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Oil and Human Rights by Sir Geoffrey Chandler

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OGEL (Oil, Gas & Energy Law Intelligence): Focussing on recent developments in the area of oil-gas-energy law, regulation, treaties, judicial and arbitral cases, voluntary guidelines, tax and contracting, including the oil-gas-energy geopolitics.

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Please contact **Editor-in-Chief** Thomas Wälde at twwalde@aol.com if you would like to participate in this global network: we are ready to publish relevant and quality contributions with name, photo, and brief biographical description - but we will also accept anonymous ones where there is a good reason. We do not expect contributors to produce long academic articles (though we publish a select number of academic studies either as an advance version or an OGEL-focused republication), but rather concise comments from the author's professional 'workshop'.

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Geoffrey Chandler was Founder-Chair of the Amnesty International UK Business Group from 1991 to 2001. He began his career as a journalist on the BBC and Financial Times, subsequently spending 22 years with the Royal Dutch/Shell Group in a number of posts in the UK and overseas. He was a Director of Shell Petroleum, Shell Petroleum NV and Shell International and was the initiator of Shell's first Statement of General Business Principles in 1976. He was Director General of the UK National Economic Development Office 1978-83, Director of Industry Year 1986, and chaired the National Council for Voluntary Organisations 1989-96. He has honorary degrees from a number of universities and is the author of books on Greece and Trinidad and of numerous articles on corporate responsibility and human rights

OIL AND HUMAN RIGHTS

Sir Geoffrey Chandler, Founder-Chair, Amnesty International UK Business Group 1991-2001 and a former Director of Shell International

The second half of the twentieth century saw oil and natural gas become the dominant sources of world energy supply, making a major contribution to world economic growth. By the end of the century there had been a significant diversification of supply sources, but consumers continued - and will continue - to be crucially dependent on supplies from Third World countries, often little developed economically when oil was first found, and where oil remains the principal economic asset.

If for a resource-based industry there is no choice *where* to go - this being dictated by geology - there is a choice *whether* to do so and in the *manner* in which a venture is undertaken. Oil companies had in the past hoped that the efficient conduct of their business, secretiveness, and security through accommodation with the state apparatus would ensure their success. But the world has changed. The measure of success no longer relates simply to the provision of a competitive source of energy, however much this remains essential for the economic development of most countries, whether as producers or consumers: it depends also on the way in which that supply is provided. Moreover in a world of widespread internal conflict, itself both the cause and effect of human rights violations, a more critical society has raised its expectations of the role and responsibilities of companies, aware of their capacity to do harm in the absence of appropriate policies and, with such policies, of the possibility of their being an influence for good.

Nearly 70 per cent of the world's oil and gas proven reserves today lie in countries with poor human rights records. The growth of oil wealth in many developing countries has fuelled the ability of governments to invest in armaments, to engage in the construction of buildings for prestige rather than utility, and to transform small-scale corruption into

personal or political gain on a scale hitherto undreamt of at the cost of social equity and political stability. Where civil conflict is an element of the scene, the presence of foreign oil companies can provide both a target for and an accelerator of that conflict, involving companies inescapably in human rights issues, whether through the security arrangements that of necessity they have to make or through association with an oppressive government and the economic support they give it. This is a poor assurance for the future of the world's most important source of energy. The protection of human rights, previously seen as the preserve of governments, has therefore been increasingly recognised as vital to the success and survival of companies and something in which they have a legitimate part to play.

Traditionally governments and NGOs have defined human rights narrowly as political and civil rights. But company operations affect the whole spectrum of rights through their impact on labour conditions, on the physical environment and on the communities in which they operate. Companies cannot and should not be expected to take on or usurp the role of governments. But they should be expected to observe and protect the rights of their stakeholders within their legitimate sphere of influence and avoid connivance at or silent complicity with government abuses.

History has shown, however - from the abolition of the slave trade onwards - that companies follow rather than lead in response to the changing values of society. The issue of human rights has proved no different and was not easily to be put on the business agenda. In the absence of corporate forethought and despite earlier approaches from Amnesty International, it took reputational disaster, for Shell in Nigeria and BP in Colombia, to bring about change. These events are now too well known to require repetition. They were the catalyst for a crucial change of approach by both companies, stimulating explicit recognition of corporate responsibility for human rights and acknowledgement of the applicability of the Universal Declaration of Human Rights (UDHR) to company operations. In March 1997 Shell's Statement of General Business Principles, first produced in 1976, was revised, after wide consultation with relevant NGOs, to include a responsibility to respect the human rights of employees and 'to express support for fundamental human rights in line with the legitimate role of business'. The following year BP similarly published a revised set of business policies incorporating explicit support for the principles of the UDHR.

The important lesson from this was that two of the world's largest transnational corporations now recognised that the defence of human rights and support for the UDHR were part of their direct legitimate responsibilities. What could be done and what should be done by companies in the context of human rights was now abundantly clear. For most companies, however, there was no such acceptance. In particular there appeared a divide between European and United States companies. Statoil and Norsk Hydro, for example, followed the lead given by Shell and BP, and growing pressure from public opinion and NGOs brought a gradual response from other European companies. In the United States, American companies, operating in a different social and commercial environment and coming under less public pressure, were unresponsive. Their negative attitude was exemplified by membership of USA*Engage, a coalition formed to oppose

United States governmental sanctions on oppressive regimes, but which could be interpreted, in the absence of corporate policies on human rights, as being preparedness to connive at human rights violations in the interest of commercial gain.

