

BUSINESS AND INTERNATIONAL HUMANITARIAN LAW

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AN INTRODUCTION TO THE RIGHTS AND OBLIGATIONS
OF BUSINESS ENTERPRISES
UNDER INTERNATIONAL HUMANITARIAN LAW



ICRC

THE ICRC AND BUSINESS ENTERPRISES

States party to the Geneva Conventions have mandated the ICRC to protect and assist persons affected by armed conflict and to promote awareness of, and respect for, international humanitarian law. To fulfil its mandate, the ICRC seeks to develop a constructive dialogue with all State and non-State actors who have a stake in or may have an influence on situations of armed conflict.

It is within this framework that the ICRC engages with business enterprises. The main objective of this dialogue is to help them better understand their rights and meet their obligations under international humanitarian law. The ICRC also wants to assist business enterprises in implementing undertakings relating to international humanitarian law to which they have subscribed under various multi-stakeholder initiatives.

The Voluntary Principles on Security and Human Rights is the only initiative emanating from a multi-stakeholder process that expressly refers to international humanitarian law. Various other inter-governmental processes or multi-stakeholder initiatives promote respect for human rights or endeavour to mitigate the social impact of business projects. To the extent that these may also have an effect in situations of armed conflict, they are of interest to the ICRC; the following initiatives or processes could be mentioned in this regard:

- *The Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises;*
- *The International Finance Corporation's Policy and Performance Standards on Social and Environmental Sustainability;*
- *The Equator Principles;*
- *The United Nations Global Compact;*
- *The Business Leaders' Initiative on Human Rights.*

The ICRC also closely follows the ongoing discussions on the issue of business and human rights taking place in the framework of the United Nations human rights system.

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P R E F A C E

The globalization of market economies offers new opportunities for business enterprises. While these opportunities can generate growth, jobs and prosperity, they also give rise to risks. Indeed as business enterprises explore these opportunities, they increasingly operate in unstable environments or areas affected by armed conflict.

A number of business enterprises have declared a commitment to conducting their activities in a conflict-sensitive way. In particular, in recognition of the fact that their operations are likely to have an impact on the dynamics of conflicts and on the suffering of civilian populations, they have indicated that they will take great care not to exacerbate conflicts and their effects on civilian populations.

Business enterprises have become increasingly familiar with human rights law. Many have adopted corporate policies aimed at ensuring that their operations respect, and at times even promote respect for, human rights, as well as policies aimed at reducing the likelihood of contributing, directly or indirectly, to human rights abuses. And many are involved in the various fora searching for a shared understanding of the boundaries of business responsibility for human rights.

Business enterprises are generally less familiar with international humanitarian law, even though this body of law, specifically developed to regulate situations of armed conflict, has important implications for them when they operate in countries experiencing armed conflict. On the one hand international humanitarian law grants protection to the personnel – provided they do not take part directly in armed hostilities – and the assets and capital investments of business enterprises. On the other hand it imposes obligations on managers and staff and exposes them – and the business enterprises themselves – to the risk of criminal or civil liability.

The risk of criminal or civil liability is undoubtedly the most pressing challenge confronting business enterprises whose activities are connected in one way or another with armed conflict. It is relevant not only for business enterprises which may themselves violate international humanitarian law, but also for those which may contribute to violations of international humanitarian law committed by the parties to the armed conflict. The issue of potential complicity is thus something business enterprises must be keenly aware of.

The aim of the present brochure is to provide managers of business enterprises with a simple basic document flagging situations where business operations may either benefit from the protections afforded by international humanitarian law or be constrained by its rules. The brochure is meant primarily for a readership of country managers and security managers who face the daily challenge of running business operations in conflict environments. It may also serve as a reference for financial, insurance and trading companies which are not directly operating in zones of armed conflict themselves, but may do so indirectly through their clients and suppliers.

The brochure does **not provide a comprehensive legal analysis**. Depending on the circumstances, business managers may thus wish to seek legal advice.

The International Committee of the Red Cross (ICRC) hopes that this brochure will prove a useful introduction to the complex and under-explored issue of the relationship between business and international humanitarian law. It is convinced that by clarifying the relevant aspects of international humanitarian law for business enterprises whose activities are connected in one way or another with armed conflict, this brochure will help them develop business operations that, at a minimum, respect and do no harm to people affected by conflict.

