

Civil Society Dialogue Network Meeting

Private Sector and Conflict

Monday, 29 October 2012, Brussels

Meeting Report

The report is a record of all the points made by participants during the meeting. It does not represent the views of the organisers.

Introduction

This is the meeting report of the Civil Society Dialogue Network (CSDN) Policy Meeting on 'Private Sector and Conflict' which took place on Monday, 29 October 2012 in Brussels. The meeting brought together representatives from a range of EU institutions; representatives from civil society organisations within and outside the EU; researchers and academics with expertise in the field, and representatives from companies and industry bodies to discuss key linkages between private sector activities, violent conflict and peace.

The meeting was structured into three sessions that covered human rights, investment, and trade as three core dimensions of private sector engagement in conflict-affected countries:

Session 1: The Ruggie framework - Implementation in conflict-affected countries

Session 2: Engaging in conflict or peace: opportunities and challenges for public investors

Session 3: Trade within an integrated EU approach

This note captures key points made and discussed by the participants of the meeting and collated by meeting *rapporteur* Terri Beswick. The meeting was held under the Chatham House Rule; the following opinions and recommendations may not be attributed to any participating individual or institution, nor do they reflect the positions of the CSDN as a whole, or of EPLO or its member organisations, the EEAS or the EC.

For more information about the meeting, contact Josephine Liebl at EPLO (jliebl@eplo.org).

The following box summarises the key points and recommendations that arose from the meeting.

Key Points and Recommendations

1. How can the EU support the private sector in moving towards implementation of the Ruggie Principles in conflict-affected contexts?

1.1 Contribute to elaborating a 'Business and Human Rights' oversight and advisory role for EU 'home' states vis-a-vis companies operating within conflict-affected countries.

1.2 Provide technical support for the development of tailored sectoral or country guidance materials for private sector actors in aligning their human rights and peacebuilding policies.

1.3 Enhance the impact of existing voluntary initiatives by publishing the results of adherence monitoring.

1.4 Highlight and respond to the potential gap in different kinds of risk assessment: whose risk is being analysed?

2. How can EU policy coherence on private sector engagement in conflict-affected contexts be increased?

2.1 Carry out an analysis of all EU actions at country level to obtain a holistic assessment of the EU response in conflict-affected contexts; the EEAS would be best placed to lead on such an assessment.

2.2 Introduce conflict sensitivity¹ into the EIB's appraisal process and ensure the engagement of conflict experts from across the EU institutions through, for instance, the inter-service consultation on proposed investment projects.

3. How can trade support peace?

3.1 Promote and protect trade relations (i.e. internal trade) between conflict actors to contribute to peacebuilding objectives.

3.2 Improve the balance between positive impacts and unanticipated negative consequences for conflicts of EU external trade.

3.3 Incorporate economic recovery into EU support for peace processes or as parallel processes to strengthen the transformative potential of the process.

4. How can the EU support positive private sector engagement in conflict recovery and transformation?

4.1 Ensure that the role of spoilers that benefit from 'war economies' is considered throughout EU external actions that involve the private sector.

4.2 Advance a 'do no harm' principle for private sector engagement in conflict-affected contexts that goes beyond a purely human rights approach.

1. How can the EU support the private sector in moving towards implementation of the Ruggie Principles in conflict-affected contexts?

The human rights responsibilities of the private sector are fast becoming established as international norms through a number of key initiatives and documents, most prominently the UN Global Compact in 2000 and the more recent UN Guiding Principles on Business and Human Rights, 2011 (the Ruggie Principles). In conflict-affected countries, the impact of business activities with regard to human rights is amplified, and anticipated local benefits or costs can alter significantly as a result of conflict dynamics. As companies and intergovernmental organisations, such as the European Union (EU), begin to focus on the third stage of translating the Ruggie Principles into practicable advice and action, the need for greater synergy between the domains of human rights and peacebuilding is evident to effectively address conflict as an instrumental variable.

