

PEACE BUILDING: THE PRIVATE SECTOR'S ROLE

By Allan Gerson*

Intrastate war is now the predominant form of armed conflict. The civil wars of the last decade have scarred the world's poorest countries, leaving a legacy of more than five million dead, many more driven from their homes, billions of dollars in resources destroyed, and wasted economic opportunity.¹ Meeting the challenge of curbing such civil wars—and preventing their re-ignition—requires a radical readjustment. Restructuring must reach beyond traditional institutional mandates and methodologies. New players—particularly the private sector, as well as nongovernmental organizations (NGOs)—must be enlisted in a new approach to economic peace building.²

Realizing the gravity of the problem, leaders of the United Nations and the World Bank have reached out to each other and to the private sector. Both supranational institutions now seek to bridge their long-standing separation and disparate institutional cultures. The United Nations has traditionally been preoccupied with the politics of peace, tending to dismiss the role of economics in conflict resolution. The World Bank, preoccupied with macroeconomics, long ignored the political realm as beyond its mandate to eradicate poverty.³ But today there is new agreement about one basic point: the scourge of intrastate war will not be contained unless the vicious cycle of poverty, economic injury, and political grievance is broken. Armed civil conflicts weaken the ability of a state to provide minimal social services and development in the neediest regions, further fueling grievances and readiness to take

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¹ Economic losses from the Guatemalan civil war, for example, are estimated at \$10 billion for the period 1980–1989, even without considering the cost of lost lives and physical injuries, and the loss of potential foreign investment. See Guatemala Historic Clarification Commission, Guatemala: Memory of Silence, Letter Dated 23 April 1999 from the Secretary-General Addressed to the President of the General Assembly, annex, UN Doc. A/53/928, at 19, para. 72 (Apr. 27, 1999), obtainable from <<http://hrdata.aaas.org/ceh/>>. The costs of conflicts currently raging in Angola, Sierra Leone, and Congo, and those which have come to an uncertain end in Rwanda, the Balkans, East Timor, and the Palestinian territories, have not begun to be quantified.

² See Ibrahim A. Elbadawi, Civil Wars and Poverty: The Role of External Interventions, Political Rights and Economic Growth, Paper presented at a conference of the World Bank's Development Economic Research Group (Feb. 22–23, 1999) <<http://www.worldbank.org/research/conflict/papers/war000.pdf>> (study of 138 conflicts since World War II, linking civil wars and poverty and demonstrating that “poverty . . . influences the probability of a civil war”); see also Paul Collier, Economic Causes of Civil Conflict and Their Implications for Policy (June 15, 2000) <<http://www.worldbank.org/research/conflict/papers/civilconflict.pdf>>.

³ Disregard of the politics of target countries was said to be required by the Articles of Agreement of the International Bank for Reconstruction and Development, July 22, 1944, 60 Stat. 1440, 2 UNTS 134, as amended, 16 UST 1942, 606 UNTS 294. Article IV, section 10 states that “[o]nly economic considerations shall be relevant” in the Bank's dealings—and a narrow interpretation has taken this to preclude the Bank from considering a state's political conduct in its lending decisions, including repression at home or aggression abroad. In the early 1990s, this view began to change, especially with regard to World Bank activity in the West Bank and Gaza, and section 10 was construed more liberally to conclude that “[v]iolation of political rights may . . . reach such proportions [as] to become a Bank concern due to significant direct economic effects or if it results in international obligations.” JOHN STREMLAU & FRANCISCO SAGASTI, PREVENTING DEADLY CONFLICT: DOES THE WORLD BANK HAVE A ROLE? ch. 3.3 (Carnegie Corp. 1988) <<http://www.ccpdc.org/pubs/world/world.htm>> (quoting Ibrahim Shihata, Memorandum: Issues of ‘Governance’ in Borrowing Members 35–36 (1990)); see also John D. Giorciari, *A Prospective Enlargement of the Roles of the Bretton Woods Financial Institutions in International Peace Operations*, 22 FORDHAM INT'L L.J. 292 (1998) (discussing evolution of legal interpretations of the Articles of Agreement and the resulting limitation on the Bank's activity in postconflict situations—still crucial in debates about expanding the Bank's role).

up arms.⁴ The creation of employment and other economic opportunities can nurture and sustain fragile peace arrangements. But such efforts require close United Nations–World Bank partnering,⁵ and engagement with the private sector as well. Over the long term, only the growth of new enterprises and investment is capable of providing the economic security that may salve the sources of conflict.

The United Nations Millennium Declaration—approved by the largest gathering of heads of state since the Organization’s founding—endorses the central role of “post-conflict peace-building and reconstruction” in the UN work agenda.⁶ Economic recovery is essential to fulfilling the UN mandate of preventing and resolving conflicts. The Millennium Declaration pledges to work toward “greater policy coherence and better cooperation between the United Nations, its agencies, the Bretton Woods Institutions and the World Trade Organization, as well as other multilateral bodies, with a view to achieving a fully coordinated approach to the problems of peace and development.”⁷ Drawing upon the groundbreaking recommendations of the Brahimi Report on United Nations Peace Operations,⁸ the Secretary-General has cautioned that “peacekeeping operations should not be used as a substitute for addressing the root causes of conflict. Those causes should be addressed in a coherent, well-planned, coordinated and comprehensive manner with political, social and developmental instruments.”⁹

Yet close and effective UN–World Bank cooperation continues to be hampered by differences over mandates and the appropriate roles they confer. Within the World Bank, controversy smolders over expanded engagement in conflict prevention and peace consolidation. Within the UN system, the lines between long-term development and postconflict reconstruction, and where agencies such as the UN Development Programme (UNDP) may fit into this continuum, remain blurred.

Compounding the difficulty in establishing new patterns of cooperation is the gnawing realization that breaking the cycle of poverty and war may exceed the capability of both the United Nations and the World Bank, operating separately or in tandem. Conflict settlement requires the injection of optimism and hope born of employment and economic opportunity. Otherwise, fragile peace arrangements can rarely be sustained. And, over the long term, only the private sector is capable of growing new enterprises, opening investment opportunities, and providing employment and enduring economic security. Moreover, the private sector can do more than serve as a source of foreign investment and economic growth. It can also be the catalyst for integrative approaches by the United Nations and the World Bank. Thus, not only closer UN–World Bank cooperation is at issue, but also how to achieve active and comprehensive engagement by the private sector, alongside nongovernmental organizations, dedicated to relief and reconstruction.¹⁰

⁴ See Guatemala Historic Clarification Commission, *supra* note 1, at 19, paras. 74–75 (citing the abandonment of social development as a factor responsible for continuation of Guatemala’s civil war).

⁵ The case for World Bank engagement in the prevention and resolution of civil wars is also argued in STREMLAU & SAGASTI, *supra* note 3.

⁶ See United Nations Millennium Declaration, GA Res. 55/2, para. 9 (Sept. 18, 2000) (issued on behalf of the heads of state and government gathered at the UN Millennium General Assembly).

⁷ *Id.*, para. 30.

⁸ UN Special Envoy Lakhdar Brahimi was commissioned by Secretary-General Kofi Annan to recommend ways to improve UN peacekeeping, after the shocks of Rwanda and Bosnia. See Report of the Panel on United Nations Peace Operations, Identical Letters Dated 21 August 2000 from the Secretary-General to the President of the General Assembly and the President of the Security Council, UN Doc. A/55/305–S/2000/809, annex (Aug. 21, 2000).

⁹ Report of the Secretary-General on the Implementation of the Report of the [Brahimi] Panel on United Nations Peace Operations, UN Doc. A/55/502, para. 7(i) (Oct. 20, 2000). The same advice was tendered by the General Assembly’s standing peacekeeping review committee and endorsed by the Non-Aligned Movement. See Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects: Reports of the General Assembly Special Committee on Peacekeeping Operations, UN Docs. A/54/839, para. 53 (Mar. 20, 2000), and A/54/87, para. 50 (June 23, 1999); Final Document, XIII Ministerial Conference of the Movement of the Non-Aligned Countries, para. 41 (Cartagena, Apr. 8–9, 2000) <<http://www.un.int/colombia/Int%20Enero-Agosto%202000/NOAL-%20DOC%20FINAL.htm>>.

¹⁰ The United Nations Millennium Declaration, *supra* note 6, para. 30, resolves “[t]o give greater opportunities to the private sector, non-governmental organizations and civil society, in general, to contribute to the realization of the Organization’s goals and programmes.”