External initiatives, most notably the OECD Guidelines for Multinational Enterprises and the United Nations Global Compact, both calling for the observance of human rights in general terms, have helped to raise the profile of the issues involved and encourage company adherence to a comprehensive set of principles. While the authority of the UN Secretary General has brought a growing number of companies from a broad geographical base into the Global Compact, these remain a small percentage of the total. Moreover, until a commitment to human rights is embedded in a company's core business operating principles, such expressions of support must be treated as public relations or mere rhetoric. If companies are to have credibility, they need to apply the commitment throughout their operations, build in internal assurance mechanisms and key performance indicators, and accept external auditing and public reporting of their impacts on all their stakeholders. They will require in managers a sensitivity, understanding and willingness to participate beyond the technical requirements of the job and a corporate framework of principles which both allows and encourages the exercise of these capabilities.

It is unrealistic to ask companies to abstain from commercial opportunity even in situations of political volatility. The question nonetheless remains whether or not companies should embark on a new venture in an area where there is conflict or gross violation of human rights. To do so without appropriate policies is clearly irresponsible. To do so if a company cannot follow the policies it has laid down for itself would be unprincipled. To do so without a prior human rights assessment, relating both to the inception and potential success of the venture, is to invite legitimate censure. But given appropriate principles and policies, given a willingness to proclaim and practise them, it is arguable that a company can in exercising its responsibilities to the full provide an enlightened example in an area of darkness.

The complexity and competitive pressures of the oil industry, however, are such that decisions will not be simple even for the most principled of companies. Both Shell and BP have been criticised for actions or intentions which appear incompatible with the commitments of principle they have made. These rightly do not escape the vigilance of a closely watching NGO world, but that world also needs to put greater pressure on those companies – whether state or private – which have so far made no such commitments.

Protection of human rights now lies at the core of security of supply. If oil is seen to be associated with inequity and injustice it will be increasingly vulnerable. The myth that overall prosperity and stability automatically follow trade and investment should now be exploded, but is still promoted by Right-wing economists and US*Engage. The failure of government oil revenues to benefit wider society, seen most vividly in Angola and Equatorial Guinea, risks both the reputation of the companies involved and the stability of their operations. The Publish What You Pay initiative and the Extractive Industries Transparency Initiative, calling for disclosure of revenues paid by companies to

governments, both address this problem, but without pressure from governments and some collective support from the industry they will only make slow progress.

It has long been clear that voluntarism does not work. If there is to be a 'level playing field' which prevents good performers being undercut by bad then an international regulatory framework for an essentially transnational business will ultimately be necessary. This will require radical change in present attitudes to international governance and lies many years off. But if governments of importing countries want secure oil supplies they will need to do more in engagement with their own companies and with the governments of producer countries. Transparency and accountability, risk analysis which includes a human rights impact assessment, will be essential elements if there is to be a secure future. And international financial institutions will also need to include these as conditions of their lending.

The US and UK governments took an unprecedented step in 2000 in initiating the Voluntary Principles on Security and Human Rights for the extractive industries as the outcome of consultation between governments, companies and NGOs. But this and other voluntary measures such as the OECD Guidelines and the UN Global Compact have made little impact on investors or market forces which are potentially the most important influences on corporate behaviour.

In the current context of inadequate accountability and redress for the abuses carried out by the subsidiaries of transnational companies, there has been increasing recourse in the USA to the 18th century Alien Tort Claims Act (ACTA). ChevronTexaco, ExxonMobil, Shell, Talisman and Unocal are currently the subject of actions. In the absence of appropriate modern legislation which could deter malpractice as well as punish it by making parent companies responsible for the misconduct of their subsidiaries, ATCA remains the only recourse and is a useful, if crude and inadequate, weapon to stimulate company action.

A constructive way forward for improving behaviour other than by regulation is now offered by the United Nations Human Rights Norms for Business¹. These distil into one document the principles of the UDHR, the Convention on the Rights of the Child and the core International Labour Organisation conventions which relate to companies. Shorn of the ambiguities of language and the procedural issues in the current version which are exploited by opponents to obscure the fundamental importance of the initiative, the Norms could provide a template for company policies and a visible measure of performance against which investors and the market could judge the relative merits of companies. It will be wholly in the interest of good companies and responsible governments to see these principles formally endorsed by the United Nations and could help the corporate world to regain the public trust it has so signally lost.

As the industry becomes more diversified, as new players enter the market with little reputation to protect and therefore less scruple about behaviour, as importing countries,

¹ The full name is UN Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.

most notably the USA, see geographical diversity of supply rather than the observance of justice and human rights in producing countries as a source of security, we are in danger of witnessing increasing instability in oil supply and price. The absence of any collective industry leadership and the tunnel-visioned policy of major importing countries do not augur well. The protection of human rights, with governments and companies meeting their legitimate responsibilities, will be a critical factor in the security of future oil and gas supplies. Whether recognition of this will come and appropriate action be taken in time to forestall a crisis must remain an open question in the present short-sighted commercial and political climate.

End.