Several key points were highlighted during the discussion:

¹ Conflict sensitivity is commonly defined as the ability of an organisation to:

- understand the context in which it operate;
- understand the interaction between the intervention and the context; and
- act upon the understanding of this interaction, in order to avoid negative impacts and maximise positive impacts.

1.1 The difficulty in blending policy and action on human rights, and conflict and peacebuilding was a recurring theme throughout the first session. Policy and actions in these fields are often articulated separately, and there was a tendency for the discussion to lean towards either human rights and business, or business and conflict; neglecting the more challenging issue of how to integrate all three. This lack of a common discourse was illustrated in the discussion surrounding the EU's response to the Ruggie Principles and the update of the European Commission's Policy on Corporate Social Responsibility (CSR). Following the review of the Policy in autumn 2011, there was renewed action within the European Commission (EC) on generating guidance for its implementation. This resulted in EC efforts to encourage Member States (MS) to develop National Action Plans (NAP) on Business and Human Rights. However, on the question of how to integrate a business and human rights framework with conflict and peacebuilding policies, there was less clarity on how the EU might engage.

Recommendation: Contribute to elaborating a 'Business and Human Rights' oversight and advisory role for EU 'home' states vis-a-vis companies operating within conflict-affected countries. The steps that the EC is already taking to encourage EU Member States to develop National Action Plans on Business and Human Rights could be a useful entry point for opening discussion on how MS plan to achieve coherence between their policies on business and human rights and those on peacebuilding and conflict.

1.2 Following on from the discussion of EU support to MS' implementation of the Ruggie Principles, several stakeholders raised the prospect of overarching EU guidance for private sector actors. For companies, some top down guidance on how to achieve coherence in their approach to human rights and peacebuilding responsibilities could create clarity on expectations, and therefore a more level playing field. In addition, the process of drafting such guidance would have the added value of exploring and resolving the commonalities and areas of divergence that exist between policies aimed at protecting human rights and those aimed at peacebuilding. However, there are obstacles of competency and capacity for the EU. Given the multinational character of most companies and their affiliates, implementing and monitoring such guidance would be a complex task with ambiguous territoriality issues that the EU may not be best placed to take on. Furthermore, the lack of capacity within the EU institutions to produce such guidance should not be ignored. Nonetheless, as the difficulty of elaborating policy coherence between these fields is unlikely to disappear, there is still scope and value for the EU to demonstrate leadership in this area by supporting the development of guidance by other actors.

Recommendation: Provide technical (or other) support for the development of tailored sectoral or country guidance materials for private sector actors in aligning their human rights and peacebuilding policies. Though there are challenges to preparing generic EU guidance, there is scope to support the development of guidance materials for improving coherence that is tailored either to specific industries or countries.

1.3 Another key discussion point that was raised during the first session relates to incentives for private sector actors to take on explicit responsibilities for human rights and peacebuilding. The majority of private sector initiatives are voluntary and many participants felt that the natural self-interest of companies in pursuing stable operating environments and local acceptance was an incentive for companies to integrate human rights and peacebuilding objectives into their operations. Moreover, a number of positive examples were put forward to corroborate this. However, caution displayed during the discussion on maintaining a base line definition of 'respect' for human rights as opposed to a responsibility to 'promote' or 'protect' is worth noting. The potential impact the Ruggie Principles in conflict-affected countries will depend to a large extent on how ambitious the base line of respect is defined. Apart from that, the responsibility of the state to protect was highlighted as well as the fact that there are certain scenarios where companies should stop operating due to the possible negative impact of their operations.

Recommendation: Enhance the impact of existing voluntary initiatives by publishing the results of adherence monitoring. The positive self-interest of businesses in the longevity and sustainability of their operations is a welcome starting point. However, putting the results of monitoring into the public domain offers a relatively low resource means of encouraging adherence.