Attracting private-sector investment in troubled areas is not easy. It requires innovation. A mix of noneconomic and economic incentives will have to be devised. Similarly, involvement of the private sector in the larger work of formulating strategy for postwar recovery will require innovative thinking. It can also be the catalyst for integrative approaches by the United Nations and the World Bank. To accomplish these twin goals, a new structure is needed. A Peace Transitions Council (PTC) would enable the private sector to have a seat at the table with representatives of the United Nations and its various constituent bodies, the World Bank, and the NGO community in the formulation and implementation of a postconflict strategy aimed at successful war-to-peace transitions through an integrated approach.

I. LAYING THE FOUNDATION FOR PRIVATE-SECTOR ENGAGEMENT

Much of the current thinking on adapting international organizations to changing conditions stems from the 1992 *Agenda for Peace*,¹¹ the landmark study by Secretary-General Boutros Boutros-Ghali. The *Agenda* contends that the United Nations needs to transform itself—to go beyond the traditional missions of peace enforcement and peacekeeping. According to the *Agenda*, state failures, characterized by crumbling or abandoned democratic structures and the regression of economic self-sufficiency, have been compounded by ethnic and tribal war. “Nation building” is propounded to meet the underlying grievances that propel civil conflict. Despite its recent bad name in U.S. policy debates, the aim of nation building is unassailable: to stop the unrest, and then to promote the rule of law and good governance. So, too, is the conclusion that nation building may not be possible without the restoration of security through international “peace-enforcement units”—more heavily armed than traditional peacekeepers and authorized to use force in cases where “[c]easefires have . . . been agreed to but not complied with.”¹²

In advocating expansion of the security role of the United Nations, the *Agenda for Peace* was not treading on soil entirely new to the UN experience. Though peace enforcement is the only military role explicitly authorized by its 1945 Charter, the role of the United Nations first expanded to encompass a complex form of peacekeeping in response to the 1962 Congo crisis, an intervention supported by the United States. Despite Soviet objections, the International Court of Justice endorsed the right of the United Nations to perform this function in the *Certain Expenses of the United Nations* case.¹³ Peacekeeping—even where a force is authorized by the General Assembly, rather than the Security Council—was justified as a legitimate UN activity insofar as it was tied to the Charter goal of maintaining international peace and security. In the view of the Court, the Security Council retained a *primary*, but not exclusive, responsibility in that area.

By contrast, “nation building” has never received similar judicial endorsement. To be sure, various UN agencies like UNDP and UNICEF have always operated in the nebulous zone between humanitarian assistance and development, working to assist movement toward democracy and good governance. This is a part of nation building. But, as contemplated by Secretary-General Boutros-Ghali, nation building encompasses the deployment of inter-

¹¹ AN AGENDA FOR PEACE: PREVENTIVE DIPLOMACY, PEACEMAKING AND PEACE-KEEPING, UN Doc. A/47/277-S/24111, at 22 (1992), UN Sales No. E.95.I.15 (1995).

¹² *Id.*, para. 44. On the continuing implications for international organizations of Boutros-Ghali’s pioneering suggestions, see STREMLAU & SAGASTI, *supra* note 3, ch. 1.1:

Boutros-Ghali’s readiness to acknowledge that problems of governance are also a general and legitimate concern of the UN marked a significant departure for an intergovernmental organization. The nature and policy implications of this challenge for the UN and other international institutions—including the World Bank—will be difficult to delineate and address.

For a critique of the concept of nation building and its expansion into a norm of humanitarian intervention, see Edward Luttwak, *Kofi’s Rule: Humanitarian Intervention and Neocolonialism*, NAT’L INTEREST, Winter 1999–2000, at 57.

¹³ *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, 1962 ICJ REP. 151 (July 20).

national troops to support national transformations. However, the disastrous results of the UN intervention in Somalia in 1993 led to American disillusionment and then hostility to the concept. The subsequent failure, at enormous cost, of UN nation-building efforts in Cambodia further shook the confidence of key states at the United Nations. Rather suddenly, the very term “nation building” took on a somewhat odious air, and Boutros-Ghali, as its chief proponent, became the object of a concerted campaign by the United States and others to defeat his bid for reappointment.

Yet, at about the same time the World Bank, with far less fanfare, was giving nation building a more receptive welcome. Although criticism of local governance had been considered off-limits for the Bank over the years, as a consequence of internal legal opinions reading its mandate as reaching only purely economic matters, increasingly the Bank came to realize that it could ill afford to take such a narrow view. It seemed myopic to ignore the political context when lending monies or engaging in project support in war-torn regions. Failure to promote good governance, in situations where the opportunity presented itself, seemed at odds with the alleviation of poverty.

In 1992 the opportunity for the readjustment of institutional inhibitions arose in two important areas—demilitarization in Africa, and peacemaking in Central America. The World Bank’s entry into demilitarization was based on a political calculation beyond its traditional reliance on purely macroeconomic factors. Understanding that idle standing forces in countries prone to war may provide additional spurs for war, the World Bank—operating through its Africa Bureau, rather than any centralized initiative—undertook the difficult and novel task of devising incentives for demilitarization in Uganda. Uganda’s leadership had to be convinced to accept demilitarization, fearing that it would be destabilizing to leave thousands of former soldiers restless and unemployed, ready to join antigovernment militias. Demilitarization required that the Bank promote the reintegration of ex-combatants through retraining and the provision of employment opportunities. The initiative was successful, and a harbinger of others to come with full World Bank approval.¹⁴

Yet the Bank did not innovate as well in its other “political” engagement of 1992—the implementation of the El Salvador peace accords. The accords called for joint UN–World Bank efforts aimed at far-reaching political, social, and economic reforms, including a rigorous economic stabilization and structural-adjustment program, and the demilitarization and reintegration of ex-combatants. Despite its formal collaboration with the United Nations, the World Bank in fact took no part in demilitarization efforts and confined itself to purely macroeconomic matters. The results, as characterized by two distinguished commentators, “was as if a patient lay on the operating table with the left and right sides of his body separated by a curtain and unrelated surgery being performed on each side.”¹⁵ Still, it planted the seeds for more successful cooperation half a decade later in Bosnia, Kosovo, and East Timor.

In 1995 James Wolfensohn ascended to the presidency of the World Bank, and with that came a new strong voice for engagement in the “political” arena. A small, but significant, outpost—the Post-Conflict Unit—was established under the leadership of the former head of demilitarization programs and assigned to handle the overall coordination of the Bank’s engagement in war-to-peace transitions. The search for “partnering” with various United Nations agencies began. Kofi Annan on behalf of the United Nations and Wolfensohn on behalf of the World Bank realized they would be better positioned to deliver a stabilizing “peace dividend” to leaders opting for settlement of their armed conflicts if they worked together. As described by Secretary-General Annan in his “Millennium Report,” this new-found joint commitment means that “[c]onflict prevention, post-conflict peace-building, humanitarian assistance and development policies need to become more effectively

¹⁴ See generally NAT J. COLLETTA, MARKUS KOSTNER, & INGO WIEDERHOFER, *THE TRANSITION FROM WAR TO PEACE IN SUB-SAHARAN AFRICA* (World Bank 1996) <<http://www.worldbank.org/html/extpb/warpeace/transit.htm>>.

¹⁵ Alvaro de Soto & Graciana del Castillo, *Obstacles to Peace Building*, 94 FOREIGN POL’Y, Spring 1994, at 69.

integrated.”¹⁶ The provision of employment and economic opportunities thus came to be viewed as pivotal to peacemaking—and active participation by the private enterprise as its indispensable component.¹⁷

Courting the Private Sector

Engagement of the business community in conflict-torn countries became a key focus for both institutions. At the Business-Humanitarian Forum in Geneva on January 27, 1999, Secretary-General Annan summarized a message delivered at various economic summits and business gatherings: “a fundamental shift has occurred in the UN-business relationship,” he noted. “The United Nations has developed a profound appreciation for the role of the private sector, its expertise, its motivated spirit, its unparalleled ability to create jobs and wealth. . . . In a world of common challenges and common vulnerabilities, the United Nations and business are finding common ground.”¹⁸ The same theme was articulated by World Bank President Wolfensohn in his Comprehensive Development Plan of January 21, 1999. Referring in part to postconflict relief, he reaffirmed that “[i]t is absolutely clear that domestic and foreign private investment is the key to economic growth and employment.”¹⁹ Wolfensohn confirmed as Bank policy a trend that had been ongoing for the last five years or more—the Bank’s mounting role in combating corruption, the absence of the rule of law, and inadequate public administration in grantee states. These deficiencies were seen both as threats to economic prosperity and, more ominously, as precursors to state failure. Neglecting them would lead to more complex emergencies, jeopardizing regional peace and setting back economic development for years to come.