INTERNATIONAL HUMANITARIAN LAW

What is international humanitarian law?

International humanitarian law is also known as “the law of armed conflict” or “the law of war”. Its fundamental premise is that even in times of armed conflict human dignity must be respected and protected, and means and methods of warfare regulated. Rules reflecting these principles can be found throughout history in most if not all cultures.

The codification of these rules at the international level started in the mid-nineteenth century, when States sought to formalize international humanitarian law in binding treaties. Since then, a variety of treaties have been concluded in order to develop and define humanitarian protections during armed conflict.



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Parties to an armed conflict must at all times distinguish between the civilian population and combatants in order to spare the civilian population and civilian property. Attacks may be directed solely against military objectives. Neither the civilian population as a whole nor individual civilians may be attacked. Attacks against civilian objects or indiscriminate attacks are prohibited. It is also prohibited to displace the civilian population.

Attacks against works and installations containing dangerous forces, such as dams, dykes and nuclear electrical generating stations are also generally prohibited. Moreover goods that are indispensable to the survival of the civilian population – in particular food and water – must be protected.

What are the basic rules of international humanitarian law?

People who do not or no longer take a direct part in the hostilities are entitled to respect for their lives and for their physical and mental integrity. Such people must in all circumstances be protected and treated with humanity, without any adverse distinction whatever. It is forbidden to kill or wound an adversary who surrenders or who can no longer take part in the fighting.

Parties to an armed conflict do not have an unlimited right to choose methods and means of warfare. It is forbidden to use weapons or methods of warfare that are likely to cause superfluous injury or unnecessary suffering or widespread, long-term and severe damage to the environment.

The wounded and sick must be collected and cared for by the party to the conflict which has them in its power. Medical personnel and medical establishments, transports and equipment must be spared. The red cross, red crescent or red crystal on a white background is the distinctive sign indicating that such persons and objects must be respected.

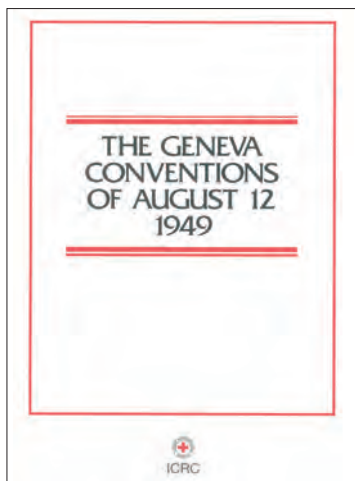
Captured combatants and civilians who find themselves under the authority of the adverse party are entitled to respect for their lives, their dignity, their personal rights and their political, religious and other convictions. They must be protected against all acts of violence or reprisal. They are entitled to exchange news with their families and receive aid. They must enjoy basic judicial guarantees.



ERIC BOUVET/ICRC

International humanitarian law regulates situations of armed conflict. It applies in the whole territory of the States involved in a conflict, regardless of whether combat actually takes place there. Furthermore, it applies continuously until the end of the conflict.

When and where does international humanitarian law apply?



International humanitarian law distinguishes between international and non-international armed conflicts. International armed conflicts oppose two or more States. Non-international armed conflicts – colloquially known as civil wars – on the other hand oppose a State and an organized armed group or two or more such groups. Although as a matter of law internal disturbances, such as riots, isolated and sporadic acts of violence and acts of criminality, do not amount to non-international armed conflict, such events may escalate into non-international armed conflict or often occur in States experiencing armed conflict.

An extensive range of treaty rules governs international armed conflicts, including situations of military occupation. A more limited set of treaty rules governs non-international armed conflicts. However, no matter which specific set of rules applies, all entities, States, groups and individuals whose activities are associated with armed conflict are required to respect international humanitarian law irrespective of the reasons for the conflict or the conduct of the opposing side.

Where can we find the rules of international humanitarian law?

Since the initial Geneva Convention of 1864, humanitarian law has evolved to meet the ever-growing need for protection resulting from developments in weaponry and new types of conflict. Today, the four Geneva Conventions of 1949 and their Additional Protocols of 1977 constitute the main instruments of international humanitarian law. Numerous other treaties address more specific topics related to conflicts, such as the regulation and use of specific weapons. International humanitarian law treaties are also complemented by customary international law. The latter is constituted by a series of rules that are not necessarily codified in treaties but derive from the consistent practice of States, accompanied by a belief that this practice is legally required.

