

War and business enterprises

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Warfare has undergone profound changes since Henry Dunant, a businessman from Geneva, founded the Red Cross in 1863. At that time wars were conducted mainly by States and their armies. Today, however, there are others, such as private business enterprises, playing an increasingly significant role in conflict situations.

There are various ways in which business enterprises can be involved in or have an impact on armed conflict. For the purpose of this article we will explore two of them. Firstly, as states have relinquished their monopoly on the legitimate use of violence, private military and security firms have increasingly taken on functions that used to be the exclusive resort of state bodies. Over the past three years, the public has been discovering the scope of involvement of such firms in some of today's conflicts. In Iraq, for example, private contractors have been not only running large chunks of the logistical chain on behalf of the multinational forces but also providing protection for military compounds, public buildings, and government officials, in addition to manning checkpoints, operating weapons systems, interrogating prisoners, gathering intelligence, etc. The private military and security sector has grown tremendously since the end of the Cold War. The size of the global market for the firms in this sector was estimated at around U.S.\$100 billion in 2001 and has continued to expand, boosted by the conflicts in Afghanistan and Iraq. Clients include states, armed groups, business enterprises, the U.N., and NGOs – even the ICRC has occasionally resorted to private security firms to protect its premises. Some of the firms are publicly traded on major stock exchanges and market themselves as flexible tools to accomplish the security goals of their clients around the world.

Secondly, business enterprises not involved in the security field but operating in difficult conflict environments also exert an influence on conflicts. The wealth they create or extract may attract interest from warring parties and turn a business operation into a military objective. Companies may have to enter into security arrangements with one or several of the parties to a conflict, which may directly affect its dynamics;

alternatively, companies may have to hire private security, introducing a new armed entity into an already fragile and volatile environment. Companies may pay taxes, in one form or another, that fill the coffers of one or several warring parties. Companies may be tempted to use their political or economic clout to steer a conflict in one direction or another. The job creation and local development brought about by companies may be used as a pretext by some belligerents to move people and alter the racial, ethnic, or religious balance of a given region. As all these examples show, there are numerous ways in which business enterprises, willingly or not, have an effect on the dynamics of a conflict.

International humanitarian law (IHL) is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons not, or no longer, taking part in hostilities and restricts the means and methods of warfare. IHL is also known as the law of war or the law of armed conflict. It does not regulate whether a state may actually use force – this is governed by an important, but distinct, part of international law set out in the United Nations Charter. Some of the rules of IHL are similar to those of human rights law, but these two bodies of law have developed separately and are contained in different treaties. Human rights law – unlike IHL – applies in peacetime, and many of its provisions may be suspended during armed conflict. IHL applies only during armed conflict and cannot be suspended.

IHL distinguishes between international and non-international armed conflicts. International armed conflicts, which are subject to a wide range of rules, are those in which at least two states are involved. Non-international armed conflicts, which are subject to a more limited range of rules, are those restricted to the territory of a single state, involving either regular armed forces fighting groups of armed dissidents or armed groups fighting each other.

IHL is rooted in the rules of ancient civilizations and religions – warfare has always been subject to certain principles and customs. One of the fundamental rules of modern IHL is that

parties to a conflict must at all times distinguish between civilians and combatants so as to spare the civilian population and civilian property. Attacks may be made solely against military objectives. This rule protects business installations, which are considered civilian objects, and their personnel, who – unless they are part of the armed forces of a state – are civilians. Accordingly, they may neither be targeted nor take a direct part in hostilities. If they do take part in fighting or otherwise actively serve or support warring parties, they become a legitimate military target and may be attacked.

These rules are particularly relevant to private military and security firms, which are the firms most likely to be engulfed in armed conflict or to take part in actual fighting. The personnel of these firms, like the members of regular armed forces, must also obey other fundamental rules. For example, it is forbidden to kill or wound an adversary who surrenders or who can no longer take part in the fighting (because he, and increasingly she, is wounded or sick). The right to choose methods and means of warfare is not unlimited – in particular, those that are likely to cause superfluous injury or unnecessary suffering are prohibited. Captured combatants and civilians who find themselves under the authority of the adverse party must be protected against all acts of violence or reprisal. They are entitled to exchange news with their families and receive aid. They must enjoy basic judicial guarantees.

Although as a matter of law the staff of private military and security firms may be held personally responsible for violations of IHL, in practice it could be difficult to find a national criminal court able and politically willing to exercise extraterritorial jurisdiction over their alleged crimes. States too may be held responsible for violations of IHL committed by private military and security companies which they have empowered to exercise elements of governmental authority, or which are de facto acting on their instructions or under their direct control. Even if private contractors are not acting as state agents, states still have a duty to ensure respect for IHL and exercise due diligence by doing what is necessary to prevent and pun-

ish violations committed by individuals or entities operating on or from their territory.

Business enterprises are increasingly concerned about enhancing their good name through active programs of corporate responsibility. An ever larger part of business value is determined by brand reputation. Large companies understand that they should offer benefits not only to their shareholders but also to society at large. A careful and sensitive analysis of the impact they may have while operating in conflict areas or weak governance zones is a step towards achieving their aim of being perceived as a force for good and boosting their brand. Corporate codes of conduct, industry-wide codes of conduct, and multi-stakeholder initiatives are some of the tools used by business enterprises to ensure that their operations are socially responsible. The Equator Principles – a set of guiding principles developed by and for the financial industry – provide a benchmark for assessing and managing environmental and social risks in project financing.

The ICRC has a mandate from the international community of states to ensure that IHL is applied fully and to provide protection and assistance for persons adversely affected by armed conflict. To fulfill this mandate the ICRC must find ways to reach those in need of help. To obtain access to conflict areas, it must talk to all those wielding power: not only political authorities, government armed forces, and rebel forces, but others too, including civil society leaders, religious leaders – and business leaders. For decades the ICRC has developed close relations with civilian and military authorities, international organizations, non-governmental organizations, and academic circles but has had few systematic contacts with the business community, except when buying goods and services from private suppliers. To remedy this, it is now developing a dialogue with a number of companies operating in situations of conflict or weak governance, which is aimed mainly at making companies aware of their rights and obligations under IHL.

As part of its strategy of dialogue the ICRC is participating as an observer in the initiative known as the Voluntary Principles

on Security and Human Rights, which is being led by the International Business Leaders Forum. The Voluntary Principles are intended to guide extractive companies in managing the security of their operations in a way that ensures respect for the human rights of host populations. The ICRC is also participating in an inter-governmental initiative led by Switzerland that promotes respect for IHL and human rights law among private military and security firms operating in conflict situations. The ICRC website (www.icrc.org) now offers a special section on this topic.

Talking to business should come naturally to the ICRC. After all, Henry Dunant himself was a businessman. He was on a business trip when he happened to be present at the end of the battle of Solferino. Horrified by the sight of thousands of soldiers left to suffer for want of medical care, Henry Dunant appealed to the local people to help him tend the wounded. Upon his return to Geneva he created the Red Cross and then undertook to persuade the European states to adopt the original Geneva Convention providing protection for wounded military personnel. Henry Dunant was initially considered a hopeless romantic, but by 1901 he had received the first Nobel Peace Prize (which he shared with Frédéric Passy). Dunant's whole life was guided by a passionate devotion to the humanitarian cause. Even his Peace Prize money he bequeathed to charitable causes rather than spend it himself, despite being penniless. The ICRC – his creation – was subsequently awarded the Nobel Prize on three different occasions: in 1917, then in 1944 as a tribute to its humanitarian activities during the two World Wars, and again in 1963 on the occasion of its 100th anniversary.