilian President Lula da Silva wrote to Ecuador’s President Palacio “stating now he was worried that the Ecuadorian government’s actions to suspend the activities of Petrobras threatened the future of the project.”¹⁰⁹ Ecuadorian courts dismissed the lawsuit less than two months later. Within Ecuador, pressure continued to be placed on the government as four retired environment ministers urged keeping the suspension in place until further studies were completed, and a study by 50 area biologists detailed the likely damage to the park if a road were built as the original plan intended.

After these setbacks, Petrobras decided to dramatically overhaul the project design. In April 2006, the company publicly announced plans to operate a “roadless” system, by removing the processing center from inside Yasuní, ending construction of the access road, and using helicopters instead of a pipeline to transport oil. Petrobras’ 2005 S&E report also noted that

The project includes a series of social environmental actions, such as the installation of an Environmental Defense Center in the region, studies of local flora and fauna with a view to their preservation, educational and health programs and infrastructure for the communities around and professional training to make use of the local workforce.¹¹⁰

Environmentalists and scientists welcomed these changes to the original plans. “Given the proliferation of oil concessions throughout the Amazon, hopefully this will set a critical precedent. No new oil access roads through primary rainforest,” said a spokesman

¹⁰⁸ <http://www.peopleandplanet.net/doc.php?id=2534>

¹⁰⁹ Ibid.

¹¹⁰ Petrobras, “Negotiations in Ecuador,” *Social and Environmental Report*, 2005,94.

for Save America's Forests. Speaking from South America, Roberto Smeraldi of Friends of the Earth—Brazilian Amazonia noted that

This is a milestone, not only because the road will not be built, but because for the first time, Petrobras has retreated in its colonialist attitude in Latin America. Despite the institutional fragility of Ecuador, open attempts at corruption that characterize this case and political pressures that even mobilized the President of Brazil, Petrobras will have to abide by the law, something foreign to its corporate culture. Let's see if this begins to happen in Brazil as well.¹¹¹

Nonetheless, scientists and environmentalists have continued to criticize Petrobras for other aspects of its Yasuni project. In November 2006, scientists and international environmental NGOs separately censured the company's newest Environmental Impact Study. They argued that the new design will still pose threats to the plants and wildlife in the national park.¹¹² Petrobras maintains that it is aware of the potential threats to the park, which is why the company has undertaken to change its project designs to accommodate outside criticisms. Petrobras' own description of the dispute briefly references but does not detail the company's efforts to retain access to the oil producing areas in Block 31, support from Brazilian government for the project, and the depth and breadth of civil society opposition to the project.

CHINA NATIONAL PETROLEUM CORPORATION

Introduction: Searching for Energy Security

The development of Sudan's oil industry is tightly connected to China's growing demand for imported energy and to China's increasingly close ties to African oil-producing countries. The state-owned China National Petroleum Corporation (CNPC) has been active in Sudan since the mid 1990s. Following an official internationalization

¹¹¹ <http://www.saveamericasforests.org/Yasuni/>

¹¹² <http://forests.org/alerts/send.asp?id=ecuador>

strategy along with other state-owned firms, CNPC took a lead role in building up Sudan's petroleum sector, which now produces around 500,000 b/d compared to practically nothing in the early 1990s. Through its Sudanese investments, CNPC gave China its first stake of overseas equity oil. CNPC's entry into the Sudanese oil sector happened to take place in the midst of a massive civil war that began in the 1970s and only ended in 2005. The conflict saw mainly Arabized, Muslim Sudanese fighting against ethnically black African rebels from mostly animist and Christian communities. Much of the fighting took place in southern Sudan, in areas where CNPC later successfully developed oil fields. A 2005 report from the Allard K. Lowenstein Human Rights Project at Yale Law School confirmed that, "oil revenue is a crucial source of income for the Sudanese government and is essential to the funding of the government's military operations, and an asset of exceptional strategic importance to the region." According to a former finance minister, in recent years, 70 percent of Sudan's oil revenue has been spent on defense.¹¹³ China's keen diplomatic and economic support for Sudan is representative of China's global search for energy security, in which Africa has become a major component in the PRC's strategic calculations.

In 2006, China's oil demand increased by eight percent over 2005 levels to reach 6.64 million barrels per day.¹¹⁴ Having become a net importer of oil in the early 1990s, China is meeting more of its energy needs from sources in the Middle East, Central Asia, and Africa. Between the late 1990s and early 2000s, China managed to diversify its sources of imported oil, although according to the International Energy Agency nearly

¹¹³ Jeffrey Gettleman, "War in Sudan? Not Where the Oil Wealth Flows," *The New York Times*, October 24, 2006, A1.

¹¹⁴ "Market Eye: China's Burgeoning Demand," *International Oil Daily*, January 29, 2007.

half comes from the Middle East.¹¹⁵ According to respected trade journal *Petroleum Intelligence Weekly*, in 2006 China imported 2.9 million b/d, an increase of 14.2 percent. Saudi Arabia, Angola, and Iran were the three largest suppliers, while Sudan ranked eighth. China received approximately 31 percent of its 2006 oil imports from Africa.¹¹⁶ With imported oil expected to account for 10.7 million b/d out of 14.2 million b/d of China's daily demand in 2025,¹¹⁷ China has been seeking all the oil it can acquire to maintain its economic development and sustain growth.

Sudan forms an important part of a much wider Chinese strategy to solidify economic links with resource-rich countries in Africa. As southern Sudanese seek to rebuild their region following decades of civil war, and while violence ravages Darfur, Sudanese elites in Khartoum have benefited enormously from the influx of oil wealth that powers the country's growing economy.¹¹⁸ Much of this oil-drenched wealth is a direct result of energy investments from China, India, Malaysia and others. Overall, China's energy engagement with sub-Saharan Africa is becoming a strategic concern for the United States, which could face a diminished diplomatic position unless it adopts a far more robust and coherent policy for the region.¹¹⁹

The East in Africa

Renewed Chinese strategic engagement with sub-Saharan Africa began in the 1990s, and this trend intensified during the 2000s. At times, Chinese policy toward Africa has inhibited resolution of the Darfur conflict, emboldened authoritarian rulers, and

¹¹⁵ "World Energy Outlook 2004", *International Energy Agency* (Paris: OECD/IEA, 2004), 267.

¹¹⁶ "Market Eye: China's Burgeoning Demand," *International Oil Daily*, January 29, 2007.

¹¹⁷ U.S. Energy Information Administration (EIA), "Country Analysis Brief: China," August 2005, <http://www.eia.doe.gov/emeu/cabs/china.html> (accessed February 14, 2006).

¹¹⁸ Jeffrey Gettleman, "War in Sudan? Not Where the Oil Wealth Flows," *The New York Times*, October 24, 2006, A1.

¹¹⁹ "More Than Humanitarianism: A Strategic U.S. Approach Toward Africa," *Independent Task Force Report no. 56*, The Council on Foreign Relations, 2006: 40-54.

subverted efforts to promote financial transparency and accountability. On balance, Chinese economic links also have provided investment and have spurred infrastructure growth. Nevertheless, nascent opposition has arisen to China's growing presence. Protests have taken place as Chinese entrepreneurs have displaced local merchants, and local workers have criticized the management style of Chinese-led operations, especially in Zambia, following an explosion at a Chinese-run mine which killed 46 people.¹²⁰

The three-day China-Africa summit held in Beijing in early November 2006 underlines China's strategic interest in the continent. For China, an enhanced presence in Africa strengthens the country's energy security and need for raw materials. Pan Zhongying, Director of Nankai University's Institute for Global Studies, made clear Chinese hardliners' position when he wrote in the *China Daily* that "energy security has become the most important component in the country's national security [...] Some countries' attempts to block China's development with regard to energy resources must be thwarted."¹²¹ Pan went on to say that, energy security concerns notwithstanding, China will endeavor to pursue international cooperation and peaceful development.

Obtaining equity oil in places like Sudan and Iran may be both a matter of prestige and a key component of PRC energy security—even if not part of a coordinated and tightly managed national energy strategy—but the search for equity oil is also common in the global energy industry.¹²² China's willingness to reach out to resource-rich rogue states with few conditions has created tension between Beijing and Washington, as well as contributed to major human rights problems in states such as

¹²⁰ "In Africa, China's Expansion Begins to Stir Resentment," *Wall Street Journal*, February 2, 2007, A1.

¹²¹ Pang Zhongying, "Peaceful Development of Resources Crucial," *China Daily*, February 7, 2006 http://www.chinadaily.com.cn/english/doc/2006-02/07/content_517757.htm (accessed February 7, 2006).

¹²² Kenneth Lieberthal and Mikal Herberg, "China's Search for Energy Security: Implications for U.S. Policy," *National Bureau of Asian Research (NBR) Analysis*, vol. 17, no. 1, April 2006, 18.

Sudan and Myanmar.¹²³ To reduce this reliance on rogue states, some U.S. commentators have urged more PRC commitment to market-based solutions. In this context, China National Offshore Oil Corporation's (CNOOC) bid for Unocal exemplifies the challenges inherent in this latter approach, as well as U.S. hypocrisy.

Chinese efforts to acquire imported oil at the source, in addition to buying oil from the market, are designed to protect China from price swings and international crises. Africa not only is an important supplier of energy for China but also a source of markets, raw materials, and, at times, geopolitical clout. China's other natural resource interests in Africa (not limited to but focused upon oil) include projects in Algeria, Angola, Chad, Equatorial Guinea, Gabon, Nigeria, and Sudan.¹²⁴ One prominent example outside Sudan is China National Offshore Oil Company's (CNOOC) \$2.27 billion acquisition of a 45 percent stake in Nigeria's OML 130 deepwater license area, which may hold recoverable reserves of 1.1 billion barrels.¹²⁵ Meanwhile, Nigeria again has encountered civil strife in its oil-rich delta region, where rebels have kidnapped oil company employees and attacked oil installations.¹²⁶ Sudan remains a key component of China's energy policy in Africa. Although the Darfur situation remains one of the world's worst humanitarian crises and human rights conflicts, China's close connections to the Sudanese government have complicated international efforts to provide robust protection for Darfur's civilians.