As a testimony to the universality of international humanitarian law, all States have ratified the Geneva Conventions of 1949. The vast majority are also party to the Additional Protocols of 1977.

Main IHL treaties

1907 Hague Regulations concerning the Laws and Customs of War on Land
1949 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

1949 Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea

1949 Geneva Convention (III) relative to the Treatment of Prisoners of War

1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War

1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)

1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

2005 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)

1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects

- 1980 Protocol on Non-Detectable Fragments (Protocol I to the 1980 Convention)
- 1980 Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II to the 1980 Convention)
- 1980 Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III to the 1980 Convention)

- 1995 Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention)

- 1996 Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II to the 1980 Convention as amended on 3 May 1996)

- 2001 Amendment Article 1 to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. Geneva

- 2003 Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention)

1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction

1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict

- 1954 Protocol for the Protection of Cultural Property in the Event of Armed Conflict

- 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict

International humanitarian law and international human rights are complementary bodies of law that simultaneously apply in times of war. Both share certain common goals, such as the protection of life, health, dignity and property. Because international humanitarian law is more specifically focused on the regulation of armed conflict, in such contexts human rights will often be interpreted based on standards of international humanitarian law. For example, in situations of armed conflict the right to life under human rights law must be interpreted in light of the rules of international humanitarian law, which permit attacks against combatants.

What are the relationship and differences between international humanitarian law and human rights law?

In relation to other issues, such as procedural safeguards, human rights law may be relied upon as a supplementary body of rules protecting persons affected by armed conflict.

Despite the sometimes complex overlap with human rights law, international humanitarian law retains various distinct characteristics. Perhaps the most fundamental one of these is that human rights are traditionally understood as only binding on States – although this position is challenged by some human rights advocates – while international humanitarian law binds both State and non-State actors – including managers and staff of business enterprises for instance – whose activities are closely linked to an armed conflict. While certain human rights may temporarily be derogated under strict conditions and circumstances threatening the life of the nation, such as armed conflicts, international humanitarian law is specifically designed for such circumstances and can never be derogated.

International humanitarian law does not just bind States, organized armed groups and soldiers – it binds all actors whose activities are closely linked to an armed conflict. Consequently, although States and organized armed groups bear the greatest responsibility for implementing international humanitarian law, a business enterprise carrying out activities that are closely linked to an armed conflict must also respect applicable rules of international humanitarian law. Moreover, whether a business enterprise operates in a context of ongoing armed conflict or whether its operations, established in a peaceful setting, are caught up by the outbreak of an armed conflict does not affect its obligation to respect international humanitarian law.

On the other hand, a business enterprise that violates provisions of the national criminal law of a country in circumstances that are completely independent of a surrounding armed conflict does not violate international humanitarian law. However, the line between these various situations is at times difficult to draw precisely.

Are business enterprises and their staff and managers bound by international humanitarian law?

Determining which activities are closely linked to an armed conflict is, however, not always easy. Providing direct support to one side in a battle is clearly such an activity. But business enterprises are likely to carry out a whole range of other activities which can be more or less connected with an armed conflict.

In view of the above, business enterprises operating in zones of armed conflict should use extreme caution and be aware that their actions may be considered to be closely linked to the conflict even though they do not take place during fighting or on the battlefield. Likewise, it is not necessary for business enterprises and their managers to intend to support a party to the hostilities for their activities to be considered to be closely linked to the conflict.

What are war crimes?

War crimes represent a core of the most egregious violations of international humanitarian law. In recognition of the seriousness of such violations, States have agreed that the perpetrators of war crimes should be prosecuted and punished before criminal courts. The Geneva Conventions and their Additional Protocol I not only oblige States to criminalize certain grave breaches of international humanitarian law in their national legislation, they also require that all States investigate and prosecute such offences irrespective of where they take place and by whom they are committed.