1.4 This also relates to the final main point that emerged regarding whose risk is being addressed by policies on human rights and peacebuilding. As noted previously, not all stakeholders shared a common discourse on the role and responsibilities of business with regards to human rights and peacebuilding. Natural commercial self-interest can and does often align with human rights and peacebuilding objectives. However, this interest is based on risk for, and security of, the business in contrast with a peacebuilding and rights-based approach that would prioritise impact on potentially affected persons or groups in the context of conflict and local rights.

Recommendation: Highlight and respond to the potential gap in different kinds of risk assessment: whose risk is being analysed? When assessing risk of entry or maintaining operations in conflict-affected areas, human rights and conflict-related policies of companies should be explicit about whose risk is being prioritised by their policies. Engagement between businesses and (non-elite) local representatives as part of a risk assessment process could encourage greater consideration of rights-based or conflict risk.

Participants agreed that companies play a vital role and have a real impact on conflict and on peacebuilding both through their CSR policies and in their general operational activities. Therefore, how the private sector engages in conflict-affected contexts and how states and inter-governmental organisations facilitate conflict-sensitive business engagement should be further explored. As companies and policy-makers begin to craft their reactions to the June 2012 Ruggie Principles, there is an opportunity to strengthen links between human rights and broader conflict policy, thereby streamlining adherence commitments for companies and setting the scene for greater policy coherence on these two areas for governmental actors.

2. EU policy coherence on private sector engagement in conflict-affected contexts

The second session focused public sector investment in conflict-affected countries; the presentations also triggered debate on EU policy coherence on private sector engagement and conflict prevention more broadly.

The following key points emerged:

2.1 Putting any new resources into contexts where power relations are contested will inevitably have an impact on conflict dynamics, regardless of intent. That impact may be positive, negative, or most likely a combination of both and negative impact is never intended by design. It is, however, possible to weigh the balance of potential impact in the design stages of an action and make a determination on how best to minimise negative consequences. This can be achieved by analysing factors, such as who will benefit or lose, or whether there will be an asymmetrical impact on conflict parties. This could be part of a holistic assessment of EU responses to conflict-affected countries to promote understanding of where, how and why the EU is engaged. One participant put forward the idea of collective EU analysis to facilitate more informed and conflict-sensitive EU action in conflict-affected countries.

Recommendation: Carry out an analysis of all EU actions at country level to obtain a holistic assessment of the EU response in conflict-affected contexts; the EEAS would be best placed to lead on such an assessment. Geographic desks inside the EEAS are most likely to possess the necessary overview of EU action in a country. Collective EU analysis to assess the “totality” of the response would promote understanding of the balance of positive and negative

effects as well as highlighting opportunities for the EU to support conflict prevention.

In the end, commercial success from investment will depend on understanding the context. More effective mainstreaming of conflict considerations within project design and within monitoring and evaluation is therefore as much a matter of business logic as it is conflict prevention.

2.2 The precise European Investment Bank (EIB) competence to engage with conflict is still debated and this was reflected in the presentations and interventions during this session. Whilst the EIB has a project based approach and has no statutory role or mandate to set policy, it does contribute to the implementation of EU policy objectives, which includes conflict prevention. Policy guidance in this respect currently flows from the EC, the EEAS and other EU institutions setting the relevant mandates and carrying expertise to the EIB. At present, current EIB project appraisal procedures define risk primarily in terms of risk to assets, investments and EU reputational risk; such definition of risk also entails an appreciation and effective remedy of impacts of projects on affected persons and communities and that dimension could be further strengthened. The EIB can bring business and human rights principles to the attention of clients, however, to date it has not explicitly recognised conflict as an area of social due diligence despite some references in its Statement on Environmental and Social Principles and Standards and tacitly taking it into account in project appraisal undertaken by social development specialists on a case-by-case basis. It is therefore reasonable to assume that conflict should be better integrated into the Bank's due diligence and decision-making process.

