

Corporate responsibility and humanitarian action

What relations between the business and humanitarian worlds?

par

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Environmental and social concerns have been on the agenda of business leaders for over a decade and gained worldwide visibility at the Earth Summit (Rio de Janeiro, 1992) and the Social Development Summit (Copenhagen, 1995). Human rights and armed conflicts have recently emerged as additional concerns. In May 2000, the weekly journal *The Economist* highlighted the challenges faced by companies operating in war-prone regions: "Pipelines can be blown up by terrorists. Contracts can be torn up by crooked partners. Fragile economies can collapse. And in recent years, firms doing business in countries with unpleasant governments have been pilloried by non-governmental organisations (NGOs), endangering the most priceless of assets, their good name".¹ At the request of several multinational companies, the first *Issues Dialogue Meetings* initiated in 2001 under the *UN Global Compact* specifically addressed the role of private companies in armed conflicts.²

Non-governmental organizations and reporters are increasingly focusing on the economic dynamics underlying today's armed conflicts. The media report daily on the role of natural resources in war-torn countries such as gold and coltan in the Democratic Republic of Congo, oil in Chechnya, Colombia or Sudan,

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or diamonds in Angola and Sierra Leone. Controversies over the so-called “blood diamonds” brought over thirty governments, NGOs and the diamond industry around the negotiating table to regulate trade so that diamonds do not fuel conflicts and conflicts do not tarnish the image of diamonds as a symbol of love.

As a result, the role of private companies in conflict-prone areas has come under tighter public scrutiny. The following examples are a good illustration of the diversity of cases involved. *TIME Asia*, for instance, reported in its 6 August 2001 issue that in some places in Aceh, Indonesia, “people literally line up to tell stories of abuses and murders committed by the troops they call Exxon’s Army”. An American NGO has filed a lawsuit in the United States against the giant oil company ExxonMobil on behalf of eleven Acehnese people who say they have been tortured by Indonesian soldiers paid out of funds the company provides with the government’s agreement.³ For that purpose, a centuries-old American legal instrument has been revived: the Alien Tort Claims Act (ATCA) of 1789 allows US and foreign companies to be sued in the United States for alleged abuses — or complicity in abuses — of internationally recognized social and human rights standards committed outside the United States.

The media widely reported on another plaintiffs’ action brought under the same Act against Royal Dutch/Shell. The plaintiffs, supported by several NGOs, accused the company of complicity with the former Nigerian military government in the execution of Ogoni leader Ken Saro-Wiwa and other members of the Ogoni Movement in 1995. America’s Supreme Court cleared the way for a civil action to proceed in New York on 26 March 2001. This decision was taken despite efforts by Shell to have the action dismissed on grounds that a New York court had no right to hear a case that involves Nigerian people and an Anglo-Dutch company.⁴

1 “Business in difficult places: Risky returns”, *The Economist*, 20 May 2000.

2 The Global Compact was launched by the UN Secretary-General at the 1999 World Economic Forum in Davos, calling on companies to adhere to nine principles in the areas of human rights, labour standards and the

environment. See <<http://www.unglobalcompact.org>>.

3 Mark Mitchell, *TIME Asia*, 6 August 2001, vol. 158, No 5.

4 See e.g. Andrew Buncombe, *The Independent*, 27 March 2001.

In mid-July 2001, the *New York Times* reported that Coca-Cola was accused of using right-wing paramilitary groups to intimidate and in some cases assassinate labour organizers in Colombia. An American labour-rights group filed a suit in the United States against the Atlanta-based company together with the United Steelworkers Union. Coca-Cola adamantly rejected the accusations and stated that the company adheres to the highest standards of ethical conduct and business practices, requiring “all operating units and suppliers to abide by the laws and regulations in the countries that they do business.”⁵ It is worth noting that while the company and regional director were cited for these alleged crimes, the government did not rate any mention at all.

This article looks at the rationale for developing relations between the humanitarian and business worlds. Part 1 provides some historical background on the evolving role of multinational companies. Part 2 looks at the business case for engagement, i.e. why many companies are now seeking to engage in a dialogue with humanitarian organizations. Part 3 raises some key questions as to the meaning and applicability of international humanitarian law to business, including private security firms. Part 4 outlines the overall private sector strategy of the ICRC and describes its position towards companies that have a direct or indirect influence on parties to conflict and on the situation of people in distress. In other words this section deals with the positioning of a humanitarian organization such as the ICRC vis-à-vis the business sector with regard to its own “core business”. Part 5 highlights some challenges facing the International Red Cross and Red Crescent Movement when dealing with the corporate sector. The article ends by summing up the conclusions and developments hitherto.