List of war crimes

War crimes include:¹

- wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health to protected persons or prisoners of war;
- unlawful deportation or transfer or unlawful confinement of a protected person;
- compelling a protected person or prisoner of war to serve in the forces of a hostile Power;
- wilfully depriving a protected person or prisoner of war of the rights of fair and regular trial;
- taking of hostages;
- making the civilian population or individual civilians the object of attack;
- launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
- extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

¹ See: Article 50 Geneva Convention I; Article 51 Geneva Convention II; Article 130 Geneva Convention III; Article 147 Geneva Convention IV; and Article 85 Additional Protocol I.



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Consequently, war crimes form part of the criminal law of most States. In addition, several international courts and tribunals, including the International Criminal Court, have jurisdiction to prosecute those responsible for such offences.

Many States have also criminalized under their national law other serious violations of international humanitarian law that are not listed above.

A significant risk of criminal liability thus exists for those who commit grave breaches of international humanitarian law, including where business enterprises or their representatives commit or knowingly assist violations carried out by others, such as contractors, subsidiaries or clients.

Moreover, participation in war crimes might also give rise to civil liability before national courts.

RIGHTS AND PROTECTIONS

Business enterprises are reluctant to abandon their personnel, their operations and their capital investments when an armed conflict breaks out around them. A withdrawal of business enterprises from conflict zones may also be undesirable: countries struggling to overcome the torments of armed conflict usually need economic development and private investment. The rules of international humanitarian law that protect civilians and civilian property prohibit attacks against business enterprises' personnel – as long as they are not taking a direct part in hostilities – and against business enterprises' facilities.

One of the most immediate threats to business enterprises operating in conflict zones is that of military activities affecting their workforce or their assets.

International humanitarian law strictly prohibits deliberate attacks on civilians and civilian objects,² such as business enterprises, as well as indiscriminate attacks, i.e. attacks that do not distinguish military targets from civilian persons or objects.³

How are the operations of business enterprises protected against attacks under international humanitarian law?

Personnel of business enterprises – be they local or expatriate personnel or contractors – performing their usual business activities are generally considered civilians and therefore benefit from the protection against deliberate and indiscriminate attacks. However, international humanitarian law stipulates that civilians who directly participate in hostilities lose their protection from attack for the time that they are carrying out these activities.⁴ It is not always easy however to determine what amounts to “direct participation in hostilities”.

International humanitarian law instruments do not provide a clear-cut definition of what amounts to “direct participation in hostilities”. It is however generally understood that the commission of acts which, by their nature and purpose, are intended to cause actual harm to enemy personnel and *matériel* amounts to a direct participation in hostilities. That would clearly be the case if an employee of a business enterprise took up arms or participated in the planning of a military operation. On the other hand, an employee of a business enterprise who supplied food or shelter to combatants or generally “sympathized” with them would not be considered to be directly participating in the hostilities.

Recognizing the inherent difficulties in making such a determination in practice, international humanitarian law provides that in case of doubt as to whether a person is a civilian or a combatant, that person is to be considered a civilian.

Business enterprises’ property such as factories, offices, vehicles, land and resources are considered civilian objects and thus also benefit from the protection against deliberate and indiscriminate attacks. However, if business property is used for military purposes, it becomes a military object and risks being legitimately attacked by parties to the conflict. The test for determining whether busi-

ness assets are military targets is in particular whether the facilities or resources in question are used in a way that makes an effective contribution to military action.⁵

If, for example, a business enterprise with manufacturing facilities in a country in conflict produces ammunition that is used by a party to the conflict, then its munitions factory becomes a legitimate target, as would trucks or planes used to transport the ammunition. Similarly, if a private oil pipeline carries oil that is transferred to and used by a party to the conflict for its military operations, it also becomes a legitimate target. On the other hand, if a business enterprise manufactures or sells products or services that do not effectively contribute to military action, it does not become a legitimate target, unless its premises are used by a party to the conflict for its military operations.

It is thus crucial to keep in mind that any civilian object may become a military target depending on the manner in which it is used.

Legitimate attacks against military objectives can cause civilian “collateral damage”. However, international humanitarian law stipulates that military targets may not be attacked if the likely incidental consequences for civilians and civilian objects are excessive in relation to the concrete and direct military advantage of destroying the military objective.⁶

The use of a grenade to kill a single soldier in a crowded marketplace or factory would thus be prohibited as its adverse effects on civilians are likely to be excessive in relation to the concrete and direct military benefit of killing the soldier. On the other hand minor damage to a factory located in close proximity to a major military barracks could be justified. Civilians working in an ammunition factory would be at risk in case of attack against this military objective.