Building on this, some participants raised the possibility of augmenting conflict due diligence as part of the EIB's investment decision making through integrating conflict sensitivity into its lending practices, starting with the appraisal phase. In addition, closer engagement between the EIB and internal EU sources of conflict expertise should be sought. The Division for Conflict Prevention, Peacebuilding and Mediation Instruments inside the EEAS and the Unit for Fragility and Crisis Management in DEVCO could assist the EIB to better advise promoters on the design and monitoring of projects in conflict-affected countries, as well as on the Bank's own appraisal and monitoring mechanisms. Lessons learned from such an engagement should then feed back into new project cycles.

Recommendation: Introduce conflict sensitivity into the EIB's appraisal process and ensure the engagement of conflict experts from across the EU institutions through, for instance, the inter-service consultation on proposed investment projects. The existing inter-service consultation mechanism could more explicitly target conflict expertise within the EU, for example by ensuring that the Conflict Prevention, Peacebuilding and Mediation Division within the EU External Action Service (EEAS) and the Unit for Fragility and Crisis Management in DEVCO are included in the distribution list, which is currently only sent to geographic desks within the EEAS and DEVCO.

3. How can trade support peace

As the EU's external trade is conducted within the context of the principles and objectives of the EU's external action, the third session explored how trade can contribute to sustainable economic recovery after conflict and maximize trade benefits in conflict-affected contexts.

3.1 The third session started with a positive example of the role that trade can play in bringing together conflict actors, with a case-study of intra-Kashmir trade (or cross line-of-control trade). The process of establishing intra-Kashmir trade relations was incremental and was part of a multifaceted peacebuilding approach that included not only trade, but also initiatives targeting youth, women's participation. Developing trade relations within an area of deeply rooted conflict faced practical challenges, such as the lack of a banking system and no existing lines of communication, and also political challenges, such as overcoming resistance from secessionist

politicians. Despite these obstacles, the project supported the re-opening of communication lines first through divided families, and supported the formation of a structure to sustain trade relations in the form of a Joint Chamber of Commerce with representatives of traders from both sides. Access to new revenue streams alongside increased communication between actors who would traditionally be considered as conflicting has laid the foundation for increased inter-dependence based on internal trade. The project has also had a broader impact on the trade climate between India and Pakistan. Whilst Kashmir would once have been perceived as an obstacle to opening trade negotiations, in this case it blazed the trail for the India-Pakistan trade relations and made the negotiation of an agreement more feasible. Following on from this example, participants discussed how the EU could promote coherent multi-sectoral action that involves, but is not limited to, trade by better integrating its trade, development and peace-building actions. In short, trade-related actions that deliver a peace dividend as well as an economic dividend.

Recommendation: Promote and protect trade relations (i.e. internal trade) between conflict actors to contribute to peacebuilding objectives. Though the EU as an external actor has no mandate to set internal trade policy, it can still promote or protect trade relations between conflict parties as a component of development assistance or peacebuilding projects, and through conflict-sensitive trade policy. In this respect, the potential impact EU's trade agreements with third countries may have on diverting trade that exists across conflict divides, should be taken into consideration.

3.2 The third session also triggered much debate on how and if trade can be used as a 'carrot or stick' for peacebuilding objectives. This was a controversial issue as some participants felt that trade policy has not been an effective instrument for advancing non-commercial policy objectives in the past. Beyond the question of trade as an instrument for other policy objectives, there was some discussion of its impact on conflict dynamics. On one hand, the possible positive consequences of trade were presented and discussed in terms of its impact on development, contribution to supporting private sector development in emerging economies, promotion of good governance, and its establishment of opportunity costs that create a disincentive for conflict between trading partners. On the other hand, participants noted the limits of trade in that it does not ensure equal distribution of economic benefits and the possibility that trade can fuel conflict in a number of ways: asymmetrical benefits between conflict parties, impact of people's livelihoods, financing of weapons, sustaining war economies etc. Though it is important to acknowledge some limits on the influence of external trade actors in remedying all potential negative impacts, the negotiation process does provide opportunities for EU trade representatives to incentivise positive or transformative action by sovereign governments. For example through scaling up the engagement of civil society actors from both sides; creating multi-stakeholder monitoring for conflict impacts; and by ensuring that conflict impact is considered as part of pre-agreement impact assessments.

