

# Supranational governance: a challenge to building resilient states and peace

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## Executive summary

In troubled areas, the vital work of building peace and resilient states continues to be undone by weak and distorted governance at the supranational level. Transnational flows of weapons, narcotics, people, hazardous goods and especially money decisively influence who gets what, when and how. Resulting maldistributions of power and wealth can cripple state capacities, corrupt politics, delegitimise leadership and feed destructive conflict. Yet despite the high priority they give to fragile states, Western and multilateral approaches are failing to take these issues fully into account. As a result, peacebuilding and state-building efforts lack coherence and effectiveness, and can even be counter-productive.

This report discusses supranational governance and public authority in five issue areas: financial systems, security/small arms, migration, extractive industries and obnoxious goods. Public control in all five is weak, although a few initiatives in supranational governance are showing promise. For each issue area, the report outlines existing international rule and enforcement systems or regimes; the interests steering or blocking them; and the resulting deficits in democratic supervision, coherence and compliance.

In all issue areas, problems manifest themselves in complex ways and vary according to context. In addressing them, no blueprints are available; indeed, attention must be paid to specific settings and to crafting approaches to fit them. At the same time, closer comparative study can yield common denominators and rules of thumb. The report identifies some common factors in supranational governance that can worsen state fragility or improve state resilience. One meriting particular attention is today's global financial architecture – a central factor in all five issue areas.

The report concludes by suggesting ways in which supranational public authority may be better developed in order to promote state resilience and peacebuilding.

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## 1. Introduction

In troubled areas, the vital work of building peace and resilient states continues to be undone by weak and distorted governance at the supranational level. Many global flows of goods, people and money lack effective public control. Some unregulated flows – think of the global trade in narcotics – routinely frustrate the emergence of resilient states and societies. Indeed the lack of control over such flows helps delegitimise the state and political life, ushering in destructive conflict. Research on trafficking in drugs, weapons, gemstones, oil, precious metals, hazardous wastes and migrant labour has begun to throw light on both the promise and pitfalls in building supranational public authority. Less well illuminated are financial circuits, especially via secrecy jurisdictions. These massive, yet obscure systems are essentially constructions of law and policy whose purpose is to conceal wealth and how it has been acquired. They serve poor countries' dictators and drugs barons, but the main beneficiaries are in rich countries. The estimated annual value of illicit flows from non-Organisation for Economic Cooperation and Development (OECD) countries to rich jurisdictions since the year 2000 approaches one trillion dollars – an amount surpassing many times over the value of all flows from rich countries to poor, including foreign aid and private investment.<sup>1</sup> These poor-to-rich flows, and the legalised secrecy protecting them, represent serious perversions of global governance. These failures' net effect is to weaken or nullify efforts by donors and citizens to promote equitable growth, resilient states, responsive politics and peace.

Despite their importance, supranational flows and how to control them have received little attention among policymakers addressing fragility and

peacebuilding.<sup>2</sup> Instead, the policy community has confined its attention mainly to territorial levels. Its explanations are limited to narratives such as those focused on “greedy elites”. But such perspectives ignore the bigger picture, especially systems of incentives and collaborators offshore, that explains why elites behave as they do. Such incentives, including conspicuous consumption and access to the means of internal repression, shape elite preferences and influence their practices. Indeed, it would be remarkable if, as actors making rational choices, they ignored such things. Only very recently have studies for mainstream policymaking begun to yield pointers such as the following, written in 2010 for the OECD's Development Cooperation Directorate:

*Donors need to focus much more attention on the ways in which their interventions and behaviour indirectly affect the incentives of political and economic elites to engage in statebuilding. In particular they should concentrate on a small number of strategic global initiatives that are central to regulating global financial flows, oil revenues and the narcotics trade, and on action to control tax evasion, money laundering, corruption, terrorist financing and flows of money relating to international criminal networks, all with a view to limiting the access of elites and opposition groups in fragile states to unearned income.<sup>3</sup>*

1 Dev Kar and Carly Curcio, *Illicit Financial Flows from Developing Countries: 2000-2009*, Washington DC, Global Financial Integrity, 2011. China, Russia and Middle East oil exporters account for the bulk of these flows, yet those from less-resilient countries such as Nigeria, Egypt and Côte d'Ivoire were substantial, certainly in proportion to their overall national incomes.

2 There is no mention of (or only the briefest allusions to) global flows in the following key documents: OECD (Organisation for Economic Cooperation and Development) DAC Fragile States Group, *Piloting the Principles for Good International Engagement in Fragile States*, Paris, OECD, 2005; World Bank, *Fragile States: Good Practice in Country Assistance Strategies*, Washington DC, World Bank, 2005; and OECD DAC Fragile States Group, *Whole of Government Approaches to Fragile States*, Paris, OECD, 2006. A recent 100-page survey of policy literature (Catherine Dom, “FTI and fragile states and fragile partnerships: background literature review”, Report no. 6, Oxford, Mokoro/Oxford Policy Management, 2009) cites no reference whatever regarding transnational flows or other external drivers of fragility. Policy shapers surveyed in 2009 in six fragile states pay almost no attention to external drivers or their governance, according to OECD, *Monitoring the Principles for Good International Engagement in Fragile States and Situations; Fragile States Principles Monitoring Survey: Global Report*, Paris, OECD, 2010.

3 Sue Unsworth, *The State's Legitimacy in Fragile Situations: Unpacking Complexity*, Paris, OECD, 2010, p 56.

Put in these clear terms, such advice represents a breakthrough. Among the greatest merits of such measures is that they are within the power and responsibility of donor states. Governments of rich countries can actually make concrete choices now to stop doing harm in fragile places. This report notes a few concrete measures in law and public action. But the record thus far has been one of neglect. Research, rule-making and public action on these issues have lagged behind. How might donors and the peacebuilding policy community now begin to address supranational governance as a “missing link” in building state resilience and peace? Some circuits are becoming targets of fully fledged transnational *regimes*, i.e. sets of implicit or explicit rules, norms and procedures around which main actors’ behaviour is supposed to converge in given areas of international relations. Depending on their scope and political backing, publicly responsive regimes can help tackle the drivers of fragility. Some international regimes, such as for nuclear inspection, are of little relevance here. Others, such as those promoting secrecy jurisdictions, are entirely relevant, yet remain resistant to real change. Despite earnest talk of coherence, Western policies guiding aid, trade and security still fail to curb transnational systems that frustrate resilience and peace. The following section sketches some elements of global governance regimes in respect to five issue areas.

## 2. Challenges in five issue areas

Supranational governance may affect state resilience and peacebuilding for better or for worse. This section discusses five issue areas to illustrate this proposition. It does not offer an exhaustive catalogue of issues; indeed, it omits some important issues such as narcotics, trade treaties, foreign aid and climate change. It aims not to make an inventory, but rather to probe patterns and thereby illuminate problems. Issues of supranational governance and public authority in each issue area are discussed in terms of the following three kinds of deficits:<sup>4</sup>

1. Democratic deficit: On the input side, citizens lack adequate knowledge of and effective voice over regimes or those tasked with imple-

menting them; on the output side, the effective realisation of public policies falls short and/or is not properly accounted for.

2. Coherence deficit: Rules align poorly with, or even contradict other rules and policies, both within and across jurisdictions.

3. Compliance deficit: Rules are not observed because enforcement mechanisms lack capacity, legitimacy, scope, political autonomy and sanctioning power.