Between these examples are a number of more difficult situations, which business enterprises should consider when they determine where to situate their premises and operations or whether to relocate as the dynamics of the surrounding conflict change.

2 Article 48 Additional Protocol I; Article 13 Additional Protocol II.

3 Articles 51(4) and (5) of Additional Protocol I.

4 Article 51(3) Additional Protocol I; Article 13(3) Additional Protocol II.

5 Article 52 Additional Protocol I.

6 Article 51(5)(b) Additional Protocol I.

International humanitarian law also grants legal protection to civilians deprived of their liberty. In addition to laying down minimum conditions and standards of treatment in detention, all persons deprived of liberty enjoy the right to be informed of the reasons for their detention⁹ and to challenge the legality of their captivity. A host of more specific legal protections apply to different types of detention that may occur during armed conflict¹⁰ – including ICRC visits to persons detained in relation with the conflict.

What additional protections do the personnel of business enterprises enjoy?

Direct attack is by no means the only threat to the personnel of business enterprises operating in conflict zones. These persons, whether locals or expatriate, may face many other serious threats to their physical integrity as a result of armed conflict.

International humanitarian law provides a series of specific protections for civilians in times of armed conflict. As civilians, the personnel of business enterprises enjoy legal protection against violence to their life, health and physical or mental well-being. In particular murder, torture in either mental or physical form, corporal punishment, rape and mutilations are all strictly prohibited.⁷ Neither expatriate nor local personnel may be taken hostage by parties to an armed conflict.⁸

If a business enterprise's staff are charged with criminal offences linked to the armed conflict, a sentence can be handed down only by a court offering the essential guarantees of independence and impartiality.¹¹ The accused also have a right to be informed without delay of the particulars of the offence alleged against them. Moreover, collective punishment and convictions for acts that did not constitute crimes at the time of their commission are prohibited. Even in a context of armed conflict, the accused enjoy the presumption of innocence, the right to attend court and the right to appeal.¹²

7 See Article 3 common to the Geneva Conventions of 1949; Article 32 Geneva Convention IV; Article 75(2) Additional Protocol I; Article 4(2) Additional Protocol II.

8 See Article 3 common to the Geneva Conventions of 1949; Article 34 Geneva Convention IV; Article 75(2)(c) Additional Protocol I; Article 4(2)(c) Additional Protocol II.

9 See Article 75(3) Additional Protocol I.

10 See Articles 42, 43, 78 – 82 Geneva Convention IV and generally Geneva Convention III.

11 See Article 84 Geneva Convention III; Article 71 Geneva Convention IV; Article 75(4) Additional Protocol I; Article 6(2) Additional Protocol II.

12 For judicial guarantees during armed conflict see Articles 82 – 108 Geneva Convention III; Articles 71 – 78 Geneva Convention IV; Article 75(4) Additional Protocol I; Article 6 Additional Protocol II.

One of the major risks faced by business enterprises in times of armed conflict involves the misappropriation or looting of assets and investments. The risks are particularly pronounced where an armed conflict creates a climate of hardship, scarcity of resources and collapse of local law enforcement mechanisms such as police and courts.



BENNO NEELEMAN/CRC

What additional protections do the assets of business enterprises enjoy?

International humanitarian law states that private property must be respected.¹³ It is, for example, prohibited to confiscate private property. The prohibition covers the premises and investments of business enterprises, as well as housing for their personnel, to the extent that they are privately owned.

Under limited circumstances however, an occupying power may be entitled to seize the property of business enterprises, provided it is returned and compensation paid at the end of the armed conflict.¹⁴ An occupier may also use a certain portion of State property to offset costs of administering the occupied territory.¹⁵ Beyond these limitations, unlawful appropriation of business assets during armed conflict or occupation will amount to pillage, which is considered a war crime.¹⁶

¹³ Article 46 Hague Regulations; Article 33 Geneva Convention IV.

¹⁴ Articles 52 and 53 Hague Regulations.

¹⁵ Article 55 Hague Regulations.

¹⁶ Article 33(2) of Geneva Convention IV, Article 47 Hague Regulations.