The evolving role of multinational companies

Corporate social responsibility has become a fashionable subject and is being included in standard MBA curricula. A vigorous debate opposes those who maintain that corporations should not be diverted from their traditional objective, i.e. maximizing shareholder

⁵ Juan Forero, *New York Times*, 26 July 2001.

value,⁶ to others who contend that companies must take into account the interests of a much wider circle of *stakeholders* including host communities, consumers, present and future generations, etc. Preliminary empirical evidence suggests that business strategies addressing the concerns of a broad range of *stakeholders* pay off in the long run.

With the advent of globalization, the private sector is playing an increasingly prominent role in international relations. The influence of some multinational corporations on war situations and on parties to conflict is growing steadily. A few facts and figures will serve to illustrate this:

- official development assistance accounted for three-quarters of the resource transfers from OECD countries to the developing world in 1990. Ten years later, foreign direct investment alone has become a multiple of official development finance to developing economies (\$240bn and \$84.9bn respectively);⁷
- successive waves of mergers and acquisitions have given birth to “corporate giants” whose turnover and profit surpass the combined national income of several war-torn countries. The net income of the oil giant ExxonMobil, for example, peaked at a record \$17.7 billion (bn) in 2000. The gross domestic product (GDP) of Angola was \$5.9bn in 1999, that of Burundi \$0.7bn and that of the Democratic Republic of Congo \$7.0bn (1998).⁸ Percy Barnevik, the Chairman of Investor, ABB, AstraZeneca and Dandvik, points out that fifty-one of the 100 largest economies in the world are companies. He adds that “Shell is bigger than Venezuela and

⁶ This view is for instance supported by Nobel Laureate in Economics Milton Friedman.

⁷ Sources: *World Investment Report 2001*, UNCTAD, Geneva, 2001; and *2000 Development Co-operation Report*, OECD/DAC, Paris, 2001. It should be noted that most foreign direct investment in the developing world

concentrates on a few recipient countries such as China and India. It is much smaller in war-prone regions, but is nonetheless significant in the oil and mining sectors.

⁸ Source: World Bank statistics. Note that GDP figures are underestimated in that informal activities often go unrecorded in official macroeconomic data.

General Motors is bigger than Ireland, New Zealand and Hungary combined”;⁹

- in parallel, both political instability and liberal economic reform have reduced the State’s power and prerogatives in many countries where the ICRC operates. Today’s diplomacy confers a greater role on the private sector. This is in particular the case when dealing with major global challenges such as preserving biodiversity, alleviating poverty, coping with population growth or ensuring access to drinking water. Instead of creating new intergovernmental bodies to deal with these emerging issues, key stakeholders have come together in flexible networks comprising private firms, independent experts, governments, non-governmental and international organizations (e.g. World Commission on Dams, Forest Stewardship Council).

The pivotal role of private firms in international relations is not new. At the end of the eleventh century, the constitution of a trading consortium in the Italian city of Genoa, the *Compagna*, was crucial in creating a State with ports and colonies from the Aegean to the Black Sea. Between the sixteenth and the nineteenth century, European countries granted charter companies such as the Dutch West India Company and the British East India Company a trade monopoly aimed at extending their commercial and political power without paying too high a price. In return, the colonial powers “outsourced” the task of maintaining law and order in their colonies to the charter companies.¹⁰

By the end of the nineteenth century, governments had withdrawn these functions from the charter companies. But large firms continued to influence international relations in the twentieth century. From the discovery of petroleum until the 1950s, the oil market was dominated by a handful of major multinational companies which regulated production and market share under oligopoly agree-

⁹ *World Link*, September/October 2001. Percy Barnevik argues, however, that the strength of big companies is relative: “Of the list of the 500 largest companies in the US, some one-third will disappear in 10 years, and

not just through acquisitions and mergers.”

