



World Gold Council Roundtable on Conflict-Free Gold

New York City – September 7, 2011

Discussion Summary

On the 7th of September 2011, members of civil society, government, and the private sector convened in New York City to discuss the World Gold Council's (WGC) draft Conflict-Free Gold Standards. The day-long Roundtable was facilitated by the independent, nonpartisan, and nonprofit organization, The Fund for Peace. WGC, the initiator of the meeting, sought feedback and guidance to ensure the Standard does what it intends and addresses what matters to all relevant stakeholders in order to build consensus and support within a broader global context. Experts assembled to share perspectives, make further recommendations, discuss efficacy and practical implementation, and jointly recognize the challenges facing companies operating in complex and sensitive environments. The following is an overview of the various discussion topics, opinions, and advice brought to light by participants during the session. The session was held under the Chatham House Rule.

Overview and Intentions

Representatives of the WGC set the stage with an overview of the origins of the draft Conflict-Free Gold Standards. The initiative was born out of a growing conviction that a standard was requisite to demonstrate responsible operation in high-risk and conflict-affected areas and that it may, in the future, serve as a tool to develop guidance for the industry as a whole. While members of the World Gold Council have a history of responsible production, it is difficult to demonstrate to external stakeholders exactly how this is achieved in practice. Previously, there was a dearth of guidance on how to work responsibly in conflict-affected and high-risk environments; this Standard is meant to bridge the gap. Created in accordance with OECD guidance on the responsible sourcing of minerals from conflict-affected and high risk areas, the prime components are assessments of conflict, company, and commodity. To ensure the Standard commands confidence and is embraced by necessary stakeholders, the WGC had published drafts for written comment in June 2011 and subsequently established a series of Roundtable meetings to garner further guidance and actionable suggestions to improve the framework.

The participants of the first Roundtable sought a deeper understanding of the Standard, the on-the-ground implications, and the ways the WGC had gone about development. Other goals of contributors were:

- To develop a better understanding of the producer side of the Standard and site-level implementation.
- To find out how multi-stakeholder groups may help industry tackle difficult issues.
- To assess how this process fits within the context of the ICGLR.
- To discuss cross-applicability and how the Standard both supplements and compliments other extant initiatives.
- To examine Chain of Custody issues from exploration/mining/refining perspectives.
- To converse on the impact of Dodd-Frank Section 1502.
- And more generally, to share thoughts and glean advantages of other stakeholders.

The four main topics on the agenda were 1) Defining and Recognizing Conflict 2) Creating and Maintaining Credibility 3) The Mechanism and 4) The Big Picture.

1. Defining and Recognizing Conflict

Assessing conflict has been one of the trickiest issues to tackle. Participants recognized that defining countries or regions as being in conflict is inherently difficult. For industry, publicly recognizing countries in which they work as being (as the OECD defines them) in conflict or at high risk of conflict could put strain on the company-host government relationship. The private sector, therefore, prefers objective lists of regions or countries over flexible and discretionary guidelines, and the World Gold Council seeks a third-party source for that identification. Furthermore, aside from Dodd Frank Section 1502 which declares conflict in the DRC outright, governments have also been loath to pass judgments on their peers. Political aversion to conflict recognition increases the complexity for the application of the standard. Thus, the dialogue commenced by examining the challenges of holistically and definitively assessing conflict.

Recommendations and points on Conflict Assessment:

- Suggestions were put forth to give primacy to assessments made by the international community such as the ICRC. However, some felt international organizations (like the ICRC) may wish to remain neutral. The UN was argued by some to have the greatest international legitimacy but others pointed out that Security Council resolutions depended crucially on the power dynamics between the P5 rather than an objective assessment of conflict situations.
- There was a suggestion that one could use the definition of conflict as per international humanitarian law, but others considered that would be too limiting, as it does not take pre- and post-conflict situations adequately into account.
- Since conflict is in constant flux, its definition ought to encompass pre- and post- conflict climates as well.
- Regulatory sanctions/assessments (such as import/export provisions) were posited as useful guides, though these provisions tend to lag or remain in place after conflict is ended.
- To address the oft-protracted nature of conflict, assessments should move beyond not causing towards not sustaining or prolonging conflict.
- Using 'conflict' and 'high risk' interchangeably leads to ambiguity.
- Other initiatives such as the EITI, BGR, ICGLR, or the Ruggie framework are useful models; the OECD provides pragmatic guidance, but is not a decision making body.

