

Business actors in armed conflict: towards a new humanitarian agenda

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Abstract

The purpose of this article is to give an overview of current understandings of the various roles of business actors in armed conflict. It traces the expanding discussion of business and conflict in today's civil wars, and the discussion's importance to humanitarian, human rights, corporate and peacebuilding policymakers. It shows how the humanitarian understanding of business roles in conflict has progressed beyond some simple and largely negative stereotypes about business in war to become more sophisticated. The article then looks at the significant diversity of business actors, which can determine their experience of armed conflict. It is suggested that there are six potential roles of business in armed conflict – that of victim, perpetrator, supplier, humanitarian actor, peacebuilder, and conflict preventer. Finally, the article recommends a range of ways to improve humanitarian policy so that humanitarian actors engage with business more actively and appropriately on law, business relief, and business continuity.

Keywords: business, armed conflict, humanitarian action, peacebuilding, business relief, business continuity.

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Henry Dunant, the founder of the Red Cross, is naturally remembered as a great humanitarian. His personal humanitarian action at the Battle of Solferino and his subsequent epiphany about the need for a new international organization is now

firmly embedded in the founding history of modern humanitarianism.¹ But Dunant did not go to Solferino deliberately to start a global humanitarian organization. In fact, he was in Solferino on business. He was urgently, perhaps desperately, seeking a meeting with Napoleon III to seek his approval for a new land concession that included a waterfall to irrigate his drought-stricken agricultural business in Algeria.² This should perhaps encourage humanitarians to engage confidently with business people. After all, our modern founder was a businessman. Although by all accounts, he was not very good at it.³

This article encourages humanitarian policymakers and practitioners towards a more varied understanding of the roles and experiences of business actors in armed conflict than has typically been the case among humanitarian agencies. The article starts by briefly surveying the academic and activist debate about business and armed conflict over the last twenty years, with its particular emphasis on war economies and its largely negative view of business as a cause of war. Drawing on more nuanced views of business that have emerged in recent years, the article then suggests that humanitarian policymakers might profit from recognizing the diversity of business in conflicted societies and the six main roles played by business in armed conflicts. Finally, the paper tentatively recommends four ways in which humanitarian actors could engage better with business in the interests of the civilian populations that work in businesses or depend on them for their livelihood and survival during armed conflicts.

Business and war

The relationship between business and armed conflict is ancient and enduring. In human history, goods have just as often been secured by violence as by trade. Armed force has regularly been used to protect trade or to expand business opportunities and develop new markets. Monarchs, states, and warlords have all needed businesses to supply and finance their wars. And, of course, war itself has often been primarily understood as a business activity by many of its foot soldiers because of the unique freedom it offers to pillage, and because of the black markets it creates for commodities made scarce by war.

In his famous 1827 novel, *I Promessi Sposi*, Manzoni describes the conduct and motivation of Wallenstein's pillaging troops,⁴ 200 years earlier, as they moved towards Mantua in the Thirty Years' War:

When they arrived at a village selected as a billeting place, the men quickly spread out over it and literally put it to the sack. Whatever could be consumed

1 See Henry Dunant, *A Memory of Solferino*, originally printed by American Red Cross, 1959, reprinted by ICRC, Geneva, 2009.

2 Caroline Moorehead, *Dunant's Dream: War, Switzerland and the History of the Red Cross*, Harper Collins, London, 1998, pp. 6–7.

3 Francois Bugnion, 'Henry Dunant', in David Forsythe (ed.), *Encyclopedia of Human Rights*, Oxford University Press, New York, 1996, p. 70.

4 Wallenstein was a militarily and commercially successful Bohemian commander who funded his own private army, which he put at the service of the Habsburg Emperor, Ferdinand II.

or carried off vanished at once and everything else was ruined or destroyed. Furniture became firewood; cottages became stables ... they searched every cranny of the houses, knocked down walls, dismantled buildings and quickly identified recently dug spots in the gardens to find where people had hidden their valuables, or tortured them to tell them where they were hidden.⁵

Manzoni's description would fit profiteering military looters from many thousands of wars in human history, most recently in Bosnia and Herzegovina, the Democratic Republic of Congo, Sierra Leone, and Libya, for example.

War can be good for legal and respectable businesses too. The great Frenchman Voltaire is known mostly to humanitarians for his timeless anti-war passages in *Candide* and his determined human rights campaigns against unfair trials, torture, and the death penalty. But in addition to being artistically and politically brilliant, Voltaire was also commercially brilliant. From an early age, he accumulated great wealth, not from his writing and plays but primarily from his business deals. Voltaire's first fortune was made with a group of school friends who worked out a formula with which to win the Paris lottery. His second fortune was made from a business that supplied uniforms to the French army.⁶

Voltaire profited legally from what scholars call a 'war economy'. According to Le Billon, this is 'a system of producing, mobilizing and allocating resources to sustain violence'.⁷ It is a phenomenon that is highly relevant to the precepts of humanitarian law and the practice of humanitarian action. Humanitarian lawyers are concerned to ensure the rights and duties of business actors in war, and need to understand when businesses act lawfully or unlawfully under international humanitarian law. Businesses are protected in armed conflict under international humanitarian law unless they are engaged in roles like arms manufacture, which makes them a legitimate military target.⁸ But they are also bound not to engage directly or indirectly in violations of international humanitarian law.⁹