In countries undergoing the transition from war to peace, the failure of economic programs aimed at growth in a free-market atmosphere can have particularly dire consequences. In this environment, a quick influx of capital and know-how is essential to serve as a counterweight to recidivist violence. In countries where fledgling peace efforts are foundering, a tangible promise of employment, trade, direct investment, and the promotion of local enterprise can have a major stabilizing effect. Yet enlisting the private sector at the

¹⁶ KOFI ANNAN, WE THE PEOPLES: THE ROLE OF THE UNITED NATIONS IN THE 21ST CENTURY, para. 48, UN Doc. A/54/2000*, UN Sales No. E.00.I.16 (2000) <<http://www.un.org/millennium/sg/report/full.htm>>, at 14. Integration of functions becomes critical “to transfer the momentum of crisis response to recovery, rehabilitation and development activities.” United Nations Development Programme, Bridging the Gap: A Report on Behalf of the IASC Reference Group on Post-Conflict Reintegration (Aug., 1999) <http://www.reliefweb.int/iasc/Documents/wg38_2.doc>.

¹⁷ See Secretary-General Proposes Global Compact on Human Rights, Labour, Environment, in Address to World Economic Forum in Davos, UN Press Release SG/SM/6881/Rev.1 (Feb. 1, 1999) <<http://www.un.org/News/Press/docs/1999/19990201.sgs6881.r1.html>>; see also Report of the Secretary-General on the Work of the Organization, UN GAOR, 54th Sess., Supp. No. 1, paras. 136–39, UN Doc. A/54/1 (1999) <<http://www.un.org/Docs/SG/Report99/toc.htm>>.

¹⁸ Kofi Annan, Message to the Business Humanitarian Forum, Geneva (Jan. 27, 1999) <<http://www.bhforum.ch/report/mesage.htm>>.

¹⁹ James D. Wolfensohn, A Proposal for a Comprehensive Development Framework (A Discussion Draft), pt. II §4 (Jan. 21, 1999) <<http://www.worldbank.org/cdf/cdf.pdf>>; see also STREMLAU & SAGASTI, *supra* note 3 (calling for further examination of the World Bank’s interactions with private-sector groups through two modalities: existing private-sector-oriented affiliates, such as the International Finance Corporation and the Multilateral Investment Guarantee Agency; and the Bank’s encouragement of foreign investment by the business community). Stremiau and Sagasti note that

one of the most significant global developments in recent years has been a reversal in the ratio of public to private capital flows to developing countries. . . .

. . . [I]t is clear that the World Bank should intensify its relations with a range of other organizations—consulting groups and private firms from developing countries, the non-English-speaking academic community, the electronic mass media (especially international television), nongovernmental organizations, and private foundations—in the interest of furthering its expanded role in post conflict reconstruction, good governance, and conflict prevention.

stage where it matters the most—shortly after a peace treaty or accord is reached but when tensions remain inflamed and violence can be sparked by the slightest provocation—is problematic. Although a growing number of private-sector businesses and companies can be counted on to explore economic participation in postconflict contexts, they generally shun early engagement. Even if issues of market size and demand can be satisfactorily resolved, the absence of an established rule of law and good governance and the lack of personal security bode badly for foreign investment, especially where good opportunities abound elsewhere. Not surprisingly, therefore, engagement in areas of uncertain security and unpredictable futures is often deferred until conditions stabilize. Herein lies the predicament: stabilization itself depends on private-sector entry; hence, waiting for stabilization as a precondition for entry becomes a self-defeating proposition.

Today's challenge is thus to find the means to make private-sector engagement attractive, especially at this early stage. Ideally, corporate participation would provide twin benefits: (1) investment, with resulting jobs and opportunities, and (2) the provision of managerial know-how and expertise to enable all the actors in the field—the World Bank, the United Nations, and civil society—to operate in a more streamlined and synergistic fashion.

Building on Business Interests in War-to-Peace Transitions

Surely, the private sector shares a vital interest in not allowing whole areas of the globe, including nearly half the African continent, to fall victim to entropy. Yet early entry has often proven most attractive to businesses whose engagement frequently prolongs rather than abates conflict, particularly extractive industries that mine natural resources and firms that provide security services.

Globalization has had a two-pronged effect in this regard. By facilitating privatization and trade liberalization, globalization has expanded business's capacity to take advantage of rapid economic and technological transformations. It has also led to an increased focus on the human side of the ledger sheet: to the private sector's potential for socioeconomic development and conflict abatement.²⁰ Multinational companies, whose revenues exceed the gross national product (GNP) of many developing countries, can influence events on a global and micro-scale,²¹ supporting governments and others with whom they do business in their quest for greater accountability. However, faced with competitive pressure to expand markets, international firms in emerging and developing economies often find it easier to continue the ways of old by working in tandem with corrupt leaders than to break with the past and join forces toward building a more civil society.²² This result is far from inevitable. Business leaders in a great many different sectors are also finding themselves under increasing countervailing pressure, both from within their ranks and from outside sources like the NGO community, to serve as a catalyst for positive change.²³

²⁰ See ANNAN, *supra* note 16, para. 48 & p. 14 ("Greater consistency must be achieved among macroeconomic, trade, aid, financial and environmental policies, so that all support our common aim of expanding the benefits of globalization"); see also JANE NELSON, THE BUSINESS OF PEACE: THE PRIVATE SECTOR AS A PARTNER IN CONFLICT PREVENTION AND RESOLUTION 20 (Prince of Wales Business Leaders Forum, 2000) <<http://www.international-alert.org/corporate/Pubs.htm>> and <<http://www.pwblf.org/csr/csrwebassist.nsf/content/fl1d2a3a4b5.html>>. Nelson details the involvement of multinationals like Microsoft, British Telecom, Dell, Oracle, and IBM, among others, in mobilizing information and communications technology for humanitarian purposes in Kosovo and elsewhere. *Id.* at 108.

²¹ See *id.* at 20.

²² See *id.* at 44.

²³ See Jonathan Berman, *Boardrooms and Bombs: Strategies of Multinational Corporations in Conflict Areas*, HARV. INT'L REV., Fall 2000, at 28; see also NELSON, *supra* note 20, at 75–87 (discussing corporate decisions to maintain or withdraw investments when dealing with repressive regimes, and arguing, with a focus on Burma, Angola, and the Sudan, that companies are now more likely to stay and improve a situation than to leave or work in concert with corrupt regimes).

Overall, the private sector has amassed a good record in positively influencing the course of peacemaking. In South Africa the business community was instrumental in enabling a smooth transition from the apartheid regime to a multiracial state, avoiding the prospect of a bloody civil war. Consolidated Goldfields, for example, arranged and paid for secret meetings between the African National Congress and top Afrikaners during the last few years of apartheid—sessions credited with building the groundwork for the negotiations to end apartheid.²⁴ The business community has also actively supported a peace agreement in Northern Ireland.

The experience of the private sector in Mozambique and in Gaza and the West Bank is also instructive, although the latter case illustrates the limits to what economic opportunity can accomplish in itself.

Mozambique's economic recovery, and the key role played by the private sector, is properly lauded. Since the end of its devastating civil war in 1992, Mozambique has changed from the second poorest nation in the world to a country with great economic promise. Growth rates have reached 10 percent, inflation has decreased substantially, and foreign investment is expanding. Mozambique continues to show signs of substantial postwar growth and development, which have been only partially set back by the winter flood disasters of 1999.²⁵

Several factors contributed to this success. The signing of a general peace agreement in Rome in 1992 brought an effective end to the fighting, and the cooperation of demobilized insurgents in establishing democratic political institutions.²⁶ Mozambique possesses an abundance of mineral resources, natural gas, and coal, which attracted foreign investment. Perhaps most important was the ability of the government to work with the private sector at home and abroad, renouncing the remnants of its Marxist philosophy. Since 1992, President Chissano has privatized more than 900 of 1,250 government-controlled firms. In conjunction with UN agencies, the World Bank, and NGOs, international companies have spurred Mozambique's recovery²⁷ and the government has continued to attract substantial foreign investment.²⁸

²⁴ See Robert Zoellick, Strategic Philanthropy for Business, Keynote Address to the Business-Humanitarian Forum (Jan. 27, 1999) <<http://www.csis.org/html/sp990127rbz.html>>; see also NELSON, *supra* note 20, at 111–15 (discussing individual and collective business efforts at peacemaking in South Africa, Zambia, the Philippines, and Northern Ireland).

²⁵ See *Mozambique: Insider View*, N.Y. TIMES, Dec. 4, 2000, at A6 (advertising supplement noting “swiftly advancing liberal economic reforms” and “a government keen to cooperate with the private sector and woo foreign investment”).