¹²³ Matthew E. Chen, "Chinese National Oil Companies and Human Rights," *Orbis: A Journal of World Affairs* 51, no. 1 (2007).

¹²⁴ Chietigj Bajpae, "Sino-U.S. Energy Competition in Africa," *Power and Interest News Report*, October 7, 2005. http://www.pinr.com/report.php?ac=view_report&report_id=378&language_id=1 (accessed November 22, 2005).

¹²⁵ Chris Hogg, "China Oil Firm Buys into Nigeria," *BBC News*, January 9, 2006 <http://news.bbc.co.uk/2/hi/business/4594058.stm> (accessed March 3, 2006); and, "CNOOC Limited acquires 45 % stake in offshore Nigerian oil mining license 130 for US \$2.268 billion cash," *Webbolt*, January 13, 2006, http://webbolt.ecnext.com/coms2/description_58218_CNOOC130106_ENE (accessed March 3, 2006).

¹²⁶ "Nigeria's Oil Rebels," *BBC News*, February 20, 2006 <http://news.bbc.co.uk/2/hi/africa/4732210.stm> (accessed March 3, 2006).

Chinese Assets in Sudan

At almost one million square miles, Sudan is Africa's largest country and became Africa's third largest oil exporter at the end of 2006. Sudan's proven reserves stand at 563 million barrels. Total reserves could number approximately five billion barrels, if unproven reserves in areas like northwest Sudan are added¹²⁷ (including in the Darfur region).¹²⁸ The Muglad basin, home to most of the country's current production, is estimated to hold one billion barrels of crude. The heart of Sudan's production comes from the Muglad area, where current production has reached 300,000 b/d.¹²⁹

Chinese capital and technical expertise helped Sudan transform its oil sector into an export-centered industry. CNPC has a number of direct investments in Sudanese oilfields, part of China's strategy to control oil resources at their source. Sudan forms part of the "foundation" for CNPC's overseas strategy. The company's operations there serve as a "global template" for CNPC exploration, production, and refining activities.¹³⁰ "The bulk of this [CNPC overseas production] is in Sudan where CNPC owns 40 percent of the 320,000 b/d Greater Nile Project and a full 100% of the 40,000 b/d production from Block 6."¹³¹ CNPC is a member of the Sudan-based consortium called the Greater Nile Petroleum Operating Company (GNPOC), which produces most of the country's oil. India's state-owned ONGC and Malaysia's state-owned Petronas are also members of

¹²⁷ U.S. Energy Information Administration (EIA), "Country Analysis Brief: Sudan," March 2005, <http://www.eia.doe.gov/emeu/cabs/sudan.html> (accessed February 14, 2006).

¹²⁸ In June 2005, the British *Guardian* newspaper reported that in 2003 British businessman Friedhelm Eronat purchased oil exploration rights in Darfur's Block 14 for at least \$3 million. The newspaper commented that Mr. Eronat may have acted on behalf of two Chinese corporations. Mr. Eronat's lawyers denied that the purchase had occurred. http://www.sudantribune.com/article_impr.php3?id_article=10070.

¹²⁹ "Sudan Oil Output 330,000 B/D, To Double This Yr—Officials," *Dow Jones Newswire*, February 14, 2006, <http://sg.biz.yahoo.com/060214/15/3yp73.html> (accessed February 15, 2006).

¹³⁰ "China's CNPC Targets Overseas Integration Deals," *Petroleum Intelligence Weekly*, January 23, 2006, 5.

¹³¹ *Ibid.*

GNPOC. CNPC also belongs to the Petrodar consortium of Asian and Sudanese companies.¹³² The state-owned China Petroleum and Chemical Corporation, better known as Sinopec, is also a member of Petrodar. Petrodar operates in Blocks 3 & 7. Chinese serve on the leadership of both consortiums.

Common figures suggest that China receives between 7 to 9.5 percent of its total oil (not just imports) from Sudan.¹³³ Sudan became a net oil exporter on August 30, 1999 when it managed to export 600,000 barrels of crude (total, not per day) from the new Port Bashair oil terminal, which had been built with Chinese financing and labor.¹³⁴ Most recent estimates suggest that Sudanese production reached the 500,000 b/d mark in 2006. The specific sources of Sudan's rising production in 2006 were Petrodar's projects in Blocks three and seven, 150,000 b/d maximum, and additional production from Block 5a (80,000 b/d) and Block 6 (30,000 b/d). The Petrodar consortium sought to raise its total production in Sudan to 250,000 by December 2006.¹³⁵

History

Chinese companies made their first foray into Sudan in 1996. During the mid-1990s, Chinese leaders recognized that China's increasing dependence on imported oil necessitated a major diplomatic initiative to secure overseas supplies. Sudan became an important part of this strategy. China's "go-out" energy policy was formalized by PRC

¹³² The members of Petrodar are: CNPC (41%), Petronas (40%), Sinopec (6%), Sudapet (8%), and Al-Thani [Sudan] (5%).

¹³³ Vivienne Walt, "China's Appetite for African Oil Grows." *CNN Money*, February 16, 2006

¹³⁴ Yitzhak Shichor. "Sudan: China's Outpost in Africa," *China Brief* (The Jamestown Foundation) 21, no. 5 (October 13, 2005).

http://www.jamestown.org/publications_details.php?volume_id=408&issue_id=3491&article_id=2370720 (accessed January 31, 2006).

¹³⁵ "Sudan Oil Output 330,000 B/D, To Double This Yr—Officials," *Dow Jones Newswire*, February 14, 2006, <http://sg.biz.yahoo.com/060214/15/3yp73.html> (accessed February 15, 2006).

leaders in 2004.¹³⁶ With an underdeveloped resource base and without a crowded field of operations (few Western companies), Sudan offered an inviting and potentially lucrative opportunity. Sudan's well-documented violent conflicts did not deter CNPC from entering the petroleum sector there. CNPC acquired a forty-percent share in the GNPOC consortium in 1996. A decade later, GNPOC has become Sudan's primary production company; the consortium's fields accounted for 90 to 95 percent of total Sudanese production in December 2005.¹³⁷

In its early years, GNPOC had considerable financial and logistical backing from Canadian oil companies, starting with Arakis, which was purchased by Talisman in 1998. Talisman maintained Arakis' share in GNPOC until 2002, when Talisman ceased operations in Sudan and divested its holdings in the country. Talisman had come under intense criticism from human rights and religious activists, who claimed that oil profits helped to sustain the central government's war in southern Sudan. ONGC Videsh (a subsidiary of the Indian national oil company, The Oil and Natural Gas Corporation) purchased Talisman's 25 percent portion of GNPOC in 2002.

GNPOC's initial oil field development occurred in the south, where most of Sudan's extant production takes place. GNPOC constructed a \$1.4 billion pipeline with a capacity of 310,000 b/d stretching from the major oilfields in the south to the Red Sea port of Bashair, near Port Sudan, where new processing facilities were constructed. (This pipeline quickly became a target of rebel attacks.) In 2005, the addition of new fields raised GNPOC's total production capacity to 275,000 b/d.¹³⁸ GNPOC may also develop its concession in Block 4. The area could provide 30,000 b/d, but high exploration costs

¹³⁶ Don Lee, "China Making Big Oil Moves," *Los Angeles Times*, January 23, 2006, C-1.

¹³⁷ *Sudan in Arab Oil and Gas Directory* (2005), 426.

¹³⁸ *Sudan in Arab Oil and Gas Directory* (2005), 427.

(\$2.10 bbl vs. 90¢ in Blocks 1 and 2) must be overcome. The incentive to produce from Block 4 comes from CNPC's declines in other blocks: "some fields [are] suffering a relatively high water cut and it [CNPC] has been drilling horizontal wells to maintain production."¹³⁹

Formed in October 2001, the Petrodar consortium operates in Blocks 3 and 7, which cover approximately 72,000 km². CNPC and Sinopec are among the founding members. According to the company's website, "Petrodar is incorporated under the laws of the British Virgin Islands and has a registered branch in Sudan."¹⁴⁰ Projects in Block 3 and 7 are expected to raise production from an initial 75,000 b/d to 150,000. In 2006, Petrodar inaugurated Sudan's second long-distance pipeline terminating at the Red Sea.

Humanitarianism versus Human Rights

While the Chinese state arguably is a stakeholder in the international system, Chinese oil companies are not full stakeholders in the international marketplace—if one measure is good corporate citizenship. Little evidence of Chinese oil companies' direct complicity in the Darfur violence has been found. Activist organizations have accused the Chinese oil companies operating in southern Sudan of both direct and indirect culpability in human rights violations. Still, Chinese companies have invested significant sums for social welfare concerns in Sudan. Perhaps not surprisingly, CNPC and the Chinese government have trumpeted their concern for humanitarianism, while activists have focused their criticisms on CNPC's lack of attention towards perceived human rights lapses.¹⁴¹

¹³⁹ "What's New around the World—Sudan," *Petroleum Intelligence Weekly*, November 21, 2005, 9.

¹⁴⁰ <http://www.petrodar.com/>

¹⁴¹ http://www.unglobalcompact.org/docs/about_the_gc/2.0.2.pdf (accessed March 13, 2006).