OBLIGATIONS AND RISKS

Business enterprises carrying out activities that are closely linked to an armed conflict are required to respect relevant aspects of international humanitarian law.

Furthermore, they may be in a position to play an important role in promoting respect for international humanitarian law among political and military authorities or other business enterprises within their sphere of influence. An understanding of international humanitarian law is thus an important ingredient in the ability of a business enterprise to live up to its obligations under the law and to any commitments it may have under the various codes of conduct or voluntary initiatives to which it may have subscribed. An appreciation of the implications of business operations in the dynamics of conflict is also key in identifying potentially significant risks of criminal and civil liability for complicity in violations of international humanitarian law.

In countries plagued by armed conflict or by high levels of lawlessness, business enterprises are often compelled to set up security systems. They may be required by local law to contract their security services from the government. They may have to hire private security companies. Or in particular circumstances, they may choose to resort to rebel forces or other armed groups to fulfil security roles. Problematically, in some instances, the same forces contracted to maintain security of a business enterprise take part in surrounding conflicts and at times violate international humanitarian law in the process.

As stated above, there may be situations where business enterprises have to hire for their protection the same State or rebel forces that are participating in conflict. Business enterprises that hire security or military forces who do not respect the rules of international humanitarian law while engaged in armed conflict may, under certain circumstances, be legally liable for assisting the commission of violations of international humanitarian law, even if they did not intend the violations to occur and if the offences were not perpetrated on their behalf. Indeed, because attacking civilians violates the most basic principle of international humanitarian law, companies that knowingly engage or collaborate with groups involved in such actions may run the risk of criminal and civil liability. In any event, engaging military protection from forces that do not respect the laws of war is incompatible with an undertaking to promote international humanitarian law.

What does international humanitarian law say with regard to managing the security of business operations?

Ordinarily, security personnel retained by business enterprises must operate in accordance with domestic law as well as with international law enforcement standards.¹⁷ These standards permit security personnel to use force only when strictly necessary and in a manner that is proportional to the threat faced. To the extent that this is within their control, business enterprises should ensure that security forces protecting their personnel and assets operate in accordance with domestic law and these standards.

It is possible that business enterprises operating in zones of armed conflict may be drawn into the conflict. In such circumstances their property may become a military objective and the security personnel defending it also. If this happens and business operations are attacked by parties to the armed conflict, the use of force is then regulated by international humanitarian law and the applicable rules are different. For example, international humanitarian law does not prohibit the use of lethal force, providing it is directed against combatants and does not violate other relevant rules of international humanitarian law (local law may impose additional limitations). International humanitarian law also stipulates that during armed conflict enemies who surrender may not be killed, the wounded must be provided with medical treatment and persons deprived of their liberty must be treated humanely.¹⁸ Torture, inhuman treatment, rape and summary executions are strictly prohibited under all circumstances. Again, business enterprises must ensure that the security forces guarding their employees and assets operate in compliance with the rules of international humanitarian law.

Business enterprises must be aware that they face another risk when operating in conflict zones: if armed forces initially contracted to protect the facilities of business enterprises subsequently used those facilities to launch, or defend against, military actions, the infrastructure and personnel implicated in supporting such military actions would become military targets.

In addition, business enterprises should take note that they are limited in the types of weapons that can be used to ensure their security in times of conflict. Anti-personnel landmines, for example, are explicitly banned in all situations by the Ottawa Convention¹⁹ because of their indiscriminate effects on civilians. They also obstruct economic development and reconstruction. Other weapons that may cause superfluous injury or unnecessary suffering are also prohibited.

¹⁷ See Article 3 of the Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly Resolution 34/169 of 17 December 1979.

¹⁸ Common Article 3 Geneva Conventions; Article 40 Additional Protocol I; Article 75 Additional Protocol I.

¹⁹ Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997.

Are there rules relating to the acquisition of assets in situations of conflict?

Business enterprises which operate in conflict zones must apply heightened managerial care to ensure that they are not acquiring resources and property without the freely given consent of the owner. They may otherwise be accused of taking part in pillage.