²⁶ On the Mozambique peace process, see generally Aldo Ajello, *Mozambique: Implementation of the 1992 Peace Agreement*, in HERDING CATS: MULTIPARTY MEDIATION IN A COMPLEX WORLD 615 (Chester A. Crocker, Fen Osler Hampson, & Pamela Aall eds., 1999); CAMERON HUME, ENDING MOZAMBIQUE'S WAR: THE ROLE OF MEDIATION AND GOOD OFFICES (1994); RICHARD SYNGE, MOZAMBIQUE: UN PEACEKEEPING IN ACTION, 1992–94 (1997).

²⁷ See generally 3 DIRECTORY OF AMERICAN FIRMS OPERATING IN FOREIGN COUNTRIES (1999); WORLD INVESTMENT REPORT 1998: TRENDS AND DETERMINANTS (UN Conference on Trade and Development, 1998) <<http://www.unctad.org/en/docs/wir98ove.pdf>>; Katherine Marshall, From War and Resettlement to Peace Development: Some Lessons from Mozambique and UNHCR and World Bank Collaboration (Harvard Institute for International Development, Development Discussion Paper No. 633, April 1998) <<http://www.hiid.harvard.edu/pub/pdfs/633.pdf>>; *Benefits of Peace*, ECONOMIST, Mar. 12, 1997, at 44; *Better Times for a Battered Country*, ECONOMIST, Dec. 5, 1998, at 42; Gary Younge, *City with a Poetic Edge: Mozambique Attempts to Put a Decade Long Civil War Behind It*, GUARDIAN, June 12, 1999. For additional material, see Joint Statement by Denmark, Finland, Sweden and the Netherlands, High Level Meeting on the Special Initiative for Africa and the Education Sector Strategy for Mozambique (UNESCO, July 7–8, 1997) <<http://www.unsia.org/cluster/educ/mozal.htm>>; *War-to-Peace Transition in Mozambique: The Provincial Reintegration Support Program*, FINDINGS AFRICA REGION NO. 90, July 1997 <<http://www.worldbank.org/afri/findings/english/find90.htm>>; UNDP: Country Cooperation Frameworks and Related Matters: First Country Cooperation Framework for Mozambique (1998–2001), UN Doc. DP/CCF/MOZ/1 (Nov. 7, 1997) <<http://www.undp.org/rba/country/ccf/9730548e.htm>>; War-Torn Societies Project, WSP in Mozambique (UN Research Institute for Social Development, Sept. 1998), *obtainable from* <<http://www.unrisd.org/wsp/moza/toc.htm>>; *Mozambique: Country Implementation Review*, THE WORLD BANK PARTICIPATION SOURCEBOOK (1996), *obtainable from* <<http://www.worldbank.org/wbi/sourcebook/sb0211.htm>>; World Bank Group, Mission of the Africa Region's Partnerships Group—Regions: Sub-Saharan Africa <<http://www.worldbank.org/afri/index/partnrs.htm>> (visited Nov. 21, 2000).

²⁸ According to the DIRECTORY OF AMERICAN FIRMS OPERATING IN FOREIGN COUNTRIES (15th ed., 1998), the following American companies have operated in Mozambique: Air Express International Corp.; Louis Berger International, Inc.; Deloitte Touche Tohmatsu International; DHL Worldwide Express; Enron Corp.; Ernst & Young, LLP; Johnson & Johnson; KPMG Peat Marwick, LLP; McCann-Erickson Worldwide; Pfizer Inc.; Wackenhut

In Gaza and the West Bank, the private sector—spearheaded by the Palestinian diaspora and the support of the European Union—has created new banking systems, venture-capital funds, and mechanisms for the privatization of telecommunication and other industries. American business, however, has been reluctant to invest in the area, and the recent breakdown of the peace process will undoubtedly retard matters. But the case of the Enron Corporation may be indicative of future possibilities for private-sector entry: the U.S.-based energy and communications business has invested heavily in Gaza and its entry was made possible through the extended range of the political-risk insurance guarantees of the Overseas Private Investment Corporation. The jobs created have given new impetus to a sluggish Palestinian economy.²⁹

Yet clearly, peace-building investment does not guarantee progress. Investment can reinforce the power of repressive regimes.³⁰ It can lead to further graft and corruption. Nevertheless, in the critical phase of transition from war to peace, where former belligerents have laid down arms and allowed fledgling peace processes to proceed, foreign investment can play an indispensable role. It can help keep the peace by providing private security services and can offset the provocations of those that stand to benefit from confrontation by offering an alternative to the message that the way to a life of minimal dignity lies only through the resumption of unbridled nationalist or tribal ambitions. By creating an aura of normalcy and confidence in a region's future, it can replace an atmosphere of despair and a mentality of "nothing left to lose" with broader horizons and stakeholders in peace. Girded by jobs and economic opportunity as an antidote to alienation, the seemingly disinherited now have incentives to work to maintain stability and break the cycle of violence.

The nascent tendencies and ambitions within the business community for positive change can be mobilized to accomplish these ends. But to do so will require conceptualization and implementation of a new structure capable of harnessing business's capacity for service in the cause of peace.

Tapping Business Interest in Real Change

Professor Rosabeth Moss Kanter of the Harvard Business School has shown that, although "[t]raditionally, business viewed the social sector as a dumping ground for spare cash,

Corp.; and Xerox Corp. The following companies also have (or had) a presence in Mozambique, according to various business news sources: Coca-Cola (U.S.), Flour Daniel GTI Inc. (U.S.), Atlantic Richfield Co. (U.S.), Cabot Corp. (U.S.), Scimitar Hydrocarbons Corp. (Can.), Banco Mello (Port.), Billiton PLC (UK), Commonwealth Development Corp. (UK), Marubeni Corp. (Japan), Mitsubishi Corp. (Japan). *See also Mozambique: Insider View, supra* note 25.

²⁹ *See generally* REX BRYNEN, A VERY POLITICAL ECONOMY: PEACEBUILDING AND FOREIGN AID IN THE WEST BANK AND GAZA (2000). *See also* JOHN D. CLARK & BARBARA S. BALAJ, NGOS IN THE WEST BANK AND GAZA (World Bank Feb. 1996). For a comprehensive report on the Palestinian economy covering developments in the first half of 1999 as compared to the first half of 1998, including a special focus on donor disbursements and public and private investment, see Palestinian National Authority, Building the State of Palestine (UNESCO Report on Palestinian Economy) <http://www.pna.net/building_state/macro_1.htm> (visited Dec. 15, 2000). On U.S. efforts to promote economic growth and access to markets for Palestinian firms, see especially U.S. Agency for International Development, West Bank and Gaza Mission, The Gaza Industrial Estate (May 16, 2000) <<http://www.usaid-wbg.org/gie.html>>. The report documents both the growth of the Gaza Industrial Estate project aimed at promoting 20,000 jobs on-site and many more jobs in nearby feeder industries, as developed by a private-sector investment company, the Palestinian Industrial Estate Development and Management Corporation, and the assistance of the U.S. government in overcoming political and bureaucratic obstacles to the development of the estate, especially the lack of Palestinian-Israeli agreement on security and access procedures. Like other entrepreneurial projects in the Palestinian territories, this one has been stalled by the unrest in the region that began in late September 2000. In light of the economic setbacks caused by the unrest, the World Bank made a \$12 million grant to the Palestinian Authority. "This is a highly unusual move for the World Bank," said Joseph Saba, World Bank director for the West Bank and Gaza, "since the Bank usually provides loans rather than grants." The Bank said it wanted the grant to serve as a catalyst for other donors. *See Palestinians Given \$12 Million World Bank Grant*, Reuters, Dec. 6, 2000 <<http://www.icg.org/globalpolicy/socecon/bwi-wto/wbank/2000/1206rt.htm>>.

³⁰ See, for example, the experience of Bosnia, where corruption and inefficiencies born of failed Communist-era policies have contributed to the failure to sustain private-sector entry despite \$1.5 billion in postwar public funds for reconstruction. *See International Crisis Group, Why Will No One Invest in Bosnia and Herzegovina?* (Apr. 21, 1999), *obtainable from* <<http://www.crisisweb.org/>>.

obsolete equipment, and tired executives," today the private sector tends "to approach the social sector . . . not as an object of charity" but as an opportunity for "a partnership between private enterprise and public interest that produces profitable and sustainable change for both sides."³¹ Although Kanter focuses largely on the private sector's role in the United States, the model of merged private/public interest is equally applicable to the activities of multinational corporations.

