
13. The role of humanitarian organizations: the case of the International Committee of the Red Cross

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I. Introduction

The 1990s saw a great deal of progress in the field of corporate social responsibility. After the United Nations world summit meetings in the first half of the decade,¹ top executives of multinational companies began to focus their efforts on environmental and social concerns. In recent years, the business community has also started to examine its role and responsibility in conflict-prone areas, where companies face increasingly complex challenges. This applies in particular to the business of raw material extraction, where investment decisions are dictated by geological factors rather than by political risks. When extractive industries look for new deposits in ever more remote areas or continue operating in countries undergoing fragile democratization processes, they need to learn how to manage risks related to armed violence and conflict in a new environment where they are expected to act as responsible corporate citizens.

Humanitarian organizations have learned that any intervention in a conflict-prone area, even with the best intention to assist victims, can do more harm than good if the overall impact of this intervention is not carefully assessed. Development cooperation agencies have elaborated new methods to conduct so-called peace and conflict impact assessments before starting a project in sensitive, unstable places.² Similarly, private companies have been asked to devote much more attention to these issues so that their production activities and the ensuing revenue generation and distribution do not raise tensions or aggravate the local political situation. In addition to the 'do-no-harm' approach, business is increasingly expected to consider how to contribute to conflict-prevention and peace-building processes. Corporations are thus increasingly addressing issues that were formerly considered the exclusive concern of governments, multilateral organizations and non-governmental organizations (NGOs). It is clear, however, that business cannot provide a

¹ On the UN Conference on Environment and Development (UNCED, or the Earth Summit), held in Rio de Janeiro in 1992, see URL <http://www.un.org/esa/sustdev/documents/UNCED_Docs.htm>; and on the World Summit for Social Development, held in Copenhagen in 1995, see URL <<http://www.un.org/documents/ga/conf166/aconf166-9.htm>>.

² On these assessments see, e.g., 'Peace and conflict impact assessments', in 'Peace in the millennium', Alliances for Africa Online Bulletin, no. 3 (1 Jan. 2000), URL <<http://www.alliancesforafrica.org/print.asp?news=198&width=500>>.

cure-all for the world's ills. Governments, humanitarian organizations and private companies each have different objectives. They also have different responsibilities, the boundaries of which have yet to be clarified and reaffirmed.

The International Committee of the Red Cross (ICRC) is a humanitarian organization born out of war 140 years ago.³ Its mandate is to promote international humanitarian law and to provide war victims with assistance and protection. In order to carry out its activities, the ICRC maintains relations with those who exert a direct or an indirect influence on armed conflicts. After World War I, it established formal contacts with liberation movements and guerrilla groups in its capacity as a neutral intermediary in war. It later expanded its network of contacts to include formers of public opinion, the media, trade unions, religious leaders and other groups in order to promote greater respect for international humanitarian law.

With the globalization process now under way, the business community is playing an ever more important role in international relations, including in war-prone countries. The ICRC has consequently decided to develop its contacts with the private sector in the belief that the plight of the children, women and men affected by an armed conflict is likely to be addressed more effectively if the business community is involved in a constructive manner, rather than being excluded simply because of its corporate motives. The goals of companies have not suddenly become humanitarian in nature. Profitability obviously remains their top priority, but they are realizing that it is in their best interest to contribute to the preservation of basic humanitarian principles.

II. Business and the economy in conflict prevention

Research has shown that abundant natural resources can be more of a curse than a blessing for communities located in resource-rich areas.⁴ For example, the risk of war seems to be higher in these than in other countries,⁵ and fair revenue distribution within a society may reduce the probability of armed conflict. The international community is involved in several initiatives to fight corruption and promote transparency, one example of which is the Extractive Industries Transparency Initiative (EITI).⁶ However, transparency alone is not

³ See the ICRC Internet site at URL <<http://www.icrc.org>>, especially Carbonnier, G., 'Corporate responsibility and humanitarian action: what relations between the business and humanitarian worlds?', *International Review*, vol. 83, no. 844 (Dec. 2001), URL <[http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/57JRLN/\\$FILE/0947-0968_Carbonnier.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/57JRLN/$FILE/0947-0968_Carbonnier.pdf)>. Much of this chapter is based on this document.