Chinese oil companies have made major infrastructure investments for social and humanitarian purposes. In February 2007, CNPC reached an accord to support social services in Sudan with a \$1 million donation and an additional \$900,000 for professional training in the petroleum sector. The 2006 U.S. Department of Energy report on China's strategic energy position has noted that, since entering the Sudanese oil sector, Chinese oil companies have paid for projects totaling \$30 million, including "schools, hospitals, bridges and other social/economic infrastructure [...]."¹⁴² CNPC is not participant in the UN Global Compact, the Voluntary Principles on Security and Human Rights, the Extractive Industries Transparency Initiative, or the Business Leaders' Initiative on Human Rights. For Sudan specifically, the GNPOC, under pressure from then-consortium member Talisman, signed a corporate code of conduct. However, CNPC and the Malaysia's state oil company Petronas declined to sign individually.¹⁴³

Based on a report from the state-run *China Information Center*, CNPC has paid \$4 million to construct new four hospitals, drilled 100 water wells in its areas of operation, donated \$150,000 for reconstruction after floods in 1998, built ten new primary schools, and has provided outstanding Sudanese students with opportunities to study petrology in China.¹⁴⁴ CNPC concisely mentioned its Sudan community activities in the company's 2003 annual report:

CNPC has begun to participate in various forms of community activities in Sudan Block 1/2/4 since 1999. By the end of 2003, over 1.02 million local residents have benefited from CNPC's public welfare projects including the drilling of drinking water wells, the construction of medical and health centers,

¹⁴² U.S. Department of Energy, "Energy Policy Act 2005, Section 1837: National Security Review of International Energy Requirements," (China), February 2006, 34.

¹⁴³ "Sudan, Oil, and Human Rights" Human Rights Watch, (Washington, DC: Human Rights Watch, 2003), 90.

¹⁴⁴ "CNPC Wins Projects in Sudan through Sincerity and Strength," *China Information Center*, December 10, 2003, <http://www.china.org.cn/english/features/China-Africa/81937.htm> (accessed January 31, 2006).

hospitals and schools, and the supplies of health care equipment and teaching facilities.¹⁴⁵

The 2003 report also notes CNPC's water well drilling in Block 6 and \$1.12 million USD financing of the Khartoum Friendship Hospital. No mention of Sudan is made in the Corporate Social Responsibility section of CNPC's 2004 (English) annual report. According to Chinese officials, CNPC's work in Sudan exemplifies mutual aid among developing countries and "[...] is the model for South-South cooperation." In return, Sudan's President Bashir commented, "no CNPC, no oil industry in Sudan, not to mention the peace in south and north of Sudan."¹⁴⁶

Conduct Under Question

CNPC's attempts at social welfare have been overshadowed by Sudan's violent conflicts. The International Crisis Group has said that among the Chinese national oil companies "there is an almost total disregard for the human rights implications of their investments [in Sudan]."¹⁴⁷ In the same news report which describes CNPC's social infrastructure projects, CNPC general manager Wang Dongjin, referencing attacks on the pipeline during construction (1998-9), said that "even in times of great danger, we never prolonged the time limit on our project. Instead we worked out a set of realistic contingency plans." Mr. Wang did not elaborate.

Rights groups and activists like Smith College professor Eric Reeves have argued that, in certain cases, "contingency plans" to protect Chinese investments turned out to be

¹⁴⁵ China National Petroleum Corp. *2003 Annual Report*, English version, "Community: Overseas Community—Sudan" <http://www.cnpc.com.cn/english/gsgk/gsnb2003.htm> (accessed March 13, 2006).

¹⁴⁶ "Chinese CNPC in Sudan, Model of South-South Cooperation," *China Daily*, November 3, 2006 www.chinadaily.com.cn. (accessed November 13, 2006).

¹⁴⁷ "God, Oil, and Country: Changing the Logic of War in Sudan" *International Crisis Group*, (Brussels: International Crisis Group Press, 2002) 69.

armed Chinese laborers backed by Sudanese military forces. To cite one example, a May 2000 report from Amnesty International said that

A Chinese oil company has contracted with the Sudanese government to ensure the security of its operations. The Vice-President of the China Petroleum Engineering and Construction (Group) Corporation [CPECC], Mr. Wang Guoqing, told a reporter in December 1999 that ‘the Sudanese army had to protect them from guerilla assaults when they built the Heglig and Unity wells. Our workers are used to eating bitterness; they can work 13 or 14 hours a day for very little money. The quality isn't as high, but we charge less.’ Sudanese civilians who escaped attacks in the area south of Heglig and fled through the Wicok area reported that the Chinese workers were armed and appeared willing to use their guns. Other reports from the area around Heglig speak of rapes committed by Chinese workers.¹⁴⁸

CPECC formerly functioned as part of the Chinese military. Its modern operations may be compared to those of the U.S. Army Corps of Engineers, but at present it is a subsidiary of CNPC. A separate report issued by Doctors without Borders in 2002 similarly contends that evidence exists which implicates Chinese companies in the displacement of civilians to construct an oil transport road in the Bentiu area in Southern Sudan.¹⁴⁹

Chinese companies bear chief responsibility for transforming Sudan into an oil exporting country. Yet they have done little to grapple with Sudan’s civil strife, which has been shaped, in part, by oil development. In 2003, the UN special rapporteur on Sudan’s north-south civil war reiterated his earlier observations that “oil was exacerbating the conflict, insofar as the war in the Sudan is mainly the result of a fight for the control of power and resources.”¹⁵⁰ The 2005 Comprehensive Peace Agreement (CPA) between the northern government in Khartoum and southern rebels has brought a

¹⁴⁸ “Sudan: The Human Price of Oil,” Amnesty International, May 3, 2000, <http://web.amnesty.org/library/print/ENGAFR540012000> (accessed March 14, 2006).

¹⁴⁹ Doctors without Borders, “Violence, Health and Access to Aid in Unity State/Western Upper Nile,” April 2002. http://www.doctorswithoutborders.org/publications/reports/2002/sudan_04-2002.pdf (accessed March 14, 2006), 10.

¹⁵⁰ Report of the Special Rapporteur, Gerhart Baum, to the Commission on Human Rights, “Situation of Human Rights in Sudan,” E/CN.4/2003/42, January 6, 2003.

tenuous peace to the oil-rich southern region. Still, implementation of the agreement has proceeded slowly; disputes over sharing oil revenue and managing oil reserves continue.

Finally, the international outcry targeting mass atrocities against civilians in Darfur should make Chinese companies doing business in Sudan reevaluate and retool their operating practices.

With few exceptions, China has vetoed or otherwise opposed UN Security Council measures to hold Sudan accountable. As of September 2006, the Security Council had issued nearly a dozen resolutions on Darfur with negligible effect. China did support Resolution 1706, which authorized UN peacekeepers in Darfur. However, the Resolution required Khartoum's consent, which has not been forthcoming. China weakened Resolution 1564 in September 2004, which would have sanctioned Sudan if the government failed to disarm the proxy militias (Janjaweed). Under Chinese pressure, the final language of that Resolution was that the Council would "consider taking additional measures" instead of directly sanctioning Sudan. In March 2005, it passed Resolution 1591, which banned travel and froze the assets of perpetrators of human rights violations in Sudan. The United States had also proposed sanctions on Sudanese economic resources, including oil, but China had rejected these, arguing that sanctions would make peace negotiations more difficult. Sanctions also would have halted the shipment of Sudanese oil to China. In early 2006, China sided with Qatar to block the release of a UN report that supported sanctions against individuals believed to be obstructing peace efforts in Darfur.¹⁵¹

So far, Chinese leaders have urged all parties in the Darfur conflict to discuss peace. Yet, Chinese officials have not proposed any concrete measures to either protect civilians or to pressure Khartoum to halt its violent tactics. In this situation, Chinese NOCs have come to be viewed as abettors of Sudan's civil conflicts. As Chinese academic Zha Daojiong has argued, a crucial first step to improve Chinese NOCs standing around the world is for CNPC and Sinopec to increase the transparency of their Sudanese operations.¹⁵²

China's leaders also must recognize that the People's Republic risks unnecessarily antagonizing the international community with its support for Sudan over Darfur, where millions have been displaced and thousands have perished. Given the gravity of the

¹⁵¹ Matthew E. Chen, "Chinese National Oil Companies and Human Rights," 44.

¹⁵² Zha Daojiong, "China's Energy Security: Domestic and International Issues," *Survival*, vol. 48 no.1, Spring 2006:179-189.

atrocities in Darfur, China needs to consider where its long-term interests lie, especially if the international community finally finds its backbone and takes strong measures to protect Darfur's civilians. Again, as Zha Daojiong said, "China does need to face the challenge of addressing domestic policies in Sudan."¹⁵³ This effort would help to demonstrate China's commitment to being a full stakeholder in the international energy marketplace.

THE OIL AND NATURAL GAS CORPORATION

Introduction

The Oil and Natural Gas Corporation Videsh (OVL) is the international arm of one of India's key state-owned enterprises, the Oil and Natural Gas Corporation (ONGC). Responding to India's growing oil demand, ONGC created its international subsidiary in 1996. India imports approximately 70 percent of its total oil, with that figure expected to reach 90 percent by 2030. Given that India's oil consumption is projected to make India the world's fourth largest oil consumer by 2010, achieving security of supply has become a national security concern of the first order for the Government of India. To this end, through OVL, "the ONGC has invested as much as \$3 billion since 2000 in overseas exploration and energy projects."¹⁵⁴ International production accounted for 15 percent of ONGC's total in 2005 and amounted to \$1.7 billion out of \$11.9 billion in total revenue.¹⁵⁵

With its location between the Middle East and East Asia, India has found itself literally at the center of geopolitical competition for energy resources. Like its Chinese

¹⁵³ Zha, 185.

¹⁵⁴ Sumit Ganguly, "ONGC" in *The Changing Role of National Oil Companies in International Energy Markets*, working paper, March 2007.