Moreover, the private sector can bring to bear, independently of its capacity to generate investment and trade, a catalytic role in assistance to peacemaking activities. Its expertise in dealing with complicated problems involving myriad actors and its experience in complex negotiations can provide a link between disparate and less flexible institutional approaches. Yet despite this confluence of interests, cooperative arrangements involving the private sector in the work of international institutions have hardly begun to extend beyond enhanced commercial relations and occasional advisory boards.

The World Bank's advocacy of a stronger role for the business community in postconflict reconstruction has devolved in practice largely to inducing greater private investment through improved political-risk insurance and loans administered by its affiliate, the International Finance Corporation. Too little has been done to meet the practical needs of the business community by shifting the Bank's attention from macroeconomics to microeconomics and the development of labor and capital markets.³² But the World Bank's more recent efforts in Bosnia, Kosovo, and most especially in East Timor do show that greater attention is being paid to building the essential basis for private-sector entry, including establishment of the rule of law, which protects property rights and contractual commitments.³³

The United Nations' courtship of the business community has not extended to encouraging business involvement in the formulation and implementation of overall strategy. The UN Office for Project Services (UNOPS) has been lauded as an example for more positive UN-private-sector relationships. To be sure, it demonstrates how a UN entity can operate in an efficient, businesslike manner, and thus overcome the reservations of the private sector in dealing with the United Nations. But UNOPS remains a contract procurement agency, dealing only with businesses seeking to sell goods or provide services directly to the United Nations.³⁴ It does not have a policy role with respect to foreign investment. And the larger goal of a meaningful role for the private sector in decision making affecting postconflict reconstruction remains a cause without a champion or forum in the UN system, even within the Office of the UN Secretary-General.

³¹ Rosabeth Moss Kanter, *From Spare Change to Real Change: The Social Sector as Beta Site for Business Innovation*, HARV. BUS. REV., May-June 1999, at 122. Kanter cites IBM's Reinventing Education Program as a key example of business innovation, using the corporation's best talents to develop tools and solutions for systematic change at 21 sites in the United States and four other countries.

³² The recent recommendations of the World Bank's Operations Evaluation Department, for example, focus on renewed efforts at macroeconomic stabilization with practically no reference to other concerns of the business community. See ALCIRA KREIMER, JOHN ERIKSSON, ROBERT MUSCAT, MARGARET ARNOLD, & COLIN SCOTT, *THE WORLD BANK'S EXPERIENCE WITH POST-CONFLICT RECONSTRUCTION* (1998).

³³ East Timor presents the most concerted effort at UN-World Bank coordination, unhampered by the type of self-imposed legal restrictions hindering the Bank's engagement in Bosnia and Kosovo (in the latter, Serbia nominally retains sovereignty and was not a member of the World Bank). The East Timor effort has been undertaken pursuant to the East Timor Joint Assessment Mission Draft Terms of Reference of November 3, 1999, as amended, which provide, among other functions, for the development of accountable judicial institutions and processes. See Hansjörg Strohmeyer, *Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor*, 95 AJIL 46 (2001).

³⁴ On UN outreach to the private sector through UNOPS, see Press Briefing by United Nations Office for Project Services (Apr. 6, 2000) <<http://www.un.org/News/briefings/docs/2000/20000406.unops.doc.html>>. UNOPS Director Reinhart Helmke argues that the new UN-business partnerships "recogni[ze] that the magnitude of moving into a conflict situation and relaunching a shattered economy [is] of such proportions that even with double or triple contributions from governments, the job could not be done by the United Nations alone." Since 1995 when UNOPS was established, it has created a project portfolio of \$4 billion, an annual turnaround of about \$800 million, and an income of \$50 million, which covers all costs.

In part, the reluctance of the United Nations and the World Bank to engage the private sector fully derives from a lingering lack of confidence in the private sector's willingness to sustain commitments in any one area, as witnessed by the capital flight and 1998 downswings in Asia and other markets around the globe. Although only about 4 percent of world GNP relates to military production, business contacts with developing countries remain associated in the popular mind with images of war profits. In fact, tourism is the world's fastest-growing industry—generating more than 10 percent of total international GNP—and better represents the posture of the business community. The tourism industry is particularly vulnerable to acts of terror, and like most multinational companies employing millions of people worldwide, has a vested interest in containing political instability and turmoil, especially when they have cross-border regional effects, which can undermine successful investments and operations on a much broader scale.

Thus, despite lingering doubts about the sustainability of private-sector commitment, there is general recognition that private capital, if properly channeled, is capable of enormous contributions to capacity building and social reconstruction. Beyond stimulating labor markets that induce foreign investment, private capital can also create the necessary capital-market institutions such as investment banks, development funds, venture-capital funds, and—in former centrally planned socialist economies—privatization mechanisms. It can augment public funding, which often suffers from false promises. (Public promises of contributions—particularly those made in the immediate aftermath of events inducing widespread sympathy—are often not sustained over time.)³⁵

For these reasons, the proportion of private investment to public funding of projects in war-torn areas could usefully be increased. Private investment controls a far greater fund of capital than governments can practically ever muster. But private-capital flows will continue to bypass postconflict nations unless the United Nations and the World Bank demonstrate that they are willing to share the risk of such investment to a far greater degree than in the past, and can show that cooperation between all these sectors is mutually beneficial and welcome. Risk sharing can include provision for political-risk insurance at more favorable terms and, generally, receptivity to allowing the private sector to become more involved in formulating and implementing strategy affecting postconflict reconstruction.

Once the private sector does become engaged abroad, it can be expected to encourage the development of a rule of law essential to securing investment, defining property rights, forming contracts, and preventing default on debts, and otherwise to aid in reducing the avoidable risks of investment. However, it cannot assume this task alone. Laying the groundwork for judicial reform and the rule of law must be seen by international organizations and donor governments as a priority, not as an objective to be pursued after full stabilization of the security and political situation, but alongside it. Quick-response legal teams aimed at setting up a rudimentary working-court system, and backed by the leverage of donor states, are essential.³⁶ Else one may fall in the trap of Bosnia, where rampant corruption has stilled the prospects of foreign investment.³⁷

³⁵ See GOOD INTENTIONS: PLEDGES FOR POST-CONFLICT RECOVERY (Shepard Forman & Stewart Patrick eds., 2000).

³⁶ See Strohmeier, *supra* note 33.

³⁷ See, e.g., Chris Hedges, *Leaders in Bosnia Are Said to Steal up to \$1 Billion*, N.Y. TIMES, Aug. 17, 1999, at A1. Corruption in Bosnia has thwarted business entry as well as international donor support. The problem is compounded by the fact that “[e]ven when laws are passed to try to contain the fraud, politicians have blocked or ignored them.” *Id.* Judges fearing retribution are afraid to enforce the law. The Office of the High Representative in Bosnia has recommended an intensified effort against corruption, while disputing the magnitude of the loss from corruption claimed in the *New York Times*. See Office of the High Representative, Press Release, Fighting Corruption in Bosnia and Herzegovina (Aug. 18, 1999) <<http://www.ohr.int/press/p990818a.htm>>. But the rule of law has not been made operational in implementing the Dayton Peace Accords. See Crime and Corruption in Bosnia: Hearing Before the House Comm. on International Relations, 106th Cong. (2000) (testimony of Harold Johnson, associate director of international relations and trade, U.S. General Accounting Office) (arguing for a broad-based anticorruption strategy and calling on Congress to require that the State Department certify that the Bosnian national and entity governments have taken concrete steps to fight corruption as a condition of further

Concomitantly with support for development of the rule of law, business can bring to bear its technical expertise. Competence in traditional business areas such as finance, product design, accounting, and marketing, as well as electronic commerce in all of its forms, is important to both emergency relief and longer-term prospects for economic growth. Corporations like Microsoft, IBM, and others in the computer and telecommunications industry have entered into partnering relationships with agencies such as the UN High Commissioner for Refugees, for example, in introducing modern technology to keep pace with the registration of refugees and other critical needs in Kosovo and similar crisis areas.³⁸

Moreover, in addition to advancing development and providing managerial and business expertise, the business community is positioned to contribute in a more systematic way to global stability. Businessmen tend to approach issues in a rational, realistic, pragmatic, and professional manner. They deal with conflicts on a day-to-day basis. They are experienced in negotiations and they know *how and when to compromise*. These qualifications are very much needed and helpful in any conflict-management process, and integration of business at the local level in conflict areas may help to persuade ground-level political actors to cooperate more effectively. Political, economic, ethnic, cultural, and other differences—the underlying conditions for international conflicts—are issues most multinational companies deal with effectively within their organizations. And the global business community tends to be politically well placed—at both the upper and the lower echelons of power—to assess growing tensions.

