

Pushing the humanitarian agenda through engagement with business actors: the ICRC's experience

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Abstract

Large companies can have both massively positive and massively negative impacts on communities, be it directly through their operations or indirectly through their influence on decision-makers. This is particularly true when business operations take place in conflict-affected or high-risk areas. Humanitarian organisations endeavouring to bring protection and/or assistance in these areas cannot, therefore, ignore these influential actors. Engagement with business actors – as well as with any other societal actor – should be framed within a clear rationale in order to deliver positive results. This article introduces the rationale that has been developed by the International Committee of the Red Cross (ICRC) and offers some examples of past engagement between the ICRC and business actors. It notes that occasions for humanitarian organisations to engage with business actors are likely to become more frequent in the coming years and argues that this trend, if properly managed, offers

* This article was written in a personal capacity and does not necessarily reflect the views of the ICRC.

humanitarian organisations opportunities to leverage energies, know-how, and resources from the business sector for the benefit of the persons and communities that humanitarian organisations strive to protect and assist.

Keywords: business, corporate social responsibility, community engagement, partnership, multi-stakeholder initiatives, private military and security companies, extractive industry.



For most of their existence, humanitarian organisations led their operations without paying much attention to business actors. Relationships with companies were essentially limited to those providing goods and services that allowed humanitarian organisations to operate. There were few pressing reasons or incentives to expand the working relationship beyond this client–supplier dimension.

This situation changed in the course of the last decade of the twentieth century. The combination of globalisation and competition for finite natural resources resulted, among others, in two interesting developments. First, business consolidations through multiple mergers and acquisitions created companies enjoying far greater economic clout than many governments across the globe.¹ Second, it became increasingly common for humanitarian workers to cross paths with business operators while in the field, including in areas affected by armed conflict or other situations of violence.

These two developments matter for humanitarian organisations. Economic clout often results in influence on people and events. A company investing billions of dollars, paying tens of millions in taxes, and creating hundreds of jobs directly and thousands more through its chain of suppliers will obviously have a massive economic impact and will in most circumstances endeavour to use its influence to at least ensure that it can continue to run its activities smoothly. Humanitarian organisations – and, for that matter, development organisations – expect this influence to be used in a way that will at least ‘do no harm’ and at best ‘do good’ to the wider community.

As for the second development, the presence and operations of companies in places affected by armed conflict or other situations of violence constitutes, in theory, good news: companies more than any other societal actor are creating economic value, jobs, and opportunities for development – all elements that offer

1 Several organisations and academic institutions have tried to compare the relative economic sizes of countries and corporations, using various calculation methods. Working on different sources, Global Trends published a recent article establishing a new ranking. According to this ranking, in 2009 44 per cent of the largest 100 economies and 59 per cent of the largest 150 economies were corporations. This article is available at: www.globaltrends.com/knowledge-center/features/shapers-and-influencers/66-corporate-clout-the-influence-of-the-worlds-largest-100-economic-entities (all internet references were accessed in 2013).

hope and create alternatives to fighting or violence. Under this assumption companies can be a force for good, helping to counteract the dynamics fanning conflict or violence. Reality, however, does not always align with this theoretical view. Companies' operations have often been a trigger for events that have worsened conflict or violence. Some companies cut corners and make choices that are harmful to the environment, to neighbouring communities, or to the general welfare of the population of a country or region.² They generally do this to maximise profits (by cutting costs or saving time). They follow the assumption that their actions will not be noticed or that, if they are, they will be able to arrange a quiet, amicable settlement with the relevant authorities. Sometimes harmful decisions are the result of companies' policies; often they are the result of a few managers acting in a way that is not condoned by their hierarchical line but that the latter makes possible by its lack of concern or curiosity. On the darkest fringes of the palette, some entrepreneurs or small, 'fly-by-night' companies are willing to take advantage of conflict situations in order to make a quick profit. Their activities may be legally condoned (through a legal license to operate received from some official authorities) or plainly illegal (through participation in various types of trafficking, for instance). What these companies have in common is that they give no attention to their environmental and social impacts and thus operate outside any corporate responsibility framework. There are many companies performing poorly with regard to their corporate responsibility, especially in conflict-affected areas where most often the authorities are either unwilling or unable to regulate corporate behaviour. This creates further tensions or conflicts, further humanitarian consequences, and further suffering.

Many companies, however, do operate under a set of corporate responsibility policies. They endeavour to 'do no harm' and understand that operating in conflict-affected areas requires from them a heightened level of caution – or 'due diligence', in business parlance. Humanitarian organisations can, when relevant and without substituting the respective roles of governments and companies, leverage their own experience and know-how with a view to supporting these companies' endeavours to do no harm. They can share their analyses on the social and political situation in a given context. Benefiting from their proximity with local communities, they can help companies better understand the complex web of social or humanitarian impacts of their operations. They can guide companies through their rights and responsibilities under human rights law and, when relevant, international humanitarian law (IHL). They can provide advice when companies wish to make social investments within communities, and so on.

Moreover, through their field staff, humanitarian organisations have their feet on the ground in almost all places across the globe affected by armed conflict or other situations of violence. There, they do their utmost to bring assistance and sometimes protection to all those who suffer the consequences of these situations. In order to carry out their work efficiently and diligently, they have constantly to

2 The website of the Business and Human Rights Resource Centre offers a wealth of examples: www.business-humanrights.org.

make sure that they understand as precisely as possible their operating environment. What are the root causes of a situation of conflict or violence? What are the main drivers of abuses? Who are the main actors – locally, nationally, regionally, internationally – worsening or calming down dynamics of conflict or violence? What are the objectives of these various actors? As we consider these and other questions, business actors and economic interests often appear as distinct parts of the equation. Humanitarian organisations should thus take notice and include business actors in their network.

The ICRC has taken notice. While it is certainly neither the first nor the only organisation which has started to engage with business, its experience in this field should be of interest for persons involved in the 'business and human rights' and 'business and conflict' debates as well as for the wider humanitarian community. The reasons for this stem from the organisation's operational focus on armed conflicts and other situations of violence, its broad mandate of protecting and assisting persons affected by such circumstances and disseminating IHL and humanitarian principles, its approach encompassing all persons affected by armed conflicts or other situations of violence rather than focusing on only a few categories (such as children, women, refugees, displaced, or the wounded and sick), its extensive presence in the field, and its constructive approach with all interlocutors. All this put together requires from the ICRC a carefully thought-through and balanced approach to business actors.

This article presents the ICRC's experience in engaging with business actors. In the first section it explores the various circumstances under which the ICRC is interested in engaging with business actors. It then describes the ICRC's engagement with business actors over the 2000–2012 period and provides some concrete examples of this engagement. It further provides some insights into future trends with regard to ICRC engagement with business actors, and makes a few concluding remarks.

ICRC engagement with business

In the late 1990s, with a view to organising its interactions with companies, the ICRC categorised the various circumstances under which it needed to engage or has an interest in engaging with companies. These circumstances, presented below, need not be cumulative for the ICRC to decide to engage.

