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Challenges in Lawyering: Business Operations in Troubled Jurisdictions and Conflict Zones

An article in the series Corporate Accountability in Conflict Zones

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INTRODUCTION

U.S. corporations, especially those in the mining and oil and gas industries, face many challenges in operating in difficult locations around the world. With the imperative to go where the natural resources occur, these challenges can be geographical, operational, legal, and ethical depending on remoteness, terrain, political stability, governing regime, and cultural differences. Absent a developed concept of “rule of law,” there is often no assurance of impartial courts, predictable enforcement of contracts, or due process in the treatment of employees or assets. Changes in regimes or economic conditions can result in an environment that has deteriorated significantly from the time a company made its initial country entry decision. Creeping expropriation through tax, royalty, or regulatory changes or total expropriation of assets is a potential risk. Expatriate employees are often asked to

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take local assignments, and local employees may be hired. Their safety and security is a central concern. Reputational risk is also a key consideration.

Imagine this realistic scenario presenting a perfect storm of problems: Several years after undertaking operations in a country, a company learns that a local agent may have paid bribes to obtain business on its behalf. The governing regime has become increasingly despotic. The U.S. government indicates that country sanctions may be imposed due to links between the regime and terrorism. The regime initiates decrees to double the royalty rate and tax rate on foreign concessions. A company expatriate employee is hijacked and possibly kidnapped on his way to work, and, because operations in the country are material to the company, prompt disclosure obligations apply.

Providing legal advice to business operations exposed to such events requires counsel to be aware of a wide range of considerations in order to plan a specific country entry, anticipate problems, reduce the risk of legal exposure, and react quickly to developments. Creative lawyering goes beyond knowledge of the applicable law to include understanding local culture and customs, understanding the company's strategy and risk tolerances, being mindful of corporate reputation, gathering relevant prior experience, and being willing to act as the conscience of the company. To address known and unknown risk conditions, companies and their lawyers can look to a number of guiding principles to shape decisions and responses.

As a starting point, U.S. corporations must comply with applicable U.S. law and local law in their operations. This obligation is supplemented by self-imposed standards set forth in codes of business conduct adopted by most major corporations and in international initiatives on human rights, security, and transparency to which many companies in extractive industries have subscribed.¹ The evolution of these initiatives in industries that have experienced the challenges for many decades can provide a context and precedent for companies in other industries with global operations.

CODES OF BUSINESS CONDUCT

Codes of Business Conduct are generally grounded in the obligation to comply with law and to conduct business in an ethical manner. Codes provide varying degrees of detail about a corporation's commitment to certain corporate values and to corporate social responsibility, including human rights and environmental stewardship. A key focus of these codes in the extractive industries is compliance with the Foreign Corrupt Practices Act ("FCPA"),² other anti-corruption laws, anti-boycott laws,

¹ See, e.g., ConocoPhillips, Code of Business Ethics and Conduct, <https://secure.ethicspoint.com/domain/media/en/gui/26697/code.pdf> [hereinafter ConocoPhillips Code of Conduct].

² Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq. (2010).

export controls, and country sanction requirements.³ Effective codes are supported within a corporation by communication, training, counseling, compliance certifications, reporting hot lines, audits, and investigations and disciplinary actions as needed. Many major international companies publish annual corporate social responsibility reports.⁴

Under the 2003 Sarbanes-Oxley Act⁵ and current Securities and Exchange Commission (“SEC”) rules,⁶ all SEC reporting companies are required to disclose their code of ethics or explain the reasons for not having one. A compliant code must be designed to, among other things, deter wrongdoing and promote ethical conduct, compliance with law, and internal reporting of violations. Any exceptions to the code granted with respect to senior officers must be publically reported.⁷ Copies of codes are available on major companies’ websites.