¹⁰ A. Wild, *The East India Company: Trade and Conquest from 1600*, Harper Collins, London, 1999.

ments. In her well-known book *The Paradox of Plenty*, oil expert Terry Lynn Karl argues that “the absolute dominance of the oil companies over the exporting states characterized this regime and molded the development prospects of these states”.¹¹ She adds that since the 1960s, massive oil revenues have helped to exacerbate the process of centralization and concentration of power in petro-States without ensuring a simultaneous development of public institutions and political authority. This has resulted in a wide gap between the extensive jurisdictional role of the States and their weak mechanisms of authority.

The former American conglomerate United Fruit has been cited as another private firm with substantial leverage in US foreign policy in the mid-twentieth century. The firm has, for instance, been accused of requesting Washington’s support to topple the freely elected Guatemalan president J. Arbenz Guzman in 1954 and install the first of a series of right-wing leaders friendly to the United States.¹²

For some observers, the charter company concept of the sixteenth to nineteenth centuries is re-emerging nowadays in a new guise: “At the forefront of economic globalization, transnational corporations, which have long pursued their business in developing countries with little oversight by weak local governments and even less by the international community, are being targeted by modern-day missionaries in the form of human rights and environmental nongovernmental organizations. (...) Oil companies are being told not only that they must behave according to international human rights and environmental norms, but that they must become agents of change by putting pressure on host governments to improve their own practices.”¹³

Rationale for a dialogue

In today’s era of instant telecommunication, information flies from the remotest corner of the globe to the capitals of the world within seconds. Competitive pressure associated with globalization is

¹¹ T. L. Karl, *The Paradox of Plenty: Oil Booms and Petro-States*, University of California Press, London, 1997.

¹² Tim Weiner, “CIA in 1950’s drew up list

of Guatemalan leaders to be assassinated”, *New York Times*, 28 May 1997.

¹³ M. Ottaway, “Reluctant missionaries,” *Foreign Policy*, July/August 2001.

also mounting. As a result, some companies are becoming more responsive not only to investors and customers but also to a wider group of stakeholders that includes employees, local communities, social and environmental activist groups, etc. This is creating an unprecedented momentum for dialogue between private companies and humanitarian organizations such as the International Committee of the Red Cross. In order to understand what drives this momentum, it is instructive to look at the “business case” or motivation for dialogue.

The motivation for companies

The primary objective of private companies obviously is and remains the generation of profits. A number of factors nevertheless combine to induce certain companies to adopt a more open and considerate attitude with regard to social corporate responsibility issues, including the following:

- growing pressure from public opinion, shareholder groups and consumers, and the need to protect a company’s image and reputation through a mix of preventive and corrective measures;
- long-term strategic planning, especially in the oil and mining sectors, where return on investments often involves periods of 15 years or more. For these companies, political stability plays an important role in the development of markets, and long-term profitability depends among other things on a company’s acceptance in the local communities where it operates;
- personal motivations of some business leaders and the development of loyalties among the staff of large multinationals who identify better with their company when the latter does not neglect their social and environmental concerns;
- increased risk of judicial proceedings and even penal sanctions against company executives for violations of international law;
- sharing of know-how and information with humanitarian organizations as part of corporate risk management and crisis management strategies.

... and for the International Committee of the Red Cross

In a nutshell, engaging the corporate sector will substantially increase the ICRC's outreach and capacity to effectively protect and assist war victims, as explained below. Dialogue with companies will also help the ICRC to gain a better understanding of economic dynamics and the logic of economic players involved in today's armed conflicts.

Business and basic humanitarian principles

This section will seek to highlight some of the main questions and debates with regard to the interactions between business activities and fundamental humanitarian principles enshrined in international humanitarian law. Much reflection and dialogue are still required before reaching any conclusion on this subject.

As companies expand and explore new opportunities, they operate under complex and ever more difficult conditions. This applies in particular to firms whose investment decisions are dictated by geology rather than by political stability. In many instances, they face civil strife, political unrest or outright armed conflict in countries with a weak judicial apparatus, little respect for the rule of law and a lack of appropriate legal enforcement and monitoring mechanisms. In such environments, companies have to address a couple of sensitive questions, the answers to which have a direct bearing on the humanitarian situation on the ground:

- how to provide adequate security for corporate staff and facilities while at the same time respecting international standards of human rights and international humanitarian law, and
- how to ensure that corporate activity and the ensuing distribution of wealth at least does not make things worse, or at best helps to ease tensions between warring parties?