There was group consensus that no one is currently assessing and publicizing conflict sufficiently, and this problem extends beyond the gold industry. With governments and industry being unable or unwilling to provide this requisite function, there is an open space for civil society to fill the void. It was suggested that a multi-stakeholder group may be one way to assess conflict and stay abreast of changing climates and unpredictable situations. With goals of clarity, flexibility and ease, regional expert groups could utilize academics and NGOs on the ground. A concern was raised that this group may suffer legitimacy issues – i.e. they cannot determine conflict without international law as a guideline. In response, it was posited that the international perspective must be balanced with the critical reality on the ground; access to local expertise is one way to achieve this. It was also recognized, however, that this would take time and resources. The members of the World Gold Council need criteria to presently apply to the Standards.

Some participants felt that the industry was being faint-hearted in not being willing to apply the criteria provided by the OECD; why could these issues be left to risk assessments provided by companies? Others suggested that there are a number of existing lists of countries (e.g. as operated by FAFO in the US) as being 'high risk' in terms of weak governance or vulnerability to criminal groups and money laundering. In relation to the selection of regions being left to the choice of individual countries, it was pointed out that this would be a difficult way in which to operate a standard if two gold mining companies, operating in close proximity came to different conclusions about the conflict risks inherent in that region; stakeholders would expect consistency of application of a standard.

Regional vs. National Assessments

Participants concurred that national-level assessments largely overlook regional disparities (e.g. it is not ideal to apply the same conflict label to both South Kivu and Katanga). Proximity tests would allow for more focused regional analysis. How one might determine the distance or porousness between different regions of a single state entity was not addressed.

Snapshot of Industry Perspectives

Companies require an unambiguous delineation of conflict in order to have something clear and transparent to present host governments and to avoid uncomfortable situations and/or legal issues. Internal mechanisms to address conflict already exist. Most companies are risk averse; perception matters. One participant stated it would be illogical for a refinery to accept gold that is even tentatively perceived as being conflict-gold. South Sudan was brought up as an example of a country which involves. It is known to have gold reserves but their provenance is uncertain; in this situation it is unclear whether a refiner should accept it even though it comes from a sovereign government. . Regarding gold from the DRC, many refiners would rather turn away questionable gold than wager a good reputation. Currently only a very small proportion of global gold production comes from active conflict zones, including 0.6% of newly mined gold coming from the DRC itself.

There is a shared interest between companies and people - they both want stability and sustainable peace. As a result of legislation and the de facto embargo in the DRC, the supply chain has been altered. The WGC Conflict-Free Gold Standard is neither about stigmatizing countries nor specifically about the DRC. It is intended to aid member companies demonstrate that they can operate responsibly in conflict and high-risk areas globally.

Western Perspectives

How to assess conflict is only one part of the quandary; who defines it is an equally valid consideration. Western perspectives may differ from the way other cultures recognize conflict. There is a mounting perception that international standards are being imposed by a Western agenda on producing countries. Assessments which seemingly do not account for other points of view are often left vulnerable to criticism. This inevitably begs the question – who is the Standard ultimately intended for? Who requires assurance? End-users demand it; a primary objective is to externally demonstrate that members operate responsibly. Accountability also extends beyond consumers to civil society at large. A representative of an international organization drew attention to the importance of international humanitarian law as the foundation of the standards; companies should not try to make it up as they go along.

Bigger than Gold

The complexities of defining conflict extend far beyond the gold industry alone. Convening stakeholders to identify and assess conflict is a global, cross-sector undertaking. Particularly in light of the recent challenges facing the Kimberley Process (KP), the timing may be right to use this Standard to create an overarching initiative with broader reach. A multi-stakeholder initiative - that goes beyond defining conflict or simply addressing one sole commodity – may help to drive progress to this end.

A Starting Point

The draft WGC standard currently provides three triggers for companies to undertake a conflict assessment – a UN resolution; national law from a country of standing and influence and guidance from a multi-stakeholder group. It was becoming clear, however, that it would likely take two to three years to establish a governance framework for a new multi-stakeholder process and it was, therefore, suggested that the use of an authoritative existing benchmark might be appropriate. In this context some participants commended the Heidelberg Conflict Barometer. Opinions were voiced that the index may not be able to respond quickly to dynamic situations, that countries deemed in conflict are not involved in the assessment, and that it was relatively unknown (so that its methodology was not well known). While not perfect, there was general consensus that it was a sufficient place to start. Participants acknowledged the need for clarity and flexibility in conflict assessment; there is space for both soft and hard criteria going forward.