1. *When companies or their representatives are directly or indirectly associated with adverse humanitarian consequences on communities or individuals.* Situations where companies are directly causing adverse humanitarian consequences are rather infrequent – companies generally take care to do no harm. Indeed, the political, reputational, and financial risks of operating in conflict-prone areas or war-torn societies have been integrated into companies' decision-making, at least for large transnational companies. However, it is not uncommon for companies to be indirectly associated with adverse humanitarian consequences, most often resulting from acts carried out by public security forces, private

security forces, or other non-state armed groups in the process of defending companies' staff, assets, or operations. These adverse humanitarian consequences may originate from violations of IHL and may trigger legal proceedings under international or national jurisdictions against company managers or against companies themselves.³ Beyond these legal issues, the ICRC is keen to understand and, when relevant, act upon situations in which companies are directly or indirectly associated with adverse humanitarian consequences – not in a 'name-and-shame' perspective, but rather in a framework of constructive and privileged dialogue geared at improving the practices of companies in regard to their social or humanitarian impacts. Examples of engagement are offered in later sections of this article.

2. *When companies or their representatives bring influence to bear on a given situation.* Companies exert influence in many different ways. In certain circumstances, they are listened to carefully by the authorities in charge because their managers' decisions can have a massive impact on the authorities' budgets or on the economic life of the country or region. In other circumstances, the social or environmental impacts of companies' operations can decide the fate of large groups of populations. In yet other circumstances, their operations lead to a marked militarisation of a whole region. In its field operations, the ICRC needs to reach out to all actors wielding influence if it is to be able to carry out its mandate of protecting and assisting persons affected by armed conflicts and other situations of violence.
3. *When companies develop competences or skills that are of interest to the ICRC.* The corporate world is a source of learning with regard to general management practices, such as optimisation of human, financial, and logistical resources, innovation, and quality control systems. Some competences, skills, and good practices developed within companies are indeed of interest for humanitarian organisations. In its continuous efforts to best use the resources granted to it by its donors, the ICRC seeks to take up, when and where relevant, good practices that have been tried and tested by others, including companies.
4. *When companies sell goods or services required for humanitarian operations.* This is the classical client–supplier relationship and is the most regular and tested relationship between the ICRC and companies. Indeed, the ICRC has continuously needed goods and services sourced from businesses in order to smoothly run its operations. In this client–supplier relationship the ICRC has been endeavouring for the past few years to ensure that its suppliers behave properly in terms of their corporate responsibility and that they are not involved in activities running counter to the ICRC's humanitarian mission.
5. *When companies offer opportunities for partnership.* Faced with increasing levels of expectations from civil society and at times from governments, many

3 See the articles by Joanna Kyriakakis and Simon O'Connor, in this issue, for an overview of the various ways in which international and domestic criminal law can address business involvement in violations of international humanitarian law.

companies have sought recently to create positive social or environmental impacts beyond and above their pure business purpose as well as beyond and above their possible philanthropic activities. In this endeavour companies have been looking for partners in other sectors of society (such as government, academia, and non-governmental organisations) who can bring to a common project a different and complementary set of skills and competences as well as a degree of credibility. This provides an interesting field of exploration for the ICRC: indeed, the institution offers a very large palette of skills and competences, it faces regular flows of operational and organisational challenges, and it identifies projects that it cannot carry out by itself. Partnership with companies represents an option to develop state-of-the-art, comprehensive, and sustainable responses.

6. *When companies are interested in supporting humanitarian operations through cash or in-kind donations.* Companies have often proved generous when disasters strike. At times such generosity results from compassion – for instance, when a disaster affects a country or area where a given company operates or when a major disaster is heavily mediatised. At other times generosity is part and parcel of a well-calculated move aimed at gaining acceptance and polishing corporate reputation. The ICRC is seeking to diversify its donor base, and has determined that companies can be potential donors under certain conditions (these conditions are explained later in the article).

While not exhaustive, the above list covers the largest part of the spectrum of circumstances in which the ICRC will consider engaging with companies. Whatever the circumstances, though, the ICRC’s ultimate desired outcomes in engaging with companies can be compacted into two rough blocks.

The first block of desired outcomes – covering roughly the circumstances described in points 1 and 2 above – consists of ensuring that companies are sensitised to humanitarian issues or challenges. As companies can have a massive positive or negative impact in situations of armed conflict or other situations of violence, the ICRC considers that it can be worthwhile and legitimate to discuss humanitarian concerns with companies; it is a form of preventative action and as such is part and parcel of the ICRC’s mandate. This endeavour can take many forms, from bilateral discussion with a specific company on a specific humanitarian issue to production of generic guidance or participation in multi-stakeholder initiatives – that is, initiatives led jointly by several societal groups (such as governments, civil society organisations, and companies) with a view to responding to specific challenges. Under this first block of motivations, the ICRC simply seeks to bring about conditions that will diminish the chances of companies’ actions having negative impacts such as abuses against or deteriorating conditions for local communities. This is in line with the ICRC’s mission to protect and assist persons affected by armed conflicts or other situations of violence.

The second block of desired outcomes for the ICRC when it engages with companies – covering roughly the circumstances described in points 3 to 6 above – consists of ensuring that the organisation benefits from the right set of skills

and competences and from a solid and diversified donor base. Indeed, as mentioned earlier, companies regularly develop within their ranks very competitive and innovative sets of skills, competences, and good practices. Some of them are transferable to the not-for-profit world and should thus be given serious consideration. Furthermore, many companies are keen to leave a positive mark by supporting humanitarian activities or partnering in humanitarian projects. Under this block the ICRC simply seeks to strengthen its capacity to efficiently and economically deliver its humanitarian services.

As a conclusion to this first section exploring the circumstances and motivations that trigger ICRC engagement with companies, it is important to clarify one point. The ICRC engages with companies because it has observed in many theatres of operations that these entities play a role in conflict-related situations and that they often have the capacity and sometimes even the willingness to support humanitarian action. Based on its practice of constantly drawing lessons from its evolving operating environment and its pragmatic approach of developing working relationships with all actors that wield influence, the ICRC's engagement with companies represents one element among many others that help the institution to be relevant, knowledgeable, and effective in its mission to protect and assist persons affected by armed conflicts or other situations of violence.

2000–2012: the ICRC's first organised steps in engaging with business

The ICRC's current engagement with business actors began in late 1999. The present section describes briefly the strategy that was established to frame this engagement before exploring some concrete examples of engagement.

Strategy of engagement with the private sector

In late 1999 the ICRC adopted a specific strategy aimed at developing and organising its engagement with business (hereafter referred to as 'the strategy' or 'the 1999 strategy'). The novelty in the strategy was not so much that the ICRC had made a decision to engage with business: it had already done so episodically in the past. Rather, the novelty lied in the fact that the ICRC's governance and Directorate teams were supporting a comprehensive institutional policy signalling that business actors had become a stakeholder for the institution, and one that deserved closer attention and a more systematic approach. For internal purposes the implementation of this strategy of engagement with business was designed as a five-year project.

The 1999 strategy organised the ICRC's efforts of engagement with business around five distinct objectives that are briefly presented below.

The first objective consisted of *promoting humanitarian principles among business actors*. The focus was laid on companies operating or exerting influence in areas affected by armed conflict or other situations of violence. Under this objective, the ICRC essentially endeavoured to sensitise companies to their rights and

responsibilities under IHL and to draw their attention to the (potential) consequences of their decisions or operations on communities. Work on this objective was carried out both through direct bilateral dialogues with companies at headquarters or field levels and through participation in multi-stakeholder initiatives and normative processes.