Self-regulation and codes of conduct

In an attempt to cope with these challenges, some companies have adopted voluntary sets of principles and guidelines of ethical behaviour to meet the expectations of key stakeholders. These corpo-

rate codes of conduct are often based on internationally recognized norms (e.g. human rights, labour standards). When corporate codes of conduct specifically deal with the use of force, they usually refer to the United Nations Code of Conduct for Law Enforcement Officials¹⁴ as well as to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.¹⁵ The latter principles are essentially meant to provide guidance to police and detention forces irrespective of whether there is a situation of armed conflict or not. They specify that security personnel must respect the fundamental rights of individuals, and may use force only when strictly necessary and only to an extent proportional to the threat.

The challenge for companies is to effectively implement the provisions laid down in voluntary codes of conduct in their daily business operations around the world, especially in countries with little external oversight and a weak judiciary system. This requires the constant attention of top management and intensive awareness-raising and training of all staff. However, several NGOs and experts have warned that voluntary initiatives and corporate self-regulation may replace legislation and intergovernmental agreements, rather than complementing them in promoting corporate responsibility.¹⁶ Many NGOs and activists thus regard internationally binding regulations as a prerequisite to ensure compliance with such fundamental principles.

Some business leaders share this view on the ground that intergovernmental agreements are necessary to deal with the so-called "free-rider problem". Binding regulation provides fair conditions whereby all competitors face the same obligations and ensuing (opportunity) costs. This is what happened in the field of corruption: American companies were restrained under the US Foreign Corrupt Practices Act of 1977, whereas foreign competitors could deduct bribes from their tax return. Negotiations within the framework of the Organization for Economic Co-operation and Development (OECD)

¹⁴ UNGA Res. 34/169 of 17 December 1979.

¹⁵ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 1990.

¹⁶ See e.g. P. Utting, "UN-business partnerships: whose agenda counts?", *Transnational Associations*, No. 3, 2001.

resulted in the adoption of the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, restoring a level playing field for competitors from all OECD countries.

In the absence of intergovernmental regulations, guidelines of ethical behaviour or codes of conduct may have the merit of setting norms and standards for industries. An article in an earlier issue of the *Review* focused precisely on the interactions between global norms and international humanitarian law. The author, Ramesh Thakur, contends that norms may be more important than laws at the regional level, while at the international level “both norms and laws, including soft laws, are at play in shaping the behaviour of different classes of players”. Thakur adds that States may be prompted to honour widely recognized standards in order to avoid expressions of disapproval from other States or from interest groups.¹⁷ It would follow that corporate codes of conduct — most of which are based on internationally recognized norms — may have the long-term effect of extending the scope and applicability of specific provisions of international law to the corporate sector.

One of the most recent voluntary sets of principles deals with the role of private firms in conflict-prone areas. It is the outcome of a process initiated by two governments eager to offer a framework for security arrangements by their industries in sensitive contexts. This process was launched by the governments of the United States and the United Kingdom in conjunction with human rights organizations, labour unions and British and American companies in the extractive sectors. The participants adopted a set of guidelines entitled “Voluntary Principles on Security and Human Rights”, of 20 December 2000.¹⁸ Companies such as BP-Amoco, Conoco, Chevron, Freeport McMoran, Rio Tinto and Shell thereby acknowledged that even though governments have the primary responsibility for promoting respect for human rights and international humanitarian law, they

¹⁷ R. Thakur, “Global norms and international humanitarian law: An Asian perspective”, *IRRC*, No. 841, March 2001, p. 19.

¹⁸ <http://www.state.gov/www/global/human_rights/001220_fsdr principles.html>

themselves share the common goal of promoting respect for these internationally recognized rights. In particular:

- Companies “recognize the importance of sharing and understanding respective experiences regarding (...) security practices and procedures, (...) and public and private security, subject to confidentiality constraints.”¹⁹
- “Companies should support efforts (...) to provide human rights training and education for public security [and] should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. Where appropriate, companies should urge investigation and that action be taken to prevent any recurrence.”
- “Private security should observe the policies of the contracting company regarding ethical conduct (...) and promote the observance of international humanitarian law. (...) Private security should have policies regarding appropriate conduct and the local use of force (...). Practice under these policies should be capable of being monitored by companies or, where appropriate, by independent third parties. (...) Companies should designate services, technology and equipment capable of offensive and defensive purposes as being for defensive use only.”