¹⁵⁵ ONGC Annual Report 2005-2006, 176.

counterparts, OVL emerged late into the marketplace of international energy. Similarly, OVL has also sought out equity opportunities in oil and natural gas, including in countries with questionable human rights records and unrealized economic development. Other than Sudan, ONGC's most controversial investment to date has been its exploration and development projects for natural gas in Myanmar (Burma). The country's unelected military government has been able to maintain its firm grip on power in part because of the large inflows of revenue from oil and gas investments. "Myanmar's reclusive ruling generals have awoken belatedly to the notion that opening to select foreign investors is more likely to maintain their long-term hold on power than economic isolationism."¹⁵⁶ ONGC has joined a number of companies, including Total, Chevron, and PetroChina, doing business in Myanmar. These companies have long argued that their activities in highly authoritarian countries bring opportunities for economic development that would otherwise not be possible. International human rights groups argue, instead, that oil and gas revenues primarily, if not exclusively, benefit the elites invested in the status quo and offer few incentives for a transition to democracy.

ONGC's approach to social responsibility recognizes UN norms but concentrates its sustainability efforts within India. Interestingly, ONGC Videsh's presence in Myanmar supports the hypothesis that "multinational corporations are more likely to adopt CSR than those operating solely in their home country but that the profile of their CSR tends to reflect the profile of the country of operation rather than the country of origin."¹⁵⁷ ONGC became a participant in the United Nations Global Compact in 2003. However, the company's most recent Communication on Progress was its 2002-2003

¹⁵⁶ Shawn W. Crispin, "Myanmar Shakes Western Noose," November 3, 2006, www.atimes.com.

¹⁵⁷ Wendy Chapple and Jeremy Moon, "Corporate Social Responsibility in Asia: A Seven-Country Study of CSR Web Site Reporting," *Business and Society* 44, no. 4 (2005): 415-441.

annual report.¹⁵⁸ Like the United States, India is neither a donor country nor participating country in the Extractive Industries Transparency Initiative (EITI). The Government of India and ONGC have not chosen to adopt the Voluntary Principles on Security and Human Rights (VPSR) or join the Business Leaders Initiative on Human Rights. Given ONGC's initial accession to the UN Global Compact, this essay will examine ONGC's approach to social responsibility abroad in the context of the first and second Global Compact principles concerning human rights.¹⁵⁹

Company Policy: "Look East"

In 2006, ONGC had producing oil and gas blocks only in Sudan and Vietnam. As a consortium member, ONGC is participating in Russia's Sakhalin-I project. Most of ONGC's activities abroad were continuing efforts to explore for new prospects in Africa and the Middle East, as well as Myanmar and Australia. As tasked by the Government of India and ONGC, OVL has as its primary mission to acquire at least 20 million tons per year of equity oil and gas by 2020-2025. India's rapidly growing energy demand and declining domestic reserves have led the Indian Government to adopt a "Look East" component to its energy strategy. Myanmar has come to occupy an important place in this schema.

Since the warming of India-Myanmar ties in the mid-1990s, energy has accelerated trade and strategic cooperation between the two countries. "Bilateral trade grew from \$87.4 million in 1990-91 to \$323.43 million in 2001-02."¹⁶⁰ In 2005 bilateral

¹⁵⁸ As of February 1, 2007.

¹⁵⁹ Principle 1: "Businesses should support and respect the protection of internationally proclaimed human rights" and Principle 2 "make sure that they are not complicit in human rights abuses."

¹⁶⁰ Helen James, "Myanmar's International Relations Strategy: The Search for Security," *Contemporary Southeast Asia* 26, no. 3 (2004): 530-53.

trade increased to just over \$500 million.¹⁶¹ Energy resources are a key driver of this trend. Assessments of Myanmar's natural gas reserves have fluctuated significantly over time, including in recent years, as new discoveries have been located and then reevaluated. According to the 2006 BP Statistical Review of World Energy, which included data up to the end of 2005, Myanmar's proven natural gas reserves are approximately 17.7 trillion cubic feet or 0.50 trillion cubic meters. Chinese sources often claim that Myanmar has an estimated 2.54 trillion cubic meters in total natural gas reserves.¹⁶²

In January 2004, natural gas was discovered in Myanmar's Block A1, where OVL owns a 20 percent stake. Announcements in 2007 have substantially revised earlier projections of gas reserves in Block A1. Estimates from early 2007 suggest that the find has roughly 4 trillion cubic feet of natural gas, less than half the original projections.¹⁶³ In the words of the director general of Myanmar's energy ministry, "current estimate of reserves in block A1 is not enough to meet the demand of an export pipeline to India," and a study conducted by UK-based Gaffney Cline and Associates concluded that "production estimates are being put at 18 million standard cubic meters per day, 40 per cent of volumes needed to support investment in a transnational pipeline."¹⁶⁴ A natural gas discovery in Block A3 will be reassessed in May 2007. As stated by ONGC's 2004-2005 annual report, the company has invested the relatively small sum of \$26.57 million

¹⁶¹ "India, Myanmar Vow to Enhance Bilateral Trade," *Indo-Burma News*, May 12, 2006
<http://www.indoburmanews.net/archives/archive06/archive-06-may/03>.

¹⁶² "Chinese Company to Explore Oil, Gas in Three Myanmar Offshore Areas," *People's Daily Online*, January 16, 2007 http://english.people.com.cn/200701/16/eng20070116_341436.html.

¹⁶³ Saibal Dasgupta, "China Bags Oil Contract After Backing Junta," *Times of India*, January 17, 2007
<http://timesofindia.indiatimes.com/>.

¹⁶⁴ "India-Myanmar gas pipeline unlikely to become reality," www.zeenews.com (New Delhi), January 19, 2007; Saibal Dasgupta, "China Bags Oil Contract After Backing Junta," *Times of India*, January 17, 2007
<http://timesofindia.indiatimes.com/>.

in its Myanmar prospects.¹⁶⁵ Korea's Daewoo International Corporation is the operator and holds 60 percent.

To a large degree, ONGC's presence in Myanmar has been affected by India's often competitive, occasionally collaborative energy relationship with China. While an accord supporting limited Sino-Indian cooperation on acquiring equity oil stakes has been signed, competition with China also has shaped India's overall approach to energy. CNPC and ONGC's joint shareholding in the Sudanese-based Greater Nile Petroleum Operating Company (GNPOC) is an example of collaboration between the two countries. Myanmar, however, has become a center of energy rivalry. "India, thirsty for energy to fuel its own fast growing economy, sees Myanmar as a place where it needs to contain China."¹⁶⁶ Both China and India have sought to ink deals to create transit networks linking southwest China and eastern India to Myanmar's natural gas fields. In the case of each country, the relative proximity of Myanmar's gas resources, compared to the Middle East, is viewed as an important strategic asset. In a blow to India's strategy, in January 2007 CNPC announced it would undertake a feasibility study for a possible pipeline to China's Yunnan province, and also revealed a deal with Myanmar's state-Oil and Gas Enterprise to explore for oil and gas along Myanmar's Rakhine coast.¹⁶⁷ In addition, statements from Myanmar officials suggest that, if gas reserve estimates for blocks A1 and A3 hold fast, India's bid to construct a gas pipeline from Myanmar compares less favorably than LNG export partnerships with Marubeni of Japan and Kogas of Korea.

¹⁶⁵ ONGC Annual Report, 2004-2005, 6.

¹⁶⁶ Jane Perlez, "Myanmar Is Left in Dark, an Energy-Rich Orphan," *New York Times*, November 17, 2006, A-1.

¹⁶⁷ "CNPC inks exploration deal for Myanmar oil, gas," Agence France-Presse, January 16, 2007.

Indian policymakers would like to reach an accord with Myanmar to construct a major natural gas pipeline overland, connecting western Myanmar (Arakan and Chin provinces) with India's eastern provinces or via undersea pipeline in the Bay of Bengal. A previously proposed pipeline that would pass through Bangladesh has become a distant prospect. This is due to immense domestic opposition to such a pipeline in Bangladesh, where many view India's energy maneuvers with suspicion. For its part, India has viewed its natural gas bid as highly competitive with Chinese and Korean counterproposals. "[...] India says its offer remains the best, petroleum ministry sources said."¹⁶⁸ A mooted Myanmar-India gas pipeline continues to be highly desirable from the standpoint of Indian energy security interests. To this end, "India is using diplomatic channels to sway the decision in its favor" and "several high-profile visits to Myanmar have been planned, including by [Indian] President A.P.J. Abdul Kalam."¹⁶⁹ To enhance its energy ties to Myanmar, India has allowed any ideological compunction about doing business with the military junta to take a back seat to pragmatic concerns over securing its energy supplies.

Energy and Regional Politics

Following the ruling junta's crackdown on dissidents in 1988, Myanmar cultivated closer ties to China. India, though, remained aloof. Adopting a critical position, the Government of India chided Myanmar for its human rights abuses. Yet by 1993, China's ever-growing influence in Myanmar forced a change in Indian policy.¹⁷⁰ Indian strategists grew perturbed by the idea that, via Myanmar, China's navy could gain a

¹⁶⁸ Lola Nayar, "India Sticks to First Price Offer for Myanmar Gas," *India E-News*, www.indiaenews.com November 26, 2006.

¹⁶⁹ Lola Nayar, "India Sticks to First Price Offer for Myanmar Gas," *India E-News*, www.indiaenews.com November 26, 2006.

¹⁷⁰ Kripa Sridharan, "Wooing the Generals: India's New Burma Policy," *Contemporary Southeast Asia* 26, no. 2 (2004): 383.

significant foothold along the Indian Ocean. Moreover, the absence of significant Western investment due to sanctions policies provided an opening for Indian oil and gas companies that their Chinese counterparts already had begun to seize. In this context, India's overt support for human rights in Myanmar seemed too high a price to pay.