In the civil wars of recent years, questions about business in conflict have rightly extended beyond the conduct of businesses in war to the role that business interests play in causing and sustaining armed conflict. Scholars and non-governmental organizations (NGOs) have carried out a great deal of research to understand how commerce of various kinds drives and shapes the violent patterns of war.¹⁰ In the 1990s, research in this area heightened the insight that many

5 Alessandro Manzoni, *The Betrothed [I Promessi Sposi]*, (trans. Bruce Penman), Penguin Kindle Edition, London, 1983, p. 532.

6 Ian Davidson, *Voltaire in Exile*, Atlantic Books, London, 2004, p. 4.

7 Philippe Le Billon, *Geopolitics of Resource Wars: Resource Dependence, Governance and Violence*, Frank Cass, London, 2005, p. 288.

8 ICRC, *Customary International Humanitarian Law, Vol. I: Rules*, Jean-Marie Henckaerts and Louise Doswald-Beck (eds), Cambridge University Press, Cambridge, 2005, Rule 8, 'Definition of Military Objectives', pp. 29–34.

9 See ICRC, *Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law*, ICRC, Geneva, December 2006.

10 See e.g., David Keen, *Useful Enemies: When Waging Wars is More Important than Winning Them*, Yale University Press, New Haven and London, 2012, Chapter 2, and *Complex Emergencies*, Polity, Cambridge, 2007, Chapter 2; Philippe Le Billon, *Fueling War: Natural Resources and Armed Conflict*, Routledge,

contemporary civil wars were driven as much by commercial greed as by political grievance.¹¹ In other words, war can be as economic as it is political.

Political actors – as governments or non-state armed groups – can have a primarily economic project that they use violence and politics to deliver, or a primarily political project that uses violence to co-opt the economy necessary to finance it. Warring parties may want to appropriate land and resources for an elite few. Or, in more socialist struggles, they may seek to reappropriate natural resources for the many from the few. In either case, whether as a national or a guerrilla army, they need to finance their forces at the very least. Economic resources are never the whole story of a political contest but they are certainly central in many armed conflicts. For example, the UN has calculated that over the past sixty years, 40 per cent of civil wars have been associated with important contests over mining and natural resources of some kind.¹² Diamonds and gold have been particularly prominent as the sources of armed conflict and the means to finance several African wars. This has led to major industry efforts to end so-called blood diamonds and ensure that gold remains ‘conflict free’.¹³

Humanitarian lawyers struggle to find the point at which a primarily economic conflict becomes an armed conflict proper, or when it remains a violent and protracted policing struggle against organized crime. This can be difficult to discern in some cases. The current ‘drugs war’ in Mexico is an example of this. This struggle amongst a state, its citizens, and organized crime networks has an extremely high rate of violent death higher than many situations considered as armed conflicts proper.

The humanitarian implications of war economies

Insights into the economic rationale of war and its affinity with theft, expropriation, reappropriation, or criminality are not new to political science. Marxist theories, in particular, have long observed the violent patterns of primitive accumulation that go hand-in-hand with the development of capitalism. War has always been a means of economic strategy and a way to the accumulation of wealth. This is particularly true in colonialist violence. The clarion cry of British imperialism was ‘Commerce and

London, 2005. See also, the many reports of Global Witness available at: <http://www.globalwitness.org/news-and-reports> (unless otherwise stated all links in this article last visited 20 September 2012).

- 11 Christopher Cramer, *Civil War is Not a Stupid Thing: Accounting for Violence in Civil Wars*, Hurst, London, 2006; Mats Berdal and David M. Malone (eds), *Greed and Grievance: Economic Agendas in Civil Wars*, Lynne Reiner, Boulder, 2000.
- 12 United Nations Inter-Agency Team for Preventive Action, *Extractive Industries and Conflict: Guidance Note for Practitioners*, UN, New York, 2010, p. 7.
- 13 Details of The Kimberly Process on conflict diamonds are available at: <http://www.kimberleyprocess.com/>; details of the World Gold Council’s initiative are available at: <http://www.globalwitness.org/news-and-reports>, http://www.gold.org/media/press_releases/archive/2012/03/world_gold_council_unveils_latest_draft_of_conflict_free_gold_standard/.