⁴ Karl, T. L., *The Paradox of Plenty: Oil Booms and Petro-States*, Studies in International Political Economy 26 (University of California Press: London, 1997).

⁵ Collier, P., *Breaking the Conflict Trap: Civil War and Development Policy*, World Bank Policy Research Report (World Bank and University Press: New York, 1 June 2003).

⁶ The EITI was launched by British Prime Minister Tony Blair at the World Summit on Sustainable Development in 2002. Its objective is 'to increase transparency over payments and revenues in the extractive sector in countries heavily dependent on these resources'. See 'Extractive Industries Transparency Initiative (EITI), London Conference, 17 June 2003, Statement of Principles and Agreed

enough. The International Monetary Fund and the World Bank are also trying to improve revenue allocation mechanisms so that entire populations benefit from natural resource exploitation (e.g., in the Chad–Cameroon region and in Azerbaijan). Transparency and revenue allocation are thus important ingredients of conflict prevention. It is true that the ultimate success of recent initiatives in this area will depend on governments and international organizations, but they cannot succeed without the strong support and cooperation of the business community.

War economies

The role of business in conflict prevention or peacebuilding cannot be considered without taking into account war economies and their specific characteristics. In many countries with a fragile peace process, the major obstacles along the road to economic recovery are insecurity and lack of investor confidence (e.g., Iraq today). In addition, when economic governance is weak and the population has developed survival strategies outside the formal sector, the informal financial sector is often larger than the ‘official’ economy. In the direct aftermath of a protracted conflict, this development seriously reduces the government’s revenue and tax base, and hence the capacity of the state to deliver essential public services and maintain basic infrastructure.

The judiciary system of states with war economies is also often weak, and corruption is rampant. As criminal actors enjoy impunity, illegal economic activities thrive without any serious risk of sanction, which attracts international criminal networks. As a result, part of the politico-economic elite is often discredited. In such an environment, it is not easy for a company to operate in the formal economy and still abide by high standards of business behaviour. However, even in war-torn countries such as the Democratic Republic of the Congo and Somalia, many national and foreign business people manage to maintain day-to-day activities in the communities despite this environment. They help to preserve or rebuild a minimal social capital, without which reconstruction efforts are highly unlikely to succeed.

Several recent initiatives reflect the growing interest of the international community in better understanding and tackling the economic dynamics underlying civil wars. The Kimberley Process—created to curb the flow of ‘conflict diamonds’—is a prime example,⁷ as is the work of panels of experts mandated by the UN Security Council to produce reports on the illegal exploitation of natural resources in African countries at war.⁸ Consequently,

Actions’, URL <http://www.worldbank.org/wbi/corpgov/csr/econferences/publicpolicy/pdf/eiti_stat_of_principles.pdf>.

⁷ The Kimberley Process originated in 2000 through the decision of southern African diamond producing countries to take action to stop the flow of conflict diamonds to markets while at the same time protecting the legitimate diamond industry. See URL <<http://www.kimberleyprocess.com/>>. See also chapter 11 in this volume.

⁸ For recent reports of UN panels of experts on natural resources and conflict see the Internet site of the Global Policy Forum at URL <<http://www.globalpolicy.org/security/natres/docsindex.htm>>. The

today no one would deny that economic factors may contribute to fuelling conflicts, sometimes with dramatic humanitarian consequences.