These deficits differ across the issue areas, but also across different places, cultures and historical periods. They usually manifest themselves in the interplay of actors in fragile and powerful states. Given asymmetric power, especially in terms of aid and financial and security systems, emphasis here falls on the responsibilities of Western public and private actors, as they have been the main architects and builders of today’s supranational regimes. However, the growing economic and political muscle of some non-Western states raises the distinct possibility that Western monopolies over international norms and rules will soon end. Hence, some supranational regimes may face defections and loss of legitimacy; new regional or ideological “clubs” may form the basis of competing rather than universal regimes. Indian, Chinese and Russian stances toward global climate accords are but one instance of emerging challenges in global governance. For many issues, political and entrepreneurial classes in fragile areas no longer confine their attentions to American or European interlocutors, but deal with an increasingly wider range of official and non-state actors. Weaker states may thereby gain negotiating leverage, but new deals favouring less fragility and more resilience are anything but guaranteed.

The issues selected for attention here have salience and impact in different ways in different places. There is no uniform diagnosis, nor a single cure-all for these deficits. Indeed, close attention to the specific circumstances of problems, actors and interests, and to the supranational regimes being constructed (or not) is likely to yield more-useful insights.

<sup>4</sup> As used in this report, a deficit refers to a condition in which the design or performance of legitimate institutions fails to meet minimum expectations or standards based on widely accepted and tested principles and practices in the policy area in question.

## 2.1 Financial circuits

### 2.1.1 Problem cluster

Uncontrolled flows of money can be major drivers of fragility. Fabulous wealth accumulated offshore by autocracies in Tunisia and Egypt helped stoke public outrage at their ruling dynasties, culminating in their overthrow in 2011. Secrecy jurisdictions are major pillars of support for narco-states and for the traffickers in illicit goods and services for whom state fragility offers many advantages.

Repercussions for equitable development and political stability usually impact three overlapping fields: (1) monetary measures, such as when liquidity shortages force up interest rates or where capital shifts toward short-term speculative activities, abandoning productive, job-creating activities; (2) fiscal measures, such as where revenue shortfalls reduce government spending on public services, social protection and infrastructure, or where income is redistributed upwards through taxes and extra borrowing; and (3) in balance of payments terms, such as where foreign exchange shortages lead to further public austerity, loss of sovereignty, and the upward redistribution of income and wealth. Accompanying and often helping drive such shifts is the explosive growth of the informal economy, militarisation and criminalisation. Moneyed and politically well-connected interests drive financial flows, but also shape rules that promote and protect these flows, ensuring their concealment and exemption from taxation. Because these circuits seldom harm and frequently benefit financial and political interests in richer countries, they tend to be under-researched and kept off public agendas. Journalists' accounts of tax evasion are unlikely to appear in the pages of newsreports whose owners themselves benefit from tax havens. Today, however, as OECD governments seek ways to reduce the incoherence of their foreign political and economic policies, shadow circuits are finally getting official attention that has been long overdue.

### 2.1.2 Actors and interests

The financialisation of market systems began to accelerate in the late 1970s as intermediation through banks, brokerage houses, hedge funds, insurance companies and real estate firms came to occupy capitalism's main engine rooms. These agents capture financial surpluses from Western,

but especially non-Western economies, extracting rents from them. The architecture of this new global power has grown thanks to both national and supranational rules and institutions. These came about through official intervention, but not always through transparent politics. Multilateral financial authorities – ostensibly international public servants – have adopted the preferences of Western private financial corporations as their own policies.<sup>5</sup> Secrecy jurisdictions and “shadow banking” have been significant outcomes. Today, in the face of fiscal crises, tax havens have begun to face official criticism as contributors to global financial anarchy. Yet despite clear evidence that they help delegitimise governments, drain public revenues and foster large-scale crime – among other hallmarks of fragility – they are resisting efforts to close them down.<sup>6</sup> Meanwhile, in fragile settings such as Afghanistan and most of sub-Saharan Africa, international financial institutions (IFIs) and donors have worked hard to reconfigure states around strong, well-staffed central banks and financial ministries whose policies converge around norms aligned with the financialisation of today's global economy and its corresponding regimes.

### 2.1.3 Existing international regimes

Rules and norms governing capital flows, exchange rates, taxation, financial markets and foreign debt have taken shape over decades, as have a host of conventions and bodies to supervise and enforce these rules. Among the founding principles of this global financial architecture is the norm that capital mobility must not be impeded, with the result that short-term financial gain takes precedence over longer-term social, political or environmental equity and stability. In many lower-income areas, there is evidence that this supranational regime has contributed to slow, volatile and especially

5 For example, the International Monetary Fund (IMF) tends to “champion the U.S. financial sector”. Such biases crippled IMF abilities to foresee and respond to the global economic crisis unleashed in 2007. Those conclusions appear in a report by the Independent Evaluation Office of the IMF, *IMF Performance in the Run-up to the Financial and Economic Crisis: IMF Surveillance in 2004–07*, Washington DC, IMF, 10 January 2011, p 12.

6 See, for example, Ronan Palan, Richard Murphy and Christian Chavagneux, *Tax Havens: How Globalization Really Works*, Ithaca and London, Cornell University Press, 2010; and Nicholas Shaxson, *Treasure Islands: Tax Havens and the Men Who Stole the World*, London, Bodley Head, 2011.

inequitable economic growth. It has affected state resilience through one of its key subregimes: global secrecy jurisdictions facilitating illicit flows and tax evasion. Contrary to popular images of suitcases full of cash, the main mechanism for shifting capital out of fragile economies is in fact through the mispricing of goods and services by firms, a largely legalised and common vehicle for evading/avoiding taxes and duties.<sup>7</sup> Other subregimes include efforts to curb money laundering<sup>8</sup> and policy conditionalities that reduce income to the state, especially in low-income nations,<sup>9</sup> thus reducing public services despite costs to government legitimacy.

#### 2.14 Democracy deficits

On the input side of policymaking, the powers of national officials, citizens and their elected representatives are limited. Voting rights, secrecy and other norms prevailing in the IMF, World Bank, regional development banks and specialised agencies such as the Financial Stability Forum remain heavily weighted toward financial interests in rich OECD countries. Information access is asymmetrical and often non-transparent, setting limits to even-handed economic governance. Moreover, private interests exercise increasing power over regulation and economic governance in general; private law and private forums of global governance are advancing at the expense of public control. It is for these reasons that policy insiders speak of the “capture” of public institutions, both domestic and international, by financial interests.<sup>10</sup>

7 “Trade mispricing: refers to the deliberate overinvoicing of imports or underinvoicing of exports, usually for the purpose of tax evasion .... Trade mispricing is a major conduit through which profits of companies are shifted from developing countries to developed country banks and tax havens. Indeed, at least half of the US\$1 trillion in annual illicit financial flows can be attributed to this conduit” (Ann Hollingshead, *The Implied Tax Revenue Loss from Trade Mispricing*, Washington DC, Global Financial Integrity, February 2010, p 2).

8 The weaknesses of today’s anti-money laundering regime overshadow its strengths. See, for example, M. Arnone and P. Padoan, “Anti-money laundering by international institutions: a preliminary assessment”, *European Journal of Law and Economics*, vol 26, no. 3, 2008, pp 361-386.

9 On massive revenue losses suffered by the poorest states owing to aid conditionalities requiring the reduction of taxes on external flows, see T. Baumsgaard and M. Keen, “Tax revenue and (or?) trade liberalization”, IMF Report no. 05/112, Washington DC, IMF, 2005.