Christianity'.¹⁴ The world's first modern business corporation, the British East India Company, famously had a standing army of 200,000 people which it used in massacres and pitched battles, a fact that led to Adam Smith's famous description of the company as 'that bloodstained monopoly'.¹⁵ Pioneering work by Global Witness, Partnership Africa Canada, and the UN on the role of diamonds and minerals in the wars in Angola, Sierra Leone, Liberia, and the Democratic Republic of Congo (DRC) since 2000 has shown how the business interests of government and non-state warring parties still deploy extreme violence against civilians in the late twentieth and early twenty-first centuries.¹⁶

War economies in civil wars take several forms depending on the nature of the conflict and the goals and capacities of the combatants.¹⁷ Naylor distinguishes three main forms of armed group conflict economies: predatory, parasitic, and extractive.¹⁸ In a predatory economy, armed actors raid and pillage the local area, unable to control the territory fully. A parasitic war economy uses violence to control territory and does business by taxing, extorting, or taking over businesses in what then becomes a shadow economy within a state. In an extractive conflict economy, armed forces violently take the necessary territory to appropriate and control profitable agricultural and mining businesses. As Jimmy Kandeh and David Keen have pointed out, government forces as well as rebel forces are just as likely to adopt such business practices in civil wars – the recent archetypal examples being the military millionaires of the Indonesian army, and the soldier-rebels (or 'sobels') of the Sierra Leone government who copied violent rebel practices to exploit local business opportunities.¹⁹ Critics of the invasion of Iraq would say that the new oil, construction, and service contracts awarded to international companies after the Iraqi regime change are clear examples of the United States and its allies profiting from a similar conflict economy.

Humanitarian actors are acutely alive to the role of business in war for a variety of reasons:

- First, humanitarians are aware of the ability of business interests to cause war and encourage commercially predatory, violent, strong men to use atrocities against civilians to increase their market share.

14 David Livingstone, the famous Scottish missionary explorer of Africa, repeatedly framed his vision of colonial progress as a threefold mission of 'Christianity, Commerce and Civilization', a phrase taken to heart by British imperialists.

15 Nick Robins, *The Corporation that Changed the World: How the East India Company Shaped the Modern Multinational*, Pluto Press, London, 2006, see Chapter 6 summarizing Adam Smith's criticism of the company and its monopoly.

16 Investigative research by Partnership Africa Canada and Global Witness, in particular, brought about international political oversight by the United Nations and industry-wide monitoring by the Kimberly Process – a joint government, company, and civil society initiative.

17 Achim Wennmann, 'Conflict economies', in Vincent Chetail (ed.), *Post-Conflict Peacebuilding: A Lexicon*, Oxford University Press, Oxford, 2009, pp. 74–89.

18 R. Thomas Naylor, *Wages of Crime: Black Markets, Illegal Finance and the Underworld Economy*, Cornell University Press, Ithaca, 2002, pp. 45–47.

19 D. Keen, above note 10, Chapter 2; Jimmy D. Kandeh, 'Ransoming the state: elite origins of subaltern terror in Sierra Leone', in *Review of African Political Economy*, Vol. 26, No. 81, 1999, pp. 349–366.

- Second, humanitarians need to mitigate war's terrible effect on local businesses and family assets that soon become unable to sustain people's livelihoods. When war destroys people's small farming or trading businesses, impoverishment follows fast.
- Third, humanitarians rightly worry about the ambivalent role that aid commodities can play in a local economy – potentially undermining markets by creating gluts of certain items or increasing inflation by introducing new cash in wages or relief distributions.
- Fourth, humanitarians are naturally alert to the moral hazard and perverse commercial incentives that can be generated by humanitarian aid. Violent groups may attract aid in order to tax it, divert it, or violently co-opt it. In this way, aid becomes part of the conflict and its presence can increase violence against those who need it. This core risk to humanitarian action in war is most clearly confronted by humanitarian policies that aim to insulate their projects against such risks by actively 'doing no harm' or applying 'conflict-sensitive' programming.²⁰
- Finally, a large new business sector has developed to protect businesses and other organizations in armed conflict, including humanitarian agencies. The sharp rise in the scale, coverage, and profitability of private security companies (PSCs) and private military companies (PMCs), such as G4S, Aegis, and Academi (formerly Blackwater), means that they are now a major new commercial actor in armed conflicts, and one that is frequently armed.²¹ In the last few years, the Montreux Document has been negotiated to outline international standards for operations by PSCs and PMCs in armed conflicts,²² and a more recent multi-stakeholder initiative, the International Code of Conduct for Private Security Service Providers, aims to 'clarify international standards for the private security industry operating in complex environments, as well as to improve oversight and accountability of these companies'.²³

The recent evolution in business ethics

The initial discourse around business and conflict was dominated by a deeply suspicious analysis of 'big bad multinational corporations' who were out for everything they could get, and would cover-up whatever they needed to in order to get it. In his important survey of colonial economies, David Fieldhouse describes

20 Mary Anderson, *Do No Harm: How Aid Can Support Peace or War*, Lynne Reiner, Boulder, 1999; Conflict Sensitivity Consortium, *Resource Pack on Conflict Sensitive Approaches to Development, Humanitarian Assistance and Peacebuilding*, available at: <http://www.conflictsensitivity.org/publications/conflict-sensitive-approaches-development-humanitarian-assistance-and-peacebuilding-res>.

21 See company websites at: www.g4s.com; <http://www.aegisworld.com>; <http://www.academi.com>.

22 The Montreux Document on Pertinent Legal Obligations and Good Practices for States Related to Operations of Private Military Companies and Security Companies during Armed Conflict, 2009, available at: http://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf.