How do humanitarian organizations position themselves in this environment? The economic actors who are outlawed by these new initiatives feel under increasing scrutiny when working in war zones. They may thus oppose any external presence—sometimes violently—including that of humanitarian organizations. This carries serious security risks for these organizations and may impede their access to a population caught in the midst of a conflict. For this reason, the ICRC often has to reaffirm that it is not in any way associated with the monitoring or reporting of economic activities and to make it clear that its sole purpose, as a humanitarian organization, is to assist and protect the victims of armed conflict.

III. Challenges for business in conflict areas

When operating in a conflict area, companies must take measures to ensure the security of their personnel and facilities while at the same time avoiding any association with violations of internationally recognized norms of behaviour. A bad decision by management concerning security can have disastrous consequences for the company's reputation. It may also result in legal action, as is presently the case for many major oil and mining companies in the United States.

International humanitarian law

In this context, where does the 'humanitarian responsibility' of a company begin and end? The primary responsibility for respecting as well as ensuring respect for human rights and international humanitarian law rests with states. The states parties to the Geneva Conventions of 1949, for example, have made such a commitment.⁹ This does not mean, however, that international humanitarian law does not place any constraints on economic actors. It applies to all those involved in the conduct of hostilities during an armed conflict, government and non-state actors alike. Companies can be held accountable for violations of international humanitarian law if they are directly involved in the hostilities, for example, through military personnel whom they have hired for that purpose.

There is a lively debate on the notion of complicity, notably in connection with crimes covered by the Rome Statute of the International Criminal Court (ICC), with particular reference to Article 25 on individual criminal responsi-

Forum monitors policymaking at the United Nations, promotes accountability of global decisions, educates and mobilizes for global citizen participation, and advocates on vital issues of international peace and justice.

⁹ See Article 1 common to the 4 Geneva Conventions of 12 Aug. 1949: 'The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances'. The Geneva Conventions are available at URL <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/party_gc>.

bility.¹⁰ Several analysts have drawn attention to the fact that the Statute's accomplice liability provision could create international criminal liability for corporate employees and managers.¹¹ Companies could thus be prosecuted for crimes against humanity through the *individual liability* of their staff or directors. In the specific case of a breach of the 1949 Geneva Conventions,¹² for example, a perpetrator's superior would be held accountable if this person knew, or could conclude, that the subordinate person was going to commit such a breach and did not try to prevent it. Attempts to include the principle of *corporate liability* in the ICC Statute have been unsuccessful, even though several states provide for such a form of criminal responsibility in their national legislation.

The case of private military or security firms deserves specific mention, as there is a clear trend towards the privatization of some military functions, including combat support, logistics and training.¹³ In principle, national legislation should regulate the practice of security companies, and penal sanctions for violations of international humanitarian law should be included in national legislation. In practice, however, private military companies are often contracted to work in places where there is little respect for the rule of law and where the state is unable to offer a sufficient level of security, which is why those who can afford to do so opt for private security companies in the first place. It is thus not exceptional to find private military and security firms operating in places with weak legal infrastructure and an inefficient or paralysed judicial system. They often pursue their activities in a 'legal vacuum'. Further reflection is needed on the appropriate regulatory tools and enforcement mechanisms to ensure effective compliance with international humanitarian law in such cases.

Voluntary initiatives

Many companies have adopted voluntary codes of conduct to address the risks associated with operating in conflict areas.¹⁴ NGOs and advocacy organizations have expressed concern that these voluntary initiatives should not become substitutes for fulfilling the legal requirements of intergovernmental agreements.¹⁵ They have instead called for binding regulations to ensure that companies respect international law. It seems that some business leaders are beginning to share this view, since binding rules might contribute to fair competition conditions—'a level playing field'—between those companies that

¹⁰ For the Rome Statute see URL <<http://www.un.org/law/icc/>>. See also Wiharta, S., 'The International Criminal Court', *SIPRI Yearbook 2003: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2003), pp. 153–66.

¹¹ See, e.g., Nyberg, M., 'At risk from complicity with crime', *Financial Times*, 27 July 1998.

¹² Article 86 of 1977 Protocol I Additional to the 1949 Geneva Conventions (see note 9).