10 Among these is former IMF chief economist Simon Johnson, who has described this capture in such articles as “The quiet coup”, *The Atlantic*, May 2009, and “Who caused the currency wars?”, *Project Syndicate*, 13 October 2010.

#### 2.15 Coherence deficits

Today’s global financial architecture shows major deficits in coherence. These deficits manifest themselves in massive financial flows from capital-starved poor areas to capital-abundant rich areas. In terms of conventional economic theory, this is equivalent to water flowing uphill. Official policies underpinning the financial architecture, such as the Basel Banking Accords (1988, 2004, 2010), confer advantages on the very financial institutions that pose the greatest risks to financial stability. Policy elites prefer restricted public sector spending, favouring more austerity during economic crises and less austerity in the boom times; such pro-cyclical approaches generate growth-limiting, boom-and-bust volatility. They offer no shock absorbers for fragile economies. These elites further encourage competition and “self-insurance” rather than collective public goods mechanisms that would buffer fragile economies against volatility and losses.

Secrecy jurisdictions, also termed offshore financial centres, are a result of deliberate policy by the American, British and other Western governments. Many arose through formal governmental procedures and are enshrined in law. This is why the Congressional Research Service, a body established by the US Congress, has concluded that “Because much of the corporate tax revenue loss arises from activities that either are legal or appear to be so, it is difficult to address these issues other than with changes in the tax law”.<sup>11</sup> Nonetheless, in the face of such incoherence, only a few agencies focused on development and fragile states pay attention to these vital matters.<sup>12</sup>

#### 2.16 Compliance deficits

Compliance with the financial rules of the game poses few problems for powerful actors, for they usually help write the rules in the first place, or strongly influence their enforcement. Exemplifying soft law approaches devised by financial corporations are the Wolfsberg Anti-money Laundering Principles (2000)

11 CRS (Congressional Research Service), *Tax Havens: International Tax Avoidance and Evasion*, Washington DC, CRS, 2009, p 22.

12 The Norwegian government has shown greater readiness to probe these issues than have other OECD members. See Commission on Capital Flight from Poor Countries, *Tax Havens and Development: Status, Analyses and measures*, Oslo, Norad, 2009; and Kari Heggstad and Odd-Helge Fjeldstad, *How Banks Assist Capital Flight from Africa: A Literature Review*, Oslo, Norad, 2009.

and the Equator Principles (2003) on environmental and social aspects of project loans. These point in positive directions, but remain merely statements of intent that lack means of enforcement or compliance, as proposed by the pressure groups that had taken the initiative in the first place.<sup>13</sup> Indeed, recent research suggests continuing failures to comply with officially agreed regimes, such as those promoted by the 1997 OECD Convention on Bribery.<sup>14</sup> In the face of a powerful coalition of actors, today's anti-money laundering regime, including the OECD Financial Action Task Force (1989), is proving unable to achieve compliance.<sup>15</sup> As one specialist concluded: "The final verdict on the regime is at best, 'much ado about nothing', at worse, an elaborate cosmetic exercise with detrimental effects on weaker actors of the system."<sup>16</sup>

## 2.2 Arms and armed services

### 2.2.1 Problem clusters

Poor control over flows of weapons and security services carries especially serious implications where domestic governance is distorted and weak, sometimes pushing that governance into downward spirals of repression and open violence.<sup>17</sup> In sub-Saharan Africa, the incidence of armed conflict rises and falls with inflows of arms.<sup>18</sup> These problems intensify as politicians, business people, and private citizens are pushed and pulled toward acquiring arms and armed services. In fragile settings, current international rules offer few serious barriers or disincentives to acquiring these "force multipliers" of violence.

13 Such as the Collevocchio Declaration on Financial Institutions and Sustainability of January 2003, which the banks countered with the Equator Principles in June 2003.

14 Fritz Heimann and Gillian Dell, *Progress Report 2010: Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, Berlin, Transparency International, 2010.

15 Mariano-Florentino Cuéllar, "The tenuous relationship between the fight against money laundering and the disruption of criminal finance", *Journal of Criminal Law & Criminology*, vol 93, no. 2-3, 2003, pp 311-464.

16 Eleni Tsingou, "Who governs and why? The making of the global anti-money laundering regime", Geoffrey Underhill, Jasper Blom and Daniel Mügge, eds, *Global Financial Integration Thirty Years On: From Reform to Crisis*, Cambridge, Cambridge University Press, 2010, p 186.

17 Damien Rogers, *Postinternationalism and Small Arms Control: Theory, Politics, Security*, London, Ashgate, 2009.

18 Cassidy Craft and Joseph Smaldone, "The arms trade and the incidence of political violence in sub-Saharan Africa, 1967-97", *Journal of Peace Research*, vol 39, no. 6, 2002, pp 693-710.

### 2.2.2 Actors and interests

Powerful interest blocs, some operating beyond effective public control, have long shaped the politics of this realm. These include the following:

- **Arms manufacturers:** This industry looms large and enjoys large public subsidies in some OECD countries. In markets for small arms and light weapons (SALW), however, their once-overwhelming market positions have been challenged by non-OECD producers who have entered the market with cheaper products and even fewer scruples about who buys them and for what purposes.<sup>19</sup>
- **Arms brokers:** Especially since the end of the Cold War, arms brokers have flourished because of regulatory loopholes in some jurisdictions and the absence of a functioning international regime to eliminate these legal sanctuaries.<sup>20</sup>
- **Private military/security contractors:** Since the 1990s a large and growing global security industry (GSI) has emerged, encouraged in part by New Public Management thinking and related policy thrusts for privatisation and deregulation. Beyond routine guard duty, private security forces are routinely deployed in fragile settings for purposes of political repression and counter-insurgency. Because they escape normal public accountability, they help block the emergence of democratic politics. In most settings, these businesses effectively face little or no public regulation.



### 2.2.3 Existing international regimes

Concerns about organised crime and terrorism, as well as about human rights abuses, have led to efforts to curb illicit arms flows. Laws have developed at the national level, mainly focused on individuals' access to firearms and on licences to export firearms.

19 Barbara Gimelli Sulashvili, "Multiplying the sources: licensed and unlicensed military production", *Small Arms Survey 2007: Guns and the City*, Geneva, Small Arms Survey, 2007; Eric Berman and Jonah Leff, "Light weapons: products, producers, and proliferation", *Small Arms Survey 2008: Risk and Resilience*, Geneva, Small Arms Survey, 2008.

20 Rachel Stohl, *The Tangled Web of Illicit Arms Trafficking*, Washington DC, Center for American Progress, 2004.

At the supranational level, however, the focal areas are narrow and the loopholes many: “There are currently no universally accepted, legally binding global standards that apply in every country to prevent irresponsible arms transfers.”<sup>21</sup> In the 1990s some momentum for change gathered, resulting in 2001 in the UN Firearms Protocol and UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. However, most weapons-exporting countries have shown no haste to ratify the Firearms Protocol (with Norway being among only five West European countries to have done so) or to develop a more comprehensive legal regime to curb illicit flows. An international Arms Trade Treaty is currently under discussion, with tentative backing by the American government. Progress thus far has taken place mostly at the regional level, but gaps remain. Some see in the EU’s Code of Conduct on Arms Exports (1998, revised and adopted as a Common Position in 2008) an advanced instrument for transparency and peer pressure among European governments. But it remains inadequate in respect to, among other things, public oversight and safeguards about end uses.<sup>22</sup>

Arms brokering is among a number of industries still beyond effective international control: “the stark reality is that over two-thirds of states have yet to establish a national legal framework to control any form of arms brokering, and many existing national controls are too weak.”<sup>23</sup>

Regarding the global security industry, the Montreux Document (2008) encourages private military and security companies to observe human rights and humanitarian law in conflict zones, but explicitly excludes binding rules or sanctions. Hence a dangerous, fast-growing, state-promoted

private industry lacks effective international rules and mechanisms to control it, especially in fragile areas.<sup>24</sup>

#### 2.2.4 Democratic deficits

Open discussion of international rules is constrained by old norms and rules of secrecy and by industry “capture” of governments. Some private investors have acquired rights to run their own security forces beyond government purview, as in the case of Mittal Steel in Liberia.<sup>25</sup> This leads to toothless public control over military/security sectors. Nevertheless, a few limited regimes, such as the Mine Ban Treaty (1997) and the Convention on Cluster Munitions (2008), have shown that sustained citizen action can provoke change in international rule-making, even in the face of hostility or non-cooperation by major powers.