The second objective concentrated on *developing within the ICRC an increased capacity of analysis and a more holistic understanding* of armed conflicts or other situations of violence through exchanges with business actors. In any place where it operates, as well as at the global level, the ICRC has always built its analyses on the basis of exchanges with a variety of stakeholders such as governmental authorities, non-state armed groups, religious clerics, and civil society organisations. Under this objective the rationale was to include, to the extent possible, business actors among the stakeholders consulted as a way to complement and enrich the ICRC's analysis. These societal actors indeed bring to the analytical exercise an economic dimension that had often been neglected by humanitarian actors.

The third objective was aimed at *developing competences through exchanges with companies*. The idea was that companies develop in the course of their operations and management practices a set of competences, know-how, and good practices that could be adopted or adapted by humanitarian organisations such as the ICRC. This objective set in place mechanisms and reflexes allowing the institution to create opportunities to take advantage of the capacities developed within companies.

The fourth objective focused on *refining the relationship between the ICRC and its suppliers*. Its aim was to improve some logistical procedures through increased cooperation with selected companies.

Finally, the fifth objective consisted of *developing fundraising from, and partnerships with, companies*. This objective fell in line with a broader institutional effort to diversify the ICRC's sources of funding. Indeed, the bulk of cash and in-kind donations to the ICRC comes from state contributions as well as from contributions from the Red Cross and Red Crescent Movement, with private donations covering only a very modest proportion of the institution's needs. This objective thus marked a determination on the part of the ICRC to be more assertive in seeking support from companies, while at the same time taking care not to encroach on the private fundraising efforts of other members of the Red Cross and Red Crescent Movement such as National Societies.

The 1999 strategy represented for the ICRC an evolution more than a revolution. The support for and interest in the implementation of the strategy displayed by the ICRC Directorate allowed the organisation to bypass some of the reluctance traditionally experienced among not-for-profit organisations toward engagement, cooperation, and association with business actors. The resources lined up for the implementation of the strategy facilitated progress on many of the set objectives. Proactive engagement with some industry sectors (such as the extractive sector and the private military and security sector) ensured a good positioning from which the ICRC could provide input on humanitarian concerns or IHL in various processes – in particular, in multi-stakeholder processes such as the

Voluntary Principles on Security and Human Rights and the United Nations (UN) Global Compact Expert Group on Responsible Business Practices in Conflict-Affected and High-Risk Areas. Business support in terms of competences, know-how, and funds helped the ICRC to better deliver its humanitarian services – the ICRC could, for instance, benefit from corporate expert support on issues such as quality control for drugs and internal auditing procedures. The network of contacts with business representatives built up over the years offered opportunities to promote humanitarian principles and created other opportunities of cooperation both at the field and headquarters levels. In short, by focusing the energies of the actors involved, the strategy of engagement with business accelerated a process of engagement with business actors. It is likely that this latter process would have taken place even without the 1999 strategy, but it certainly would have been more haphazard and much slower.

The ‘lessons learned’ exercise carried out after five years of implementing the 1999 strategy produced two main results. First, it determined that the ICRC should continue to engage with business and carry on with the main ambitions of the strategy. The efforts made during the first five years were deemed useful and conclusive for the ICRC in the sense that the implementation of the strategy benefited the ICRC in its capacity to deliver its humanitarian services. Second, the ICRC determined that, five years on, it was time to mainstream this work: engaging with business should no longer be considered as a separate issue tackled by a small group of specialists, but as an integral part of the ICRC’s functioning.

Some concrete examples of engagement with business actors

This section offers a glimpse into some of the work that has been carried out over the past twelve years as a result of the implementation of the 1999 strategy of engagement with business. The list that follows is not exhaustive; the selections were made on the basis of representativeness and exemplarity.

The Voluntary Principles on Security and Human Rights

Soon after the launch of its 1999 strategy, the ICRC determined that the extractive sector (oil, gas, and mining companies) was of particular relevance to its engagement with business. Extractive companies regularly operate in situations of armed conflict or other situations of violence; indeed, the very resources they exploit are often at the heart of grievances from communities and at the core of competition for access between opposing parties. As a consequence, operations carried out by the extractive sector often trigger increased levels of security deployments. The ICRC’s interest in this sector coincided with the early days of the Voluntary Principles on Security and Human Rights initiative.⁴

4 The website of the Voluntary Principles initiative contains the full text of the Voluntary Principles on Security and Human Rights, information on the various participants in or observers of the initiative, and

The Voluntary Principles were launched in December 2000 by the governments of the United States and of the United Kingdom, a number of major companies from the extractive sector, and a number of human rights non-governmental organisations. The Voluntary Principles are on the one hand a set of principles established to guide companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights, IHL, and fundamental freedoms. On the other hand, the Voluntary Principles also represent an initiative whereby participating companies, governments, and non-governmental organisations commit to promoting and implementing those principles. As a form of recognizance of the occasional overlaps between extractive activities and situations of armed conflict, the Voluntary Principles are a rare example of a multi-stakeholder initiative on the broad issue of business and human rights that specifically refers to IHL.

It made sense for the ICRC to take part in the proceedings of the Voluntary Principles, and for the initial members of the initiative to have the ICRC on board. The ICRC, however, did not wish to be a formal member of the Voluntary Principles: it considered that formal membership in an initiative that was constituted exclusively of Western governments, companies, and organisations was not suitable with regard to the institution's principle of neutrality and would risk creating unwanted constraints in terms of its operational capacity in some circumstances. These limitations were understood and accepted, and in 2001 the ICRC was invited to participate in the Voluntary Principles as an observer.

This participation in the Voluntary Principles offers various interesting opportunities for the ICRC. First, the institution is able, at a stroke, to sensitise a large set of extractive companies on, for instance, the provisions of IHL that are of relevance to their operations, the differences between human rights law and IHL, and the fact that provisions of IHL are in no way 'voluntary', in the sense that companies have to comply with these provisions or their managers face the risk of being held accountable for any violations.

Second, the ICRC can participate in several working groups or task forces established under the Voluntary Principles initiative. These structures are aimed at advancing the work of the initiative in preparing decisions on governance or organisational issues or in exchanging and formalising good practices on specific questions or challenges. They therefore create valuable opportunities for the ICRC to inject some of its humanitarian concerns early on and to share some of its experience in, for instance, the development of working relations with specific groups such as affected communities, public security forces, private security forces, and non-state armed groups.

An interesting third avenue through which the ICRC has contributed to the progress of the Voluntary Principles involved launching and overseeing the production of a set of guidance tools seeking to help companies in their efforts to transform their commitments under the initiative into real changes in their

miscellaneous information on the work performed and reporting produced under the initiative: www.voluntaryprinciples.org.

management and operational practices. In this exercise, the ICRC joined forces with three other organisations that all enjoy observer status in the Voluntary Principles: the International Finance Corporation, the International Council on Mining and Metals, and the International Petroleum Industry Environmental Conservation Association. Under their watch, a team of consultants produced what are now known as the Implementation Guidance Tools.⁵ These very practical tools are based on years of field experience and development of good practices by companies, consultants, and international organisations on issues of risk assessment, relations with public security forces and private security forces, and stakeholder engagement. The Implementation Guidance Tools have been an instant hit from the moment of their formal launch in 2011. Many companies that participate in the Voluntary Principles are reporting that they are using these guidance tools either as a benchmark for their own tools and procedures or as a replacement for or complement to them. Furthermore, it is very likely that extractive companies which are not participants in the Voluntary Principles have also been using the publicly available Implementation Guidance Tools.