2. Creating and Maintaining Credibility

The WGC seeks to ensure that all essential components are in place to create and maintain credibility; this will rest in part upon the confidence of third parties in the rigor of the standard and the degree of transparency around issues like audit. Civil society, for example, wants the application of the Standard to have value. Industry must meet broader community standards, customer requirements of certification and verification, and ensure that their decisions are defensible. This session illuminated what it would take for various stakeholders to believe in the Standard and what models are valuable in their eyes.

Credibility

Participants offered the following ways to enrich credibility:

- Clarifying timelines with respect to Remedial Action Plans (albeit there was no clear consensus about what an acceptable window should be).
- Monitoring progress of Standard implementation.
- Ongoing consultation and engagement with regional actors.
- Publicizing aspects of internal management and training procedures.
- Ensuring that all stakeholders are at the table (with specific mention of India and China). Participants agreed this would be ideal; unfortunately, there is significantly less buy-in from these countries – which in itself, creates opportunities for ‘conflict-gold’ flows.

Reliable Auditing

Audit assurance is necessary to foster credibility. A participant recommended the auditing concept extend to reach “beyond the four corners of a company.” It was stated that refiners should not only know their customers (the miners), but also their customer’s auditors. A multi-stakeholder/tripartite committee to review audits and reports would lend credibility from the NGO perspective. The ICGLR’s DRC auditing procedures are clearly outlined and may be a useful guidance tool; the EITI may also be a support. It was stressed that the WGC has always intended that implementation of the standards should be audited by an independent and authoritative third party

Transparency

Civil society stressed the import of public disclosure. Currently, it is unclear whether the audits will be available externally. The WGC pointed out the security and safety issues involved in making certain documents and information public and called for specifics on what is required for transparency rather than blanket statements. While having some limits on transparency (e.g. where to publish information might, in itself aid the commission of a crime or place the safety of others at risk) seemed acceptable to representatives of the NGO community, details were not discussed.

Artisanal and Small-Scale Mining (ASM)

Concern was voiced that the Standard ought to paint a more in-depth picture of what gold production can look like – from illegal, illegitimate actors to various practices of legitimate ASM. There was then a call to clarify the role of the WGC with respect to ASM. Industry recognizes that artisanal mining is a missing ‘puzzle piece’ and that many distinct types of artisanal miners exist which should not be lumped together during analysis. The Standard is not meant to apply to ASMs but only to large-scale mining. That said, some miners are, in fact, very eager to work on the ASM issue on the ground as it can be a challenge for both operations and reputation; and they recognize the importance of ASM in many countries as an important source of livelihoods.

A member of the refining community voiced frustration that while the standards for large-scale firms must be rigorous, well documented, audited, transparent, and verified by civil society, artisanal miners are seemingly subject to none. Having such polarized standards place refiners in a difficult position. A participant then pointed out that there are no double standards – either production of the gold supply chain contributes to conflict or it doesn’t. But, with respect to the DRC, refiners feel that ASM producers just cannot meet necessary standards of due diligence there. The gold will get to market through informal sectors or through refiners who don’t care about standards (e.g. the Ugandan refinery).

The WGC is not in a position to solve the ASM problem. They can work on securing the supply chain, encouraging formalization of artisanal miners, and promoting a more holistic analysis of the positive developmental contributions gold can have. The WGC is, however, working with governments and civil society on the OECD gold supplement which it hopes will become an over-arching framework for due diligence requirements for all forms of gold production.

Finding Balance

Increasing private sector involvement in ASM communities raises specific challenges; when companies take on too much responsibility, liability and supply chain concerns may be raised by stakeholders. Companies also should not be taking the place of government with respect to the provision of services. With engagement and learning, the right balance of community involvement is possible. Furthermore, finding balance between total certification and disengagement is difficult. This gets at the crux of what the Standard is trying to achieve – making it possible for companies to work in difficult locales and be safe and responsible. Otherwise the places, often already suffering from poverty, will have even less economic development; disinvestment should typically be a last resort.

3. The Mechanism

This session was intended to prod if stakeholders believed the Standard capable of achieving its purpose, to develop consensus that it indeed is on its way, and to seek guidance on how to improve the mechanism. Over 900 preliminary inputs (over 20 from established organizations) had already been received and would be taken into consideration. They touched on topics such as granularity, audit assurance, grievance processes, alignment with other initiatives, suggestions of useful models, and routes to ensure conformance.