#### 2.2.5 Coherence deficits

Industrial, commercial and military interests in powerful states constrain international policy on SALW and the GSI.<sup>26</sup> In the case of America, a powerful “rights-based” interest bloc frustrates gun control at both the domestic and international levels. This influence is particularly important because America is a major exporter of conventional arms (legal and illicit) and fervent promoter of private security services. American official ambivalence on the control of SALW and the GSI is a key source of incoherence and inertia.<sup>27</sup> China and Russia, and also some OECD members, show little enthusiasm for reducing their arms exports. In preventing the *illicit trade* in SALW, the EU and America have shown somewhat more interest. But because most weapons were produced and traded legally before entering

21 IRIN, “Guns out of control: the continuing threat of small arms”, IRIN In-depth, UN Office for the Coordination of Humanitarian Affairs, May 2006, p 4. Geopolitical reasons for this continuing impasse are outlined in Denise Garcia, “Arms transfers beyond the state-to-state realm”, *International Studies Perspectives*, vol 10, no. 2, 2009, pp 151-168.

22 For example, Paul Holtom and Mark Bromley, “The limitations of European Union reports on arms exports: the case of Central Asia”, *SIPRI Insights on Peace and Security*, no. 2010/5, Stockholm, SIPRI, September 2010.

23 Brian Wood, “International initiatives to prevent illicit brokering of arms and related materials”, *Disarmament Forum*, no. 3, 2009, p 6.

24 James Cockayne et al., *Beyond Market Forces: Regulating the Global Security Industry*, New York, International Peace Institute, 2009. In many settings, providers of these armed services effectively enjoy immunity from prosecution for violent criminal acts. See, for example, James Risen, “Efforts to prosecute Blackwater are collapsing”, *New York Times*, 20 October 2010.

25 Global Witness, *Heavy Mittal? A State within a State: The Inequitable Mineral Development Agreement between the Government of Liberia and Mittal Steel Holdings NV*, London, Global Witness, 2006.

26 Asif Efrat, “Toward internationally regulated goods: controlling the trade in small arms and light weapons”, *International Organization*, no. 64, 2010, pp 97-131.

27 Rachel Stohl and E.J. Hogendoorn, *Stopping the Destructive Spread of Small Arms*, Washington DC, Center for American Progress, 2010. A major exception is the vigorous American official effort to control man-portable air-defence systems.

illicit circuits, the coherence of the illicit-trade focus is open to question. Incoherence will probably persist as long as extreme global asymmetries of power persist. Disarming (some) actors in the South while reinforcing military advantages of (some) powers in the North builds a shaky basis for the global acceptance of new rules. More coherence on counter-measures might be gained if policy researchers on SALW/the GSI and others working in related fields (trade in narcotics, offshore finance, etc.) could learn from each other and even work together.

### 2.2.6 Compliance deficits

Compliance with a weak international regime is almost a non sequitur, since there is little that is solid enough to comply with. However, even in cases of concerted international agreements, such as UN arms embargoes in the 1990s on belligerents in Sierra Leone and Liberia, compliance has largely failed. These cases illustrate how “soft” regulation across a range of commodities and services – merchant shipping, air cargo licensing, gemstones, hardwoods, drugs, banking – allows belligerents to obtain most of the arms they want.<sup>28</sup> Arms embargoes in West Africa have been largely symbolic gestures, as legal loopholes have been abundant and capacities for enforcement feeble.<sup>29</sup> However, what eventually did reduce illicit commodity circuits were radical constraints on the belligerents’ *financial* circuitry.<sup>30</sup> Other compliance deficits arise from failures of international conventions to bring all major players, including America, Russia and China, on board.<sup>31</sup>

28 See, for example, Hugh Griffiths and Mark Bromley, *Air Transport and Destabilizing Commodity Flows*, SIPRI Policy Report no. 24, Stockholm, SIPRI, 2009.

29 Owen Greene and Elizabeth Kirkham, *Preventing Diversion of Small Arms and Light Weapons: Strengthening Border Management under the UN Programme of Action*, Biting the Bullet Report, London, Saferworld, 2010.

30 Maraike Wenzel and Sami Faltas, “Tightening the screws in West African arms embargoes”, Michael Brzoska and George A. Lopez, eds, *Putting Teeth in the Tiger: Improving the Effectiveness of Arms Embargoes, Contributions to Conflict Management, Peace Economics and Development*, vol 10, Bingley, Emerald Group, 2009, pp 101-136. The efficacy of targeting financial flows was demonstrated clearly in the case of sanctions on the Angolan movement UNITA and the case of curbs on illicit activities by North Korea, as described in David L. Asher et al., *Pressure: Coercive Economic Statecraft and U.S. National Security*, Washington DC, Center for New American Security, 2011.

31 Zeray Yihdego “The EU’s role in restraining the unrestrained trade in conventional weapons”, *German Law Journal*, vol 10, no. 3, 2009, p 302.

## 2.3 Extractive industries

### 2.3.1 Problem cluster

When they dominate a fragile political economy, natural resources can have perverse political and economic consequences. In sub-Saharan Africa, this “paradox of plenty” often arises from economic patterns established over many decades, even centuries. Economic growth in these places is polarised, inequitable and volatile. Such countries tend to be saddled with *rentier* political systems unresponsive to citizens except through clientelism. Domestic output declines as imported goods crowd it out. Debts accumulate, making long-term claims on extractive sector earnings and public revenues.

### 2.3.2 Actors and interests

Hydrocarbons and some precious metals are among resources virtually “hardwired” into global systems of technology, production and final consumption. These orient and drive potent corporate and military interests in both the North and South. Extractive systems produce rents that link formal and informal businesspeople with political figures. These rent-based circuits of patronage serve as political “glue” holding together national political classes, as in Angola. Investors in forests and farmlands for productive or speculative purposes are triggering comparable processes.

Financial sector companies, eager to sell loans and secrecy jurisdiction services, closely shadow states dependent on extractive industries, as do purveyors of military hardware and security services. Extractive and financial interest blocs thus reinforce each others’ pursuits of non-transparency and other forms of exemption from public oversight and control.