BRIBES AND FACILITATING PAYMENTS

The FCPA prohibits payments, directly or indirectly, to “foreign officials” made corruptly to obtain or retain business.⁸ The law permits facilitating payments to secure performance of routine governmental services.⁹ It is often difficult to determine who is a government “official” and what the boundaries of a “facilitating payment” are. While lawyers have profited from over thirty years of experience with the provisions of the FCPA, facts and circumstances are often novel, can vary widely and change over time, and thus require legal interpretation. For example, all members of a royal family may be government “officials” under the ruling structure in some countries, and employees of a local telecommunications company may all be government officials in a country where the utility is government owned. Making these interpretations in addition to determining the appropriateness of permissible payments, gifts, and entertainment is an ongoing activity for corporate lawyers.

The interplay of the FCPA with the laws of other nations and with a company’s Code of Business Conduct can pose novel issues. For example, the U.K. anti-corruption law, applicable to U.K. citizens employed by U.S. companies and to subsidiaries of

³ See, e.g., ConocoPhillips Code of Conduct, *supra* note 1.

⁴ See, e.g., Royal Dutch Shell plc, Sustainability Report: Royal Dutch Shell PLC Sustainability Report 2009, http://sustainabilityreport.shell.com/2009/servicepages/downloads/files/all_shell_sr09.pdf; Starbucks Corp., Global Responsibility Report 2009, <http://assets.starbucks.com/assets/ssp-g-p-full-report.pdf>.

⁵ Sarbanes Oxley Act of 2002, § 406, Pub. L. No. 107-204, 116 Stat. 745 (codified as amended in scattered sections of Chapter 15 of the U.S. Code).

⁶ 17 C.F.R. §§ 228–229, 249 (2003).

⁷ SEC Form 8-K, at Item 5.05 (2010).

⁸ Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1 to -3 (2010).

⁹ *Id.*

U.K. corporations, does not permit facilitating payments.¹⁰ Many Codes of Business Conduct do not permit bribes of any nature, not just those intended to obtain business.¹¹ Company lawyers must be ready to act decisively after conducting a thorough and rigorous analysis when confronted with real world situations like the following:

A police officer in a country in Southeast Asia threatens a company employee with arrest for a minor and questionable infraction by the company. Local law permits incarceration of indefinite duration pending a future hearing and trial. Local jails are notorious for substandard conditions and lack of inmate safety. The officer offers to drop the matter for a significant bribe. The payment appears justified on humanitarian grounds and would not be intended to obtain or retain business. The company's Code of Business Conduct prohibits all bribes and requires approval by the Board of Directors for any exception. It is not clear that the employee could exit the country. Because time is of the essence, it may be difficult to seek guidance from the Department of Justice. Under these circumstances, most companies would probably make the payment if the situation could not otherwise be resolved.

A group of "rebels" in a South American country have been sabotaging oil pipelines in remote areas to harass the government which earns substantial revenues from oil flows. The group offers "protection" to a company's pipelines in exchange for periodic payments. The rebels are not government officials. The company's Code of Business Conduct prohibits all bribes. Pipeline damage requires expensive repairs and interrupts significant company revenues. Most companies would probably decline to pay the extortion and seek additional protection from the government.

A country in Africa requires certain aspects of business to be conducted through local agents or with local suppliers. A company thoroughly vets a proposed agent through investigation, business history checks, references, reputation, and known contacts, and determines that the person qualifies and can be expected to act without making inappropriate payments on behalf of the company. The agent is knowledgeable about the FCPA and agrees to comply and certify compliance periodically. Two years later, the company learns facts that give it reason to believe the agent may have made

¹⁰ Bribery Act, 2010, c. 23, §§ 1–2 (U.K.).

¹¹ For example, the ConocoPhillips Code of Business Ethics and Conduct provides that "[i]t is unacceptable to directly or indirectly offer, pay, solicit or accept bribes or kickbacks in any form." ConocoPhillips Code of Conduct, *supra* note 1, at 10.

bribes in connection with the company's business with the government. The situation triggers the need to suspend payments to the agent, conduct an internal investigation, and consider self-reporting to the Department of Justice. The company must decide whether and when to terminate the agent, a decision that will surely have local repercussions.

