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Meeting Summary

World Gold Council: Conflict-Free Gold Standards

Stakeholder Consultative Roundtable, Chatham House

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INTRODUCTION

Chatham House convened a varied group of stakeholders from business, NGOs, research institutions and industry bodies to discuss the World Gold Council's (WGC) development of standards for 'conflict free' gold production. Much recent attention has been focussed on links between mineral production and conflict in the Democratic Republic of Congo (DRC), reflected in the terms of the recent US Dodd-Frank Act, as well as guidelines and regulatory frameworks developed by a range of regional, multilateral and industry bodies.

But only 0.4% of global gold supply (0.6% of newly-mined gold) comes from Eastern DRC. Conflict-free standards for gold production should be applicable globally and such standards should not lead to industry disengaging from difficult operating areas. They should rather give guidance that, if adhered to, allows companies to operate in the most challenging environments, including conflict affected areas such as Eastern DRC. They would thereby avoid industry disengagement, and avoid negative impacts on economic growth, development and job creation. WGC members represent about two thirds of the world's corporate gold supply, only a tiny percentage of which is estimated to be linked to conflict.

DEFINING AND MEASURING CONFLICT

Defining the terms

There was no agreement on defining, measuring or recognising armed conflict. Conflict could be between states, non-state armed groups or communities. Combat deaths, conflict-related mortality or human rights abuses could be used as indicators, but each gave different results. There was also the question of how to judge between a one-off event and an on-going conflict.

What time-limits might be imposed? If human rights were used as a basis, what definition should be used or given the most weight in an assessment process? How would a rights-based approach fit with existing Corporate Social Responsibility (CSR) frameworks? What responsibility should companies have for sustainable development? How many combat deaths were sufficient to label violence as a conflict?

It was also necessary to clarify whether conflict assessments were regional or national. If conflict could be analytically confined to one region of a country, would companies be free to operate across the rest of a given territory without undertaking conflict-related due diligence? Are Western DRC and Katanga Province, for example, conflict-affected? Or is conflict confined to just the East? Conditions in Chechnya were very different to those in the rest of Russia.

There were also fundamental questions around information and evidence. Evidence was, by definition, difficult to collect in conflict-affected areas, meaning that much conflict assessment was based on reports from international NGOs, local civil society or media. These information sources had different standards – NGOs, for instance, needed to maintain a relationship with local authorities to continue their work, and were obliged to protect their sources – and the resulting assessments might not therefore stand up to scrutiny when third parties demand the production of 'evidence'.

Who makes the judgement?

The OECD defines conflict in its Guidance on the Responsible Sourcing of Minerals from Conflict- Affected or High Risk Areas; providing a potential benchmark for other frameworks. But the OECD would not undertake assessments or provide an authoritative list of which countries or regions are covered at any one time by the definitions, and instead placed the responsibility with companies. This presented a challenge, in that extractive industries worked over a long time-scale and relied on an on-going relationship with host governments for their licence to operate – if a company publically assessed a country or region as conflict-affected or 'high risk', it might sour their relationship with that government. Industry was therefore reluctant to be seen to have a choice; it was difficult for companies to be seen to be making an essentially 'political' judgement. A degree of 'automaticity' might minimise problems with host governments.

Further, individual companies operating in the same countries or even regions might well reach different conclusions if each were to carry out its own assessment, particularly given the lack of agreement on fundamental definitions of conflict. Each company in a given supply chain would apply different criteria at different times, and could judge the conflict impact of a single shipment very differently. The resulting lack of consistency could undermine the credibility of a system with stakeholders.

Governments were unwilling to provide public assessments of conflict, largely due to the need to avoid controversy and maintain bilateral relationships. Travel advisories issued by governments might provide a proxy variable, and would potentially address regional variations within a given country, but were not based on a conflict assessment – they did not, for instance, differentiate between civil unrest, criminality and conflict.

UN processes could offer another avenue for widely-accepted conflict assessment. But collective declarations on conflict were rare. The UN Security Council authorised Peacekeeping Operations (PKOs), which offered one clear indicator of conflict, but the process by which PKOs were authorised was fundamentally political, and tended to focus on regions of lower political salience, notably in Africa, rather than potentially conflict-affected areas elsewhere; moreover peace-keepers often continued to be deployed even when conflict-risk may be relatively low. EU, AU or other multi-lateral actors suffered from similar drawbacks.