### 2.3.3 Existing international regimes

Hydrocarbon and other extractive industries have over many decades shaped national and international rules and procedures, chiefly to protect corporate interests and serve privileged consumers. Yet a number of rules showing some autonomy of these industries have begun to fall into place, thanks mainly to pressure by policy activists. In response, corporations and governments have formulated narrow, unenforceable soft law measures, exemplified by the Extractive Industry



Transparency Initiative (EITI).<sup>32</sup> Being voluntary, such schemes effectively oblige no one to account for anything. Showing even less promise have been donor-backed efforts to influence African governments, such as in Chad, to put revenues into special funds for developmental purposes. In 2010, however, new American legislation opened the way towards genuinely effective disclosure and thus the taxation of extractive industry revenues.<sup>33</sup> This had added to pressures, already being felt from citizens' groups and the European Parliament, to align the EU's Transparency Directive (dating from 2004) with the new American law and thus to make corporate transparency not merely voluntary, but mandatory.

### 2.3.4 Democratic deficits

On the input side, the hydrocarbon industry manages public debate through its influence in the courts and the media. On the output side, its successful "capture" of regulators, media, and political parties is evident in massive public subsidies and impediments to sustainable energy policies. Western security policies are also strongly affected, as seen in costly military deployments in oil-rich zones. In states dependent on extractive industries, national legislatures are poorly informed and unable to demand accountability about the executive branches' use of industry revenues or press for the fair taxation of corporations. This results from re-engineering the state apparatus over decades. Normative-legal compasses have been changed and lines of accountability reoriented so that, for example, state executives are insulated from popular pressures – hallmarks of weakened political legitimacy and state fragility.<sup>34</sup> More specific curbs on national sovereignty and transparency stem from such things

as "stabilisation clauses" imposed (often in secret) by transnational corporations in their investment agreements with host governments.<sup>35</sup>

In recent years policy activists have helped put teeth into disclosure rules that extractive industry corporations are supposed to obey. Combined with other measures, such as those to curb the attractions of secrecy jurisdictions, these rules can help reduce democratic deficits that hinder the emergence of resilient states and peace.

### 2.3.5 Coherence deficits

Both within international regimes and around them, coherence deficits are evident. The OECD Guidelines for Multinational Enterprises, for example, initially omitted the wider gamut of corporate operations, such as supply chains; today, thanks to years of activist pressures, that large loophole is being closed.<sup>36</sup> Because it omits global circuits for diamonds, the Kimberley Process, begun in 2003 to control conflict diamonds, lacks coherence. Its arbitrary and inconsistent use of crucial terms like "conflict" and "legitimate governments" and its reliance on non-mandatory "due diligence" formulas further limit its scope and effectiveness. Because the Kimberley system applies to Sierra Leone but not to Israel as diamond exporters, it seems more a "disciplinary tool directed against nonstate actors and weak and pariah states, rather than one aimed at the phenomenon of conflict diamonds per se".<sup>37</sup> For tropical hardwoods, a viable regime with teeth seems to be emerging in the recent advance of EU forest product trade legislation roughly matching American legislation banning the import of illegally harvested timber.<sup>38</sup>

32 The EITI's weaknesses have long been observed. It has been compared to "a bathtub with five holes and you're making only one of them slightly smaller" (Alexandra Gillies, "Reputational concerns and the emergence of oil sector transparency as an international norm", *International Studies Quarterly*, vol 54, 2010, p 122.

33 Provision 1504 (Disclosure of Payments by Resource Extraction Issuers) of the Dodd–Frank Wall Street Reform and Consumer Protection Act, enacted in July 2010, requires oil, gas and mining companies registered with the US Securities and Exchange Commission publicly to report how much they pay each government for access to exportable resources.

34 Saskia Sassen, *Territory, Authority, Rights*, Princeton, Princeton University Press, 2006, pp 222-271; Shari Bryan and Barrie Hofmann, eds, *Transparency and Accountability in Africa's Extractive Industries: The Role of the Legislature*, Washington DC, National Democratic Institute for International Affairs, 2007.

35 Prem Sikka, "Accounting for human rights: the challenge of globalization and foreign investment agreements", Report, Centre for Global Accountability, Colchester, University of Essex, 2011.

36 See OECD Watch, "Assessing adherence to the OECD Guidelines' supply chain provision", *Fact Sheet*, no. 4, Amsterdam, OECD Watch, 2007; and OECD, *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-affected and High-risk Areas*, Paris, OECD, 2010.

37 Neil Cooper, "On forgetful goldfish and failed mnemonics: transforming political economies of conflict using voluntarism, regulation, and supervision", *Economics of Peace and Security Journal*, vol 5, no. 1, 2010, p 46. As a legitimate quasi-official system of global governance, its future is now in question; see Fatal Transactions, "Vote of no confidence of Kimberley Process Civil Society Coalition at Kinshasa meeting – press release", 24 June 2011, <http://fataltransactions.org/News>.

38 EU forest law and governance legislation similar to the American Lacey Act (amended in June 2008 to cover timber imports) will come into effect in 2012.

Overall, the coherence of international regimes-in-the-making is constrained by corporate power. For leaderships in fragile states, incentives to collude with actors in global “shadow” circuits can far outweigh those offered by the aid and development industry, whose own stance toward extractive industries is ambiguous (e.g. in donor-influenced Mozambique, the private extractive industry is a leading pillar of the development model backed by donors). There is an urgent need for revised national laws and for open and fair negotiations that frame extractive industry taxation and royalty agreements; for at present, most agreements disadvantage poor country treasuries and political sovereignty generally, the result of asymmetric bargaining capacities and, probably, the corruption of national elites by extractive corporations.<sup>39</sup>

### 2.3.6 Compliance deficits

Non-binding codes and other soft law to encourage better corporate behaviour show generally weak and uneven impacts in fragile settings.<sup>40</sup> However, corporations have begun to pay closer attention to compliance with existing hard law, such as the American Alien Tort Statute. They face increasing risks to reputations brought on by lawsuits in OECD countries, although not yet before international tribunals.<sup>41</sup> On more general normative-legal planes, compliance often fails because means to enforce rules (a) are inaccessible to victims, (b) operate too slowly to make any real difference, (c) lack sufficiently wide mandates, including geographical reach, (d) lack political independence and expertise, (e) offer no real redress in the short or longer term, and (f) lack public legitimacy and transparency.<sup>42</sup>

39 Gavin Hilson and Roy Maconachie, “The extractive industries transparency initiative: panacea or white elephant for sub-Saharan Africa?”, Jeremy Richards, ed., *Mining, Society and a Sustainable World*, Berlin/Heidelberg, Springer-Verlag, 2009, pp 471-492.

40 Many researchers share this conclusion. See, for example, Amy Lehr, “Old and new governance approaches to conflict minerals: all are better than one”, *Harvard International Law Journal Online*, vol 52, November 2010, pp 148-170, [http://www.harvardilj.org/wp-content/uploads/2010/11/HILJ-Online\\_52\\_Lehr.pdf](http://www.harvardilj.org/wp-content/uploads/2010/11/HILJ-Online_52_Lehr.pdf).

41 Jonathan Drimmer, “Human rights and the extractive industries: litigation and compliance trends”, *Journal of World Energy Law & Business*, vol 3, no. 2, 2010, pp 121-139.

42 Adapted from ICHRP (International Council on Human Rights Policy), *Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies*, Versoix, ICHRP, February 2002. Exceptions to this pattern are detectable in cases highlighted in BASESwiki, a web-based initiative of the UN secretary-general’s special representative on business and human rights, [http://baseswiki.org/en/Extractive\\_Mechanisms](http://baseswiki.org/en/Extractive_Mechanisms).