Recommendation: Improve the balance of positive developmental impacts of EU external trade and unanticipated negative consequences for conflicts. Include conflict explicitly within the framework of *ex ante* trade sustainability impact assessments (SIAs) and take steps to increase civil society engagement from both sides during negotiations and through implementation monitoring mechanisms.

3.3 It is almost impossible for countries to recover from conflict without a private sector. As noted in the previous section, there is a degree of mutual self-interest in the relationships between trade partners that can benefit peace. Therefore, trade does have a part to play in creating conditions for lasting peace. However, how it plays this part was perceived differently by the diverse stakeholders in the meeting. Some participants felt that trade was under-conceptualised as a component of peacebuilding and there was room to remedy this. One example is foreign direct investment in conflict-affected contexts, which unfortunately suffers from the paradox that many foreign investors may prefer to wait for stability before investing in a conflict-affected country, thereby delaying the emergence of the stability they seek. Yet, others cautioned against treating trade as a silver bullet

for any and all external action challenges, including conflict; citing failures of previous overt attempts to engineer trade policy. In spite of this, trade has a broader significance in conflict-affected contexts and should not only be discussed as an instrument for achieving other policy objectives. There is a danger in propagating a perception of external trade relations as the only means of advancing economic recovery. Trade has a stand-alone value for peacebuilding in that it is part of economic recovery, and economic recovery is part of sustainable peace.

Recommendation: Incorporate economic recovery into support for peace processes or as a parallel process to strengthen the transformative potential of the peace process. Peace processes are holistic and must, therefore, build in economic development. The EU could support countries in moving towards economic recovery using a range of EU instruments that have an economic impact, for example technical support, investment, education programming, as well as trade.

One final point to highlight from the third session was the importance of distinguishing between trade relations that occur between conflict actors (often internal) and international trade relations. The two contexts require very different approaches and will have different implications for conflict dynamics and peacebuilding.

4. How can the EU support positive private sector engagement in conflict recovery and transformation?

The following additional points arose during discussions throughout the day as part of a continuous theme of enhancing EU policy coherence for conflict prevention and peacebuilding:

4.1 Whilst many of the discussions addressed the issue of impact on conflict parties, the role of spoilers was only raised once or twice. Nonetheless, the destructive potential of spoilers that benefit from war economies adds an additional dimension to how the EU should conceptualise conflict-sensitivity or main-streaming in EU actions that involve the private sector or other economic actors, including governments. This relates not only to actions that initiate changes, but also to EU engagement that may have the effect of sustaining or promoting perverse economic incentives.

Recommendation: Ensure that the role of spoilers that benefit from 'war economies' is taken into consideration within EU external actions that involve the private sector. The way the EU conceptualises conflict and peacebuilding impact in conflict-affected contexts needs to consider not only the conflict parties, but also those that derive financial benefit from the status quo.

4.2 EU policy coherence is especially complex given the countless layers of EU policy, regulations, directives, and instruments, which by their sheer number create inevitable incompatibilities. Yet, the mandate and commitment to pursue actions that “preserve peace” and “prevent conflicts” is clearly articulated in the one document to which all EU policymakers can refer for guidance on how to prioritise diverse agendas: The Treaty of Lisbon. The Treaty creates a valid expectation that EU actions will, at a minimum, align with the 'do no harm' principle and ensure peace and conflict is mainstreamed throughout EU policies and actions.

Recommendation: Advance a 'do no harm' principle for private sector engagement in conflict-affected contexts that goes beyond a purely human rights approach. EU policymakers have the mandate and the responsibility to pursue conflict prevention and peacebuilding objectives in their engagement with the private sector which applies to the EU's implementation of the Ruggie Principles, its investment policy including EIB lending as well as EU trade policy.