This potential can be tapped in a variety of ways beyond direct investment.

—*Assistance in the formulation of systemwide strategy.* Senior-level meetings of business leaders with security, military, and other government and nongovernment officials can be held to express the viewpoint and ideas of business on conflict prevention and resolution, and on related issues that underpin a conflict, such as corruption, the distribution of tax revenues and patronage, human rights issues, security, and judicial reform. In this way, the work of the PTC would complement but go far beyond the global public policy networks advocated by the UN Vision Project on Global Public Policy, in which “these networks, states, international organizations, civil society, and the corporate sector collaborate to make globalization work for all.”³⁹ By contrast, collaboration in a PTC context would move beyond an advisory role to regular participation in the formulation and execution of policy.

—*Assistance in overcoming divisions based on divergent institutional cultures.* In Kosovo and East Timor, the United Nations and the World Bank are undertaking their most ambitious efforts in helping nations to learn to govern themselves effectively. Each institu-

assistance), available in LEXIS, News Group File, Most Recent Two Years. The State Department has disagreed with the GAO recommendations, but Johnson noted that there is “no evidence that [the State Department’s] reassessment or its current strategy address[es] the underlying causes of corruption and the lack of reform.” *Id.* See also Benn Steil & Susan L. Woodward, *A European ‘New Deal’ for the Balkans*, FOREIGN AFF., Nov.–Dec. 1999, at 95, 96. They observe:

As in other war-torn parts of the world, the dangerous myth is being spread that much-needed private foreign investment will naturally follow major international aid. . . . [But r]eports of financial corruption among Bosnian officials who manage public and donor funds, combined with delays in creating the cumbersome Dayton-prescribed economic institutions, have driven away Western corporate investors.

To remedy the situation, Steil and Woodward recommend that “[d]evelopment assistance should . . . be extended directly to private local institutions or be used to leverage private Western financing of Balkan projects. . . . [T]he West should make equity investments in Balkan business a priority.” *Id.* at 103.

³⁸ In contrast to Bosnia, where international civilian authorities chose to exercise little more than the power of persuasion, in Kosovo a UN administration—backed by more than 50,000 NATO-led troops—is authorized to take control of the territory’s institutions with a view toward creating democratic self-government based on the rule of law. Perhaps as a result of this security gap, “the international investment needed for a successful transformation of Bosnia would be much greater than the already considerable investments currently in place there and in Kosovo.” Ivo H. Daalder & Michael B. G. Froman, *Dayton’s Incomplete Peace*, FOREIGN AFF., Nov.–Dec. 1999, at 106, 112.

³⁹ See NELSON, *supra* note 20; *Foreword* to WOLFGANG H. REINICKE & FRANCIS DENG, *CRITICAL CHOICES: THE UNITED NATIONS, NETWORKS, AND THE FUTURE OF GLOBAL GOVERNANCE* at vii (2000).

tion is stretching the limits of its mandate and seeking to overcome differences in institutional approaches to socioeconomic problems. A neutral third party may help both actors to clarify or redefine their mandates in a way that provides a steadier compass for their work. Similarly, outreach by the World Bank and the United Nations to the NGO community may be more effective if an intermediary role can be played to overcome lingering suspicion and distrust.

—*Participation in negotiation/mediation processes.* Inclusion of disaffected groups in the economic life of a nation is an essential aspect of reconstruction, drawing on private-sector expertise in planning and coordination, including the support and development of local entrepreneurship and training programs.

Yet modalities for interaction between the private sector and its counterparts in government, multilateral institutions, and the NGO community have not progressed beyond advisory groups or ad hoc engagements in response to particular crises.⁴⁰ Solid advances require the continuity of a standing structure—a Peace Transitions Council—to engage the full potential of the business community and civil society in a unified approach to peace building.

II. TOWARD A PEACE TRANSITIONS COUNCIL

A Peace Transitions Council would work to close various gaps in the present system through meaningful partnering between key players in peace building. It would aim at better coordination of functions and synergistic gains, taking advantage of what the private sector can contribute to central systemwide strategy, the reconciliation of contending institutional principles and mandates, and coordination through the integration of information systems to avoid redundancies in effort. Soliciting and recommending the apportionment of public and private capital would be among its other useful functions.

A PTC would build on efforts that have taken place within the UN system itself to achieve better coordination of functions in postconflict scenarios. The UN Inter-Agency Standing Committee Reference Group on Post-Conflict Reintegration found some critical “planning mechanism failures” within the UN system, and between the UN system and the World Bank. Five principal shortcomings were noted:

[i] failure to bring in all relevant actors at the outset of the planning period; [ii] cumbersome nature of the instruments; [iii] disconnects between agreed strategies arising out of the instruments and individual agencies’ programmes and appeals; [iv] no mechanism for effective regional and sub-regional [ie, trans-border] planning and [v] inadequate linkages between peace agreements and measures to ensure that “gaps” are closed.⁴¹

Each of these shortcomings could be rectified through active private-sector engagement in a PTC.

⁴⁰ The Business-Humanitarian Forum is one example, but it has dealt largely with emergency relief rather than reconstruction. The forum was first convened in Geneva on January 27, 1999, under the cochairmanship of Sadako Ogata, the United Nations high commissioner for refugees, John C. Whitehead, chairman of the board of the International Rescue Committee, and John F. Imle, Jr., president of the Unocal Corporation—stressing that “[a]t present, only limited channels of communication exist between multinational corporations and humanitarian organizations.” See Business-Humanitarian Forum, Executive Summary (Jan. 27, 1999) <<http://www.bhforum.ch/report/index.htm>>. Other business associations contributing to humanitarian and peace-related activities include Business for Social Responsibility, the Businessman’s Forum, the Business Roundtable, the Stanley Foundation, and various local chambers of commerce, particularly the U.S. Chamber of Commerce in Washington, D.C. They are joined by smaller groups worldwide such as the Business for Global Stability Initiative, led by Israeli businessman Haim Roet. None claim any involvement with international organizations beyond the first stage of improving dialogue and opening channels of communication. In the United Kingdom, matters have progressed somewhat further than in the United States, with the Prince of Wales Business Leaders Forum’s coordination between business, government, and the NGO community, but there are no active partnership arrangements with international organizations.

⁴¹ United Nations Development Programme, *supra* note 16.

Framework for Engagement: Legal and Operational Aspects of a PTC

Equality of the partners in a PTC in sharing burdens and responsibilities along agreed divisions of labor is critical to its success. The private sector and the NGO community would not be limited to an advisory function. The private sector could take the lead in encouraging foreign and local investment. For example, it could plan training and the development of human capital in line with new technologies to create an attractive and disciplined workforce—retraining workers from inefficient enterprises to match entrepreneurial needs, and encouraging short-term worker training through the use of new, computerized, Internet-based distance-learning technologies. The NGO community could focus on relief, development, and good governance. In making recommendations pertinent to overall strategy, each partner would speak with an equal voice.

Although the actual modalities for PTC operations would necessarily evolve through negotiations and trial and error, the principles listed below are suggested as guidelines:

(1) The PTC would consist of twenty representatives, coming from and appointed by the respective entities of the United Nations, the World Bank, the NGO community, and the international business community, with five seats allocated to each. Terms of appointment should be for two years, subject to renewal. Representatives of the United Nations and the World Bank would serve *ex officio*, concurrently with their existing positions. Private-sector and NGO representatives would be expected to serve independently of their other affiliations. A president of the PTC would be elected by a majority vote of the representatives.

(2) PTC headquarters would be located in Washington, D.C., giving it proximity to the World Bank, and the ambassadorial and NGO communities. It would have a secretariat and an executive director. Operating expenses would be covered by joint assessments of all the representative sectors, with the NGO sector incurring one-half of the costs of its counterparts. Private-sector funding should come from as wide a base as possible by enlisting all segments of the business community. The focus should be on multinational corporate and global NGO engagement. The PTC would be convened on a regular basis to review peace-building efforts worldwide, and on an exceptional basis at the request of any of the parties or its president.

(3) The PTC would establish links with regional organizations and development banks to share information and resources pertaining to common interests in peace-building missions and the avoidance of redundant efforts.

(4) The PTC would seek to contribute to ongoing efforts at avoiding bureaucratic logjams and streamlining operations, including the elimination of needless layers of bureaucracy in international organizations and crisis-response architecture.⁴²

(5) The PTC would be directly answerable to no other authority, assuring its complete independence as an advisory body. It would encourage centralized decision making with regard to overall strategy and planning, but not act as a decision-making entity with regard to functions normally assumed by the United Nations or the World Bank.