## 2.4 Migration and displacement

### 2.4.1 Problem clusters

Forces pushing or pulling people to move from insecure places to more secure and prosperous places have been intensifying for decades. In-migration, especially when it occurs rapidly or with no local assimilation, often fuels the inflammable politics of xenophobia. Out-migration can generate, at least in its early phases, remittance flows that can stabilise households in poor zones in the short term, but also enhance inequalities over the longer term; they are no panacea.<sup>43</sup> Diasporas based in better-off places can play a variety of political roles, from human rights lobbying to fundraising for insurgencies.

Outcomes for fragile places have not improved since the 1990s, when America, followed by the EU, began to portray migration as a security problem and to make and enforce laws accordingly.<sup>44</sup> These measures have repercussions not only on Northern borders, but also in Southern countries, among which migration takes place on a far larger scale than along the South-North axis. Around the world, different laws govern different streams of people, depending on what they are seeking: physical safety, political asylum or economic opportunities. However, countries experiencing in-migration may themselves interpret those motivations according to prevailing domestic circumstances. How migrants are categorised is thus often fuzzy and arbitrary, making it difficult to analyse this realm of flows and the supranational regimes intended to control them.

### 2.4.2 Actors and interests

Influence over migration policies relevant to fragility/resilience depends on power configurations specific to the political economy of each country, and to subregions within it. Powerful in many labour-receiving countries are:

- firms and industries reliant on cheap and docile labour: agribusiness, light manufacturing, commerce and a wide number of services;

43 Ilene Grabel, “Remittances, migration and other panaceas: the end of outward-looking development strategies?”, *Triple Crisis*, 24 September 2010, <http://triplecrisis.com>.

44 Michela Ceccorulli, “Migration as a security threat: internal and external dynamics in the European Union”, GARNET Report no. 65/09, April 2009.

- large and usually informal businesses that broker labour, sometimes associated with criminal practices, including coercive or deceptive recruitment;
- politicians and social movements: those grabbing most headlines aim to incite exclusion, deportation and even violence against migrants; and
- police, frontier and related security services: in poorly controlled settings, these officials prey on migrants, using arbitrary practices, including violence, thus adding to the informalisation of governance and the delegitimation of politics.

### 2.4.3 Existing international regimes

In contrast to other economic realms such as the commodity trade, finance and intellectual property, the realm of labour migration has no overarching international regime and even less a single global authority. Each sovereign nation and even some subnational governments, such as the states of Alabama and Arizona in America, assert prerogatives over migration. By contrast, a long-standing international regime exists for people displaced outside their countries and formally defined as refugees.

Attention is not always proportionate to the issues at hand. For example, the trafficking of women for prostitution has triggered much attention, resulting in the UN's Trafficking Protocol (2000). Yet large discrepancies appear between what campaigns have claimed and what close research has been able to verify about the scope and drivers of this branch of trafficking. Meanwhile, international systems to manage uncoerced, but unprotected migrants are fragmented and weak. Attention is distorted in geographic terms; the scale of South-South migration is much larger, but receives far less attention than South-North circuits. However, this is now changing under pressures to enlist African states in the management of West European immigration-cum-security policies.<sup>45</sup>

45 Oliver Bakewell, "South-South migration and human development: reflections on African experiences", UN Development Programme, Human Development Reports, Research Report 2009/07, April 2009.

### 2.4.4 Democratic deficits

On the input side, public debate and policymaking about migration are often poorly informed and over-heated. Policies can be reactive, driven by the politics of fear. Public debate is commonly distorted by misconceptions about why migration happens and who benefits from the lack of fair and rational ways to regulate it. Politically vulnerable migrants and refugees themselves have virtually no voice, while employers benefitting from such weaknesses often enjoy political influence. On the output side, some systems can be democratically counterproductive, in that they help produce huge substrata of undocumented people and expanded opportunities to extort and otherwise abuse vulnerable people. These can easily fuel the inflammable politics of inter-group fear and humiliation, as seen, for example, in the upheaval in Côte d'Ivoire since 2000.

### 2.4.5 Coherence deficits

Massive refugee populations and streams of work seekers testify to the incoherence of contemporary international policy and practice.<sup>46</sup> Coherence suffers where policy emphasis is not aligned with the scope and depth of problems.<sup>47</sup> By reconstructing migration as an issue of security for richer zones and involving Southern governments in what are effectively border control operations, Western governments risk continued neglect of a main driver of migration, namely the lack of decent jobs close to home. While in the EU some pragmatic experiments in regulating temporary Africa-EU labour flows have begun,<sup>48</sup> a coherent regime for migrant labour has yet to crystallise.

46 Most displacement today is a result of Western intervention and its repercussions. Afghanistan and Iraq, followed by Somalia and the Democratic Republic of Congo, today account for the bulk of the world's refugees and internally displaced people. See UNHCR (UN High Commissioner for Refugees), *Global Report 2009*, Geneva, UNHCR, 2010.

47 Analysed in the case of the EU in Christophe Bertossi, ed., *How can Europeans Agree on a Common Migration Policy? Report of the IFRI/Barrow Cadbury Trust Seminar, Anglo-French Policy Dialogue on Regularisation and Co-Development*, Paris, IFRI, February 2009.

48 On the basis of the EU Council's 2005 Global Approach to Migration, the 2006 EU-Africa Declaration on Migration and Development, and the EU's 2008 European Pact on Immigration and Asylum. See Jean-Pierre Cassarino, *EU Mobility Partnerships: Expression of a New Compromise*, Washington DC, Migration Policy Institute, September 2009.

### **2.4.6 Compliance deficits**

Regarding lower-skilled migrant flows, compliance falls short in routine tasks such as issuing visas and following up those who overstay their visas. More serious compliance gaps arise from failure to tackle abuse by labour brokers in “shadow” circuits and by employers, such as through workplace inspection. These gaps stand out insofar as there is nothing inherently difficult about compliance, as demonstrated by smoothly run systems to manage the migration of skilled workers.

For refugees and asylum seekers, compliance often falls short of the protection mandated in international conventions, even by agencies such as the UN High Commissioner for Refugees, for whom the mandates are obligatory. Given ambiguities created by parallel or overlapping regimes, governments may simply take an exit option from one regime in order to derive advantages from another; the EU, for example, often reframes refugee flows as economic migrant flows, thereby shifting the international regime under which it justifies (for domestic political reasons) its policies. But compliance deficits also have deeper, geopolitical roots; they seem likely to continue as long as potent mixtures of domestic xenophobia and hard-handed geopolitics continue to prevail.

## **2.5 Obnoxious goods**

### **2.5.1 Problem clusters**

Trade in certain goods can put public health and the environment at risk, and even fuel destabilising politics. Hazardous waste dumping, human organ trafficking, unauthorised pharmaceuticals, contraband cigarettes and gambling are among obnoxious businesses.<sup>49</sup> These circuits are growing forcefully across frontiers, some of them in the hands of “conflict entrepreneurs”. They deny states needed tax revenues, undermine respect for the law, and damage the legitimacy of public politics and public authority by corrupting or otherwise overwhelming them.

### **2.5.2 Actors and interests**

Flows and their brokers are specific to regions, but tend to be found in semi-formal “shadow” economic realms. Cigarettes (genuine and falsified

brands) and unauthorised pharmaceutical copies originate mainly in East and South Asia. Wastes and toxic substances originate mainly in Europe and North America. Corporations strongly shape regulatory processes and mercantile promotion policies of governments, such as Canada’s drive to export white asbestos, a known carcinogen, and its efforts to block international restrictions on it. Lucrative price structures reflect government-granted privileges, which are now enshrined in World Trade Organisation intellectual property regulations shaped through vigorous lobbying by large pharmaceutical corporations. Such artificial prices stimulate unauthorised drug copies sold at lower prices – a natural market response, but one bringing forth a “shadow” market with shadowy market players.