23 For a detailed description of this Swiss-led initiative, see: http://www.icoc-psp.org/About_ICoC.html.

how multinational and transnational corporations (MNCs and TNCs) got a particularly bad press from Marxist economists who saw them as the main instrument in the subjugation of peripheral colonial and post-colonial economies to a dependency on a core global economy structured to suit Western self-interest.²⁴ To these dependency theorists, all TNCs were little better than the British East India Company or Spanish conquistadors of old, and many were still thought to be quite happy to run private or proxy armies of their own. Shell in Nigeria, Lonrho in southern Africa, and Rio Tinto in Papua were regarded as the epitome of this kind of exploitative and irresponsible company, and still are by some NGO campaigning groups like the London Mining Network.²⁵

'Multinational' became a term of abuse in leftist circles during much of the post-colonial period. This began to change in the 1990s when the arrival of corporate social responsibility (CSR) and a deep reappraisal of business ethics across many global corporations brought new cooperation between NGOs and companies.²⁶ In the late 1990s, big business began to respond to ethical prompting by NGO critics and stock market legislators, and also started to recruit former NGO activists to run their social and supply chain teams. NGOs like CorpWatch (1996) began to monitor individual company performance; a new wave of funds emerged to focus on socially responsible investment (SRI); the UN launched its Global Compact (1999); and stock markets developed indices like the Dow Jones Sustainability Indices (1999) in New York and FTSE4Good in London (2001). Most of these built on the 'triple bottom line' model of NGO innovator John Elkington, which asked that companies report on their impact on 'people, planet and profit'.²⁷ At the same time, mainstream development theory – in governments and NGOs alike – also changed to become less leftist and more supportive of the business sector's contribution to human development and human security. The human rights obligations of business also began to be scrutinized and elaborated.²⁸ The culmination of this process was the official adoption of the UN Guiding Principles on Business and Human Rights by the Human Rights Council in 2011.²⁹ These were carefully prepared over several years by Professor John Ruggie while

24 David Kenneth Fieldhouse, *The West and the Third World: Trade, Colonialism, Dependence and Development*, Blackwell, Oxford, 1999, Chapter 9.

25 See, for example, London Mining Network, 'Rio Tinto: a shameful history of human and labour rights abuses and environmental degradation around the globe', available at: <http://londonminingnetwork.org/2010/04/rio-tinto-a-shameful-history-of-human-and-labour-rights-abuses-and-environmental-degradation-around-the-globe/>.

26 John V. Mitchell, *Companies in a World of Conflict: NGOs, Sanctions and Corporate Responsibility*, Earthscan and Royal Institute for International Affairs, London, 1998, Editor's Overview, pp. 1–17.

27 John Elkington, *The Triple Bottom Line for Twentieth Century Businesses*, in J. V. Mitchell, above note 26, Chapter 2.

28 For an excellent summary of the evolution of human rights obligations on business actors before the Ruggie Process, see Andrew Clapham, *Human Rights Obligations of Non-State Actors*, Oxford University Press, Oxford, 2006, Chapter 6 on corporations and human rights.

29 UN Doc. A/HRC/17/31, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, 21 March 2011, unanimously endorsed by the United Nations Human Rights Council on 16 June 2011.

he was the UN Secretary General's Special Representative for Business and Human Rights.

All these developments mean that the boundary between business and humanitarian concerns has become much more porous. Humanitarian agencies and businesses debate together, both profess respect for human rights, increasingly swap staff, and have common participatory approaches to community development and conflict reduction strategies at field level.

Understanding the diversity of business

Just as earlier debates about business and war stereotyped business as big and bad corporations, they often limited discussion to the extractives sector – oil, mining, and timber – and to the arms trade. Other business sectors were overlooked. The fact that the great majority of the world's poor and most civilians in armed conflict were also small businesspeople of one kind or another was equally obscured. As the relationship between multinationals and NGOs became less conflicted, space emerged for a more sophisticated discussion of business in conflict. Useful distinctions were made between different kinds of companies, different sectors, and the variety of business models.³⁰ This more realistic discussion of the diversity of business has enabled more nuanced thinking about how different types of business affect armed conflict and are affected by it.

Business is not monolithic. Proper use of the term business must cover a multitude of different forms of human production and exchange at all levels of society. Only with a full view of all business types, is it possible to gain a full appreciation of the dynamics of business and conflict. Important variations between businesses are determined by several key factors. These differences need to be understood by humanitarian agencies if they are to achieve better working relationships and advocacy with the wide range of businesses present in any armed conflict.

Scale creates immediate and significant differences between businesses. So too does market reach – some businesses are local, some are national, and some are international. Sectors also create variety between businesses and make real differences between banking, retailing, mining, servicing, agricultural, manufacturing, and construction businesses. In a civil war economy, a large, profitable mining business producing a raw material with strong international market demand is likely to be more strategic to an armed force than, for example, a clothing retail chain at a time when local people have little money for consumer goods. Business values are a distinguishing factor too. Some businesses have very high ethical values around corruption, bribery, treatment of employees, high standards of efficiency, good customer service, and a strong notion of what constitutes morally responsible products and services. Others do not.