Reversing course, the Indian Government declared that political development in Myanmar was a domestic matter and had to be resolved by Myanmar's people, not outsiders. This policy shift opened the door to renewed bilateral exchanges. Indian policy analysts mainly hold the view that India's relationship with Myanmar must be based on close political and economic ties that allow the countries to work cooperatively on areas of mutual interest, like energy, and lay aside disagreements on issues like human rights. Seen through this lens, any Indian Government support for democratization in Myanmar appears likely to come through "quiet and concerted diplomatic efforts" that build upon the work of the United Nations and the existing National Convention convened by Myanmar's military rulers.¹⁷¹ India's minister of state for external affairs reiterated the non-interference policy in January 2007 saying, "We are a democracy and would like to see democracy spread, but we will not interfere in Myanmar's internal affairs."¹⁷²

A strong current in Indian policy analysis underscores the belief that perceived national security and strategic interests should outweigh ideological considerations regarding India's energy development in Myanmar. Energy engagement with Myanmar is viewed as the best way to promote economic liberalization and enhance Myanmar's prospects for peaceful democratization. Writing for the South Asia Analysis Group, C. S. Kuppuswamy—former director of the cabinet secretariat, Govt. of India—argued that

¹⁷¹ G. Parthasarathy, "Myanmar in Transition," *The Daily Pioneer*, November 16, 2006.

¹⁷² Madhur Singh, "EAM to Discuss Energy, Defense with Myanmar," *Hindustani Times*, January 19, 2007.

“economic, strategic and security considerations must outweigh the idealistic concern for democracy or the inhibition to deal with the military junta, if India has to establish itself as a regional power.”¹⁷³ Reinforcing the realpolitik approach, Dr. Subhash Kapila, a strategic studies analyst and retired Indian Army brigadier general, has argued that “keeping Myanmar’s great strategic significance to India [sic], it becomes imperative that Indian foreign policies towards Myanmar are solely guided by our national security considerations and these are not endangered by ideological considerations of any kind.”¹⁷⁴

A sense that India must keep pace with China’s energy expansion abroad also features prominently in policy circles. In addition, Indian analyses have criticized Bangladesh’s recurring opposition to a transnational gas pipeline traversing its territory. Dr. Anand Kumar has expressed his support for engagement with Myanmar saying that, “the time lost in bringing Bangladesh on board to this deal has already taken away some significant advantages from India as Myanmar entered into negotiation with China. Now the time has come to construct the pipeline without any delay. If we miss out this time, we have only ourselves to blame.”¹⁷⁵ A more nuanced view claims that energy engagement can prove mutually beneficial for both politico-economic and ideological reasons, over the long term. Udai Bhanu Singh, a researcher with the Institute for Defense and Strategic Analyses (IDSA) in New Delhi—self-described as India’s premier strategic studies think-tank—commented,

[...] it is worth taking Myanmar seriously as a source of energy [...] a strong and stable Myanmar is in India’s interest [...] From the Indian point of view a stable

¹⁷³ <http://www.saag.org/%5Cpapers18%5Cpaper1732.html>

¹⁷⁴ <http://www.boloji.com/plainspeak/024.htm>

¹⁷⁵ Anand Kumar, “India-Myanmar Gas Pipeline: Disentangled At Last,” *South Asia Analysis Group*, May 30, 2006.

Myanmar is a good in itself and must not be construed as illustrative of Indian rivalry with China. If economics is the prime mover behind India's Look East policy, the economic transformation of India's eastern neighbor could play a very powerful role in its political transformation to a more democratic regime. The process may be gradual but if Myanmar is helped along in this process by neighboring ASEAN States (including Indonesia which has an experience in this regard) and India, the results may be more enduring and least disruptive.¹⁷⁶

Finally, while U.S. law prohibits new investment in Myanmar by American companies, U.S. sanctions policy has come under criticism for being ineffectual. "Sanctions have no effect on ruling elites; they stimulate autarky and nationalism, and a strong desire to resist the pressures from western-based groups perceived to be working to the advantage of neo-colonial interests."¹⁷⁷

Exploiting Energy

ONGC's energy investments provide financial support for Myanmar's military government, which the International Labor Organization (ILO) has castigated for utilizing forced labor, relocation, and extortion. The ILO also has proposed to take its dispute with the Government of Myanmar before both the UN Security Council and the International Court of Justice. "The [ILO's] governing body decided to do this because it was very concerned at the widespread existence of forced labor, and because of a lack of progress in working with the government there to address the problem."¹⁷⁸ While development of the Shwe projects led by Daewoo is only in the early stages, prior examples are instructive. In the past, the government has simply crushed dissent in energy-rich areas. Reports from exiles, activists, and researchers who have visited

¹⁷⁶ Udal Bhanu Singh, "Indian President's Visit to Myanmar," Strategic Comment, Institute for Defense Studies and Analyses (New Delhi), March 9, 2006. See also: Chietigj Bajpae, "India Recovers Lost Ground in the International Energy Game," *Power and Interest News Report*, March 16, 2006; Mohan Malik, "China's Strategy of Containing India," *Power and Interest News Report*, February 6, 2006.

¹⁷⁷ Helen James, "Myanmar's International Relations Strategy: The Search for Security," *Contemporary Southeast Asia* 26, no. 3 (2004): 548.

¹⁷⁸ "UN Labor Agency Considers Taking Burma to International Court over Forced Labor," *Voice of America*, November 17, 2006 <http://www.voanews.com/english/2006-11-17-voa18.cfm>

Myanmar's western borderlands indicate that the government already has begun a process of brutal militarization in the areas where ONGC's investments are located, with devastating effects on local communities.

An earlier case involving private firms is illustrative of the challenges ONGC faces. In the mid to late 1990s, Total and Unocal corporations helped to construct the Yadana/Yetagun natural gas pipeline from eastern Myanmar to Thailand. Today, revenues from the Yadana/Yetagun projects provide crucial funding for the country's generals. Yet local communities have not benefited. Moreover, during construction of the pipeline, the military moved en masse to create a hardened security corridor and committed serious human rights abuses.

In defense of its Myanmar operations, Unocal argued before the U.S. House of Representatives' International Relations Committee that "energy development and private investment will bring long-term benefits to the people of Myanmar." The company said that it was "bound not to assert ourselves in the internal politics of any sovereign nation" and added that "Unocal will not tolerate human rights abuses in any of our projects anywhere in the world." Moreover, it contended that through its charitable work, communities benefited from improved health care and refurbished schools.¹⁷⁹

By contrast, a 1998 U.S. Labor Department report argued that in the mid 1990s, both Total and Unocal used workers "forcibly relocated and coerced into serving as porters for soldiers protecting the pipeline, and to build support facilities for the project."¹⁸⁰ In 2001, a group of six Nobel Peace Prize laureates spoke out against the

¹⁷⁹ "Prepared Statement by Unocal Corporation before the [U.S.] House International Relations Committee," *Federal News Service*.

¹⁸⁰ "Total, Unocal, May Have Used Forced Labor in Myanmar: U.S. Report," Agence France Presse, October 8, 1998.

Yadana project, saying that Myanmar army soldiers “[...] are torturing, killing, raping, and enslaving thousands of people.”¹⁸¹ Three years later, in a landmark case, Unocal and EarthRights International (representing residents from the Yadana area) reached a multimillion dollar settlement. While Unocal never admitted to wrongdoing, internal company documents “revealed that Unocal's consultants had repeatedly warned it of the military's abuses, at one point stating unequivocally that ‘egregious human rights violations have occurred.’”¹⁸²

It must be said that ONGC and ONGC personnel have not been directly implicated in human rights abuses in Myanmar. Given the risks that other companies have faced, however, ONGC’s presence in Myanmar may indirectly support the military. Myanmar’s military in turn has committed well-documented abuses while providing “security” for energy companies’ assets. As an expanding and internationalizing company, ONGC should be aware that any future interest in accessing U.S. capital markets, upholding a favorable reputation, and avoiding criticism from advocacy groups will be related to how its operations in Myanmar proceed. Recognizing the sensitive nature of its Myanmar presence, ONGC’s fellow state-owned enterprise and joint venture partner GAIL (India) Limited commented through unnamed, anonymous officials that “the issue can create a lot of international outcry and that is why the conglomerate is taking steps very carefully.”¹⁸³

¹⁸¹ “Six Nobel Laureates Move Against U.S. Energy Firm with Myanmar Link,” *Deutsche Presse-Agentur*, October 4, 2001.

¹⁸² Daphne Eviatar, “A Big Win for Human Rights,” *The Nation*, May 9, 2005
<http://www.thenation.com/doc/20050509/eviatar>

¹⁸³ Supratim Mukherjee, “Myanmar: Cheers, Jeers Over Giant Gas Find,” *Asia Times*, February 14, 2004
www.atimes.com

NOCs and Corporate Citizenship

As the pace of energy exploration and development quickens, Myanmar's military government has been tightening its chokehold on resource-rich regions. Increasing militarization in Arakan province, adjacent to the Shwe offshore fields, is a direct result of energy exploration and development. Since 1988, the army's presence has grown from 3 to 43 battalions. Consequently, forced labor has become endemic. As mentioned earlier, the International Labor Organization, an arm of the UN which has monitored Myanmar's compliance with the Forced Labor Convention of 1930, has expressed its "profound concern" about forced labor there.¹⁸⁴ At the 297th session of the ILO's Governing Body, meeting in Geneva:

Delegates expressed great frustration that the country's [Myanmar's] authorities had not been able to agree on a mechanism to deal with complaints of forced labor. They requested that the government conclude with the ILO such an agreement as a matter of utmost urgency and decided to place on the agenda of its March 2007 session a specific item to enable it to move on legal options, including involving the International Court of Justice. The Governing Body also asked the ILO Director-General to bring the relevant documentation to the attention of the United Nations' Security Council when it considers the situation in Myanmar. The documentation should also be made available to the Prosecutor of the International Criminal Court for any action that may be considered appropriate.¹⁸⁵

A report by the Shwe Gas Movement, an activist organization based in Southeast Asia, also lays out charges not only alleging forced labor, but also uncompensated land confiscation, extortion, rape, severe economic restrictions, and environmental degradation—all by Myanmar's military to secure the onshore area near ONGC and its partners' energy assets.¹⁸⁶

¹⁸⁴ "Report of the Chairperson of the Governing Body to the Conference for the Year 2005-2006," The International Labor Organization (ILO), 95th Session, Geneva,

<http://www.ilo.org/public/english/standards/reln/ilc/ilc95/pdf/pr-1.pdf>

¹⁸⁵ <http://www.ilo.org/public/english/bureau/inf/pr/2006/53.htm>

¹⁸⁶ "Supply and Command: Natural Gas in Western Burma Set to Entrench Military Rule," All Arakan Students and Youth Congress/Shwe Gas Movement, Mae Sot, Thailand, July 2006

http://www.burmacampaign.org.uk/reports/shwe_gas.pdf

Demographic Disaster

In contrast to activists' calls to halt investments in Myanmar, many Indian policy analysts have contended that only through economic development, gentle diplomacy and internal dialogue can Myanmar's military rulers be encouraged to gradually move towards political liberalization. There is little question, however, that Myanmar's energy exports are an essential and growing source of revenue for Myanmar's military government. Foreign investment in Myanmar has continued its upward trend, surging to \$6 billion during 2005-2006, official statements say.¹⁸⁷ Therefore, it is crucial to assess how operations of companies like ONGC and the revenues they generate impact both Myanmar's economic development and human security.