### **2.5.3 Existing international regimes**

International mechanisms to control these circuits range from weak to potentially strong, depending on the product branch. Among stronger regimes is that based on the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989) and various special conventions and protocols from the 1990s. Despite the non-participation of America, Russia and a few others, an international regime of rules and enforcement has developed substantial contours, as shown in the wide adherence to the Basel Convention, adequate systems of reporting, consultation, a UN special rapporteur, a major non-governmental organisation watchdog, and domestic legislation and enforcement systems largely in place in OECD countries. By contrast, an effort to build an international regime to control unauthorised pharmaceuticals has triggered dispute between, on one side, corporations seeking to curb competition and, on the other, poor countries seeking affordable medicines.

### **2.5.4 Democratic deficits**

With important exceptions such as nuclear materials, hazardous or obnoxious goods rarely appear on political agendas in the North, in part because of an assumption that only poor people far away in the South are really at risk. Further constraints on the input side stem from corporate influence in formulating and negotiating regulations and standards that underpin international regimes, but also in getting things done in fragile settings. This influence is most marked in

<sup>49</sup> An online compilation of research and news accounts of various illicit flows, not all of them relevant to fragility and peacemaking, is Havoscope, <http://www.havoscope.com>.

knowledge-based sectors where patent protection has been crucial for many industries, especially pharmaceuticals. On the output side, investigative journalists and human rights commissions have fed vigorous new public debates on protecting public health and the environment (as in Côte d'Ivoire regarding toxic-waste dumping) and the businesses of “conflict entrepreneurs” (as in Kosovo and other Balkan states).<sup>50</sup>

### 2.5.5 Coherence deficits

In these trade and environmental regimes and proto-regimes, coherence deficits tend to arise from market failures shaped by asymmetric market powers and are exacerbated by state failures to provide equitable and transparent systems to make and implement regulation. They also result from pressures in contemporary capitalism, especially on poorer states, to commercialise aspects of their sovereignty. Politicians in small, poor jurisdictions face incentives to allow entrepreneurs to operate bank secrecy services, tax-exempt export processing zones (of which 1,735 have been identified in 133 countries<sup>51</sup>), gambling casinos and even wholly illicit trades such as in human organs. Corporations, in their turn, face incentives to “shop” for the least restrictive regulatory jurisdiction; this “forum shopping” encourages degenerative competition among states. Corporations also have incentives to shape laws and procedures that generate lucrative rents for themselves, but which also attract competitors operating in “shadow” markets. Dumping hazardous wastes in poor countries reflects such race-to-the-bottom arrangements.

### 2.5.6 Compliance deficits

Despite tighter controls upstream, compliance deficits remain, exemplified in continuing flows of “e-waste” (cast-off computers, mobile telephones, etc.) dumped in Africa and Asia. Deficits in upstream and downstream compliance with pharmaceutical regulations cast even larger shadows of money and corruption in fragile settings.

50 The Kosovo Liberation Army pursued its war aims with profits from trade in human organs removed from its prisoners. See CoE (Council of Europe), *Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo: Report to Committee on Legal Affairs and Human Rights*, Strasbourg, CoE Parliamentary Assembly, 12 December 2010. Regarding public debate on toxic waste in Côte d'Ivoire, thanks are due to an anonymous reviewer of an earlier draft of this report.

51 François Bost, ed., *Atlas mondial des zones franches*, Paris, La Documentation Française, 2010.

However, strategies that improve compliance are emerging. Research into an effective environmental subregime to control POPs (persistent organic pollutants) suggests ways to reduce supranational governance deficits with three combined juridical and enforcement approaches, namely: “levelling down”, which emphasises the contractual nature of international agreements; “levelling up”, which strengthens state accountability; and “governing across”, which concretises arrangements among public and private actors networked across national frontiers to set norms and standards and even to adjudicate disputes.<sup>52</sup>

## 3. Synthesis and pointers

The foregoing cases illustrate challenges to building resilient states and peace where rules and mechanisms governing global flows are weak or distorted. The cases underline the need to pay attention to the specific circumstances of any given issue area, time or place. Despite the importance of the contexts and particulars of each case, some general patterns are detectable. This section suggests some of these commonalities in international regimes, or where one might look for them. It assigns them to one of four main categories according to their net effects in helping to (1) accelerate or (2) inhibit state fragility, and according to the level at which these factors mainly operate: (3) supraterritorial or (4) territorial. This four-part schema offers a necessarily simplified means of portraying complex dynamics that cut across and reinforce one another.

### 3.1 Supraterritorial accelerators of fragility

Today's global financial architecture is a problem posing as a solution. It often acts as a “force multiplier” for illicit circuits involving subsoil resources, timber, arms, narcotics, work seekers and obnoxious commodities. These stem from combinations of the following:

- the relaxed supervision and control of capital flows, sometimes as a condition of support from donors and IFIs;
- secrecy jurisdictions, also termed offshore financial centres or tax havens;

52 Veerle Heyvaert, “Levelling down, levelling up, and governing across: three responses to hybridization in international law”, *European Journal of International Law*, vol 20, no. 3, 2009, pp 247-274.

- transfer-pricing rules and lax control over corporate mispricing;
- the dependence of legitimate financial sector firms on illicit circuits, such as money laundering and drugs trafficking;<sup>53</sup>
- regulatory competition spurred by “shopping” for the least-restrictive regulatory climate, thereby promoting “degenerative regulation” especially harmful for labour rights and environmental protection;
- the “commercialisation of sovereignty” in which territorial laws and rules (tax-exempt banking, export-processing zones, licences for merchant shipping, etc.) become tradable assets;
- weak regime legitimacy, because rich and powerful states, or their allies, effectively exempt themselves from the rules;
- regulatory “capture” of legislators, policymakers and rule enforcers, such as central banks and agencies supposed to supervise banks and others in the financial sector;<sup>54</sup>
- political subordination and the incapacities of agencies tasked with enforcing international regimes, such as the British Serious Fraud Office; showing greater effectiveness, however, is a comparable American body, the Foreign Corrupt Practices Act Unit of the US Department of Justice;<sup>55</sup> and

- macroeconomic and governance formulas that neglect regulation as a logical corollary to donor and IFI policy conditionalities promoting liberalisation, New Public Management methods and privatisation.<sup>56</sup>

### 3.2 Supraterritorial inhibitors of fragility

The following have a positive effect in this area:

- global frameworks that reinforce national rules (such as on toxic wastes) and enforcement systems, and that form bases for supranational information exchange, learning and coordination;
- global approaches promoting “paradigm shifts” in policy and law; for example, signs of a shift to a “harm reduction” paradigm on narcotics and soft drugs are detectable, although the end of the prohibition/repression paradigm is not yet at hand;
- international regimes with real teeth, such as new American and EU laws to curb illicit trade in tropical hardwoods, or rules that face little concerted political counter-leverage by non-state actors, such as waste-dumping firms;
- corporate fears of legal sanctions for failing to report payments to national governments and possibly fears of damage to reputation for disrespecting environmental and human rights norms; and
- research and advocacy that reframe issues in ways that catalyse the pursuit of public control;<sup>57</sup> thus far, such efforts have stemmed from informal coalitions of investigative jour-

53 The head of the UN Office on Drugs and Crime sees drug money as having been crucial to the liquidity of many large banks (Rajeev Syal, “Drug money saved banks in global crisis, claims UN advisor”, *The Observer*, 13 December 2009). In the Netherlands, tax laws and related financial services attract foreign corporate clients and wealthy individuals, thereby contributing significantly to the Dutch economy; the financial sector thus enjoys considerable political protection and pushes back against calls for laws and law enforcement to curb illicit flows.