Participation in the proceedings of the Voluntary Principles has also contributed to member companies becoming better acquainted with the ICRC, its constructive approach, and its areas of expertise. As a result, extractive companies have occasionally approached the ICRC both at the headquarters and field levels with a view to seeking expert advice on specific challenges they are facing, on guidance they are preparing, or on processes they are setting up. The ICRC endeavours to respond positively to these requests, provided they touch on issues where it really has competences to share and provided that its input is directly or indirectly beneficial to persons or communities affected by armed conflicts or other situations of violence.

Finally, there is yet another way for the ICRC to use the Voluntary Principles initiative as a conduit for its humanitarian mission – and this may be the most promising one. The Voluntary Principles as an initiative have so far delivered rather poorly in terms of having its members work together to tackle Voluntary Principles-related challenges at the level of the various countries where extractive operations are taking place. Indeed, after more than ten years of existence, there is only one country where oil and mining operations are taking place in which a group of stakeholders connected to these industries have worked together with a view to implementing the Voluntary Principles literally on the ground: Colombia. The Voluntary Principles initiative has been trying to establish national implementation processes in other countries with important oil and mining operations, but with only modest success so far. There are, however, two good reasons to be optimistic. First, in spring 2013 the Voluntary Principles initiative concluded a long process of work focusing on governance and organisational issues – a process that consumed a lot of its participants' energies for several years. Second, all participants in the Voluntary Principles – be they companies, governments, or non-governmental

5 The Implementation Guidance Tools are publicly available at: www.voluntaryprinciples.org/files/VPs_IGT_Final_13-09-11.pdf.

organisations – realise that the credibility of the initiative lies in the clear demonstration that the Voluntary Principles bring concrete improvements at the field level. As a consequence, there is at present a shared appetite among participants to enhance implementation efforts in the field. This development offers opportunities for a humanitarian organisation such as the ICRC to bring to bear its experience and competences and to use, where and when relevant, the leverage of Voluntary Principles-related efforts with a view to improving the protection of and assistance to persons or communities affected by armed conflicts or other situations of violence. The ICRC has been using these opportunities in places such as Colombia, Peru, and Madagascar, and it remains vigilant for future opportunities.

The private military and security industry

The private military and security industry has constituted an obvious point of concern for the ICRC. This industry has experienced a period of spectacular growth throughout the past two decades, a growth marked by serious incidents such as the presence of private security contractors during sessions of degrading and inhumane treatment inflicted on prisoners at Abu Ghraib prison in Iraq, and the Nisoor Square shooting by Blackwater contractors which cost 17 lives. Throughout this period companies in this industry have deployed more and more personnel in areas affected by armed conflict or other situations of violence and have developed a large palette of activities ranging from support to military forces to securitisation of sites or protection of persons, intelligence-gathering, training services, and provision of humanitarian assistance. Thus, they have naturally attracted the ICRC's attention.

The ICRC had previously had occasional chance encounters with the private military and security industry through its fieldwork, but it was only in 2003 that it started to organise its engagement with this industry, first by meeting a group of the most important and prominent companies based in the United Kingdom and United States. The main objective of this first round of engagement was to ensure that these large companies were fully aware of their rights and responsibilities under IHL. At the same time, the ICRC initiated representations with states – states contracting these private military and security companies, states on the territory of which these companies were operating, and states where these companies were incorporated. The main objective of this second part of the ICRC's involvement with the issues created by this industry was to underline that states have a responsibility to respect and ensure respect for IHL, and that this responsibility can be exercised, for instance, by properly regulating this sensitive industry.

Following several discussions with companies and states, two clear realisations emerged. On the one hand, it appeared that there was a need for an instrument or a mechanism that would facilitate the management by states of the challenges posed by the operations of private military and security companies in areas affected by armed conflict. On the other, it also appeared that there was a lack of consensus within the international community on the idea of developing a binding international legal instrument to tackle these challenges. On the basis of

these realisations, the ICRC then decided to join forces with the Swiss government (through its Federal Department of Foreign Affairs, the Swiss equivalent of a Ministry of Foreign Affairs) and to take an active part in what was referred to as the 'Swiss-ICRC initiative'. This initiative aimed at clarifying the applicable rules of international law and states' responsibilities vis-à-vis the operations of this industry. It also worked constructively with concerned states and the industry to develop practical and realistic guidance in order to enhance the protection of IHL and international human rights law in relation to the operations of private military and security companies in areas affected by armed conflict.

In autumn 2008, these efforts led to the adoption by 17 states⁶ of the Montreux Document on private military security companies (hereinafter 'Montreux Document').⁷ The Montreux Document serves two main purposes. First, it recalls the existing legally binding obligations of states, private military and security companies, and their personnel under international law whenever these companies are present in a context of armed conflict. So, while the Montreux Document itself is not legally binding, the rules contained in its first part are legally binding obligations under treaty or customary laws. Second, it offers a compilation of good practices designed to assist states in complying with their obligations under international law. The Montreux Document does not intend to legitimise the use of private military and security companies. Its objective is to recall and clarify rules of international law applicable to the activities of private military and security companies in situations of armed conflict and to offer good practices in this respect.

In late 2008, the Montreux Document was circulated as a document of the UN General Assembly and the UN Security Council. Under this status it was translated in all official UN languages⁸. Together with the Swiss Federal Department of Foreign Affairs, the ICRC has been active in promoting the Montreux Document across the world. At the time of writing, a total of 46 states and one international organisation (the European Union) support the Montreux Document.⁹

The Montreux Document is not the only conduit for ICRC engagement on private military and security issues. The ICRC has been engaged in trilateral dialogues with various states as well as private military and security companies both at the field and headquarters levels. It has had dialogues on IHL and humanitarian issues with industry associations, and it has offered on request specialised inputs focusing on IHL to processes such as the International Code of Conduct for Private Security Providers¹⁰ led by the Swiss Federal Department of Foreign Affairs and

6 These states were Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom, Ukraine, and the United States.

7 The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, available at: www.icrc.org/eng/resources/documents/misc/montreux-document-170908.htm.

8 The Montreux Document can be viewed in the various official UN languages at: www.un.org/ga/search/view_doc.asp?symbol=A/63/467.

9 An updated list of states supporting the Montreux Document is available at: www.eda.admin.ch/eda/en/home/topics/intla/humlaw/pse/parsta.html.

10 The text of the Code of Conduct as well as other related information is available at: www.eda.admin.ch/eda/en/home/topics/intla/humlaw/pse/coc.html.

work streams such as the Open-Ended Intergovernmental Working Group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies¹¹ under the UN Human Rights Council.

The ICRC's Business and International Humanitarian Law booklet

ICRC staff involved in dialogues on humanitarian issues with business representatives began to realise that the latter had hardly any knowledge of IHL. Through their corporate responsibility managers, community relations officers, or legal and compliance advisers, companies had started in the late 1990s or early 2000s to grapple with human rights, but in most cases they had failed to recognise that a distinct body of law was applicable in situations of armed conflict.