(6) The PTC would initiate a data system, a communications system, and a control center that could integrate the pertinent data, on a real-time basis, of all of its constituent entities.

(7) The PTC would be global in scope and focus on globalization as a potentially inclusive mechanism for rapid growth and development.

(8) The PTC would aim at overcoming differences between NGOs and private enterprise through demonstrating that joint participation advances the common interest in

⁴² For example, the confusion of international agencies in the Bosnia reconstruction effort has been notorious, allowing opponents of the peace process to attempt to set one against the other, and permitting continued prosecution of ethnic war by other means.

peace building. NGO autonomy would not be infringed inasmuch as all associations and the implementation of recommendations would be voluntarily assumed.

Accordingly, the PTC would operate in two ways: (1) encouraging foreign investment, and (2) providing advice and recommendations regarding a wide plane of issues affecting regional peace and stability. As the PTC would be composed of distinguished individuals noted for their objectivity and expertise, its recommendations would be hard to ignore. The private sector could contribute its expertise in the identification of realistic investment opportunities, management, the provision of products and services, the creation of new industries, and the development of infrastructure. But by regularly interacting with multilateral institutions and civil society, the private sector would also become an integral part of international peace-building efforts.

It would thus enable coherence of approach through the provision of multiple perspectives, better relate costs to means, and assess levels of commitment and commensurate goals. Country action plans could be developed that would pay greater attention to labor-market institutions, including the necessary education and training; capital-market institutions, including banking and development funds; and the development of legal institutions conducive to private-sector entry. The PTC could bolster these efforts by promoting legislative and other measures aimed at further reducing the risk of foreign investment in troubled areas, such as enhanced political-risk insurance to reward early entrants. Moreover, the PTC could serve as a model of cooperation for international organizations, NGOs, and business in the field.

Undertaking Projects

Applying these guidelines, among the projects the PTC could undertake are the following.

1. *Centralize targeted data collection.* Even in the best of circumstances, private-sector entry into countries undergoing war-to-peace transition will be realistic in only a relatively narrow class of cases. Those cases need to be identified. To date, there is no comprehensive data source on such entry—even to persuade businesses that they should look further. A common data bank should be established, analyzing three different types of situations: (1) high-profile and politically prominent cases where resources are available—i.e., South Africa, West Bank/Gaza, Angola, Congo, Bosnia, and the Balkans; (2) low-profile conflicts where resources are scant—i.e., Rwanda, Burundi, and Somalia; and (3) partial-conflict nations—i.e., Colombia, Indonesia, and Sri Lanka. These data would also permit firmer conclusions about what conditions have induced economic entry, and what enhancements are necessary or desirable to induce further entry.

2. *Improve the “atmospherics” of UN and World Bank relations with the business community.* The business community must be convinced that the World Bank and the United Nations are open to its concerns. One important measure is a demonstration of commitment to reducing the nature and amount of economic and personal risk presented by investment in transitional societies. Another is greater transparency in UN budgetary measures, to facilitate complementary planning. The PTC could also boost private-sector confidence by allaying fears that certain UN efforts, such as aspects of Agenda 21 adopted at the 1992 Rio Conference on Environment and Development, are intended to lead to the mandatory transfer of corporate resources and know-how at less than market rates.⁴³ While the PTC certainly cannot rewrite

⁴³ Agenda 21, the framework for action adopted at the Rio Conference, called for the limitation of greenhouse-gas emissions through the decreased use of fossil fuels and coal. See United Nations Conference on Environment and Development, Agenda 21, UN Doc. A/CONF.151/26 (1992) <<http://www.un.org/esa/sustdev/agenda21text.htm>>. Toward this end, the United Nations Environment Programme is authorized to facilitate the transfer of environmentally sound technologies to the developing countries and assist in their effective application. *Id.*, paras. 38.21–23; see also United Nations Framework Convention on Climate Change, May 9, 1992, Art. 4(5), S. TREATY

the Rio Agenda or any other international agreement, it can influence the way they are interpreted, and help assure that they are not misconstrued as creating needless roadblocks to effective interaction.

3. *Place emphasis on early-stage entry.* Without early-stage entrants in significant numbers, there is little springboard for subsequent entry. A critical mass of private business activity may have to be generated to invigorate the political/economic environment, as well as provide a counterweight to the continued influence of nationalist political parties or other conflict-prone actors. Building this “expeditionary” business community must begin with the corporate sector’s enhanced awareness of profit opportunities in still-anarchic stages—including in the delivery of emergency humanitarian relief such as housing, food, medicine, and the provision of security, and in other areas such as the development of basic infrastructure.

In early entry where the security situation has stabilized, two questions are central to business: (1) Is there an opportunity to get enhanced returns because of market misapprehension of the degree of risk? (2) Is there an opportunity to establish a market position ahead of future competitors?

By engaging in commercial activity in a region that others consider too risky, businesses can lay the groundwork for future long-term profits despite short-term risk. Early-entry businesses can establish a loyal consumer base, customize infrastructure for their own purposes, enact favorable deals and regulations with local government and already-existing businesses, and secure concessionary rights to land, water, and other resources that will sustain future profits.

The World Bank and the United Nations can create and advertise private opportunities for establishing a secure market position ahead of the competition—making use of their presence in the field and good working relations with the local government. They can open doors in much the way that national governments have done in developed markets. They can observe and facilitate the interaction between the private sector and the postconflict governments. Early private-sector entrants interested in economic reform can then help to shape the economy to their liking. Thus, the business-government climate can be positively influenced for years to come, and the private sector can avoid being saddled with the corrupt or inefficient framework of a vestigial regime, which a new government might otherwise be inclined to continue.

4. *Court existing as well as potential business entrants.* Much of the international private sector’s awareness of opportunities in transitional countries is shaped by discussions with local private-sector entities that have survived the years of conflict. The World Bank and the United Nations must pay greater attention to improved relations with these local companies. Often, they will express resentment and uncertainty about the future, after having dealt with the conflict-prone prior regime. Discussions between the World Bank and new governments can help local business communities overcome these fears, which would otherwise deter international entrants. In several countries, including Liberia and Nicaragua, Bank representatives have been working with the new governments to assure that contracts undertaken during prior regimes will be honored, so that the grievances of an earlier era will not be perpetuated.

5. *Make political-risk insurance comprehensive and affordable.* Private-sector entry is necessarily tied to reducing risk and ensuring against the acute types of “political” risks inherent in transitional war-to-peace societies. Currently, some insurance can be obtained from the Multilateral Investment Guarantee Agency (MIGA). Private industry cannot compete with MIGA rates. However, MIGA provides only limited project insurance. For example, in Gaza,

DOC. NO. 102-38 (1992), 31 ILM 849 (1992). The transfer provision has been interpreted by some UN officials as including privately owned technologies. Although the transfer is to be accomplished on a voluntary basis, the U.S. coal industry has raised concerns that the “transfer” provision will be used to demand the sale of technology at less than market rates. See Robert Reinstein, *Understanding the Global Decisionmaker*, COAL VOICE, Winter 1994, at 23.

where the average proposed project is valued at \$25 million, MIGA provided a maximum of \$5 million insurance in 1999. In areas engaged in ongoing armed conflicts or susceptible to renewed fighting, MIGA will not provide any insurance at all.

Postconflict countries would benefit from the availability of privately based, primary political-risk insurance, supported by MIGA reinsurance. American and international insurance companies may be willing to supply services under such an arrangement, which also has the advantage of employing private-sector networks and capacities to launch effective advertising campaigns. Dialogue between the private sector and MIGA should be encouraged to assure the most effective allocation of resources—to balance the problem of too much risk (and therefore no investment) against too little risk (and the resulting moral hazard). It seems reasonable to allocate the highest risk to MIGA, and to permit the private sector to take the next level of risk.