International humanitarian law prohibits pillage, i.e. the unlawful taking of private property for personal or private use. Pillage is not limited to the acquisition of assets by force. In the past, courts have considered the acquisition of assets by entering into contracts as pillage when the agreement was based on threats, intimidation, pressure, or a position of power derived from the surrounding armed conflict. In other cases, transfer of company shares based on fear, management of a business enterprise for the benefit of individuals other than the owners and knowingly receiving goods obtained against the will of the true owner were all found to constitute pillage. Thus, when operating in a conflict environment, business enterprises should be extremely careful about the circumstances under which they acquire assets.



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Business enterprises operating in situations of armed conflict face particular challenges related to the labour conditions of their workforce. Some companies have been found responsible for having benefited from the labour of civilians, prisoners of war or concentration camp detainees to carry out work that did not meet minimum standards.

What does international humanitarian law say about labour conditions?

Although international humanitarian law does not prohibit States from compelling certain categories of persons (persons deprived of their liberty or the civilian population of occupied territories) to carry out certain types of work, it does not grant this right to private actors and, in any event, it prohibits uncompensated or abusive labour. It lays down minimum working conditions and places limitations on the types of work that such individuals can be asked to carry out.²⁰ The precise conditions and limitations depend on the nature of the armed conflict and the status of the persons concerned. As a general rule however, they exclude work that is connected with the armed conflict, unhealthy, dangerous or humiliating. International humanitarian law also lays down detailed provisions dealing with working conditions, duration of labour, pay, and right to compensation for occupational accidents and medical supervision.

It may happen that a business enterprise operating in a zone of armed conflict benefits from a workforce provided and organized by the authorities. In such situations the managers of the business enterprise should apply heightened managerial care to identify risks and prevent abuses of this workforce.

On the issue of labour, the protections in international humanitarian law are less comprehensive than those found in the International Labour Organization Forced Labour Convention (No. 29) of 1930 – also relevant in times of armed conflict – which prohibits forced labour of civilians in most situations. Business enterprises must, therefore, ensure that no forced labour is associated in any way with their operations.

²⁰ See Articles 49 - 55 Geneva Convention III; Articles 40, 51 and 95 Geneva Convention IV; Article 5(1)(e) Additional Protocol II.

What does international humanitarian law say on displacement?

Business operations sometimes involve obtaining access to resources and establishing transport routes in ways that may affect a civilian population's residential or agricultural land. Securing such access within conflict zones has at times involved the intervention of warring parties who evicted residents by force.

The taking of private property without due legal process and fair compensation may amount to pillage (see above). Moreover, international humanitarian law stipulates that, in situations of occupation or in times of civil war, civilians cannot be forcibly relocated except in limited circumstances and only temporarily when their security or imperative military reasons so demand.²¹ In this sense, the expulsion of civilians by armed groups acting on behalf of a business enterprise cannot be justified. In fact, if such practices were closely linked to an armed conflict, they could give rise to significant legal liabilities, both criminal and civil.

Business enterprises may have an impact on the environment in a variety of ways, whether directly through their operations or indirectly through the way their products or services are used. On the other hand, conflicts often have an undesirable impact on the environment. Heightened managerial care with regard to environmental issues is therefore required from business enterprises operating in conflict zones.

Business enterprises may be implicated in violating these rules by selling armed forces the means necessary to carry out attacks that cause severe damage to the environment. Therefore, business enterprises supplying products – such as chemical or biological weapons, or exfoliants – that can cause such damage during armed conflict may face legal proceedings.

Are there any rules protecting the environment in times of conflict?

International humanitarian law contains rules intended to limit damage to the environment. For instance, it specifically prohibits forms of warfare that may be expected to cause widespread, long-term and severe damage to the natural environment.²² Furthermore, the rules of international humanitarian law for determining whether something is a military target also protect the environment. Incidental environmental consequences of an attack against a military target must also be considered and weighed against the military benefit of destroying the target in question. Moreover, attacking forests or other kinds of plant cover by incendiary weapons is prohibited, except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives.

Business enterprises may also be held responsible for violations of international humanitarian law perpetrated against the environment by providing services. Advising armies on how to engineer massive oil spills as part of an armed conflict, assisting in the development of weapons that cause widespread, long-term and severe damage to the environment or providing armed forces with the means to do so would be plainly inconsistent with an undertaking to promote international humanitarian law.