Initial estimates from Daewoo, which leads the Shwe consortium, suggest that the Shwe gas project will generate at least \$800 million per year for Myanmar's government.¹⁸⁸ Figures provided by the Shwe Gas Movement, a human rights advocacy organization, claim that Myanmar's government might earn \$8 billion over the life of the project. By comparison, "Thailand, Southeast Asia's largest economy, spends about \$1.2 billion a year for Myanmar's natural gas, giving the military government badly needed hard currency."¹⁸⁹ Responding to questions about the Daewoo-led projects, a spokesperson in South Korea replied, "Our position is that it's not the right time to discuss a human rights abuse issue because we are still at a stage of exploring the gas field and have yet to begin development."¹⁹⁰ Select foreign investment in Myanmar has

¹⁸⁷ Shawn W. Crispin, "Myanmar Shakes Western Noose," November 3, 2006 www.atimes.com.

¹⁸⁸ Supratim Mukherjee, "Myanmar: Cheers, Jeers Over Giant Gas Find," *Asia Times*, February 14, 2004 www.atimes.com.

¹⁸⁹ Jane Perlez, "Myanmar Is Left in Dark, An Energy-Rich Orphan," *New York Times*, November 17, 2006, A-1.

¹⁹⁰ "Korean, Indian Firms Urged to Withdraw from Myanmar," *Reuters*, July 11, 2006 www.reuters.com

helped the ruling generals to pursue their strategy of building state security through economic growth and construct alliances to thwart unwanted outside pressure, especially from the United States.

While Myanmar's energy resources are being developed, the military government is presiding over a demographic collapse; disease, malnutrition, and premature death now ravage the country. "According to the [London-based] International Institute for Strategic Studies, the junta's military expenditures account for 40 percent of national budget while Myanmar's health and education spending is 0.4 percent and 0.5 percent respectively."¹⁹¹ In the port of Sittwe, opposite ONGC's natural gas fields, "paraffin and wood are major sources of light and heat. People receive two hours of electricity a day."¹⁹² As reported in the *New York Times*, a public health study by Johns Hopkins University's medical school found that Myanmar spent \$22,000 to combat AIDS in 2004. The World Health Organization notes that Myanmar spent 2.8 percent of its GDP on public health, or \$53 per capita, in 2003. By comparison, India and the U.S. respectively spent 4.8 percent (\$82 per capita) and 15.2 percent of GDP (\$5,711 per capita) on public health. In Myanmar's eastern Karen state, as the government seeks to consolidate its control over the country and suppress ethnic minority rebels, attacks on civilians reached a new high, with 200 villages burnt down, land mines implanted to prevent the return of refugees, and some 20,000 people displaced since the beginning of 2006.¹⁹³

¹⁹¹ Supratim Mukherjee, "Myanmar: Cheers, Jeers Over Giant Gas Find," *Asia Times*, February 14, 2004, www.atimes.com.

¹⁹² Jane Perlez, "Myanmar Is Left in Dark, An Energy-Rich Orphan," *New York Times*, November 17, 2006, A-1.

¹⁹³ Anthony Faiola, "Misery Spirals in Burma As Junta Targets Minorities," *Washington Post*, November 17, 2006, A-1.

While Myanmar earns millions from its natural gas exports, its citizens languish in poverty or often fear attack at the hands of government soldiers. Most often, oil companies such as ONGC cannot be held directly responsible for how governments decide to spend the revenues generated by the energy sector. Nevertheless, companies' investments fund government operations, including suppression and military attacks that violate international human rights standards. The energy revenues being poured into the pockets of Myanmar's generals have not yet benefited the citizenry.

PETROLEOS DE VENEZUELA

Introduction

Through its Houston-based subsidiary Citgo Petroleum, Petroleos de Venezuela (PDVSA) has confirmed Venezuela as one of the leading suppliers of crude oil to the United States.¹⁹⁴ Sitting atop some of the world's most prolific oil reserves outside the Middle East, Venezuela and its firebrand president Hugo Chavez have utilized petroleum diplomacy to enhance ties with countries across Latin America, as well as in Asia and Africa. PDVSA has performed an essential role in financing President Chavez's socialist reform programs ("The Bolivarian Revolution") and subsidizing low gasoline prices for Venezuelan consumers. It also helps fund economic projects outside Venezuela, namely Citgo Petroleum's low-income heating oil assistance program in the USA. Venezuela's oil overtures to U.S. consumers have come under some intense criticism within the U.S., but a few legislators and heating oil program recipients have staunchly supported it. Citgo's low-income heating oil program may indeed serve a political purpose in line with

¹⁹⁴ In October 2006, Venezuela was the fourth largest crude oil supplier to the USA after Canada, Mexico, and Saudi Arabia, supplying a monthly total of 1.25 million barrels, according to *Petroleum Intelligence Weekly*, an increase above the 911,000 barrels supplied in October 2005.

President Chavez's diplomatic goals, but it equally provides a significant charitable benefit for U.S. residents that complements Citgo's track record as a corporate citizen.

Political Philanthropy?

Citgo "is owned by PDV America, Inc., an indirect, wholly owned subsidiary of Petróleos de Venezuela, S.A., the national oil company of the Bolivarian Republic of Venezuela." PDVSA provides crucial funding for President Hugo Chavez's program of socio-economic reforms ("The Bolivarian Revolution) and for his overseas projects, such as the low-income heating oil program in the United States. Citgo's connection to PDVSA gives it access to the largest oil reserves in the Western Hemisphere, nearly 80 billion barrels of conventional oil, and as much as 235-270 billion barrels of extra-heavy, unconventional crude oil located mostly in Venezuela's Orinoco Belt region. PDVSA acquired a 50 percent stake in Citgo in 1983, and acquired 100 percent of the company in January 1990. The acquisition helped secure market share for Venezuela's heavy and sour crude oil. Since the 2002 strike by PDVSA personnel in Venezuela, and the attempted coup against Chavez, Citgo's top leadership posts have been filled by Venezuelan nationals with close ties to the Chavez administration, such as chief executive Felix Rodgriguez.¹⁹⁵

PDVSA's approach to corporate citizenship, focused on activities within Venezuela, is linked to President Chavez's socialist vision. Chavez's Bolivarian Revolution has been described by Dr. Michael Weinstein of Purdue University as "a set of broad principles and goals around which to mobilize Venezuelan society that reflects adaptation to the country's economic underdevelopment and its sharp social

¹⁹⁵ "Citgo's Status Is Giving Houston Jitters," *New York Times*, March 5, 2005.

divisions.”¹⁹⁶ Since taking power in 1998, Chavez has initiated a series of tactical moves to advance his goal of increasing socialism in Venezuela’s economy and body politic, including modifications to the national constitution, greater state control over the oil sector, and rigorous regulation of the press. Venezuelans elected Chavez to a third-term in 2006. In turn, he has mentioned changing the country’s constitution to end term-limits. In early 2007, Chavez announced plans to accelerate Venezuela’s path to socialism, including nationalizing private utilities, asserting majority state ownership of natural gas and heavy oil projects, and creating a single socialist political party. PDVSA plays a crucial role in providing the public goods that Chavez has repeatedly campaigned on and advocated while in office.

PDVSA is genuinely committed to Venezuela's social and economic development, and is especially active in projects focused on health, education, environment, and local economy. The State oil company has also begun a review aimed at integrating Social Investment into the framework of a vision of Corporate Social Responsibility that works directly with communities, and emphasizes the development of local small and medium-sized enterprises in oil-related and other sectors, especially cooperatives and microenterprises.¹⁹⁷

In a brochure entitled “About CITGO” the company stresses its “commitment to corporate citizenship” in a section detailing its charitable activities. PVDSA and Citgo are not parties to the major corporate citizenship initiatives such as the UN Global Compact, EITI, VPSHR, and BLIHR.

Citgo highlights its corporate citizenship activities as “community involvement.”¹⁹⁸ In the philanthropic sector, Citgo provides support for the Muscular Dystrophy Association (MDA) and The United Way. In 2006, Citgo contributed \$8.6 million to the MDA, while Citgo employees and customers “have helped raise more than

¹⁹⁶ http://www.pinr.com/report.php?ac=view_report&report_id=492&language_id=1

¹⁹⁷ <http://www.citgo.com/AboutCITGO/PDVSAprofile.jsp>

¹⁹⁸ <http://www.citgo.com/CommunityInvolvement.jsp>

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\$83 million to fund research over the past 21 years.” Citgo actively supports employees’ involvement in The United Way. A description on Citgo’s website (January 9, 2007) contained the quote that “at our corporate headquarters in Houston, Texas, hundreds of employees celebrated a Day of Caring by weeding, planting, painting and improving area homes, and just giving back to the community.”