SANCTIONED COUNTRIES

Attempting to operate in countries subject to U.S. sanctions can pose difficult compliance issues. Sanctions can vary significantly in their breadth and coverage and can change over time. A company might be operating legally in a country against which sanctions are later imposed or increased or might aspire to do as much business as is legally permitted in a country under limited sanctions in order to maintain business relationships.

Sanctions could be imposed by the U.S. government against countries with repressive regimes that sponsor terrorism or engage in human rights abuses. The Office of Foreign Asset Control ("OFAC") in the U.S. Department of Treasury currently enforces sanctions involving the Balkans, Belarus, Burma, Cote d'Ivoire, Cuba, Democratic Republic of the Congo, Iran, Iraq, Lebanon, Liberia, North Korea, Somalia, Sudan, Syria, and Zimbabwe.¹² The coverage of sanctions varies widely from comprehensive limitations on commercial and financial activity,¹³ to prohibition of engagement in oil and gas activities,¹⁴ to a combination of travel and export/import restrictions, to asset freezes. Prohibited activities change from time to time, as evidenced by recent U.N.¹⁵ and EU¹⁶ sanctions against Iran and OFAC regulations concerning Lebanon.¹⁷ Facilitation of unlawful activities is also prohibited. For example, receipt by a U.S. employee of a report describing a business opportunity

¹² See *OFAC Sanctions Programs*, OFAC, U.S. DEP'T OF TREASURY, www.ustreas.gov/offices/enforcement/ofac/programs (last visited Nov. 24, 2010).

¹³ See, e.g., OFAC, Cuba: What You Need to Know About U.S. Sanctions Against Cuba (2009), <http://www.ustreas.gov/offices/enforcement/ofac/programs/cuba/cuba.pdf>; Office of Foreign Assets Control, Iran: What You Need to Know About U.S. Sanctions: An Overview of O.F.A.C. Regulations Involving Sanctions Against Iran (2010), <http://www.ustreas.gov/offices/enforcement/ofac/programs/iran/iran.pdf>; Office of Foreign Assets Control, North Korea: An Overview of Sanctions with Respect to North Korea (2010), <http://www.ustreas.gov/offices/enforcement/ofac/programs/nkorea/nkorea.pdf>.

¹⁴ See Office of Foreign Assets Control, Sudan: What You Need to Know About U.S. Sanctions (2008), <http://www.ustreas.gov/offices/enforcement/ofac/programs/sudan/sudan.pdf>.

¹⁵ S.C. Res. 1929, ¶ 8, 21, U.N. Doc. S/RES/1929 (June 9, 2010).

¹⁶ 2010 O.J. (L 195) 39–40.

¹⁷ See Lebanon Sanctions Regulations, 75 Fed. Reg. 44,907 (July 30, 2010) (to be codified at 31 C.F.R. pt. 549).

transmitted for analysis to another employee not subject to the U.S. sanction regime could constitute facilitation.¹⁸

SECURITY OF COMPANY EMPLOYEES AND ASSETS

The most important challenges for a company operating in difficult locations are the safety of its employees and the security of its assets. Reliance is placed first on the local police force, which can vary considerably in its availability, effectiveness, and reliability. Major companies operating in troubled locales generally have a professional security department to analyze conditions, sensitize in-country employees, design secure corporate compounds, and contract for supplementary security arrangements as necessary. Kidnapping of company personnel is a concern, and responses are generally planned under crisis management programs. Some companies maintain hostage and kidnap insurance to fund potential ransom demands in order to avoid later taking financial considerations into account under crisis conditions.