This knowledge gap was problematic because, as mentioned earlier in the article, companies were increasingly operating in areas of armed conflict and were increasingly connected through their presence and operations with local or regional dynamics of conflict, in particular but not exclusively the extractive and private military and security sectors. Consequently, the ICRC considered that it was worth the effort to raise awareness and knowledge among business actors on the existence of IHL and on their rights and responsibilities under this body of law. It thus decided not only to disseminate IHL to business operatives when it was meeting them at the field or headquarters levels or as part of its involvement in various initiatives, but also to produce a booklet summarising the main elements of relevance, entitled *Business and International Humanitarian Law*.¹²

In acknowledgement of the fact that business managers are generally circumspect in front of lengthy reports, the booklet was built around a questions-and-answers structure. It was thus made expressly short and concise and was written in a way that is light on legal or humanitarian jargon. Furthermore, it was road-tested before publication to ensure that the final product addresses the main concerns and questions that business managers face when operating in areas of armed conflict.¹³

Field engagement

As an institution, the ICRC has faced no particular problem in engaging with companies at the corporate or headquarters levels on broad humanitarian issues. Both on the companies' and the ICRC's sides, the personnel involved have usually been open and keen to engage on humanitarian-related issues. Engagement at the field level has been more challenging so far. Several causes line up on the ICRC side

11 The mandate of this Working Group and other related information is available at: www.ohchr.org/EN/HRBodies/HRC/WGMilitary/Pages/OEIWGMilitaryIndex.aspx.

12 ICRC, *Business and International Humanitarian Law: an Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law*, 30 November 2006, available at: www.icrc.org/eng/resources/documents/misc/business-ihl-150806.htm.

13 With time the booklet has been translated into French, Russian, and Chinese.

to explain the difficulties, including lack of familiarity, practice, or priority with regard to emergency response operations at the expense of relationship-building with new interlocutors; to these causes one could add occasional mutual suspicion experienced by personnel on both sides.

Nevertheless, there have been instances where engagement and cooperation have actually taken place. Below are presented three illustrative examples of cooperation in the field between companies and the ICRC.

Example 1: Improving law enforcement around industrial sites

The first example relates to the involvement of the ICRC in the training of security forces assigned to the protection of companies' staff, assets, and operations.¹⁴ For many years the ICRC has run programmes to support armed forces and law enforcement agencies in numerous countries.¹⁵ At one level, these programs aim to develop in these entities knowledge of the rules of IHL and of some relevant components of human rights law, in particular those related to the use of force in law enforcement operations. At another level, they aim to assist authorities in the integration of these rules into the doctrines, training, and operational practices of these entities. The ultimate objective of these programmes is to help the armed forces and the various law enforcement agencies perform their functions in a way that is compatible with IHL and with the provisions on the use of force.

In places where business operations are affected by significant security risks and are thus accompanied by deployment of armed forces or law enforcement agencies, companies need these public entities to perform well. Good performance means in particular that these entities are able on the one hand to securitise companies' staff, assets, and operations, and on the other to carry out their tasks in a way that does not encroach on communities' rights and well-being and that does not exacerbate tensions or provoke security incidents with these communities. Experience has indeed shown repeatedly that when communities are negatively affected by the security deployment associated with a company's operations, the company is also negatively affected, either because the operations have to be stopped or suspended due to the tensions or because the company's reputation takes a significant dent locally or internationally.

It is thus clear that in those situations, the ICRC's efforts to develop knowledge and application of the relevant provisions of IHL and human rights law in law enforcement are resonating well with companies' need to be able to benefit from good-quality law enforcement performance. As a result, there have been over the past years several instances in which companies and

14 Background information on the ICRC's engagement with weapon-bearers is available at: www.icrc.org/eng/what-we-do/building-respect-ihl/dialogue-weapon-bearers/index.jsp.

15 The following link to the ICRC's Annual Reports gives access to a country-by-country description of ICRC activities, including ICRC engagement with weapon-bearers: www.icrc.org/eng/resources/annual-report/index.jsp.

the ICRC have liaised and coordinated in the field to ensure that the work of the ICRC with armed forces and law enforcement agencies also benefits forces specifically engaged in the protection of business operations. This has happened, for instance, in Colombia, Indonesia, Azerbaijan, and Madagascar.

This type of cooperation offers a 'win-win-win-win' proposition. The authorities in charge benefit from the enhanced capacity of the armed forces or law enforcement agencies to perform their duties in a way that does not create a litany of tensions and incidents. Companies benefit from a more serene and less troubled working environment. Communities near the sites of business operations benefit from an improved and less risky interaction with the security set-up that supports those operations. The ICRC, meanwhile, benefits because communities are better protected, and less tensions and incidents create less humanitarian needs – and all this is made possible simply by the ICRC delivering its mission to protect and assist persons affected by armed conflicts or other situations of violence and to promote IHL and some segments of human rights law.

Example 2: Cooperating on the continuous delivery of privatised essential services in times of disruption caused by armed conflict

A second illustration of the possibilities of cooperation in the field with companies has as its background the Ivory Coast during the internal armed conflict that started in 2002. As a result of this conflict, the country found itself divided into two parts – one run by the central government, and the other run by the armed opposition. Such a situation traditionally creates a whole array of problems for the delivery of public services, and in this particular case one of them was related to the management of the water treatment and distribution system.

The running of the water treatment and distribution system had been privatised some years before the conflict erupted. The system was managed by the local subsidiary of a transnational company based outside the Ivory Coast. The *de facto* partition of the country created two particular problems for the water company. First, it was no longer able to ensure the proper maintenance of the water system in the areas under the control of the armed opposition, due in particular to the sudden departure of a large portion of its qualified staff. Second, it stopped receiving payments for the water delivered to private clients in those areas.

Had it followed pure business-motivated logic, the company might have considered suspending its services in the areas under control of the armed opposition, at least until practical solutions for maintenance and payments could be found. Fortunately, the massive humanitarian setback that such a business-motivated decision could have caused convinced all stakeholders – including the Ivorian ministry in charge and the company – to seek alternative solutions.

This is where the ICRC came in. In many places around the world, the organisation runs programs to ensure that populations affected by armed conflict or other situations of violence benefit from drinkable water. It had such a program running in the Ivory Coast at the time of the conflict. Through discussions with the ministry in charge and the company, pragmatic solutions could be found. The ICRC carried out itself or facilitated the temporary and secure transfer of qualified company staff to conduct some of the essential maintenance operations required in areas held by the armed opposition, with a view to ensuring that the water supply system would not break down or deliver water of insufficient quality. A quadri-partite agreement involving the ministry in charge, the company, a donor, and the ICRC and shared in full transparency with the armed opposition detailed the responsibilities of each party and organised the financial set-up in such a way that the company would not derive profits or sustain additional losses from the arrangement.¹⁶

This case is illustrative of the potential for huge beneficial humanitarian consequences when companies and a humanitarian and neutral organisation such as the ICRC manage to propose pragmatic solutions and persuade all parties concerned to set aside military and business considerations in order to preserve the well-being of hundreds of thousands of civilians.

Example 3: Acting as a neutral intermediary to help resolve hostage crises

A third example of engagement with companies directly in the field is related to the ICRC's traditional role as a neutral intermediary. This is a role that is granted to the ICRC through the Statutes of the International Red Cross and Red Crescent Movement¹⁷ and that follows on logically from the organisation's operational approach, which involves developing contacts and working relationships with all parties involved in an armed conflict or other situations of violence. On the back of this access to a wide range of interlocutors, the ICRC can offer its services as a neutral intermediary to help resolve a humanitarian issue. These services can take the form of providing good offices or, less commonly, mediation, and either way they are carried out with the full consent of all parties involved.

This operational practice occasionally places the ICRC in situations where it can facilitate some specific processes. The ICRC normally uses this working relationship with all parties to press its humanitarian messages, to inform of its humanitarian operations, and to get security clearances for those operations. At times, however, the ICRC's privileged access to all parties can be

16 Further information on this program can be found in the ICRC's *Annual Report 2004*, p. 112, available at: www.icrc.org/eng/resources/documents/annual-report/icrc-annual-report-2004.htm.