There are also important ownership differences. Businesses can be privately owned by one or more individuals or be publically owned through a stock market

30 Gilles Carbonnier, 'Private sector', in V. Chetail, above note 17, pp. 245–254.

thousands of miles away. Other businesses may operate a mutual or cooperative business model in which the company belongs to all its members and customers. Increasingly, social entrepreneurs in health, education, food, and micro-finance are also trading as 'social businesses' rather than charitable NGOs. This term, coined by Nobel laureate and founder of Grameen Bank, Muhammad Yunus, describes companies that run commercial operations to meet specific social needs and return all profits into the business. Some of the world's largest businesses are state owned – especially in China, Africa, and South America.

A company's business model is another vital differentiator between businesses. Large high-investment mining companies like BHP Billiton or Xstrata are often described as 'captive' businesses. They are geographically stuck to a small area where natural resources lie. They are financially trapped by the multi-billion dollar upfront investment required to mine an area. They are also trapped in time because of the decades it often takes to deliver a significant return on investment from high-tech extractive businesses. The business model of a mining company also creates very high revenue but relatively very low employment. In contrast, a soft drinks and brewing company can be relatively light on upfront investment and employ or enable a marketing network of hundreds of thousands of people selling its products across a whole country. This gives them real pro-poor reach across the bottom of the pyramid (BoP) – the broadest and poorest part of the population in most countries. Some sectors like mining and banking thrive with a few large businesses because the bar for market entry is set by very high investment. Others, like construction, farming, and retailing, include many thousands of small to medium sized enterprises (SMEs). Some business models are very seasonal. Some are export dependent, like cash crops, and some are import dependent, like tourism whose customers must be attracted from abroad.

Some businesses are highly adaptable in war, even deeply innovative. For example, in many wars, high-end sections of the property, hotel, and restaurant market boom as they adapt by renting to international aid agencies. When international Safari tourism dried up because of armed conflict in Zimbabwe, several local tourist companies adapted to provide logistical and administrative support to international agencies. One of Switzerland's most famous chocolate bars – Ragusa – is also the result of business wartime innovation. When the supply of cocoa became extremely scarce in wartime Europe, Camille Bloch invested in hazelnuts instead and designed the product that became his leading brand.³¹

One of the main distinctions in any analysis of business is between the formal and informal sectors. All economies have a formal and informal sector, but poor and conflict-affected economies have particularly large informal sectors. The formal sector is tax-paying and regulated by government. The informal sector is not. Humanitarian agencies and NGOs work mostly with the informal economy. In an armed conflict every poor family is a family business of some kind, desperately trying to find customers for the labour and products of its adult and child members every day, and struggling to retain or recover its assets. What is often referred to as

31 See Ragusa, 'Historique du produit', available at: <http://www.ragusa.ch/fr/historique-du-produit.html>.

‘livelihoods programming’ or ‘economic protection’ in humanitarian action is really support to family businesses.

The six main roles of business in war

The strong emphasis on business as a potential motivation of armed conflict and atrocity focuses excessively on one potential role of business as a cause or perpetrator and obscures the other roles that business plays in war as victim, supplier, humanitarian actor, peacebuilder, and conflict preventer. Alongside an appreciation of different types of businesses operating in an armed conflict, humanitarian workers also need to have a nuanced understanding of the different roles that business can play in war. These roles can most easily be divided into the six main areas explored below.

Business as perpetrator

The potential for businesses to be perpetrators of violations in armed conflict is well recognized in international humanitarian law. This body of law describes the violations that can take place during armed conflict. In relation to business, these can include pillage, manufacture of illegal weapons, use of forced labour, and unlawful violence by company-hired militias or collusion with state or non-state forces. A company may commit these crimes directly or be complicit with others who commit them.³²

A landmark case of corporate war crimes from World War II is that of I. G. Farben, the German chemical company that cooperated with the Nazi authorities in the planning and co-option of chemical plants in Nazi-occupied countries and also held the patent for and supplied Zyklon B, the gas used in Nazi extermination camps, to German authorities.³³ German, Swiss, and Turkish banks have been shown to have been complicit in dealing in ‘Nazi gold’ that supported the German war effort and was often gained through war crimes and atrocities. ‘Teeth gold’ and jewellery from victims of the Holocaust were made into gold bars, and gold bullion was stolen from banks and individuals in Nazi-occupied countries.³⁴

More recently, NGO activists have been determined to secure modern precedents for corporate crimes in war. One of their most high-profile efforts has been against Anvil Mining in the DRC for alleged logistical support of a massacre of

32 For a comprehensive discussion of corporate complicity in war crimes, see International Commission of Jurists, *Report of the Expert Legal Panel on Corporate Complicity in International Crime*, Geneva, 2010; and Salil Triparthi, ‘Business in armed conflict zones: how to avoid complicity and comply with international standards’, Institute for Human Rights and Business, Geneva, 2010, both available at: <http://www.business-humanrights.org/ConflictPeacePortal/Issue/Complicity>.