This governmental initiative is intended to enhance respect for international humanitarian law among companies operating in war-prone areas. In that sense, it is consistent with Article 1 common to the four 1949 Geneva Conventions for the protection of war victims, under which States party to the Conventions pledge not only to respect, but also to ensure respect for international humanitarian law. The Voluntary Principles were released at a time when the ICRC was initiating a dialogue with about a dozen companies operating in war-prone areas, with the primary aim of sensitizing firms to specific humanitarian concerns and mobilizing their support. This dialogue shall undoubtedly help oil and mining firms to translate

¹⁹ The principles concern the sharing of risk assessments relating to factors such as the identification of security risks, the poten-

tial for violence, human rights records, conflict analysis, arms transfers, etc.

commitments to abide by the Voluntary Principles on Security and Human Rights into operational reality. The ICRC has now been invited to contribute to forthcoming meetings in the Voluntary Principles process in its capacity as guardian and promoter of international humanitarian law.

Business and international humanitarian law

International humanitarian law must be respected primarily by combatants, i.e. all those directly involved in the conduct of hostilities during an armed conflict, including non-State bearers of weapons such as rebel groups, guerrilla movements or private military firms. Violations of international humanitarian law committed in a conflict would be directly attributable to a private company only insofar as the latter is directly involved in the hostilities, for instance through military personnel it has hired for that very purpose.

This being said, it is interesting to echo here the lively debate on the issue of complicity, notably in connection with crimes covered by the Rome Statute of the International Criminal Court (ICC): “International penal repression, dating from its early manifestations at Nuremberg and Tokyo, has focused not so much on the ‘principal’ perpetrator — that is, the concentration camp torturer or front-line executioner — as on the leaders who are, technically speaking, ‘mere’ accomplices. The offenders who are the focus of international efforts are often themselves urbane and sophisticated individuals, with little or no personal experience in killing and torture.”²⁰ In the specific case of a breach of the 1949 Geneva Conventions or Additional Protocol I thereto²¹, the perpetrator’s superior will be held accountable if he knew — or had sufficient information to conclude — that his subordinate was going to commit such a breach and did not try to prevent it.

²⁰ W. Schabas, “Enforcing international humanitarian law: Catching the accomplices”, *IRRC*, No. 842, June 2001, p. 440.

²¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 Art. 86.

With the adoption of the Rome Statute 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.²² Companies could thus be prosecuted on account of crimes against humanity through the individual liability of their staff or directors. Attempts to include corporate liability for breaches in the ICC Statute were unsuccessful, even though some signatory States do provide for such a form of criminal responsibility in their national law. Advocates of corporate liability argue that this would allow for the seizure of corporate assets required to offer compensation to victims.

The case of private military or security firms deserves a specific mention. In principle, national legislation should regulate the practice of security companies, and penal sanctions for violations of international humanitarian law should be inserted in national law. But in practice, private military firms are often hired in places with little respect for the rule of law and where the State is unable to offer a sufficient level of security to those who opt for private security. It is thus not exceptional to find private military and security firms operating in places with a weak legal infrastructure and an inefficient or paralysed judicial system. They find themselves working *de facto* in a "legal vacuum". This situation calls for further consideration of appropriate regulatory tools and enforcement mechanisms to ensure effective compliance with international humanitarian law.

It is of course neither the role nor the intention of the ICRC to enter into controversial debates over some of these issues. The next section will therefore turn to the relations that the ICRC has started to build with the private sector, beginning with the overall strategy and then examining more specific issues related to companies operating in war-prone regions.

²² See for instance M. Nyberg, "At risk from complicity with crime", *Financial Times*, 27 July 1998.

The ICRC's private sector strategy

The ICRC's governing body has drawn a road map for the development of overall relations with the private sector in a coherent and coordinated manner, and has made this one of its institutional priorities for the years to come. The global strategy adopted by the ICRC's Assembly in December 1999 encapsulates five objectives, each of which applies to different categories of firms.