17 Statutes of the International Red Cross and Red Crescent Movement, Art. 5(3), adopted by the 25th International Conference of the Red Cross at Geneva in 1986, available at: www.icrc.org/eng/assets/files/other/statutes-en-a5.pdf.

leveraged by others. This is the case, for instance, when the organisation helps with the exchange of information or the resolution of logistical issues in support of peace processes. It is also the case when parties to a conflict want to find ways to liberate prisoners or hostages. These are typical examples of the ICRC's capacity to act as a neutral intermediary.

Over the past few years there have been many instances of business actors being taken hostage in the course of their work in the field. In some of these instances – in Sudan,¹⁸ Ethiopia,¹⁹ and Niger²⁰ – the ICRC has been called in, in its capacity as neutral intermediary, to facilitate the release of the hostages. It is important to underline here that in all such situations the ICRC does not negotiate the terms of the releases, an option that would push the institution away from its humanitarian mission; it only facilitates such processes by relaying messages and managing the logistics when required.

In this type of situation, the ICRC provides a service that helps companies. It does so not because it helps companies *per se*, but because it helps to resolve a humanitarian problem that affects civilians. This nuance underlines the fact that this particular instance of engagement in the field with companies does not represent a deviation from the ICRC's mission – it is just a part of that mission.

As mentioned earlier in this section, the above selection of examples is purely illustrative and does not cover the full spectrum of the various situations in which the ICRC has engaged with business in the field. Further examples include occasional support provided by companies in specific circumstances on ICRC request – for instance, in situations of emergency where companies have swiftly offered in-kind assistance when the ICRC's logistical set-up was temporarily stretched – and ICRC participation in fieldwork carried out under some normative or multi-stakeholder initiatives, such as work related to the Voluntary Principles on Security and Human Rights. As a conclusion to this section, it is important to underline one common thread in these various instances of cooperation in the field between companies and the ICRC: they were all directly or indirectly connected to the implementation of the ICRC's humanitarian mission. The condition for any decision by the ICRC to engage in the field with companies has always been, and will remain, that it plays a part in achieving a humanitarian objective. Absent this condition, the ICRC will not wish to engage as to do so would risk spreading its resources too thinly and ultimately eroding its capacity to deliver on its core mandate.

18 See Peter Shadbolt, 'Kidnapped Chinese workers released in Sudan', in *CNN*, 7 February 2012, available at: <http://edition.cnn.com/2012/02/07/world/africa/sudan-hostages>.

19 See 'Rebels release Chinese hostages', in *ChinaDaily*, 30 April 2007, available at: www.chinadaily.com.cn/china/2007-04/30/content_863863.htm.

20 See 'Niger rebels release French hostages', in *France 24*, 25 June 2008, available at: www.france24.com/en/20080625-niger-rebels-release-french-hostages-niger-rebels.

Partnerships

The strategy of engagement with business that the ICRC adopted in 1999 identified companies as a source of potential support. Support offered by companies can be financial, but it can just as valuably be of a more operational nature: companies and the ICRC can share their respective expertise, know-how, and good practices in a way that benefits both sides. This form of relationship not only provides the ICRC with extra means to deliver its humanitarian mission, but also offers extra capacities to deliver that mission more effectively.

In order to take advantage of the resources and capacities on offer from companies, the ICRC established in 2005 a group of corporate supporters under the name of the ICRC Corporate Support Group.²¹ All companies and foundations in the group are Swiss-based. Before being invited to join the group, they were vetted by the ICRC through an ethical screening process involving various specialised agencies. While the ICRC is ready to engage with all companies when it comes to discussing humanitarian issues and these companies' operations in the field, it has adopted strict criteria to guide its relationship with companies when this relationship involves an association of image.²² This caution is motivated by the necessary management of the institution's reputation – a reputation that is instrumental to the ICRC's capacity to deliver its humanitarian mission as well as, to some extent, to the security of its operations.

The establishment of a structured partnership with a group of companies has created new opportunities for the ICRC. The institution benefits from advice or direct support on issues such as human resources management, internal auditing, and financial management as well as on more technical fields such as logistics and quality control in medical procurement. Partner companies, meanwhile, have been able to benefit from yearly meetings with the ICRC's President, from yearly workshops where they can exchange experiences on specific issues (such as human resources, induction of new staff members, and corporate responsibility) with ICRC managers, and from occasional inputs by ICRC staff members sharing their field experiences. Partner companies have also been able to benefit from the positive effect in terms of reputation created by their partnership with the ICRC.

Looking ahead

This section will consider some of the main trends that can be observed on the issue of the connection between companies and armed conflicts or other situations

- 21 The initial seven corporate supporters to join the ICRC Corporate Support Group were ABB, Fondation Hans Wilsdorf, Lombard Odier Darier Hentsch, Roche, Swiss Re, Vontobel, and Zurich. Corporate supporters that joined the group after its 2005 launch include Holcim, Fondation Avina, Credit Suisse and Novartis. An updated list of the ICRC Corporate Support Group members is available at: www.icrc.org/eng/what-we-do/other-activities/private-sector/private-sector-csg-members.htm.
- 22 These criteria are listed in the document 'Ethical principles guiding ICRC's partnerships with the private sector', available at: www.icrc.org/eng/resources/documents/misc/ethical-principles-220502.htm.

of violence. It will then look at the way in which the ICRC intends to develop its engagement with business actors.

Major trends

Four major trends can be observed in relation to the connection between business actors and armed conflicts. The first two are closely related to what the former Special Representative of the UN Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, identified in his report *Protect, Respect and Remedy* as 'the governance gaps created by globalization – between the scope and impact of economic forces and actors, and the capacity of society to manage their adverse consequences'.²³

The first trend is that there has been a movement, though as yet a rather modest one, to better regulate the interaction between business and society, including when it relates to situations of armed conflicts or other situations of violence. Developments in the past two years seem to indicate that some states, through their governments, their legislative bodies, or the multilateral organisations in which they participate, have started to take their responsibility to address these governance gaps seriously.²⁴

Second, many actors in society have shown a continuous interest in tackling concrete challenges through multi-stakeholder processes. These processes most often generate dialogue and develop better understanding among separate groups of stakeholders animated by diverging views and interests. This dialogue and increased understanding in turn facilitates pragmatic approaches and resolutions to specific challenges. And these pragmatic resolutions, even though of a voluntary and non-binding nature in most circumstances, often result in incremental improvements in the way business actors deal with some of the challenges they face with regard to their impacts on communities. These processes create a body of soft-law mechanisms and offer a vibrant alternative to the often slow and increasingly complicated process of producing legal obligations in the form of international instruments.²⁵

23 Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, 'Protect, Respect and Remedy: a Framework for Business and Human Rights', UN Doc. A/HRC/8/5, 7 April 2008, available at: www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf.

24 By way of illustration, the following document, produced in late 2012 by the International Corporate Accountability Roundtable, provides US-focused examples of domestic legislation and regulations as well as of multi-stakeholder processes in its sections titled 'Discussion 2' and 'Discussion 3' respectively. See 'Second Annual Meeting of the International Corporate Accountability Roundtable: continuing our coordinated movement, Washington D.C., September 6–7, 2012', available at: <http://accountability-roundtable.org/wp-content/uploads/2013/02/ICAR-Second-Annual-Meeting-Report1.pdf>.

