

means of an application to the Security Council.¹² The United States opposed the Palestinian effort and vowed that it would veto any application in the Security Council if necessary.¹³

As of this writing (late November 2011), the Palestinian initiative has been unsuccessful. Under Article 4(2) of the UN Charter, membership in the organization requires a decision by the General Assembly acting on a recommendation from the Security Council. Under Article 27(3), the Council's recommendation requires nine affirmative votes and no veto by a permanent member. Palestine reportedly has not been able to muster the nine votes necessary for an affirmative Security Council decision, even absent a U.S. veto. In mid-November, the Council's admissions committee (on which all fifteen members are represented) adopted a report saying that it was "unable to make a unanimous recommendation" to the full Council.¹⁴

INTERNATIONAL LAW AND NONSTATE ACTORS

United States Joins with Other Governments, Major Companies, and NGOs in Effort to Strengthen Voluntary Principles on Security and Human Rights

In September 2011, a U.S. delegation joined with representatives of six other governments,¹ nineteen major oil and mining companies,² and ten nongovernmental organizations (NGOs)³ at an Extraordinary Plenary Session in Ottawa of the participants in the Voluntary Principles on Security and Human Rights (Voluntary Principles).⁴ The Voluntary Principles were adopted in 2000 in an effort to minimize human rights abuses by security forces in conflict areas where large natural resources companies often operate.⁵

¹² Isabel Kershner, *Palestinian Says U.S. 'Too Late' on U.N. Bid*, N.Y. TIMES, Sept. 9, 2011, at A5; Ethan Bronner & Isabel Kershner, *Palestinians See U.N. Appeal as Most Viable Option*, N.Y. TIMES, Sept. 18, 2011, at A6.

¹³ Joby Warrick & Joel Greenberg, *Diplomatic Efforts Unable to Derail Palestinians' U.N. Gambit*, WASH. POST, Sept. 9, 2011, at A16; Ethan Bronner, *Palestinians Resist Appeals to Halt U.N. Statehood Bid*, N.Y. TIMES, Sept. 16, 2011, at A10; Joby Warrick & Scott Wilson, *U.N. Vote Could Test U.S. Role in Mideast*, WASH. POST, Sept. 16, 2011, at A1; Ethan Bronner & Isabel Kershner, *Palestinians Set Bid for U.N. Seat; A Clash with U.S.*, N.Y. TIMES, Sept. 17, 2011, at A1; Neil MacFarquhar & Steven Lee Myers, *Diplomats Scramble as Palestinians Plan to Apply for U.N. Membership on Friday*, N.Y. TIMES, Sept. 20, 2011, at A11.

¹⁴ *Committee Is Deadlocked over Palestinian Membership Bid*, N.Y. TIMES, Nov. 12, 2011, at A5; see also MacFarquhar, *supra* note 11.

¹ The participating countries are Canada, Colombia, the Netherlands, Norway, Switzerland, the United Kingdom, and the United States.

² The participating companies are Anglo American, AngloGold Ashanti, Barrick Gold Corporation, BG Group, BHP Billiton, BP, Chevron, ConocoPhillips, ExxonMobil, Freeport McMoRan Copper and Gold, Hess Corporation, Inmet Mining, Marathon Oil, Newmont Mining Corporation, Occidental Petroleum Corporation, Rio Tinto, Shell, Statoil, and Talisman Energy.

³ The attending NGOs were Amnesty International, The Fund for Peace, Human Rights First, Human Rights Watch, IKV Pax Christi, International Alert, Oxfam, Pact, Partnership Africa Canada, and Search for Common Ground. Attending as observers were the International Committee of the Red Cross, the International Council on Mining & Metals, and the International Petroleum Industry Environmental Conservation Association.

⁴ Summary of Proceedings—Voluntary Principles on Security and Human Rights—Extraordinary Plenary Session (Sept. 16, 2011), at http://www.voluntaryprinciples.org/files/FHE-DC-130591-v1-VPs_Summary_of_Proceedings_Extraordinary_Plenary_Meeting.pdf. For background information on the Voluntary Principles, see <http://www.icmm.com/library/voluntary-principles-on-security-and-human-rights>.

⁵ Voluntary Principles on Security and Human Rights, Statement by the Governments of the United States of America and the United Kingdom (Dec. 19, 2000), at http://www.unglobalcompact.org/Issues/conflict_prevention/meetings_and_workshops/volsupport.html. For discussion of a similar code of conduct among companies providing security services to international resources companies and others, see John R. Crook, *Contemporary Practice of the United States*, 105 AJIL 122, 156 (2011).

The Ottawa meeting adopted a set of governance rules for the initiative and decided to pursue creation of a formal legal entity in the Netherlands. The U.S. Department of State applauded the results of the meeting.

For decades, countries rich in oil, gas, or minerals have been cursed by conflict surrounding those resources. Companies in the extractive industries are often accused of complicity in violating human rights. For 11 years, the United States government has been part of a collaborative effort that brings governments, companies, and NGOs together to make sure that as companies extract resources in some of the most difficult places on earth, they take tangible steps to minimize the risk of human rights abuses in the surrounding communities.