Responding to the devastation wreaked on the U.S. Gulf Coast during 2005, Citgo has disbursed \$2 million out of a total \$5 million incremental pledge. It also provided up to 2 million barrels of oil to ease fuel shortages in the hurricanes’ aftermath. In late 2006 Citgo “donated five million dollars to expand the Southwest Louisiana Center for Health Services (SWLA) in Lake Charles, which serves the uninsured and other people in need.”¹⁹⁹ CITGO also supports education by providing close to \$2 million per year for collegiate scholarships in the U.S. In addition, company volunteerism is coordinated through community action teams. Most notably, though, since 2005 Citgo has run “The CITGO-Venezuela Heating Oil Program.” The controversial initiative provides discounted heating oil to low-income families in the Northeastern United States.

The CITGO-Venezuela Heating Oil Program

On October 27, 2005 a small group of U.S. Senators, including Harry Reid, Edward Kennedy, and Hillary Rodham Clinton, wrote an open letter to America’s oil companies in which the senators urged them to address surging energy costs and “act as good corporate citizens and invest earning profits into programs, such as fuel funds, that will provide energy assistance to low-income Americans.” In response, Venezuela’s state-owned PDVSA announced plans to start shipping low-cost heating oil, via CITGO,

¹⁹⁹ “CITGO Responds to Misinformation,” *Press Release*, October 2, 2006 www.citgo.com

to the South Bronx in early December. “After delivering the first of 12 million gallons of heating fuel to 40,000 Massachusetts households [...], Venezuela trumpeted its new policy last week in full-page ads in *The New York Times* and other newspapers with the headline ‘How Venezuela Is Keeping the Home Fires Burning in Massachusetts.’”²⁰⁰ Between 2005 and 2006, the CITGO-Venezuela Heating Oil Program, as the initiative is called, provided 40 million gallons in eight states for 181,000 families and households.

Citgo and PDVSA produced a public relations brochure “From the Venezuelan Heart to the U.S. Hearths” providing details of the 2005-2006 program as well as testimonials from beneficiaries.²⁰¹ Some program recipients even traveled to Caracas to meet with Venezuelan officials, including Chavez, and express their support for continuing the program in the future. The program’s success prompted renewal and expansion in 2006. “Eligible families can purchase one-time deliveries of up to 200 gallons of home heating oil at a 40 percent discount.”²⁰² Through Citgo, Venezuela’s largesse has aided individual Americans, especially those for whom heating bills doubled in the winter of 2005-2006. In its first year, the heating oil program cut some consumers’ bills by as much as 40 percent. In other cases, the Citgo initiative aided people left outside the U.S. federal assistance program. As Eugene Guilford, director of the Independent Connecticut Petroleum Association, explained to the *New York Times* (February 12, 2006), “the cost of heating oil has sharply risen but the federal assistance program has not covered the increase for low-income residents.”

Disparaged by American conservatives for working too closely with Venezuela during a period of deteriorating relations with the U.S., the non-profit Citizens Energy

²⁰⁰ “Gesture from Venezuela Heats the Bronx,” *New York Times*, December 7, 2005, B6.

²⁰¹ <http://www.citgo.com/WebOther/CommunityInvolvement/HeartToHearths.pdf>

²⁰² <http://www.citizensenergy.com/>

Corporation headed by Joseph P. Kennedy II assists Citgo with administration of the heating oil program. In an opinion column that appeared in the *New York Daily News* on January 6, 2007, Kennedy wrote that, despite his disapproval of Hugo Chavez's 2006 UN speech referring to U.S. President George W. Bush as "the devil," the heating oil program continues to provide essential relief for low-income energy consumers. Citing higher oil prices, Kennedy argued that "for those who need help, it isn't a question of politics. It's a matter of survival [...] this assistance comes at a time when our government has cut the federal fuel assistance program budget by a third and resisted collecting royalties from oil companies making huge profits from drilling on public land [...]"²⁰³

In contrast, conservative opinion like that of the *Wall Street Journal* editorial board holds that support for the heating oil initiative exacts too great a toll on U.S. interests and is detrimental to Venezuelans themselves.²⁰⁴ Other conservative critiques suggest that Venezuela's control over Citgo weakens U.S. energy security. In *Human Events*, Mac Johnson decried PDVSA's control over Citgo: "Today, CITGO is—quite simply—an unregistered agent of a foreign government, progandizing for and subsidizing the Chavez regime in its neo-Marxist crusade against America's alleged empire."²⁰⁵

For its part, the Bush Administration responded favorably when the program began in the aftermath of hurricanes Katrina and Rita. During a press briefing in December 2005, State Department spokesperson Adam Ereli commented that "we don't see this as a political issue. We don't see this as an issue that concerns the U.S. and Venezuela. We see this as an issue of an American company helping American people,

²⁰³ http://www.nydailynews.com/news/ideas_opinions/story/486275p-409434c.html

²⁰⁴ Editorial, "Dial Joe-4-Chavez," *The Wall Street Journal*, November 18, 2006, A14.

²⁰⁵ Mac Johnson, *Human Events*, October 9, 2006, 15-16.

which is -- which is good and right and proper. And we as a government are doing our part as well.”²⁰⁶

Corporate Multilateralism Matters

Citgo’s philanthropic activities have shown the company to be a good corporate citizen in the United States. The company’s difficulty in communicating this message is evidence, perhaps, of how voluntary corporate citizenship initiatives provide some select social benefits for participating corporations. Companies that achieve recognition as participants in good standing in initiatives such as the UN Global Compact may choose to highlight this status in their public relations and, sometimes, gain greater social legitimacy as a result. Operating outside the emerging frameworks for corporate citizenship reduces the information and tools that Citgo has at its disposal.

In the final analysis, Citgo’s corporate citizenship projects parallel those of other major oil companies, but one of its major contributions has become tied up in international politics. This raises two broader issues. As a wide-ranging synthesis of traditional philanthropy, ethical/sustainability theory, and better business conduct, corporate citizenship in practice can vary from a rather elegant public relations exercise to a largely genuine effort to operate both beneficently and profitably. More often it is a nuanced combination of enlightened self-interest, munificence, and calculated strategy. How can authentic corporate citizenship initiatives be understood separately from the political environment in which they operate? Second, the phenomenon of NOCs going abroad, unregulated by international mechanisms, again brings up the problem of how to referee international corporate behavior. How should the international community

²⁰⁶ <http://www.state.gov/r/pa/prs/dpb/2005/57831.htm>

respond if political factors and economic exigencies mean that some NOCs will pursue what they (and their governments) perceive to be superior national security and energy security interests no matter what the socio-economic and environmental harm? If corporate citizenship is not a panacea, what are the fundamental political, legal, and economic limits to what it can accomplish? What role will internationalizing NOCs continue to have in the international corporate citizenship debate?

CORPORATE CITIZENSHIP GOES GLOBAL

Towards a New Paradigm

The growing impact of national oil companies' foreign operations upon human rights, the environment, and sustainable development is an undeniable and significant international policy issue. Current international corporate citizenship initiatives represent a major breakthrough in the creation of forums for discussion, development of policies, and review of new and improved practices on human rights and sustainability. Statoil and Petrobras, for example, have been major contributors and participants in these forums, and their public statements and sustainability records would indicate they will remain supporters of corporate citizenship at the international level. In comparison, CNPC, ONGC, and PDVSA have largely been inactive. The fact that the Chinese and Indian NOCs are not active participants is especially problematic. Still, even their interest in resource-rich, rights-poor states stems from commercial and national-energy security concerns, rather than an intrinsic business case to profit from conflict.

Asian corporations are certainly not bothered by CSR concerns, and they are unafraid to invest in countries like Burma and Sudan, but this is only a small part

of a much larger internationalization strategy that can be understood in the context of rapidly increasing demand for oil in their home markets.²⁰⁷

Altruism aside, corporate citizenship also opens an additional arena where companies may struggle for competitive advantage. Any evolving international regulatory frameworks for corporate citizenship must be adaptable enough to address the multifaceted situations that energy companies might face on the ground. They also need to embrace incentives in addition to punitive measures in order to have the optimal range of tools to inform company decision-making.

Implicit in this line of reasoning is the idea that non-state actors, e.g. national oil companies, have obligations beyond their economic functions, and that these obligations mean that national oil companies may be held accountable for violations of these non-economic obligations. “The traditional notion that only states and state agents can be held accountable for violations of human rights is being challenged as the economic and social power of [multinational corporations] appears to rise in the wake of the increasing integration of the global economy that they have helped to bring about.”²⁰⁸ Attempts to codify corporate accountability and define complicity have met resistance both from companies and governments, including the U.S., which view binding international regulation as an infringement upon corporate rights and an unnecessary dilution of countries’ regulatory authority. Even so, national regulation alone has not proven to be adequate, by itself, in ensuring that businesses respect basic human rights. A new paradigm is needed.

²⁰⁷ Scott Pegg, “World Leaders and Bottom Feeders: Divergent Strategies toward Social Responsibility and Resource Extraction,” 264.

²⁰⁸ Peter T. Muchlinski, “Human Rights and Multinationals: Is There a Problem?” *International Affairs* 77, vol. 7 (2001):31.