25 The 'Overview of selected initiatives and instruments relevant to corporate social responsibility', in *Annual Report on the OECD Guidelines for Multinational Enterprises 2008*, OECD, 2009, provides an interesting oversight and classification of multi-stakeholder initiatives: see www.oecd.org/daf/inv/mne/40889288.pdf. The document *Investing the Rights Way: a Guide for Investors on Business and Human Rights*, Institute for Human Rights and Business, 2013, provides another interesting oversight and rough analysis of international frameworks and codes/principles/standards: see www.ihrb.org/publications/reports/investing-the-rights-way.html.

The third trend – and probably the most encouraging one – consists of a shift towards implementation. An increasing number of companies have indeed started in earnest to implement in their field operations the resolutions to which they have committed under various declarations of principles, codes of conduct, and multi-stakeholder processes. They have realised that rhetoric and positioning alone are no longer sufficient in the court of public opinion. They have also realised that while improving their human rights records is certainly not the easiest path to follow, it is likely to be the most sustainable one in the mid- to long term as it facilitates balanced and serene relationships with communities and polishes corporate reputation among civil society organisations, clients, and industry peers – all elements that ultimately bring down operational costs and create new business opportunities.²⁶

A fourth trend relates to companies' increasing keenness to connect their corporate responsibility or sustainability endeavours to the material issues created by their core business operations. This trend is strengthened by the fact that companies are growing less content merely to provide money, goods, or services to humanitarian organisations. In short, some companies have been demonstrating a new level of commitment and seriousness in addressing the challenges that their operations may create.²⁷ They increasingly want their social or humanitarian commitments to be more than simply feel-good operations meant to compensate adverse impacts created by their core business activities – they want their commitments to address directly some of these adverse impacts. The fact that food processing companies are addressing the adverse impacts of the increasing demand for palm oil, that telecommunications companies are addressing issues related to data management and privacy, that retail companies are addressing challenges emerging across their supply chains such as child labour or poor health and safety conditions on production sites, and that extractive companies are addressing the challenges related to the displacement of communities or the management of security around their operations are all testimony to this new level of commitment among companies – even though it is clear to everybody that there is still much progress to be made.

26 The operational and opportunity costs of conflict with communities have been shown in Rachel Davis and Daniel M. Franks, 'The costs of conflict with local communities in the extractive industry', conference paper, Proceedings of the First International Seminar on Social Responsibility in Mining, Santiago, Chile, 19–21 October 2011, SRMinning Publisher, available at: http://shiftproject.org/sites/default/files/Davis%20&%20Franks_Costs%20of%20Conflict_SRM.pdf. It is worth mentioning here two extremely valuable publications that provide guidance to companies in their endeavours to operate in a way that 'does no harm'. The first publication is generic: Luc Zandvliet and Mary B. Anderson, *Getting it Right: Making Corporate-Community Relations Work*, Greenleaf Publishing, April 2009 (at the time of publishing, the authors were part of the Corporate Engagement Program of CDA Collaborative Learning Projects). The second publication is specific to situations of conflict and to the extractive industry: *Conflict-Sensitive Business Practice: Guidance for Extractive Industries*, International Alert, March 2005.

27 By way of example, one could note how the Unilever Foundation connects its social investments and NGO partnerships with its corporate responsibility plan entitled 'Sustainable Living': see www.unilever.com/aboutus/foundation/. In the same industry sector, one could also note the same type of connection between Nestlé's social investments and NGO partnerships and its corporate responsibility plan entitled 'Creating Shared Value': see www.nestle.com/csv.

The above trends bear much promise for humanitarian organisations that are ready to engage with companies. They offer space for humanitarian organisations to get involved in the development of legal provisions seeking to better regulate companies in relation to their social or environmental impacts on societies, and to support the implementation of these legal provisions. They create opportunities for humanitarian organisations to foster pragmatic solutions to specific problems through their active involvement in multi-stakeholder initiatives. Finally, they open the way for humanitarian organisations to work alongside companies and craft joint projects that bring about positive impacts for vulnerable groups.

The ICRC has spotted these trends and will do its best to exploit them in such a way as to support its mission of protecting and assisting persons affected by armed conflict and other situations of violence and of disseminating IHL and humanitarian principles.

Continued engagement

A dozen years of structured and organised engagement with companies have allowed the ICRC to verify that such engagement is a strategic investment that yields great benefits with regard both to its humanitarian mission and its good functioning as an institution. The ICRC is resolved to pursue its strategy of engagement over the coming years and to further develop it.

So far, the bulk of the ICRC's engagement with companies has focused on the extractive and the private military and security industries. The institution has certainly remained open and ready to engage with companies from any sector should they approach it with requests or dilemmas that have a bearing on its mission and operational concerns. In the years to come, the ICRC will endeavour to reach out to new sectors such as the trading, telecommunications, and agribusiness industries. Activities in these sectors have great potential for both positive and negative humanitarian impacts and as such deserve to be explored in more depth. As in its engagement with other sectors, the idea is not for the institution to 'name and shame' but rather to refine its understanding of its operating environments and to determine whether there are, in these sectors, win-win opportunities for engagement that could trigger humanitarian improvements in specific contexts.

Another evolution in the ICRC's engagement strategy relates to the companies' home countries. An overwhelming majority of the ICRC's work has been carried out with companies originating from OECD countries. This was an opportunistic choice. These companies were indeed considered low-hanging fruit: they were most active and visible in multi-stakeholder processes or fora dealing with business and human rights; they were showing resolve in engaging with the humanitarian sector; they were closer culturally and more readily understandable for the headquarters-based ICRC staff that dealt with them; and they thus required less upfront investment from the thinly resourced ICRC team responsible for the strategy of engagement. Over the coming years the ICRC intends to reach out more determinedly to companies originating from non-OECD countries, in particular from so-called emerging economies. Once again, the main rationale for doing so is

to refine the ICRC's understanding of its operating environments by diversifying its network and to identify some potential win-win opportunities for engagement.

Furthermore, the ICRC has taken due note of the present trend toward implementation noted earlier in this article: many companies have over the past few years moved beyond declarative statements and have started grappling with actual implementation of their commitments in their operations. This move is of particular interest to the ICRC, firstly because it bears promise that certain humanitarian hardships directly or indirectly created by companies' activities could be lessened or avoided altogether, and secondly because while changing their operational practices to 'do no harm' or to 'do good', companies often seek specific sets of competences that are available from humanitarian organisations. The ICRC will carefully observe in certain contexts whether matches can be made between companies' needs and projects and its own humanitarian objectives and plans.

In its revisited strategy, the ICRC will also tackle its engagement with companies in a more holistic way. In previous years the ICRC has functioned with an organisational set-up that completely separates its endeavours to engage companies on humanitarian issues from its endeavours to seek support from companies (whether in the form of know-how, in-kind goods or services, financial assistance, or partnerships). The new approach will certainly keep a clear distinction between these two forms of engagement – there are indeed groups of companies with which the ICRC is willing to engage in relation to the humanitarian impact of their field operations but unwilling to enter into a donor or partnership relationship. The new strategy will however create more continuity between these two forms of engagement and will seek to favour synergies when and where it is relevant to do so. The rationale is that the level of shared experiences and trust created when the ICRC works alongside a company or group of companies on a specific humanitarian challenge can trigger opportunities for parallel engagement on exchange of competences, in-kind or financial support, or partnership. Furthermore, a company's willingness to provide support to the ICRC can serve as a stepping stone to engagement on humanitarian challenges associated with the company's operations.