The first two objectives are new initiatives which focus on establishing a substantive dialogue with the private sector on humanitarian issues, namely:

- to promote humanitarian principles among firms operating in war-prone regions; and
- to strengthen the ICRC's network at an operational level, involving business leaders where relevant.

The medium-term aim is to improve the ICRC's capacity to provide effective protection and assistance by including among regular interlocutors private companies that have substantial direct or indirect influence on armed conflicts and on the fate of war victims. Parallel efforts are being undertaken with States whose responsibility it remains to comply with — and ensure respect for — international humanitarian law.

The remaining three objectives, the purpose of which is to enhance the ICRC's efficiency and operational capacity through the support of companies, are:

- to draw on specific skills from the private sector and to promote exchanges in strategic areas;
- to improve the ICRC's purchasing policy for both goods and services; and
- to step up fundraising efforts with the private sector.

The latter three objectives are not new, but will be conducted in a more systematic and synergetic manner. The ICRC has adopted clear ethical criteria for the selection of corporate partners, in line with Article 23 of the 1991 Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies. This article stipulates, among other things, that “[a business partner] must in no way be engaged in activities running counter to

the [Red Cross and Red Crescent] Movement's objectives and Principles or which might be regarded by the public as controversial."

The present analysis is concerned only with the first two objectives cited above, and thus focuses on relations with companies operating in war-prone areas.

Engaging the business community: in what spirit?

In order to carry out its humanitarian activities, the ICRC maintains relations with all those who exert direct or indirect influence on armed conflicts. Against the current background of globalization, multinational companies with their growing economic and financial power may have greater influence than more traditional ICRC interlocutors in the field. The ICRC has consequently decided to reach out to the private sector. This is not because those companies' goals are or might be humanitarian in nature. Clearly, profitability remains the top priority of private companies. Just as it is not the role of the ICRC to pass judgement on the groups that it has traditionally dealt with, such as rebels, opinion leaders or government officials, it is also not its role to qualify private companies as good or bad.

In making this move, the intention is to enhance the ICRC's ability to protect and assist the victims of armed conflicts by strengthening its network of contacts at the operational level, through the inclusion of influential new stakeholders such as multinational companies. A first step is to improve mutual understanding and to sensitize the private sector to the humanitarian principles and country-specific concerns of the ICRC. Through dialogue, the ICRC may also further increase its own understanding of the economic dynamics underlying conflicts and of the role and reasoning of various economic players involved.

The main elements of the ICRC's institutional position, which are discussed below, form the framework for the relations with companies operating in armed-conflict situations:

- promotion of international humanitarian law;
- exchanges of information; and
- logistical support.

The primary target group consists of multinational companies or large national firms which can exert significant influence, directly or indirectly, on the users of violence and on the fate of the people affected. To begin with, the ICRC will establish contacts with companies doing business in sectors such as the oil industry and mining, construction and civil engineering, food processing, textiles and apparel.²³

Promotion of international humanitarian law

The ICRC does not intend to propose yet another corporate code of conduct dealing specifically with issues related to international humanitarian law applicable in armed conflict. It has instead decided to actively spread knowledge of the most relevant fundamental humanitarian principles and provisions, highlighting their operational and practical implications in specific situations in which companies operate. The objective is to ensure that private enterprises know these principles, promote them and put them into practice when the situation calls for it, especially in contractual relationships with government or private security forces. It is also to encourage private companies to promote respect for humanitarian principles in their relations with partners such as States, private military companies, government security forces, local authorities, etc. As mentioned above, this will help companies which have welcomed the Voluntary Principles on Security and Human Rights to translate into operational reality their pledge to promote respect for international humanitarian law.

When necessary, the ICRC will of course give clear and precise answers as to the applicability and scope of international humanitarian law. But it is aware that adopting a narrow legalistic approach may be counterproductive to establishing a fruitful dialogue with companies.

In practical terms, the ICRC will focus on the most important humanitarian principles which may be relevant for multinationals in conflict situations, including:

²³ Contacts (pursuant to Art. 36 of Protocol I) with private arms designers and producers,

as well as with financial and commercial intermediaries, are also envisaged.