The “Voluntary Principles on Security and Human Rights” provides a forum and ongoing dialogue on the sensitive considerations involved.¹⁹ The Voluntary Principles, developed in 2000 by the U.S. State Department and U.K. Foreign and Commonwealth Office, along with several NGOs and companies in the extractive industries, include commentary on the interactions between companies and public and private security providers and on risk assessments to support design of appropriate responses.²⁰ Comments cover written policies, appropriate training, proportional response, use of force, and human rights considerations. The Voluntary Principles initiative now has eighteen corporate participants and eight NGO participants, and Canada, The Netherlands, and Norway have joined as additional participating countries.²¹ A current dialogue among the participants is whether the next stage of development should focus on expanding company participation based on the current format of dialogue and information sharing or expand the program with the current participants to include more inspection and verification.²² Participation in this non-binding program enables development of standards of expected corporate behavior. Emphasis should be on companies “knowing and showing” rather than others “naming and shaming.”

¹⁸ *See id.*

¹⁹ *The Principles: Introduction*, VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS, <http://www.voluntaryprinciples.org/principles/introduction> (last visited Nov. 24, 2010) [hereinafter *Voluntary Principles, Introduction*].

²⁰ *Id.*

²¹ *Who’s Involved: Participants*, VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS, <http://www.voluntaryprinciples.org/participants/> (last visited Nov. 24, 2010).

²² *Id.*

With the emergence of large private security companies and increasing outsourcing of government military and police operations,²³ a recent effort has been launched to create a voluntary code of conduct for these entities and their employees. In October 2010, the finalized text of the “International Code of Conduct for Private Security Service Providers” was released by the sponsoring groups, the Swiss Federal Department of Foreign Affairs, the Geneva Centre for the Democratic Control of Armed Forces, and the Geneva Academy of International Humanitarian Law and Human Rights.²⁴ The effort is reported to have the involvement of companies in the security industry and the U.S. and U.K. governments. The code has provisions on selection and training of personnel, policies on appropriate use of force, grievance procedures, and rules of engagement on behalf of private and governmental clients, including respect for human rights, private property, and personal privacy.²⁵ The United States signed the code in November 2010.²⁶

TRANSPARENCY OF PAYMENTS

Companies in the extractive industries often make large payments to governments for concessions, royalties, taxes, and services. Many believe that payments associated with exploitation of a country’s natural resources should inure to the benefit of the local society. In many countries this has not been the case.²⁷ The Extractive Industries Transparency Initiative (“EITI”) was formed in 2003 to address this issue with a set of principles and implementation criteria for increased transparency.²⁸

²³ Hyder Gulam, *The Rise and Rise of Private Military Companies* (Nov. 8, 2005) (unpublished thesis for Certificate of Training in Peace Support Operations, Peace Operations Training Institute), <http://www.peaceopstraining.org/theses/gulam.pdf>. The U.S. State Department recently disclosed plans to more than double its private security guards in Iraq, up to as many as 7,000, to train Iraqi police and defend five fortified compounds. The security contractors would also search for roadside bombs, fly reconnaissance drones and staff quick reaction forces. The scale of the operation has been described as unprecedented. See Michael R. Gordon, *Civilians to Take U.S. Lead as Military Leaves Iraq*, N.Y. TIMES, Aug. 18, 2010, at A1.

²⁴ International Code of Conduct for Private Security Service Providers, Nov. 9, 2010, available at <http://www.state.gov/documents/organization/150711.pdf>.

²⁵ *Id.* at 29, 30–32, 45–49, 66–68.

²⁶ Press Release, U.S. Dep’t of State, Legal Adviser Harold Hongju Koh to Attend the Signing of the International Code of Conduct for Private Security Service Providers (Nov. 8, 2010), <http://www.state.gov/r/pa/prs/ps/2010/11/150669.htm>.

²⁷ See discussion of Nigeria and Angola in *U.S. Energy Security: West Africa and Latin America: Hearing Before the Subcomm. on International Economic Policy, Export and Trade Promotion of the S. Comm. on Foreign Relations*, 108th Cong. 64–70 (2003) (statement of Marina Ottaway, Senior Associate, Democracy and Rule of Law Project, Carnegie Endowment for International Peace).