One solution would be a bespoke multi-stakeholder group convened to agree a working definition of conflict and act as an assessment mechanism. But governments would probably not be willing to be involved, potentially lessening the credibility of the process, and it could be slow – negotiations around the governance of the EITI took three years. Would it focus just on gold, or on wider conceptual/definitional issues around conflict and have wider applicability?

An existing conflict assessment tool might provide an interim solution. Use of something like the Heidelberg Conflict Barometer could provide a basis for assessment, and could be applied immediately. But questions remained about the suitability of any one assessment mechanism. There are many different conflict assessments in circulation, each based on different methodologies – the International Crisis Group, for instance, is widely respected but does not provide an on-going numerical assessment, rather relying on ad hoc narrative analysis. The Heidelburg Conflict Barometer is only updated annually. No one system commands universal respect. But such assessments could nonetheless be useful, at least in providing a rough indicator of concern, or triggering further independent assessment of a given situation.

Artisanal Gold

Artisanal mining provides a key challenge. Artisanal mining is relatively small-scale in production terms (accounting for c.15% of total newly mined supply), but has significant social impacts both positive and negative, including providing livelihoods for over 10 million people. How could artisanal miners operate within the OECD framework, which envisaged certification or some form of assurance that the producers were not involved in funding conflict? The Fair Trade Gold certification scheme was highlighted but that currently only provides cover for very limited quantities of gold. Another route to certification might be for local production to be bought in by large scale mines (LSMs); however it was acknowledged that it is sometimes difficult for LSMs to work with artisanal producers if they were competing for access to the same resource, or if the artisanal producers had poor social or environmental practices. But companies nonetheless needed to engage with the challenge posed by artisanal producers.

Transport provides a further problem, as using formal, above-board shipping companies is expensive and individual producers lacked the economies of scale of large producers, meaning their product ends up being priced out of the market. They could consolidate and transport in concert with larger, industrial producers, but this would expose the larger companies to reputational risk. Artisanal gold therefore tends to stay out of formal channels, and remains difficult to track.

The standards themselves also need to be made accessible to artisanal miners. Agricultural practice had been developed – for instance around cocoa production in Côte d'Ivoire – that might offer a model for the informal gold sector, perhaps through differential standards or a sliding scale that could be applied to artisanal production. The standards need to empower artisanal producers. A tension was acknowledged by some participants to exist as between development and conflict-related objectives.

CREDIBILITY

Audit, certification and disclosure

If the standards are to be credible, then they would need robust certification and enforcement procedures. External audit would be necessary both to check process – production, transport, leakage and so on – as well as more fundamental location-specific assessment of links between the gold industry and conflict. Due diligence needs to pick up local conflict dynamics as well as checking adherence to process guidelines.

It is also important to manage the expectation gap between standards and their real-world implementation. It is difficult to get standards right. International finance is still imperfectly regulated, even after 75 years. Standards would need to be iteratively improved, and a challenge procedure or some form of feedback mechanism would be necessary.

Identifying, testing, rectifying non-compliance was fundamental. There were a number of open questions. How would non-compliance be tested? Who would be responsible for the rehabilitation of non-compliant bodies? How long would companies in transgression of standards be given to achieve compliance? Would such transgressions need to be immediately disclosed, or would companies have a grace period to 'make good', avoiding the adverse publicity and reputational damage of an accidental breach?

Value-added auditing

There was concern in relation to the amount of detail that might need to be disclosed for audit and due diligence. Full disclosure would risk swamping systems with unnecessary detail. Companies need to protect sources of information on sensitive security issues – gold production and transport was clearly attractive to criminal elements. Audits are also expensive, present an administrative burden, and risk duplicating effort with pre-existing internal audit procedures – which tend to be robust in the formal gold industry. The key is to avoid 'non-value added' auditing.

There is a balance to be struck between publication of company policy and disclosure of every detail of supply chains, transport routes and so on. It is necessary to avoid self-censorship and harm to informants, while ensuring transparency over details relevant to the standard being met. Identification of the key nexus points is necessary, where weaknesses of existing control systems allow leakage of product into or out of the supply chain. This would facilitate cost-effective and credible audit, and the more credibility a verification mechanism has, the less detail would need to be disclosed. An auditing committee for the overall initiative could be convened to select approved external auditors and handle the resulting reports. Reports could also be divided into a public certification and more detailed private reporting. Detailed guidance would be necessary.