- the distinction to be made at all times between civilians and combatants: the obligation to distinguish between civilian objects and military targets may be of specific interest for companies that wish to avoid having their facilities used for military purposes by the parties to a conflict so as to preserve them from attacks;
- the prohibition of forced movement of civilians: the implication for private companies is obvious when the displacement is caused by their own operations (for example, by the construction of a pipeline or the exploitation of natural resources);
- the protection of goods indispensable to the survival of the civilian population, especially food and water, and access to these goods; in the same vein, there is the rule that combatants must refrain from attacking works and installations containing dangerous forces;
- respect for and protection of detained persons.

Further principles apply in particular to companies hiring security forces:

- the ban on the use of weapons, projectiles, and material and methods of warfare which may cause superfluous injury or unnecessary suffering, or widespread, long-term and severe damage to the natural environment;
- the prohibition of indiscriminate attacks; and
- respect for the red cross and red crescent emblem and for medical services.

To spread knowledge of international humanitarian law, the ICRC is willing to extend participation in its dissemination programmes to include corporate managers, as well as personnel of the security forces they use. This cooperation is envisaged on the basis that it will not be used for publicity purposes, but is part of a long-term endeavour to improve compliance by arms bearers with international humanitarian law. For the ICRC, entering into dialogue in the field with all those who bear arms is the only way to provide effective protection and assistance to all people in need thereof. It will therefore initiate or step up dissemination activities for private security companies active in armed conflicts, to which the rules of international humanitarian law ought to be presented as a whole. The ICRC is aware of the risk that this may be perceived as conferring legitimacy

upon such companies but, as has been rightly pointed out, it develops a similar dialogue “with any party to or participant in an armed conflict, without any implication as to the legitimacy of the cause upheld by them”.²⁴

Exchanges of information

Both companies and the ICRC share common interests that are natural topics of discussion when initiating a dialogue. For instance, both parties share concerns relating to the health and security of their employees — local and expatriate — working under difficult circumstances. In addition, private firms often benefit from close networks of contacts needed to assess risks and take economically sound investment decisions. In this context, exchanges of information with the private sector may serve to complement the ICRC’s own traditional assessments.

Because of stringent confidentiality and neutrality constraints, the ICRC and companies will frankly explore the limits to dialogue. With this in mind, exchanges of information may encompass several aspects.

- In order to improve mutual understanding, both parties will explain who they are, what they do and how they operate. Even though dialogue between humanitarian organizations and the business world is just barely beginning, it should be pointed out that many multinational companies have already had exchanges — sometimes acrimonious — with NGOs. Consequently, it is useful to emphasize the ICRC’s *modus operandi*, which in order to safeguard the ICRC’s access to war zones is based on constructive engagement rather than public condemnation.
- The ICRC intends to share its major humanitarian concerns with regard to a given situation, so as to raise the corporate sector’s awareness of the issues involved.

²⁴ Y. Sandoz, “The privatization of security: Framing a conflict prevention and peace-building policy agenda”, mimeo, paper

submitted to Wilton Park Conference ICRC, Geneva, 1999, p. 99.

- The ICRC will try to find out how business people assess the political and socio-economic conditions in a given country, as well as the condition of its infrastructure and local institutions. This may help in devising appropriate relief strategies. It will seek to obtain relevant information not only during but also before a conflict (e.g. about the condition of the infrastructure and basic social services) and after it (e.g. about projects that could be taken over by private firms, such as the provision of drinking water in big cities).

Logistical support

Depending on the situation and on needs, delegations may contact companies in an ad hoc manner for specific logistical support (e.g. means of transport, or access to health services run by a private company). Logistical support may be envisaged once mutual understanding and a sufficient level of trust have been established. Corporate support may be accepted by the ICRC in crisis situations — and may even be actively solicited in the case of an emergency operation where no other solution is readily available — provided that such support is not linked to publicity, and that the political situation allows for it. This requires a careful assessment of the potential political risk in receiving logistical support from a company operating in a situation of armed conflict.

Business and the Red Cross/ Red Crescent Movement

Large firms are primarily interested in an association with “the Red Cross” or “the Red Crescent”. They seldom make a distinction between the various components of the International Red Cross and Red Crescent Movement.²⁵ In a highly interconnected world, partnerships between a multinational company and any component of the Movement may have serious repercussions on the activities of other components. The ICRC has experienced this when partners are

²⁵ The Movement comprises, in addition to the ICRC, the individual National Red Cross and Red Crescent Societies as well as the

International Federation of Red Cross and Red Crescent Societies.

companies operating in conflict zones, and also in the case of high-profile international partnerships in which the image of the Red Cross/Red Crescent is at stake.