²⁸ *The EITI Principles and Criteria*, EXTRACTIVE INDUS. TRANSPARENCY INITIATIVE, <http://eiti.org/eiti/principles> (last visited Nov. 24, 2010) [hereinafter EITI Principles].

EITI principles include these concepts: (a) the management of natural resource wealth is in the domain of sovereign governments; (b) prudent use of natural resource wealth can contribute to sustainable development and poverty reduction; (c) achievement of greater transparency must be set in the context of respect for contracts and law; and (d) public understanding of government revenues and expenditures over time could help public debate and inform choices for sustainable development.²⁹ The EITI implementation criteria include (a) regular publication by companies of oil, gas, and mining payments to governments and (b) audits and independent reconciliation of payments. Both companies and host countries are invited to participate. Countries become compliant participants by adopting programs to move toward reconciliation of reported revenues. Currently, some fifty companies are participants.³⁰ Three countries—Azerbaijan, Liberia, and Timor-Leste—are compliant, and twenty-six countries are candidates for compliance.³¹

Particularly after investigations of oil company payments to Equatorial Guinea launched by the SEC in 2003,³² there have been Congressional efforts to require public disclosure of oil and gas payments to governments. This became law in 2010 with passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which provides in Section 1504 for public reporting by SEC reporting oil, gas and mining companies of all payments to governments on a country-by-country and project-by-project basis.³³ The requirement is modeled on EITI voluntary reporting and applies to over twenty-nine of the world's thirty-two largest companies in the extractive industries.³⁴ The SEC will issue regulations implementing these reporting requirements and may look to EITI experience for guidance.

HUMAN RIGHTS

Companies can look to a variety of international conventions that set general standards and aspirational goals for conduct in global operations. The 1948 U.N. Universal Declaration of Human Rights, in addition to addressing standards for governmental actions, includes provisions on discrimination, free choice of employment, favorable working conditions, just remuneration, reasonable working

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² HUMAN RIGHTS WATCH, *WELL-OILED: OIL AND HUMAN RIGHTS IN EQUATORIAL NEW GUINEA* 32–33 (2009), http://www.hrw.org/sites/default/files/reports/bhr0709webwcover_0.pdf.

³³ Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 § 1504 (amending 15 U.S.C. § 78m by adding new subsection (q)).

³⁴ *Q&A: U.S. Financial Reform and Transparency in Oil, Gas and Mining*, REVENUE WATCH INST., July 15, 2010, <http://www.renewatch.org/news/news-article/united-states/qa-us-financial-reform-and-transparency-oil-gas-and-mining>.

hours, and unionization.³⁵ The International Labour Organization's Declaration on Fundamental Principles and Rights at Work includes provisions on the elimination of forced labor, child labor, and employment discrimination.³⁶ Many companies currently endorse these Declarations as part of their corporate social responsibility efforts. While not legally binding, endorsement sets aspirational goals and helps establish international norms.

In June 2011, the U.N. Human Rights Council will consider "Guiding Principles for the Implementation of the Protect, Respect and Remedy Framework" to be submitted by John Ruggie, the U.N. Secretary-General's Special Representative on Business and Human Rights.³⁷ His announced aim is to support business respect for human rights by, among other things, providing guidance to business enterprises operating in conflict-affected areas to identify and mitigate human rights risks.³⁸

As much as a company tries to adhere to its Code of Business Conduct, the Voluntary Principles, and the Universal Declaration of Human Rights, it can find itself in difficult scenarios. For example, a company may obtain an oil concession for exploration in a remote region of a country in Southeast Asia. After scouting the location and setting about to make arrangements for access and local labor, company officials return to the work site to discover that a small village has been relocated and an access road has been cut through the terrain, apparently with labor impressed by agents of the dictatorial regime. The company finds itself the unwitting beneficiary of these actions. Under the Voluntary Principles, the company is advised to "record and report allegations of abuses to the host country government, and urge investigation and prevention of recurrences."³⁹

Since the 1990s, local villagers with the assistance of various human rights NGO's have made use of the Alien Tort Claims Act⁴⁰ to attempt to have human rights abuse allegations heard in U.S. courts. Cases have been brought, for example, against Unocal regarding operations in Myanmar,⁴¹ Chevron in Nigeria⁴² and Ecuador,⁴³ and

³⁵ Universal Declaration of Human Rights, G.A. Res. 217A at 72, 75, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec. 10, 1948).