MILOS OJENOVIC/ICRC

Armed conflicts feed on the availability of weapons. Business enterprises involved in the manufacture and trade of weapons consequently face particular challenges linked to their role in the way conflicts are fought. Business enterprises involved in the manufacture and trade of weapons may indeed play a part in exacerbating violations of international humanitarian law.

What are the specific risks associated with the manufacture and trade of weapons?

Several international humanitarian law treaties prohibit the development, production and transfer of specific weapons. Manufacturers or suppliers may, for example, be liable for trading weapons such as anti-personnel landmines or biological and chemical weapons, including poisonous gases. In fact, a number of these treaties also compel States to take appropriate measures to control arms transfers and ensure that individuals who engage in illegal activities are criminally prosecuted.

Production and trade in weapons other than those explicitly prohibited might also give rise to legal liability where the trader knowingly supplies weapons to end-users who use them to violate international humanitarian law. Considerations based on international humanitarian law are also relevant for products not traditionally used as weapons, provided that the manufacturers or suppliers know that the product is to be used to perpetrate war crimes.

A business enterprise that supplies a party to an armed conflict with chemicals that were used in the past to commit violations of international humanitarian law is exposing itself to the risk of legal liability. The same would apply to a business enterprise supplying a party to an armed conflict with devices known to be part of weapons that have been used in the past to commit violations of international humanitarian law.

An understanding of international humanitarian law and an interest in the conduct of potential purchasers are essential to the risk management of manufacturers and suppliers of weapons and facilitate greater respect for international humanitarian law.

In addition to the risk of becoming a military target, business enterprises operating in conflict zones are exposed to the surrounding conflict dynamics. Not only their operations, but also their personnel, products or services may become part of the ongoing conflict. In the worst-case scenario, any of these could result in or facilitate violations of international humanitarian law. Business enterprises therefore run legal risks, whether based on criminal responsibility for the commission of or complicity in war crimes or on civil liability for damages. The nature, implications and extent of these risks are of particular importance to business enterprises operating in conflict zones.

What are the risks of liability under international humanitarian law?

International humanitarian law states that not only perpetrators, but also their superiors and accomplices may be held criminally responsible for the commission of war crimes. Of these forms of commission, complicity is likely to be the most relevant to business enterprises.

An accomplice is someone who provides practical assistance, moral support or encouragement that has a substantial effect on the commission of a war crime. The accomplice must have had some knowledge that providing the assistance or support would facilitate the crime.

An arms dealer who sells weapons to a client knowing that the weapons are to be used to commit war crimes is complicit in the crimes, regardless of whether he or she shares the client's motivations. Similarly, the provision on a commercial basis of logistical support that is likely to facilitate the commission of violations of international humanitarian law may attract legal liability.

Some countries have passed national legislation that permits business enterprises to be held responsible for the commission of, and complicity in, war crimes. Moreover, the managers of business enterprises may face prosecution in a personal capacity. The fact that a manager acted on behalf of a business enterprise does not provide any sort of immunity from prosecution for international crimes. In addition, because all States have an obligation to investigate and prosecute certain war crimes irrespective of where the acts occurred, business enterprises or their managers may face proceedings in countries other than those in which they operate. Business enterprises should therefore not discount the possibility of legal proceedings simply because the country where they are operating is unlikely to conduct criminal investigations or incapable of doing so. The risk of corporate and individual responsibility for crimes perpetrated in the context of an armed conflict is thus an element of growing importance in a business enterprise's assessment of the range of risks associated with its activities during an armed conflict.

Finally, business enterprises and their managers also face the risk of civil liability. While criminal law seeks to punish individuals for war crimes, civil liability allows victims to seek compensation for damages. More particularly, civil liability enables individuals claiming to have suffered as a result of the wrongdoing of a business enterprise, for example, to seek compensation from national courts. Civil litigation is increasingly perceived as being a viable way of redressing violations of international humanitarian law by business enterprises, as civil cases can be brought directly by individual victims and the standard of proof is lower than that required in a criminal trial.

MISSION STATEMENT

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of persons affected by armed conflict or internal disturbances and to provide them with assistance.

It directs and coordinates the international relief activities conducted by the International Red Cross and Red Crescent Movement – meaning the ICRC, the National Red Cross or Red Crescent Societies and their Federation – in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening international humanitarian law and universal humanitarian principles.

Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement.



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