33 Peter Hayes, *Industry and Ideology: I. G. Farben in the Nazi Era* (2nd edn), Cambridge University Press, Cambridge, 2000. For the original judgment, see *US v. Carl Krauch et al. (I.G.Farben)*, US Military Tribunal sitting at Nuremberg, 30 July 1948, in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No.10*, Vol. VIII, 1952, pp. 1081–1210.

34 Jonathan Steinberg, *The Deutsche Bank and its Gold Transactions During the Second World War*, C. H. Beck, Munich, 1999.

one hundred civilians by DRC forces in Kilwa. Anvil staff were found not guilty in a Congolese criminal court that judged Anvil's vehicles to have been requisitioned by force. The case has since been taken to the Quebec High Court by human rights activists in a class action that was dismissed on grounds of inappropriate jurisdiction, and is now lodged in appeal at the Canadian Supreme Court.³⁵ Global Witness investigations, however, were initially successful in 2006 in the individual case of the Dutch businessman, Guus Kouwenhoven, who was sentenced to eight years in prison by a Dutch court for breaking a UN arms embargo in Liberia.³⁶

Business as victim

Businesses are much more frequently the victims of armed conflict than its perpetrators. As civilian objects staffed by civilians, they endure extreme hardship. In every armed conflict, large businesses and SMEs alike are attacked and looted. Their staff may be wounded, killed, and raped. They may be discriminated against and summarily dismissed and replaced by new staff favoured by the enemy party. Business installations of all kinds, including small market stalls, company warehouses, and large factories are frequently destroyed in armed conflicts. This kind of war damage combines with restrictions on market access, credit, foreign exchange, and supply chains and often results in bankruptcy or dramatically reduced operations that mean lost earnings, wage cuts, and rising unemployment.

Business as supplier

When businesses do survive in war, they frequently thrive as suppliers of commodities and services that are vital to the war effort or indispensable to civilian survival. Arms companies, construction companies, food companies, and banks are critical to any war effort's ability to feed, pay, and equip its forces. Equally, many large and small businesses sustain markets that are essential to the survival of civilian populations. Bakeries keep bread in circulation. Wholesale merchants and small local producers and retailers keep a wide range of food available. These businesses are essential first-line economic resources for endangered civilian populations. Their significance is now widely recognized by humanitarian agencies' increasing policy of market-based programming, cash-transfer, and monetization that are recommended by the Cash Learning Partnership.³⁷ Local procurement is

35 Global Witness, 'Congolese victims' pursuit of justice against Canadian company goes to Supreme Court', 26 March 2012, available at: <http://www.globalwitness.org/library/congolese-victims%E2%80%99-pursuit-justice-against-canadian-company-goes-supreme-court>.

36 Global Witness, 'Arms dealer and timber trader Guus Kouwenhoven found guilty of breaking a UN arms embargo', 7 June 2006, available at: <http://www.globalwitness.org/fr/node/3569>. Both Kouwenhoven and the Prosecution appealed the sentence, and in 2008 the Appeals Court acquitted him on all charges (and he was freed). The Prosecution appealed again, and in 2010 the Supreme Court returned the case for retrial. It is to be seen whether the recently rendered judgment against Charles Taylor by the Special Court for Sierra Leone will have any influence on the final judgment in this case.

37 The Cash Learning Partnership is an association of agencies encouraging best practice in cash-based responses, see: <http://www.cashlearning.org/english/home>.

usually the preferred option for humanitarian action so that local businesses routinely become the main suppliers for humanitarian agencies supporting civilian survival. Local businesses run trucking fleets and produce Plumpy'nut,³⁸ plastic buckets, and generic drugs for humanitarian assistance.

Business as humanitarian actor

During war many businesses do more than just commercially supplying humanitarian agencies. They become direct humanitarian actors and lead operations that protect and assist the civilian population. The paradigmatic example of a business protecting endangered civilians is Oscar Schindler, the German industrialist who saved 1,100 Jewish people during the Holocaust by employing them in his enamelware and arms factories, and hiding their Jewish identity from Nazi authorities. Although under-researched, many businesses have a noble history of aiding and protecting their staff, their families, and the local population in times of war. In Zimbabwe's recent history of violent political conflict and economic meltdown, for instance, many Zimbabwean and international companies have played a vital humanitarian role. They paid their staff in baskets of food and essential items when rampant inflation made money increasingly worthless, and made sure that pensions and life insurance policies were honoured in the best way possible. Even when they were sustaining significant losses year-on-year, several major multinational banks and mining companies like Barclays and Rio Tinto stayed on. This was partly strategic to maintain a positive market position for when the good times returned. But it was also undoubtedly because directors genuinely felt that they could not abandon their staff and their families to whom they had a moral duty.³⁹

While this kind of informal humanitarian action is not well documented, large strategic commitments to humanitarian action by large companies are increasingly common. Many companies have formed practical humanitarian partnerships with UN agencies and NGOs that aim to leverage their expertise in war and disasters. Deutsche Post's logistics partnership with the UN, Siemens' collaboration with the International Federation of Red Cross and Red Crescent Societies, and Motorola's link with CARE International are three examples of such business-humanitarian partnerships.⁴⁰

Business as peacebuilder

The fifth main role of business in conflict that is now clearly recognized in international policy is the contribution that business leaders and their investments can play in peacebuilding and post-conflict economic recovery. Business leaders

38 Plumpy'nut is a widely used emergency food relief item, see: <http://www.nutriset.fr/en/product-range/produit-par-produit/plumpy-nut-ready-to-use-therapeutic-food-ruttf.html>.