On September 15–16, 2011 the Government of Canada hosted an extraordinary plenary meeting of the Voluntary Principles on Security and Human Rights initiative in Ottawa. The State Department helped negotiate a consensus among 19 oil, gas and mining companies, seven governments, and 10 NGOs on a new core document that outlines the expectations of the initiative's participants, and lays out a plan to pursue the creation of a legal entity for the initiative. These long overdue moves put the initiative on stable foundations for its second decade. Several participants also announced a pilot project to explore ways of verifying and guiding the ways that companies live up to the commitments they make. This will help companies maintain high standards while they do business in some of the toughest areas in the world.

The developments in the Voluntary Principles initiative are an example of this Administration's practical approach to working in partnership with corporations, other governments, and civil society groups to start fixing human rights problems that none could solve alone.⁶

An excerpt from the official summary of the results of the meeting follows:

Participants in the Voluntary Principles on Security and Human Rights (the "Voluntary Principles") gathered in Ottawa, Ontario, for an Extraordinary Plenary Meeting on September 15–16, 2011. During the meeting, the Plenary took a number of key steps consistent with the vision statement that Participants adopted at the 2010 Annual Plenary Meeting:

Strengthen the Voluntary Principles on Security and Human Rights' significance as a business and human rights best practice framework by: increasing our Participants' base; strengthening accountability; and actively promoting universal respect for human rights.

Namely, the Plenary:

- Adopted a set of Governance Rules for the initiative;
- Decided to pursue the formation of a legal entity for the initiative in The Netherlands;
- Celebrated Switzerland's admission as a full Participant Government;
- Welcomed two new Participants, Inmet Mining and Partnership Africa Canada;
- Identified host government outreach and in-country implementation as a priority and created a Host Government Outreach Working Group, to facilitate outreach to potential government Participants;

⁶ U.S. Dep't of State Press Release No. 2011/1552, Breakthrough in the Voluntary Principles on Security and Human Rights (Sept. 20, 2011), at <http://www.state.gov/r/pa/prs/ps/2011/09/172858.htm>.

- Acknowledged the launch of a voluntary collaboration by individual Participants to explore a practical approach to key performance indicators, supporting processes, and evaluating their effectiveness . . . and
- Welcomed the launch of the Implementation Guidance Tools, a practical guide developed by the International Council on Mining and Metals (ICMM), the International Finance Corporation (IFC), and the global oil and gas industry association for environmental and social issues (IPIECA), with support from the International Committee of the Red Cross (ICRC).

In addition, the Plenary heard a report on progress made by Participants on the implementation of the Voluntary Principles in Iraq, as well as a presentation on the Government of Colombia's efforts to promote the Voluntary Principles.

Since their inception, the Voluntary Principles have been used by extractive companies to strengthen their capacity to address complex security and human rights issues in their operations around the world. Members of the Plenary include representatives from three pillars: governments, companies, and NGOs. There are currently seven member governments, nineteen companies, and ten NGOs participating in the initiative. Participation in the initiative is voluntary. For questions on how to participate, contact the Secretariat at VoluntaryPrinciples@foleyhoag.com.

For more information about the Voluntary Principles, visit www.voluntaryprinciples.org.⁷

INTERNATIONAL OCEANS, ENVIRONMENT, HEALTH, AND AVIATION LAW

Secretary of State Comments on South China Sea, Affirms U.S. Navigational Interests, and Expresses U.S. Desire for Peaceful Settlement of Territorial Disputes

China's broad jurisdictional claims in the South China Sea, combined with increasingly assertive actions taken to support those claims, are a growing source of concern for the United States and states of the region.¹ In July 2011, U.S. Secretary of State Hillary Clinton issued a statement indicating U.S. concern at incidents involving encounters between military and naval forces of states with conflicting claims in the area. Her statement affirms U.S. interests in freedom of navigation and peaceful settlement of jurisdictional disputes among the littoral states in accordance with international law, including the Law of the Sea Convention.

We commend this week's announcement that ASEAN and China have agreed on implementing guidelines to facilitate confidence building measures and joint projects in the South China Sea. This is an important first step toward achieving a Code of Conduct and reflects the progress that can be made through dialogue and multilateral diplomacy. We look forward to further progress.

The United States is encouraged by this recent agreement because as a Pacific nation and resident power we have a national interest in freedom of navigation, open access to Asia's maritime domain, the maintenance of peace and stability, and respect for international law in the South China Sea.

⁷ Summary of Proceedings, *supra* note 4.

¹ Brian Padden, *ASEAN Foreign Ministers Discuss South China Sea Dispute*, VOICE OF AMERICA, July 19, 2011, at <http://www.voanews.com/english/news/asia/ASEAN-Foreign-Ministers-Discuss-South-China-Sea-Dispute-125816578.html>; Andrew Higgins, *Disputed Territory*, WASH. POST, Sept. 18, 2011, at A1; John R. Crook, *Contemporary Practice of the United States*, 104 AJIL 654, 664 (2010), 105 AJIL 122, 135 (2011).