¹³ On private military companies see also the introduction and chapters 14 and 21 in this volume.

¹⁴ See also chapter 12 in this volume.

¹⁵ See, e.g., Utting, P., UN Research Institute for Social Development, 'UN–business partnerships: whose agenda counts?', *Transnational Associations*, no. 3 (2001), pp. 157–65, available at URL <<http://www.uia.org/uiata/utting.htm>>.

commit themselves to promoting transparency and respect for international law, and those that do not.

Companies operating in war-prone areas have established voluntary norms, such as the Voluntary Principles on Security and Human Rights for the Extractive Sector, adopted in December 2000 by a number of multinational oil and mining firms together with the US State Department, the British Foreign and Commonwealth Office, Amnesty International, Human Rights Watch, International Alert and labour unions.¹⁶ The guiding principle is that governments should adopt the Voluntary Principles before the extractive industries and NGOs based in their countries can adhere to them. The Netherlands and Norway joined in 2002, and additional countries may follow suit in the near future. The Voluntary Principles process involves regular plenary meetings and, perhaps more importantly, efforts to implement the Principles in the field, where they obviously matter most and would make a real difference to the host communities.

The participants of the Voluntary Principles recognize the importance of the promotion and protection of human rights and the constructive role that business and civil society can together play in advancing these goals. More specifically, they state that while ‘governments have the primary responsibility to promote and protect human rights and that all parties to a conflict are obliged to observe applicable international humanitarian law, [they] recognize that [they] share the common goal of promoting respect for human rights . . . and international humanitarian law’.

IV. Dialogue between companies and the ICRC

As is often the case with voluntary codes of conduct referring to internationally recognized norms, the main challenge for companies is to translate general policy statements into operational reality. The ICRC aims to assist companies in identifying concrete steps to put into practice the ‘common goal of respecting and promoting respect for international humanitarian law’. It has thus established a dialogue with companies, which focuses on the relevance of fundamental humanitarian principles in the countries where they operate. In doing so, the ICRC remains faithful to its traditional *modus operandi*, developing these exchanges in the framework of a confidential and constructive dialogue, as with any other stakeholder in war zones. For the ICRC, the dialogue further represents an opportunity to share specific humanitarian concerns and to better understand the rationale and views of economic actors in complex emergencies.

A major objective of the ICRC is to strengthen its capacity to assist and protect communities affected by war by inculcating respect for basic humanitarian

¹⁶ The Voluntary Principles were developed to guide companies in the areas of risk assessment, relations with public security and relations with private security. See US Department of State, Bureau of Democracy, Human Rights, and Labor, Fact sheet, 20 Feb. 2001, URL <<http://www.state.gov/g/drl/rls/2931.htm>>. See also chapters 10 and 12 in this volume.

principles to companies operating in conflict-prone settings. Among these basic principles, embodied in international humanitarian law, are the following:¹⁷

1. *The distinction to be made at all times between civilians and combatants.* The obligation to distinguish between civilian objects and military targets is of specific interest to companies that do not want their facilities to be used for military purposes by parties to a conflict so that they will not become objects of attack.

2. *The prohibition of forced movement of civilians.* The implication for private companies is obvious when displacement of people is caused by their own operations (for example, in the case of construction of a pipeline or exploitation of natural resources).

3. *The protection of objects indispensable for the survival of the civilian population, especially goods such as food and water and access to these goods.*¹⁸

4. *Respect for and protection of detained persons.*

Three additional principles apply in particular to companies hiring security forces:

1. Under the principle of proportionality, it is forbidden to use means and methods of warfare which may cause superfluous injury or unnecessary suffering, or widespread, long-term and severe damage to the natural environment.