The selection of external auditors would present another challenge. Would they verify conflict analysis? Or check supply chains? Different auditors would be necessary at different levels of production. It would be necessary to use sophisticated sampling methodology to reduce costs, and find synergies with existing standards, perhaps reflected in formal recognition by the World Gold Council, to avoid duplication of effort. Stakeholder panels could also potentially complement external and internal audit processes. Should the audit be of the processes followed or of the reasonableness of the conclusions drawn?

Formal gold and conflict

But this would not help with commodities moving outside formal channels. There could also be complications over product with no documentation – for instance ore that had been stockpiled for a considerable period. In general the formal gold industry is already extremely careful in controlling supply chains, internal auditing and monitoring transportation. The challenge would be to focus enforcement of standards on areas of wider concern.

More fundamentally, on-going external assessment would be necessary to open-out and clarify the relationship between the formal gold industry and conflict. The nature and extent of links between tightly controlled, formal industry and conflict need to be elaborated and tested, particularly in difficult regions or countries.

THE MECHANISM

The WGC mechanism was developed from the premise that companies could and should operate in the most challenging environments. Clarity is needed on precisely what steps companies need to take in order to work in conflict-affected areas. Good overall management is necessary, including the need to train those in the most important jobs, such as site managers, to ensure compliance with the standards. Compliance could be included as part of formal employee evaluation, pay and promotion.

It is also necessary to ensure that the mechanism did not just focus on outcomes. Though formal declarations were demanded by the OECD, and maintaining credibility meant that formal, public certification would be necessary, minimising the links between mining and conflict necessitate that standards are also seen by producers and others in the supply chain as an on-going process. The standards need to shape processes as well as results.

INTERFACE WITH EXISTING FRAMEWORKS

Harmonisation

It was noted that the WGC standards were developed primarily for WGC members and thereafter other large scale operators, and may be in tension with those developed for other contexts, types of mining or companies. Clarification on the relationship between the OECD and the WGC standards is necessary, notably whether the standards were a mechanism by which WGC members could meet OECD standards, or an entirely separate process. Harmonisation around a single set of guidelines would be the ideal, including in relation to the approaches being pursued in the electronics and jewellery sectors.

Beyond the DRC

Other industry groups were already undertaking relevant assessment. The Electronic Industry Citizenship Coalition (EICC) had already set out conflict protocols and assessed conflict-affected regions. But the process by which this assessment was undertaken was not transparent and might not meet the needs of the gold industry. It was largely focussed on compliance with the demands of section 1502 of the Dodd-Frank Act, concentrating on smuggling routes from the DRC, rather than a fundamental conflict assessment. The risk aversion of US electronics firms was also essentially fuelling a boycott of African gold in an effort to avoid the due diligence requirements set out in the draft US Securities and Exchange Commission regulations. This was leading to perverse and unintended consequences on the ground, including amongst artisanal miners in the Eastern DRC.

The same was true of mechanisms related to trade in tin, tantalum and tungsten (the so-called ‘3Ts’). They were largely focussed on the DRC, which was widely-accepted to be conflict-affected, and so had little need to agree on a working definition of conflict, or carry out general conflict assessments. Gold, on the other hand, is found everywhere. The WCG standards therefore need general applicability, both geographically and temporally.

Uncertainty and 100% certification

The lack of clarity between different frameworks – the 'spaghetti junction' of acronyms – and the uncertainty surrounding emergent legal instruments such as the Dodd-Frank Act led to demands for 100% certification from nervous downstream users. But by describing the ultimate goal of the standards as 'conflict free' gold, the standards risk setting up a hostage to fortune – 100% comprehensive guarantees are not possible.

Careful messaging, communications and education will be vital to manage expectations. Interpretations of the Dodd-Frank Act regarding tin, tantalum and tungsten mining in Eastern DRC had significantly reduced trade, which had a negative impact on the livelihood of artisanal producers, and could lead to worsening conflict outcomes.

End.

ATTENDANCE

African Barrick Gold
AngloGold Ashanti
Brink's
Chatham House
Cicero
Environmental Resources Management
The Fairtrade Foundation
Foreign and Commonwealth Office
G4S International Logistics
Global Witness
Goldcorp
HSBC
International Council on Mining and Metals
International Institute for Environment and Development
KPMG
Overseas Development Institute
S&P Trading
STR Responsible Sourcing
World Gold Council