39 Field research carried out by the author in Zimbabwe in 2008–2009.

40 See Andrea Binder and Jan Martin Witte, *Business Engagement in Humanitarian Relief: Key Trends and Policy Implications*, HPG Background Paper, ODI, London, 2007.

with trust and trading networks on both sides of a conflict can sometimes play a vital bridging role in building peace. SwissPeace have researched how business people have mediated early-stage peace talks between warring parties in South Africa, Cyprus, Sri Lanka, and Nepal.⁴¹

More than talks alone, big money can bring a new pro-peace logic of its own. Using a win-win commercial logic to build super-ordinate goals around economic benefits from an international coal agreement helped to shape the beginnings of the European Union. Post-war investment by rich diaspora investors or private equity and hedge fund investors looking for first-mover advantage in Sierra Leone, Liberia, South Sudan, Angola, Serbia, Somaliland, and Croatia has helped drive economic recovery and a strong preference for peace in these countries as they emerge from protracted civil wars. One example is Manocap, the private equity group in West Africa formed by two people who had previously worked in humanitarian capacities in Sierra Leone for the United Nations Development Programme (UNDP) and GOAL.⁴²

Business and conflict prevention

In times of peace, companies can play another major role by working to prevent violent conflict. As part of their drive towards socially responsible corporate citizenship and ethical business, many national and international businesses try to limit the risks of conflict escalation in their own commercial operations. Like humanitarian agencies, they too are trying to 'do no harm' and reduce the risk of conflict.

Being a good ethical business today means making sure that your company does not cause or sustain armed conflict and human rights abuses in any part of your operations: along its supply chain; in its recruitment policies; in its working conditions; in the way it behaves with the local population; and in the way it uses guards and security forces to protect its installations. Conflict prevention of this kind is ethically good business and it is also evidently good for business. Companies need to guard against political instability in their operational environments and avoid the catastrophic damage to their reputation that can happen overnight. This nexus of commercial interest and morality is a happy one that is now well recognized by many companies.⁴³

There are now a wide range of international industry standards for all main business sectors – including extractives, manufacturing, banking, and tourism – which set guidelines for good practice in conflict prevention and reduction.⁴⁴

41 Andrea Iff, Damiano Sguaitamatti, Rina M. Alluri and Daniel Kohler, *Money Makers as Peace Makers? Business Actors in Mediation Processes*, Working Paper Series No. 2, SwissPeace, Bern, 2010.

42 See Manocap's website at: <http://manocap.com/>.

43 Havina Dashwood, *The Rise of Global Corporate Responsibility: Mining and the Spread of Global Norms*, Cambridge University Press, Cambridge, 2012.

44 Many of these, including the Voluntary Principles on Security and Human Rights, are available at the Business and Human Rights Resource Centre: <http://www.business-humanrights.org/ToolsGuidancePortal/Issues/Securityissuesconflictzones>. See also, the best practice community relations guidance notes of the International Council on Mining and Minerals (ICMM), available at: <http://www>.

The new UN Guiding Principles on Business and Human Rights represent the most comprehensive international framework to date to ensure that all businesses apply ‘human rights due diligence’ of all kinds to their business activities to prevent or remedy business-related human rights violations.⁴⁵

Several extractives companies, like Rio Tinto, Anglo-American, BHP Bilton, Newmont and Barrick (where John Ruggie has recently been appointed a special advisor), are now adopting the theory and practice of conflict resolution, peacebuilding, and human rights monitoring in their own efforts to reach fair and peaceful relationships with local communities around their mines. Some of the most progressive examples of this work have been by Rio Tinto in Australia.⁴⁶ Being only too aware that mining retains the potential to spark armed conflicts in countries such as Guinea and Peru, Rio Tinto is now trying to apply conflict resolution work in more complex settings with very recent histories of armed conflict.

This adoption of conflict resolution methods has been explicitly encouraged by a number of peace NGOs, like International Alert, who have been keen to show the potentially positive role responsible businesses can play in reducing tension and building peace.⁴⁷ Luc Zandvliet and Mary Anderson have used their humanitarian experience of ‘do no harm’ programming to research and write a new practical text on conflict reduction and peacebuilding for the commercial sector that is now being widely used by mining companies.⁴⁸ Recent mass demonstrations and deaths in Peru and South Africa show that success is still some way off, and suggest mining could still emerge as a major cause of conflict in the twenty-first century.⁴⁹

Making business a normal part of humanitarian action

Humanitarian agencies have frequently proved themselves to be creative and adaptive in their relationships with different actors in armed conflict. It is hoped that a richer and more nuanced appreciation of the many different roles and interests of business in armed conflict will lead to important new developments in humanitarian agency relationships with business. The active engagement of humanitarian agencies with business in its several roles in armed conflict can be expected to bring about some important innovations in the repertoire of

icmm.com/social-and-economic-development; and IPIECA (the oil and gas industry association for environmental and social issues) guidelines, available at: http://www.ipeca.org/library?tid%5B%5D=7&language=All&date_filter%5Bvalue%5D%5Byear%5D=&keys=&x=27&y=9.