2. Indiscriminate attacks are forbidden.

3. Medical services and other facilities displaying the Red Cross or Red Crescent emblems must be respected.

For the ICRC, it is essential to continuously assess the potential impact of technological innovations and new weapons vis-à-vis the risk of indiscriminate attacks and the principle of proportionality. In 2002 the ICRC launched the Initiative on Biotechnology, Weapons and Humanity.¹⁹ While biotechnological innovation brings enormous potential benefit for humanity, important advances in science and technology may also be put to hostile use.

The ICRC Initiative on Biotechnology, Weapons and Humanity was prompted by the need to reduce the risk of biotechnology being used to the detriment of humanity. It is intended to promote serious reflection on the risks, roles and responsibilities related to advances in this area. The initiative appeals to governments, the scientific community, the military, industry and civil

¹⁷ See, e.g., the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Preamble); the 1998 Rome Statute of the International Criminal Court (Article 7, para. 2); and 1977 Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Article 54 and Article 75, para. 3).

¹⁸ There is also a rule that combatants must refrain from attacking works and installations containing dangerous substances.

¹⁹ On this ICRC initiative see URL <<http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/bwh?OpenDocument>>.

society to work together to strengthen the commitment to the norms of international humanitarian law, which prohibit hostile uses of biotechnology, and to impose effective controls on potentially dangerous biological knowledge and agents.

The ICRC believes that it is only through the establishment of an effective network of prevention—bringing together the private sector, governments and the research community—that advances in biotechnology will be firmly harnessed for the benefit of humanity. The ICRC has established a dialogue with states and the academic community, and it encourages industry to join the dialogue in order to strengthen the prevention network.

The potential and limits of dialogue

The ICRC is, of course, aware that the prime objective of business is and remains the generation of profit. It is, however, convinced of the importance of building relations with the corporate sector and believes that it is in the mutual interest of business and humanitarian organizations to promote exchanges on issues of common concern. For the ICRC, the ultimate objective is to expand its outreach in order to provide enhanced protection and assistance to people suffering the consequences of armed conflicts. The new dialogue is promising, but the future will show whether exchanges with the business community will lead to effective improvements for those who suffer violations of international humanitarian law.

The private sector has a pivotal role to play in the rebuilding of war-torn societies. Corporate involvement is required to help restore basic infrastructure and to create jobs and opportunities, in particular for demobilized combatants and refugees or for internally displaced people after they have returned home.

During the transition from war to peace, the ICRC has had several positive experiences in handing over some of its programmes to companies engaged in the reconstruction process. This was the case in Kosovo, where responsibility for helping the authorities to provide water in urban areas was transferred to the local water board.²⁰ In addition, companies that have facilities and material available in the field can sometimes make a decisive difference in saving lives by supporting humanitarian organizations with logistics and other means necessary to launch an emergency relief operation. Nonetheless, corporate managers must understand that a humanitarian organization such as the ICRC often needs to be very prudent—some would say overcautious—in considering exchanges with companies. Rumours are often more powerful than facts in war situations, and humanitarian organizations have to carefully monitor how the belligerents perceive their relations with private firms. Local actors sometimes consider multinational companies as allies of the enemy or the government, or believe that they are acting as proxies for foreign powers. The ICRC

²⁰ See 'Kosovo: clean water for Gjilan/Gnjilane', *ICRC News* 03/13 (27 Jan. 2003), URL <<http://www.icrc.org/web/eng/siteeng0.nsf/iwpList464/7F60F85BFE42AA77C1256CBB005534B1>>.

not only has to act as a neutral, impartial and independent organization, but also must ensure that it is perceived as such.

V. Conclusions

Bridges between the business and humanitarian communities have the potential to improve the plight of those suffering the consequences of armed conflict. The ongoing dialogue is promising, but it is too early to tell whether it can bring about better compliance with international humanitarian law. The ICRC strongly believes that it is worth giving this dialogue a chance but is also mindful that states must bear the primary responsibility for promoting greater respect for basic humanitarian principles by all those who have real influence in armed conflict. To this end, the ICRC is committed to strengthening its dialogue with both states and private companies.