54 Warwick Commission on International Financial Reform, “Regulatory capture”, *In Praise of Uneven Playing Fields: The Report of the Second Warwick Commission*, Coventry, University of Warwick, 2009, ch. 5.

55 John Pappalardo and Kara Bombach, “Justice Department beefs up Foreign Corrupt Act enforcement”, *National Defense Magazine*, February 2011. Regarding the UK’s Serious Fraud Office, now facing budget cutbacks, see Neil Baker, “Bargains and the backlash”, *International Bar News*, June 2010, pp 24-27.

56 Even the World Bank has come to acknowledge the perverse effects on governance, such as in a 2010 report on corruption in Africa: “The more these elites are able to privatize state resources, the more they can distribute favors and create a base of consensus for their privileged position” (World Bank, *Silent and Lethal: How Quiet Corruption Undermines Africa’s Development Efforts*, Washington DC, World Bank, 2010, p 3). Publications like that of James Putzel (*Do No Harm: International Support for Statebuilding*, Paris, OECD, 2010) underscore the urgency of adopting much more coherent and constructive approaches than the liberalisation approaches prevailing since the late 1970s.

57 A symposium on international regimes recently concluded that “the way to influence actor behavior is to create problem framings and problem answers for governments” (Karen Alter and Sofie Meunier, “The politics of international regime complexity”, *Perspectives on Politics*, vol 7, no. 1, March 2009, p 18).

nalists, policy activists or “epistemic communities” working on issue areas such as the trade in weapons or diamonds.

### 3.3 Territorial accelerators of fragility

In this area, the following apply:

- lowered state legitimacy, where public authorities cannot control and sanction private firms, criminal gangs and other non-state actors at interfaces with the global economy, in both its formal and “shadow” realms;
- lowered capacities and incentives to fulfil international regime mandates due to a “hollowing out” of state institutions through austerity, privatisation, etc. leading to weak or arbitrary action by public agencies, regulators, public prosecutors’ offices, etc. that are under-resourced, politically vulnerable or “captured” by special interests; and
- arbitrary powers over the application of rules at the discretion of officials, thus allowing them to extract bribes or other illicit rents from businesses and citizens.

### 3.4 Territorial inhibitors of fragility

The following have a positive effect:

- strong and fair taxation systems on both external and internal flows and assets;
- reduced opportunities for the private and arbitrary extraction of rents and their accumulation in secrecy jurisdictions;
- the alignment of relevant domestic law and regulations with international regimes, especially regarding labour, taxation and environmental protection; and
- the enforcement of these laws and regulations by agents (both state officials and non-official “watchdogs” outside the state) who enjoy political autonomy and adequate resources to operate well.<sup>58</sup>

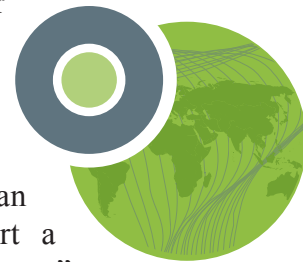
<sup>58</sup> For example, semi-autonomous revenue authorities show promise in sub-Saharan Africa. See Odd-Helge Fjeldstad and Mick Moore, “Revenue authorities and public authority in sub-Saharan Africa”, *Journal of Modern African Studies*, vol 47, no. 1, 2009, pp 1-18.

## 4. Ways forward

What pathways and concrete measures are worth pursuing? This concluding section suggests some pointers.

### 4.1 Conceptual approaches

In light of emerging knowledge about global flows and failures in governing them, there is a need to rethink current approaches to building state resilience and peace. When it comes to the question “What works?”, credible answers can be surprisingly few. For example, in response to a recent UK Department for International Development request for literature on “how the international community can effectively intervene to support a reversal of deteriorating governance”, a well-established research unit replied that it “was not possible to find any examples of successful interventions which have supported a reversal in deteriorating governance”.<sup>59</sup>



Potentially fruitful alternatives, alluded to briefly in this report, include approaches that:

- locate fragility/resilience problems in a supranational or global context;
- take transnational realms as analytically prior to national realms; especially for highly extraverted countries, the territorial or “downstream” realm can thus be better understood in terms of the supraterritorial or “upstream” realm;
- adopt perspectives based on complexity and interactivity that respect contexts, yet accept that the whole often helps shape the parts;
- work from a political economy perspective comprising informal systems, and the interplay of political and economic incentives and interest groups at the domestic and global

<sup>59</sup> GSDRC Helpdesk, *Helpdesk Research Report: Deteriorating Governance*, Birmingham, Governance and Social Development Resource Centre, 2010, p 2.

levels,<sup>60</sup> which means putting the drivers of inequality at the centre of analyses;<sup>61</sup> and

- promote the “publicness” of supranational measures, which requires moving beyond a conventional concept of global governance insofar as it “flattens the difference between public and private phenomena, as well as between formal and informal ones” and employing instead concepts of public authority with its “batch of acts of specific, identifiable actors causing specific, identifiable effects”.<sup>62</sup>

#### 4.2 Pointers for further research

Among questions meriting further probing and discussion are the following, perhaps best approached issue by issue or region by region:

- What policy experiments show promise in reducing democratic/accountability deficits in the control of supranational flows affecting fragility/resilience?
- What interests are pushing back against these measures? What permissive rules or operational systems are at work in blocking or impeding them?

- What kinds of countervailing collective action, through what channels (juridical, representative, regulatory, media, etc.) and methods (such as in reframing problems and remedies) show promise in reducing democratic and compliance deficits of control over supranational flows?
- What resilience-building measures aimed at controlling supranational flows and forces may be developed in combination with indigenous norms and institutions?
- What advantages for control of supranational flows may be achieved from the combined “levelling down, levelling up, and governing across” approach (noted at the end of section 2.5)?
- What impacts on territorial control efforts are detectable from the advent of international norms/rules promoted by non-Western powers, especially China, and possibly Brazil?
- What are the implications of supranationally focused research on fragility/resilience for paradigms of supranational politics? In particular, are there risks that framing problems as supra-territorial may allow policymakers at the territorial level to avoid rather than squarely face their concrete and real political responsibilities?

60 As advocated for the Norwegian aid system. See Diana Cammack and Anne Thomson, “Power analysis and evaluation: the case of Norwegian development support to Zambia”, Oxford Policy Management Brief no. 06-2008, Oxford, 2008.

61 Increasing inequality and conflict are strongly associated. See E. V. K. Fitzgerald, “Global linkages, vulnerable economies and the outbreak of conflict”, *Development*, vol 42, no. 3, 1999, pp 57-64; and Hanne Fjelde and Gudrun Ostby, “Economic inequality and non-state conflicts in Africa”, report presented at the annual meeting of the American Political Science Association, 2010. On the mutual reinforcement of inequality and corruption in fragile settings, see Eric Uslaner, “Corruption and the inequality trap in Africa”, *AfroBarometer Report no. 69*, April 2007.

62 A. von Bogdandy, P. Dann and M. Goldmann, “Developing the publicness of public international law: towards a legal framework for global governance activities”, A. von Bogdandy et al., eds, *The Exercise of Public Authority by International Institutions*, Berlin, Springer-Verlag, 2010, p 10.