45 See above note 29.

46 Bruce Harvey and Simon Nish, ‘Rio Tinto and indigenous agreement making in Australia’, in *Journal of Energy and Natural Resource Law*, Vol. 23, No. 4, 2005, pp. 499–510, University of Dundee.

47 International Alert, *Conflict-Sensitive Business Practice: Guidance for the Extractive Industries*, London, March 2005.

48 Luc Zandvliet and Mary B. Anderson, *Getting it Right: Making Corporate-Community Relations Work*, Greenleaf Publishing, Sheffield, 2009.

49 In August 2012, thirty-four people were killed at Lonmin’s South African mine, see: <http://www.bbc.co.uk/news/world-africa-19292909>; and more than twenty people have been killed in Peru’s recent mining disputes, see: <http://www.bbc.co.uk/news/world-latin-america-19669760>.

humanitarian action. To make this happen, humanitarians will need to engage business people at all levels (small, medium-sized, and big business) as routine interlocutors in armed conflicts.

In the meantime, four main areas of humanitarian policy seem to offer the most fruitful possibilities for greater humanitarian engagement with the business community.

Business and humanitarian law

Greater contact with business at all levels needs to become an important part of the wider dissemination of international humanitarian law and principles. Information and advocacy campaigns at the national and international levels can usefully target different business communities through local chambers of commerce, trade associations, industry best-practice groups, stock exchanges, trade unions, and the extensive business print and broadcast media. Humanitarian advocacy that targets business better will enable business people to have a much clearer understanding of their rights and obligations under international humanitarian law. This will give a good sense of the prosecutions they can expect as perpetrators, the humanitarian support and protection they can expect as victims, and the role they can play as humanitarian actors.

Advocacy for business victims

Humanitarian needs assessment could usefully assess and report in much more detail on the damage to specific businesses and markets during armed conflicts. Greater international awareness of precise business casualties – natural resources, factories, assets, markets, and offices destroyed, and employees killed or rendered unemployed – will help to draw attention to the significance of business losses for the civilian population and encourage the protection of businesses under international humanitarian law.

Protecting business continuity

Humanitarian aid could explore creative ways of aid programming that supports positive business continuity during armed conflicts. New forms of humanitarian aid need to be deployed to support the survival of businesses that are vital suppliers and critical employers, and can have a significant impact on the condition of the wider civilian population. This work could place a particular focus on SMEs and the precarious middle tier (or meso level) of a conflict-affected economy.

One of the best ways to support parts of a war-torn society may be to keep its businesses from going bankrupt. Projects of credit support, asset protection, market access, foreign exchange support, restocking, and destocking that have been used effectively at the micro-level with smallholders and sole traders could be usefully scaled up to keep small businesses employing and supplying vulnerable civilians at the meso level. Business relief at this level could include temporarily

buying assets to keep them productive or to prevent them from being sold to hoarding speculators at knock down prices. It could mean enabling foreign currency exchanges for businesses dependent on key imports for food ingredients or machinery. This kind of business relief can help to sustain employment and supply life-saving goods across the so-called missing middle of so many poor and conflict-affected societies.⁵⁰

All these various kinds of business relief may add real value to more conventional individual targeting of civilian populations and encourage business-based innovations in humanitarian action. Supporting business continuity can be an important part of wider resilience strategies in and after wars.

Involving business people

In many humanitarian agencies to date, business people have been most commonly involved in humanitarian action as funders – in cash or kind. This simple idea of them as donors restricts the contribution they can make to humanitarian programming and also obscures the sense of businesses as victims on the ground. Better engagement and involvement of local business people on the ground in humanitarian needs assessment and planning will help to give a fuller picture of the war economy, its damaging effect on civilians, and its potential for renewal or adaptation to survive chronic conflict.

Business as a new humanitarian stakeholder

The prospect of engaging with a whole new set of business stakeholders and interlocutors in war may seem daunting to a humanitarian community that already feels stretched and tested by a multiplicity of programming agendas in armed conflicts. Indeed, actively engaging with business may seem unwise when humanitarians struggle enough to cooperate in a principled way with two other potentially morally ambiguous communities – political authorities and armed forces. But armed conflicts usually affect everyone and the humanitarian mission of impartial assistance and protection must expect to involve stakeholders of every kind. As described above, humanitarian scholars and activists have uncovered important connections between business and armed conflict in the last two decades. It makes sense to use this knowledge in the interests of civilian populations and, as business people would say, leverage the value.

50 Nancy Birdsall, 'Do no harm: aid, weak institutions and the missing middle in Africa', Working Paper 113, Centre for Global Development, 3 August 2007, available at: <http://www.cgdev.org/publication/do-no-harm-aid-weak-institutions-and-missing-middle-africa-working-paper-113> (last visited 18 April 2013).