6. *Build bridges between the NGO and business communities.* Economic development by itself cannot rebuild a fractured society. Hence, the NGOs must be full PTC partners. NGOs are on the ground in conflict areas; they know the local players and play a key role in transitions from relief to development. NGOs have become a primary vehicle for the delivery of relief, and will continue to participate in postconflict development.⁴⁴ Care should be taken to build bridges and develop common aims between the private sector and the NGO community in postconflict societies. If the business community represents economic development, the NGOs can help to represent the voice of the local community and the “public interest.” Private-sector engagement with NGOs and other civil-society actors can be facilitated through a PTC framework, to visibly demonstrate the benefit that business brings to economic development, reconstruction, and social stability. This interaction, in turn, can serve as a model for relations at the field level. Social responsibility and economic development have too often suffered as a result of mutual suspicion and distrust, which have unnecessarily characterized relations between the business sector and the NGO community.⁴⁵

7. *Assist in a strategy for an international response, and in popular advocacy and marketing.* In an important policy paper, *Recovering from Conflict: Strategy for an International Response*, Shepard Forman, Stewart Patrick, and Dirk Salomons propose a more coordinated approach to bilateral and multilateral aid for countries emerging from civil war.⁴⁶ They recommend the establishment of “a full-fledged Strategic Recovery Facility to facilitate timely and effective action.”⁴⁷ Like a PTC, but without private-sector participation, the Strategic Recovery Facility

⁴⁴ On the growing power and prominence of NGOs in advancing peace processes, see Pamela Aall, *Non-governmental Organizations and Peacemaking*, in *MANAGING GLOBAL CHAOS: SOURCES OF AND RESPONSES TO INTERNATIONAL CONFLICT* 433 (Chester A. Crocker & Fen Osler Hampson, with Pamela Aall eds., 1996); Leon Gordenker & Thomas G. Weiss, *Devolving Responsibilities: A Framework for Analysing NGOs and Services*, in *BEYOND UN SUBCONTRACTING: TASK-SHARING WITH REGIONAL SECURITY ARRANGEMENTS AND SERVICE-PROVIDING NGOS* 30 (Thomas G. Weiss ed., 1998); Ruth Wedgwood, *Legal Personality and the Role of Non-Governmental Organizations and Non-State Political Entities in the United Nations System*, in *NON-STATE ACTORS AS NEW SUBJECTS OF INTERNATIONAL LAW* 21 (Rainer Hofmann & Nils Geissler eds., 1999).

⁴⁵ See NICANOR PERLAS, *SHAPING GLOBALIZATION: CIVIL SOCIETY, CULTURAL POWER AND THREEFOLDING I* (2000). He contends that

[c]ivil society emerged from the Battle of Seattle as a third global force. It took its place beside business and government as one of the key global institutions that must now determine the quality and direction of globalization. The emergence of global civil society changes the world from a uni-polar to bi-polar world to one that is tri-polar.

Be that as it may, the scars between business and the NGO community from the “Battle of Seattle” during the 1999 summit meeting of the World Trade Organization have yet to heal.

⁴⁶ SHEPARD FORMAN, STEWART PATRICK, & DIRK SALOMONS, *RECOVERING FROM CONFLICT: STRATEGY FOR AN INTERNATIONAL RESPONSE* (Center on International Cooperation, New York University, 2000) <<http://www.nyu.edu/pages/cic/pubs/PayingEssentials02.11.html>>. See also their companion volume, *GOOD INTENTIONS*, *supra* note 34, especially the essay by John Boyce, *Beyond Good Intentions: External Assistance and Peace-Building*. On the urgent need for “far better coordination and discipline” among aid agencies, see also Carol Lancaster, *Redesigning Foreign Aid*, *FOREIGN AFF.*, Sept.–Oct. 2000, at 74, 80.

⁴⁷ FORMAN, PATRICK, & SALOMONS, *supra* note 46, at 11.

would encompass the United Nations, the World Bank and International Monetary Fund, regional organizations, governments, and NGOs. As aid is the first step to recovery and provides the stage for private-sector entry, the PTC should work closely with such a facility toward a truly integrated approach. Indeed, functions of the proposed facility might be better served by being merged or subsumed under the broader agenda and wider base of the PTC. Consolidation would, among other advantages, enhance opportunities for achieving common objectives through popular advocacy and marketing in support of postconflict initiatives by both donor governments and private sources. It would also recognize, as in the case of Bosnia, that even coordinated international aid is not enough to stimulate the foreign investment necessary to repair war-torn countries.⁴⁸ Rather, what is needed is a broad-based strategy by which the strength of market economies, operating under the aegis of the rule of law, will help to guide postwar reconstruction.

8. *Assist in combating corruption.* The business community has an enormous stake in combating corruption. While individual firms may prosper in a corrupt atmosphere, private foreign investment on a larger scale is stifled by the absence of open market economies. In Bosnia, for example, McDonald's refused to set up operations after demands by officials for bribes, and large Italian and German construction companies pulled out after heavy losses.⁴⁹ Self-policing through industrywide standards can constitute an effective mode of regulation even where others have failed. A PTC would have the authority and reach to implement such codes of conduct, making a pariah of any business entity that engaged in corrupt practices beyond the scope of the Foreign Corrupt Practices Act and other international standards.⁵⁰

9. *Privatization of "governmental" functions.* Partnership with the private sector should facilitate the privatization of functions that are not efficiently handled by governments or international institutions. Such activities may span the gamut from the provision of humanitarian relief to the reconstruction of infrastructure as part of peace building. It could even include the provision of security services.⁵¹ Control would not be wrested from governments or institutions but structured and regulated, so that operational responsibility is allocated to the sector most capable of efficiently rendering needed services. Establishing the right mix of private-public responsibility is a task ideally suited for PTC engagement and, indeed, could probably not be established in the absence of such an arrangement.

⁴⁸ See Steil & Woodward, *supra* note 37.

⁴⁹ See Hedges, *supra* note 37.

⁵⁰ Current international initiatives against corruption include the standards of the Organisation for Co-operation and Development denying the tax deductibility of bribes and calling on member countries to criminalize international bribes, and the Inter-American Convention Against Corruption. See [OECD] Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, 37 ILM 1 (1998) <<http://www.oecd.org/daf/nocorruption/20nov1e.htm>>; Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 37 ILM 8 (1998) <<http://www.oecd.org/daf/nocorruption/20nov2e.htm>>; Recommendation of the Council of the OECD on the Tax Deductibility of Bribes to Foreign Public Officials, annexed to Update on the Implementation of the OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials (Apr. 28, 1998) <<http://www.oecd.org/daf/nocorruption/tax.HTM#annex>>; Inter-American Convention Against Corruption, Mar. 29, 1996, 35 ILM 724 (1996) <<http://www.oas.org/juridico/english/Treaties/b-58.html>>.

⁵¹ The problem of local security has been addressed only through the advisory functions of the UN Civil Police Administration. But CivPol has limited effect when local police agencies are corrupt or are committed to nationalist conflict. The High Commissioner for Refugees has faced the dilemma of the intermingling of armed nationalist militias with civilians in refugee camps, in conflict areas such as East and West Timor, and the Great Lakes—without any Security Council mandate for UN peacekeepers to provide an alternative source of order in the camps. The privatization of security services in the pursuit of civil peace need not, however, be limited to developed economies. Nor should the experience of well-known private security firms like Executive Outcomes and Sandline in Africa be considered indicative of the prospects for successful deployment of "privatized" guards and security services operating under UN auspices in a regulated framework. See discussion of the case for and against the privatization of security in civil conflict in PEACE, PROFIT OR PLUNDER? THE PRIVATIZATION OF SECURITY IN WAR-TORN AFRICAN SOCIETIES (Jakkie Cilliers & Peggy Mason eds., 1999); HERBERT M. HOWE, AMBIGUOUS ORDER: MILITARY FORCES IN AFRICAN STATES (2000).

III. CONCLUSION

Meaningful partnering arrangements—between the United Nations, the World Bank, and the private sector, together with the NGO community—are a necessary and welcome development. Regional disorder and civil conflicts have replaced aggression as the world's number-one security concern. No longer impeded by superpower rivalries, and empowered by the advent of globalization and innovative leadership at the United Nations and the World Bank, effective partnering by all the major stakeholders in building and sustaining peace is an idea whose time has come.

Today, private-sector flows have begun to outpace public-sector flows to developing countries. The challenge lies in encouraging capital to enter countries and regions torn by war, and in using partnership arrangements to support the evolution of civil societies based on market-driven economies and girded by the protection of human and property rights. To accomplish that, the private sector must be given a greater stake in shaping the outcomes of war-to-peace transitions.

The formation of a Peace Transitions Council would allow a unified approach in formulating and implementing strategies for recovery. Of course, the success of a PTC in meeting the demands of peace building are not assured. As always in partnerships, questions of costs and benefits will arise. Adding another layer of bureaucracy often appears as an invariable consequence of creating new fora for shared decision making. Similarly, additional delay sometimes results when consultation with a broader group of stakeholders is encouraged. Yet, with active private-sector and NGO engagement in strategic planning and management, these costs can be minimized and easily outweighed by the benefits. Fortunately, the boldness of new ideas, coupled with greater readiness to share responsibility—by the United Nations, the World Bank, the private sector, and the NGO community—bodes well for transforming peace through partnering from concept to reality through a new institutional framework for collaboration.