Aware of these challenges, in November 2001 the Council of Delegates approved a plan of action to devise a common approach to major issues of mutual concern related to the corporate sector. Adopted within the framework of the overall Strategy for the Movement, this plan requires the latter to develop ethical criteria for selecting corporate partners while preserving the integrity of the Red Cross/Red Crescent. It further calls for appropriate guidelines on what the Movement's components can offer in return for corporate support, especially with regard to use of the emblem.²⁶

For the ICRC, the policies and activities of a corporate partner shall not run contrary to the Movement's objectives and principles or to the ICRC's mandate. Corporate philanthropy cannot compensate for an absence of corporate responsibility, and should not be used in an attempt to hide fundamental contradictions between the core policies and activities of a corporate donor and those of a humanitarian agency.

Concluding remarks

The ICRC is convinced that building relations with the corporate sector can serve to strengthen its diplomatic and operational outreach, provided that the objectives and business arguments in favour of engagement are clearly spelt out and acknowledged on both sides. The business community is in fact a very diverse world in which sensitivities differ and varying degrees of responsiveness to environmental, social or humanitarian concerns are found. Multinational companies and humanitarian agencies obviously do not share the same agenda but may nonetheless have common interests, such as the desire to work in places with satisfactory security conditions where fundamental humanitarian principles are not systematically violated.

²⁶ Council of Delegates (Geneva, November 2001), Strategy for the Red Cross and Red Crescent Movement, Report by a

Working Group, Geneva, 2001, p. 24, and Resolution CD 2001/PR 5.3/1.

In this context the ICRC has identified several avenues for engaging the corporate sector. They include promoting knowledge of and respect for international humanitarian law among private firms operating in war-prone areas, as well as a frank dialogue — subject to the usual confidentiality requirements — with companies that have a direct or indirect influence on the users of violence. Joint efforts, i.e. with ad hoc corporate logistical support, may be envisaged when necessary and acceptable to the major stakeholders involved in a conflict. The ICRC will simultaneously echo this dialogue with the States party to the Geneva Conventions, especially those where multinational companies operate and those from which they originate.

Exchanges have been successfully initiated with some twenty multinational companies at headquarters level. These firms have expressed a genuine interest in building up relations with the ICRC in war-prone countries. The challenge is now to deepen that dialogue with the hope that engaging the business community in the field will make a real difference. The strategy presented here still has to pass the test: such engagement has to show that it gives war victims a better chance of receiving appropriate protection and assistance. Bridges between the business and humanitarian worlds have to prove that they do indeed lead to better compliance with international humanitarian law. The International Committee of the Red Cross is convinced that it is worth giving this approach a chance.

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Résumé

Responsabilité des entreprises et principes humanitaires — Quelles relations entre le monde des affaires et l'action humanitaire?

par GILLES CARBONNIER

Les milieux économiques exercent depuis longtemps une influence majeure sur l'évolution géopolitique mondiale. Aujourd'hui, la communauté internationale et les médias s'intéressent de plus près aux questions de responsabilité des entreprises privées, et depuis peu au rôle des acteurs économiques dans les conflits armés. En parallèle, de nombreuses compagnies se sont dotées de codes de conduite qui s'inspirent de normes reconnues au plan international, notamment dans le domaine du droit du travail et des droits de l'homme. Sur cette toile de fond, il s'agit de bien cerner les divers objectifs qui motivent le monde des affaires et les organisations humanitaires à établir des ponts entre eux.

Les compagnies privées sont amenées à engager du personnel de sécurité pour protéger leurs installations et leur personnel lorsqu'elles opèrent dans des zones instables. De ce fait se pose la question de la pertinence du droit international humanitaire dans le contexte d'activités économiques privées. Le CICR a décidé de mettre en œuvre une stratégie spécifique envers les firmes qui opèrent en zones conflictuelles, et ce dans le but d'améliorer sa capacité à protéger et assister les victimes de conflits armés. Cette stratégie comprend entre autres la promotion des principes humanitaires fondamentaux ainsi que l'établissement d'un dialogue sur le terrain visant à sensibiliser les acteurs économiques sur des préoccupations humanitaires spécifiques.