The following specific issues were brought up during the discussion:

- P18: The language outlining Part B may not accurately reflect what the WGC is attempting to summarize in subsequent pages (19-25).
- P19-28: On public grievance processes, it was clarified that there are both corporate grievance mechanisms and community grievance mechanisms.
- P20: Clarification of 'open and transparent' manner was thought to be desirable.
- P22: Situations when a company does or does not publicly distance itself...perhaps a slight language adjustment is in order as it currently begs the question, how far?
- P22: Clarification suggested on civil society and whistle blowing.
- Regarding grace-periods for Remedial Action Plans, the lack of a timeline in each section was specifically mentioned to 'negatively affect credibility.'
- From an NGO perspective, the inclusion of grievance mechanisms, or increased mention of the process, would lend credibility.
- The use of the word 'militia' was flagged from a number of perspectives. For example, the standards should not only cover situations of insurgency but also of violence perpetrated by criminal networks, terrorists and drug gangs. In addition, some people argued that the standards should seek to prevent the financing of abusive army units – even though they nominally represent the sovereign government.

4. The Big Picture and Final Thoughts

In the final session, participants discussed how the draft Standard fit into existing legislation, opportunities to streamline or work together with other initiatives, the role of industry within broader contexts, and the meaning of success.

Final Thoughts

- Refiners pointed out that they have been undertaking anti-money laundering checks, supply chain and know your customer analysis for years. It is now about instilling trust and demonstrating to external stakeholders that these mechanisms are in place, are functional and are sufficiently well-informed and enforced when it comes to conflict situations.
- Independent third party audits are key and the Standard must be stress tested.
- While the goal of stopping the flow of conflict-gold out of the DRC is laudable, it remains nearly impossible without government buy-in, security sector reform and the rule of law to drive change.
- Having a local grasp of regional dynamics is integral to assessments and is in the company's best interest.
- The importance of industry taking a lead in the formalization of ASM was reiterated.

- A recommendation was made that the WGC reach out to the ICGLR. Collaboration may be useful as this initiative already has political commitment from the highest levels.
- The OECD's gold supplement is in development and the LBMA is now on board in developing standards for refiners.

Success

'What does success look like to you?' Stakeholders defined it as follows:

- From a manufacturing perspective, success would be satisfying the customer with the most rigorous requirements.
- For the WGC, audit assurance is a key objective. Success is an internationally supported certification and traceability scheme, allowing members to demonstrate gold is conflict-free. The Standard does not imply that gold comes from a specific area or region but that it is a category of gold that is not subject to taint.
- With respect to ASM, the gold industry could replicate how the Kimberley Process (KP) dealt with similar issues. During development, two tandem efforts were created to simultaneously inform one another. The NGO - Diamond Development Initiative International (DDII) – was developed specifically to work on the ASM issue.
- An NGO participant stated that success is, first, assuring consumers that gold is conflict-free, and second, cutting off the conflict-gold supply chain from the DRC. Increased company engagement on the ground and assistance to local miners is encouraged.
- Broad replication (in countries like India and China) would indicate success.
- Ultimately, success is ongoing sourcing from difficult regions.

Harmonization

Harmonizing initiatives – for example with the RJC or the EICC - would allow for re-enforcement and increased effectiveness. Extending the long-term view of these processes would render each mechanism more inclusive and comprehensive. Confusion, overlap, and audit fatigue could lead to paralysis; hence, the way forward is clearly through seeking synergies. Coordination and a big picture approach will be paramount going forward. In the meantime, a practical solution to miners and refiners was offered – adopt the most rigorous standard and you'll probably be compliant with the others.

Conclusion

Participants accepted the Standard as requisite, learned how the WGC is developing it, commended industry for taking steps toward certifiable conflict-free gold, and acknowledged the substantial difficulties facing the WGC. Suggestions, feedback and perspectives on what matters to stakeholders were voiced, but participants did not venture a strong opinion that anything was fundamentally missing from the Standard. In general, it was a day of recognizing and tackling exceedingly complex issues in a spirit of collaboration as opposed to contention. This perhaps signifies an evolution and maturation of discussions on companies operating in conflict or high-risk areas. The participants, with seasoned understanding that issues are global in nature and extend beyond the gold industry, were aligned in a common goal of making the Standard as credible as possible. Further consensus and support for the Standard was fostered and many felt there is room for increased civil society involvement. Looking forward, the WGC invites continuing feedback.