³⁶ Int'l Labour Org. [ILO], Declaration on Fundamental Principles and Rights at Work, 86th Sess., (June 18, 1998).

³⁷ Special Rep. of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, *Statement delivered to the General Assembly, Third Committee 2* (Oct. 26, 2010), available at <http://www.ohchr.org/Documents/Issues/Business/2010GA65Remarks.pdf>.

³⁸ *Id.* at 1–2. Ruggie posted the draft document on November 22, 2010. Draft Guiding Principles for the Implementation of the U.N. "Protect, Respect and Remedy" Framework, <http://www.srsgconsultation.org/>.

³⁹ See Voluntary Principles, Introduction, *supra* note 19.

⁴⁰ Alien Tort Claims Act (ATCA), 28 U.S.C. § 1350 (2006).

⁴¹ *Doe v. Unocal Corp.*, 248 F.3d 915 (9th Cir. 2001).

⁴² *Bowoto v. Chevron Corp.*, 557 F. Supp. 2d 1080 (N.D. Cal. 2008).

⁴³ *Aguinta v. Texaco*, 303 F.3d 470 (2d Cir. 2002).

ExxonMobil in Indonesia.⁴⁴ Outcomes have included settlement,⁴⁵ jury verdict in favor of the company,⁴⁶ dismissal for forum non conveniens,⁴⁷ and dismissal for lack of standing.⁴⁸ In September 2010, the Ninth Circuit Court of Appeals upheld the trial court verdict denying plaintiffs' request for a new trial.⁴⁹ The allegations against Chevron in Ecuador are now the subject of a class action in the Ecuadorian courts.⁵⁰ In August 2010, Chevron announced it is seeking dismissal of the action based on abusive misconduct by plaintiffs' counsel and the court's neutral environmental damages expert.⁵¹

ENFORCEMENT OF CONTRACTS

Due to the risk inherent in reliance on local courts for impartial decisions, many corporations have favored international arbitration as the venue of choice for the resolution of contractual disputes.

Concession agreements, spanning considerable time periods, generally include economic stabilization clauses that attempt to lock in the effect of prevailing tax and royalty regimes at the time business decisions are made to proceed with a substantial investment. The contracts generally provide for international arbitration of disputes in a mutually agreed venue.

Arbitration, based on a bilateral investment treaty or consent under host country investment law, is also the route to seek compensation for expropriation. In June 2007, the interests of ConocoPhillips in three operating oil fields were expropriated in Venezuela after the company declined to agree to alter their participation to a passive minority interest.⁵² The company took a financial charge of \$4.5 billion⁵³ and is now

⁴⁴ *Doe v. Exxon Mobil Corp.*, 393 F. Supp. 2d 20 (D.D.C. 2005). *See also Doe v. Exxon Mobil Corp.*, 573 F. Supp. 2d 16 (D.D.C. 2008).

⁴⁵ *Unocal Pays Out on Burma "Abuses"*, BBC NEWS, Mar. 22, 2005, <http://news.bbc.co.uk/2/hi/asia-pacific/4371995.stm>. *See also* Mark D. Kielsgard, *Unocal and the Demise of Corporate Neutrality*, 36 CAL. W. INT'L L.J. 185, 187 (2005).

⁴⁶ *Bowoto v. Chevron Corp.*, 621 F.3d 1116, 1121 (9th Cir. 2010) ("The jury rendered a verdict in favor of Chevron on all claims . . .").

⁴⁷ *Aguinda*, 303 F.3d at 480.