Finally, in other aspects of its refreshed strategy the ICRC will simply continue some of the work it has been carrying out over the previous years. It will for instance pursue its involvement in selected processes creating norms, producing guidance, or collecting and disseminating good practices that directly or indirectly tackle companies' humanitarian impact in areas affected by armed conflicts or other situations of violence. As a co-initiator of the Montreux Document, the ICRC will ensure with its partners from the Swiss government that the Document is continuously disseminated and promoted. The ICRC will also continue to follow closely and when necessary provide input for the work of the Voluntary Principles on Security and Human Rights initiative, the work related to the International Code of Conduct for Private Security Service Providers, the proceedings of the UN Global Compact and in particular its Expert Group on Responsible Business Practices in Conflict-Affected and High-Risk Areas, the proceedings of the UN Working Group on the issue of human rights and transnational corporations and other business

enterprises, the various work streams related to conflict minerals, and so on. It will also consider proactively partnering with other organisations or individuals with a view to launching specific projects if and when it determines that it can add value and offer constructive involvement related to its competences.

Creating new opportunities

Sometimes opportunities just present themselves sometimes they need to be encouraged. In late 2011, the ICRC decided to join the International Institute for Management Development's (IMD) Corporate Learning Network precisely with the aim of generating new opportunities of engagement with companies.²⁸

The ICRC has integrated this membership in the IMD's Corporate Learning Network into its broad strategy of engagement with business. First of all, membership provides access to a wide network of business interlocutors – an interesting feature when one considers the increasing presence of business in areas affected by armed conflict or other situations of violence. Second, it offers learning opportunities as well as possibilities to exchange with business actors on good practices. Finally, it gives the ICRC the opportunity to reach out to new publics in its continuous efforts to communicate on its operations, to seek advice and support for its work, and to disseminate IHL and humanitarian principles.

Participation in the IMD's Corporate Learning Network is not the only conduit through which the ICRC creates opportunities to further its engagement with business, however. The ICRC Corporate Support Group (mentioned earlier in this article) represents another such conduit; it is currently in the process both of being expanded and of being more systematically utilised with a view to enhancing the ICRC's capacity to deliver its humanitarian mission. The ICRC's participation in selected multi-stakeholder initiatives and its occasional cooperation with industry associations provide yet another conduit for creating new opportunities to develop its engagement with business: constructive engagement in such set-ups nurtures interest and goodwill. Finally, the ICRC will increase its participation in various fora, processes, and groupings where business actors are heavily represented, such as the World Economic Forum.

Conclusion

As underlined in the introduction to this article, humanitarian organisations for most of their history have lived and worked without engaging much with companies, except in a client–supplier relationship. Indeed, for a long time they did not have many pressing reasons to engage: mainstream and legitimate business

28 The IMD is one of the world's most renowned business schools for executive education. The IMD's Corporate Learning Network is a platform that allows its members to learn and exchange information on strategy and management issues through roundtables and learning events. Furthermore, it offers its members access to a wealth of IMD-produced resources, from academic articles to book summaries and podcasts.

actors were rarely seen in conflict-prone areas and did not have the size and clout that some transnational corporations have today. This long period of mutual ignorance is over, and instances of cooperation and partnership between humanitarian organisations and companies will most likely continue to increase in the future.

At present both companies and humanitarian organisations find themselves in an uneasy phase of transition. Through societal expectations and sometimes initiatives by governments, companies are requested not only to 'do no harm' but also to go further by offering a positive contribution to society beyond the creation of jobs, the payment of taxes, and the sporadic deployment of philanthropic activities. Consequently, companies find themselves working in unfamiliar fields and liaising with unfamiliar partners, among which are humanitarian organisations. Generally speaking, managers and employees in both companies and humanitarian organisations are filled with representations of the other party that do not naturally generate mutual respect and confidence.

Efforts need to be made on both sides to overcome suspicion. Companies need the specific skill set and know-how that humanitarian organisations have developed over time in tackling humanitarian problems. Furthermore, companies need the access and good reputation that these humanitarian organisations enjoy in most circumstances, with a view to reaching out to local communities and developing a working environment where the latter will be able to benefit and have their say. For their part, humanitarian organisations can benefit from the specific skill sets and the financial, operational, and political clout that companies have developed.

Rapprochement will not be easy: there are certainly many differences between the business and humanitarian worlds, the most obvious one being the ultimate objectives underpinning their respective operations. But there are also similarities – there are entities with strong ethical frameworks and entities with loose ethical standards in both worlds; there are trustworthy and less trustworthy partners in both worlds; there is in both worlds a keen interest in the rule of law; and there is a pressing need in both worlds to build, develop, and consolidate one's reputation.

Nonetheless, rapprochement is inevitable: competition for resources and for markets pushes companies from all horizons to operate in all kinds of contexts, including in conflict-affected or conflict-prone areas. At the same time, the need for companies to develop their 'social license to operate' (that is, the acceptance of local communities in their areas of operations as a complement to the 'legal license to operate' granted through agreements with the governmental authorities) incites them to consider social investments and humanitarian or development activities. Both trends bring humanitarian and business actors in closer proximity to each other.

The differences and similarities between the business and humanitarian worlds require a very careful approach from both companies and humanitarian organisations when they want to engage. Humanitarian organisations should systematically analyse their potential engagement with business actors in terms of risks and opportunities. Risks regularly concern negative impacts on the

humanitarian organisation's reputation or acceptance of being associated with business actors in specific contexts. Opportunities generally consist of extended possibilities – in quantitative or qualitative terms – to deliver humanitarian services or chances to influence soft-law mechanisms that will help companies operate in such a way as to do no harm.

Pressed to improve their corporate reputation and their practices in challenging operating environments, companies are increasingly seeking to engage with humanitarian actors. While doing so, they generally know quite well what they want to get from the engagement. Humanitarian organisations have at present an excellent opportunity to take the bull by the horns: they should determine what they need and what they want from business actors and engage, whenever possible, on that basis. This will offer the best opportunities to grasp the potential of synergies and closer cooperation for the benefit of the communities that humanitarian organisations strive to protect or assist. Some humanitarian organisations have already become proactive in their engagement with companies; others have remained reactive or downright reluctant.

In line with its operational practice of engaging with all actors of influence, the ICRC has begun engaging with business actors. This article has explored the motivations, practices, and perspectives of the ICRC's engagement with business. Measuring the outcome of this engagement is a complicated task, but it is possible to pinpoint some indicators: as documented earlier in the article, the ICRC has provided some input in various multi-stakeholder initiatives promoting IHL and humanitarian principles; it has participated in the production of practical guidance assisting companies to operate in a way that 'does no harm'; it has offered occasional advice and support to companies, both at the corporate and field levels, on challenges of a humanitarian nature that they were facing; it has sensitised public security forces carrying out law enforcement in areas where companies' operations create social tensions to the proper management of the use of force; it has offered its services as a neutral intermediary to facilitate the release of hostages; it has benefited from companies' expertise in addressing various management challenges; and it has benefited from new financial or in-kind resources. This list is illustrative and by no means exhaustive.

The ICRC has thus been exploring the potential of engaging with business actors for more than a decade. It has however not yet reached a point of consolidated practice. It will thus keep exploring until it is satisfied that it has maximised the potential benefits of its engagement with business actors while carefully managing the potential downside of this engagement. This exploration is worth the effort as it can yield greatly positive results for those the ICRC strives to protect and assist.