International Relations and Corporate Citizenship

National oil companies' transnational activities have affected the global human rights regime and international relations in important ways. Conflicts in Sudan and Burma, environmental protection in Ecuador, and controversial charity in the U.S. are only a few key examples. Most of all, NOCs' investments in countries with ongoing human rights, sustainability, and environmental challenges have complicated international efforts to create a more effective architecture to address rights crises, conflict management over energy resources, and environmental stewardship. It is imperative that NOCs be gradually co-opted into the corporate citizenship ethos. As stated elsewhere by this author,

Human rights issues often insert themselves into the energy business and world politics. In certain cases, political change may seem the only way to safeguard human rights. Yet the exigencies of business remain in all the situations discussed above. If the economics cooperate, many energy companies—with the Chinese NOCs leading the way—will operate in energy-rich countries that do not or only barely meet minimum human rights standards. Managing the operations of energy companies in “rights-poor, energy-rich” countries matters for global security. A broad spectrum of corporate and international instruments can help to implement best practices and manage energy-related conflict. These instruments can work to improve how energy extraction occurs so that, on one hand, companies can meet international standards for labor and fair treatment, and, on the other, they can employ better mechanisms to mitigate energy conflicts that prove disruptive to international relations and damaging to human rights.²⁰⁹

On a multilateral basis, the United States should open a dialog with countries that have NOCs operating abroad and discuss how to enhance corporate citizenship measures by all stakeholders in the international energy market. If the U.S. does not take a leadership role, such a missed opportunity might well signal other parties seeking scarce energy supplies that human rights do not matter. A development of this nature not only would be

²⁰⁹ Matthew E. Chen, “Chinese National Oil Companies and Human Rights,” 51.

detrimental to international peace and security but also would likely hinder progress made to-date in corporate citizenship.

Efforts to enhance international corporate citizenship through civil regulation are best placed to address fundamental human rights (e.g. personal security, property and livelihood) and environmental protection. Attempts to establish binding international guidelines on the economic dimensions of corporate citizenship, however, are well-intended but impractical. Equally important, the discussion of future directions for corporate citizenship must move beyond the dialectic of regulation versus voluntary cooperation. Other, potentially more comprehensive approaches should be considered. It is not enough to say that, on one hand, regulation alone will suffice or, on the other, that only voluntary initiatives are practical.

As UN business and human rights envoy Dr. John Ruggie has contended, the idea of shared responsibility between business, governments, and civil society suggests that “as we go about the task of inducing greater corporate social responsibility, we [should] work simultaneously to overcome the capacity gaps and institutional failures that create the permissive environment for the actions of individual firms that cause harm.”²¹⁰ Flexible solutions, of which corporate citizenship is but one, are needed to alleviate governance and development dilemmas. A comprehensive framework, which blends the best elements of civil regulation with voluntary cooperation, and engages multiple stakeholders, may be a more fruitful approach at the international level.

Admittedly, the power of an international convention to affect transnational corporate behavior even on human rights and the environment has multiple limitations.

²¹⁰ John G. Ruggie [UN Secretary-General’s Special Representative for Business and Human Rights] “Remarks at Public Session—National Roundtable on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries,” Montreal, November 14, 2006, 7.

NOCs and Corporate Citizenship

Most likely, nation-states would be the primary parties to any such international convention, which would then apply to companies that are incorporated in their territory (just as national legislation would). Thus, if countries opt out, their NOCs cannot be forced to follow the provisions of such a convention, unless the companies themselves could voluntarily choose to accede to the accord under a separate protocol. Potentially, some companies could switch their country of incorporation to avoid the matter altogether. Enforcement presents numerous questions. For example, what would penalties be, and how would they be implemented? How are “fundamental human rights” and “environmental protection” to be defined in an international convention concerning transnational corporations? Plus, as David Vogel of the Brookings Institution noted in his book *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility*, corporations that do attempt implementation of CC practices may face resistance or outright objection from host-country governments, e.g., when the Government of Angola threatened to expel BP from the country when BP promised to publish its payments.

Yet, without any sort of binding international legal structure for corporate behavior, achieving progress will be slower and more difficult over the long term. For example, a patchwork of different national rules entails less efficient and authoritative adjudication of transnational violations of human rights. Of course, enforcing human rights provisions of current international law has proven difficult, even in the most onerous of cases, such as Darfur. Notably, in the absence of international mechanisms to influence corporate investments, civil society organizations, universities, mutual funds, and individuals have made their opinions known by divesting funds from oil companies

and businesses in Sudan.²¹¹ While these divestment initiatives have achieved some success, not all companies are willing to leave Sudan (where, incidentally, southern Sudanese are seeking investment to rebuild their war-ravaged territory). Fidelity Investments, for example, invests in companies that do business in Sudan. In response to criticism, Fidelity replied breezily that “the resolution of complex social and political issues must be left to the appropriate authorities of the world that have the responsibility, and capability, to address important matters of this type.”²¹²

In this context, setting a benchmark of standards with adjacent oversight might help identify, target, and arbitrate liable corporate behavior. The International Criminal Court, or a new tribunal, could potentially be a venue to target corporate leaders, or even corporations themselves, when malfeasance that crosses international boundaries is not properly dealt with at a national level. Perhaps the most pragmatic approach is to blend the binding and voluntary approaches. A minimum level of standards could be set, high enough to offer basic human rights and environmental protections, while leaving that standard low enough that companies not only will comply to avoid penalties but also will seek greater social legitimacy by exceeding the “average” standards. The on-going normative debate over voluntary corporate citizenship initiatives and standards can provide key insight into the specific content of what such international civil regulation could be.

Finally, international standards have not been codified to define irresponsible behavior by transnational corporations, while they have been codified for both nation-states and individuals. Once nearly inviolable in theory, state sovereignty has been

²¹¹ Jennifer Levitz, “Mutual Funds and Sudan,” *The Wall Street Journal*, January 30, 2007, B-1.

²¹² *Ibid.*

circumscribed by the United Nations' adoption of an international "responsibility to protect" civilian populations from genocide and other forms of mass violence. At least conceptually, limits to state sovereignty may open a door to more precisely defining corporate responsibilities in a globalizing world as a way to encourage good corporate citizenship and exercise a check on irresponsible behavior across borders. The Universal Declaration of Human Rights already provides loose but viable assignment of responsibility to corporations by stating that human rights norms include not just nation-states but extend to "every individual and every organ of society." While states bear primarily responsibility to respect, promote, and protect human rights, the impact of corporations, like NOCs, has grown markedly, while accountability measures have not. As law professor Peter Muchlinski has observed, few legal judgments have actually assigned direct responsibility for transnational human rights violations to corporations.²¹³ Still, some existing precedents suggest that, for egregious violations, corporations *could* face litigation in U.S. courts, which are already overloaded with domestic cases.²¹⁴ A competent international instrument or tribunal may be preferable to relying upon national courts alone for adjudicating alleged violations of human rights by transnational corporations.

On the other hand, imposing binding regulatory standards of an economic nature upon corporations not only exceeds the bounds of what most companies are financially disposed to accept and operationally able to perform, but also interferes with the role and expertise of civil society, governments, and international institutions in supporting sustainable economic development. This is not to say that individual NOC contracts

²¹³ Peter T. Muchlinski, "Human Rights and Multinationals: Is There a Problem?" *International Affairs* 77, vol. 7(2001):39-43.

²¹⁴ *Doe v. Unocal*; *Wiwa v. Royal Dutch Shell*.

could not contain specific provisions where a company will construct infrastructure to improve the local communities in its areas of operation. Rather, such laudatory public welfare projects ought to be voluntary when performed by companies. Indeed, as University of Adelaide (Australia) law professors Adrian Bradbrook and Judith Gardam write, given that some two billion people lack access to modern energy services, energy companies are well-placed, even ethically bound to support sustainable development projects of an energy nature, such as electrification.²¹⁵ At times, access to energy services can be an essential element of realizing socio-economic rights. However, Bradbrook and Gardam's argument that providing access to energy services should be added into international human rights law is problematic, not least because it would firmly force companies into doing development. In a voluntary, support role, companies could still make major contributions without being forced to meet international norms that, for example, may not best address local concerns or needs.

Economic CC work also should be considered ancillary to government activities and local capabilities when at all possible, so, ideally, an NOC, government, and local communities could collaborate and share knowledge and expertise. As Jędrzej George Frynas has pointed out, ensuring that development is effective usually means that development goals are best sourced from the local communities which stand to benefit, not government or company officials who may have other priorities. The existing international corporate citizenship frameworks could be improved to enhance company-to-company cooperation, but they do provide an adequate, existing foundation. While undeniably important, corporate citizenship initiatives focused on economic improvement

²¹⁵ Adrian Bradbrook and Judith Gardam, "Placing Access to Energy Services in a Human Rights Framework," *Human Rights Quarterly* 28 (2006): 389-214.

are, by nature, projects with relatively long time horizons if they are to be most effective. In the case of human rights and environmental protection, the issues in mind can be matters of imminent life and death, or the ability to earn a livelihood at all. It is in these critical areas where the participation of NOCs in international corporate citizenship becomes essential.

At a time when “we are rediscovering a need to control what an earlier generation would have referred to as ‘the unacceptable face of capitalism’” the challenges posed by the energy sector loom large.²¹⁶ Considering the Darfur conflict as the key contemporary example, corporate citizenship cannot achieve its potential as a means for improving businesses’ presence in the world by being a concept shaped primarily by European and U.S. stakeholders. Corporate citizenship must be embraced by all regions around the world to become a truly universal ethos. Simply put, the Chinese and Indian NOCs (and numerous other transnational energy corporations from around the newly industrializing world) need to be included and welcomed in the discussion and development of CC at the international level, even if they choose not to become full participants—yet. Strong arguments must be made so that the energy companies which now eschew the CC mainstream understand the long term benefits of joining. Indeed, an additional argument in favor of some internationally binding human rights and environmental regulation on corporations is that such strictures would apply equally to the countries whose companies join. U.S., European, and Asian oil companies all would have to meet the same basic human rights and environmental standards in their transnational operations. Current measures being employed to affect energy company behavior internationally, e.g.,

²¹⁶ Peter T. Muchlinski, “Human Rights and Multinationals: Is There A Problem?,” *International Affairs* 77, vol. 7 (2001), 35.

diplomatic engagement, competition for assets, consumer-consumer partnerships, have their place, but they do not individually or collectively provide all the tools that can be used to enhance corporate citizenship. In conclusion, the emergence of national oil companies as transnational actors not only poses considerable challenges for the existing human rights regime but also signals the creation of a few key opportunities to bring new stakeholders into the nascent international frameworks designed to shape corporate behavior.

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