⁴⁸ *Doe v. Exxon Mobil*, 393 F. Supp. 2d at 28.

⁴⁹ *Bowoto*, 621 F.3d at 1116.

⁵⁰ *Aguinda v. ChevronTexaco Corp.*, No. 002-2003, Super. Ct. of J., Nueva Loja, May 7, 2003 (Ecuador).

⁵¹ Press Release, Chevron Corp., Chevron Files Petition in Ecuador Seeking Dismissal of Lawsuit (Aug. 6, 2010), http://www.chevron.com/chevron/pressreleases/article/08062010_chevronseekingdismissaloflawsuit.news.

⁵² CONOCOPHILLIPS, 2007 ANNUAL REPORT 47 n.13 (2007), available at http://wh.conocophillips.com/about/reports/ar07/fin_note_13.html.

⁵³ *Id.*

in ICSID arbitration seeking fair value compensation substantially in excess of this amount.⁵⁴

SHAREHOLDER PROPOSALS

Some company shareholders may take a view contrary to the Board of Directors and management as to the wisdom of doing business in certain jurisdictions, often because of concerns over impacts on indigenous peoples or local environments or over the human rights record of the host government. Companies often receive shareholder proposals to exit a country or a project or to alter aspects of operations in a country. Shareholder meetings provide a forum for discussion of the range of considerations that impact a company's decision to enter, remain in, or exit a particular project. At the 2010 Chevron annual meeting of shareholders there were proposals to clarify the company's guidelines for country selection to address human rights issues and reputational risk and to form a human rights committee including outside human rights experts to help the company understand the human rights impact of the company's business abroad.⁵⁵ The proposals had a favorable vote of twenty-four percent and seven percent, respectively.⁵⁶

COUNTRY EXIT

Calls for country exit are often responded to with the argument that the company's presence—offering employment, promoting community development, and demonstrating corporate values—is a positive force for change over time. If conditions in a country become too unsafe for employee presence or too unstable for economic operations, or if a project is no longer worth the cost of managing the host of attendant issues, country exit may become the only viable option. Sale of assets to a company that is better situated to manage its presence may be possible. However, exit can itself be problematic, as the action could trigger new tax audits or claims of environmental damage with demands for substantial compensation.

CRISIS MANAGEMENT

Most companies with international operations maintain well-developed crisis management plans to maximize preparedness for significant surprise events. Lawyers

⁵⁴ *ConocoPhillips Co. v. Bolivarian Rep. of Venezuela*, ICSID Case No. ARB/07/30 (pending), available at <http://icsid.worldbank.org/ICSID/FrontServlet?requestType=GenCaseDtlsRH&actionVal=ListPending>.

⁵⁵ Chevron Corp., Notice of the 2010 Annual Meeting and the 2010 Proxy Statement, available at <http://www.chevron.com/documents/pdf/chevron2010proxystatement.pdf>.

⁵⁶ *Id.*

play a critical role in the development and execution of these plans, as they are familiar with the wide range of applicable laws, potential pitfalls, obligations, and liabilities. Regular short desk top drills and periodic one- or two-day simulation exercises are very helpful in honing skills, reactions, and judgment in handling crisis situations—balancing liability exposures, legal obligations, reputational issues, public communication, disclosure requirements, and ethical considerations.

CONCLUSION

Companies that do business globally necessarily encounter ongoing challenges to the security of their personnel and assets, to reaping the economic benefit of contracts, and to obtaining justice in local courts. Companies can look to their own policies and compliance programs and to international declarations and initiatives for guidance in planning for and responding to sensitive situations. Initiatives like the Voluntary Principles on Security and Human Rights⁵⁷ and the Extractive Industries Transparency Initiative⁵⁸ will mature with time and provide context for companies outside the extractive industries. The variety of local conditions, the constant changes, and the possibility of surprise provide unending occasions for creative lawyering.

⁵⁷ Voluntary Principles, Introduction, *supra* note 19.

⁵⁸ EITI Principles, *supra* note 28.