

# HUMANITARIAN LAW & POLICY



## What private businesses need to know about international humanitarian law

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*Private businesses that operate in situations of armed conflict, do business with a government or other entity involved in an armed conflict, or may do so in the future, should be aware of relevant rules of international humanitarian law (IHL).*

*In this post, the International Committee of the Red Cross (ICRC), Australian Red Cross Society and French Red Cross Society describe a new publication that introduces the most relevant rules of IHL and explains why and how private businesses need to respect them.*

*ICRC Humanitarian Law & Policy Blog · What private businesses need to know about international humanitarian law*

Today, more than 60 states are involved in armed conflicts. The total number of conflicts around the world has risen steadily since the 1990s. The global reach and transnational integration of private businesses have expanded massively over the same period.

As a result, the chances that a private business' operations will be impacted by an armed conflict have never been higher. So too the likelihood that decisions by a private business will make a difference to affected civilian populations, positive or negative.

Many private businesses are aware of this rapidly changing context and are taking various measures to anticipate and mitigate the associated risks. In parallel, many businesses have also committed to respect human rights throughout their operations.

Even such businesses, however, may not be fully aware of the special international legal regime that comes into play in situations of armed conflict: international humanitarian law, a set of specialized rules that aim to limit suffering during situations of armed conflict.

The ICRC, Australian Red Cross, and French Red Cross regularly receive questions about why, when and how IHL is relevant to private businesses. In response, we are publishing a new resource, *Private Businesses and Armed Conflict: An introduction to relevant rules of international humanitarian law*, and share here some of the answers contained therein.

## **Why do private businesses need to know about IHL?**

The most recent ICRC report on *International Humanitarian Law and the Challenges of Contemporary Armed Conflict* highlighted the relevance of IHL to technology companies and companies involved in arms transfers. Beyond these specific examples, however, IHL is relevant to a much wider range of kinds of business.

Businesses of any kind need to be aware of and prepared to seek advice about IHL whenever there is a possibility their operations, supply chains, partnerships or investments may affect or be affected by a situation of armed conflict, including occupation. Heightened attention to certain armed conflicts by the media, the public, and governments, and the increasingly transnational reach and global integration of business operations and relationships, have sensitized more and more business actors to what are, for many, new and unfamiliar risks.

What a business does or does not do in such circumstances can have important consequences for affected civilian populations, as well as its own personnel and assets. Beyond the harm to victims, which is of course the primary concern for us as humanitarians, being involved in IHL violations can negatively impact a business' reputation, operations and financial situation, and expose it and its personnel to risks of legal liability.

Businesses are increasingly aware of their human rights responsibilities, including the need to conduct heightened human rights due diligence in conflict-affected and high-risk areas. Many have adopted policies that align with

initiatives like the United Nations Guiding Principles on Business and Human Rights, the UN Global Compact, and the Voluntary Principles on Security and Human Rights. Newer resources like the UNDP guide on Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts further the discussion about corporate responsibility in situations of armed conflict. However, there is still a knowledge and practice gap when it comes to the effective implementation and integration of IHL in these human rights-focused practices.

In situations of armed conflict, international human rights law remains relevant, but IHL takes on an essential role. It directly binds all individuals whose activities are sufficiently connected to an armed conflict. This can include the personnel of private business entities, depending on what they do. This means that under international law, IHL can directly apply to the operations of a private business.

If violations of IHL occur, private businesses and their personnel can be subject to civil liability or criminal liability under international or national laws. States have obligations under IHL to ensure that private individuals and businesses under their authority respect IHL, including through enacting and enforcing national legislation.

Humanitarian, reputational and operational considerations should also prompt a business to recognize its responsibility to ensure respect for IHL by its personnel and to promote respect for IHL by others with whom it has relationships. These could include government authorities or non-state armed groups, other private business entities that are its customers or in its supply chain, as well as entities in which it invests or to which it provides financial services.

IHL also protects the personnel and assets of businesses in a number of ways. It restricts the circumstances in which parties to a conflict can seize, damage or destroy private property. Personnel and assets may not be directly attacked as long as they retain their civilian character. Even attacks targeting a valid military target are prohibited if the incidental damage to civilians and civilian objects, including the personnel and assets of businesses, would be expected to be disproportionate to the anticipated military advantage. However, the decisions a business takes on the activities of its personnel and the use of its assets can also result in its personnel and assets losing protection, thus being exposed to higher risks.

For all these reasons, businesses need to be familiar with the rules of IHL that are relevant to their operations or that may become relevant to them.

The new *publication* aims to improve this awareness and understanding.

## **Which IHL rules are most relevant for businesses?**

The *publication* provides a general introduction to IHL, including explaining when, where and to which activities IHL applies.

It also highlights a number of specific rules that are particularly pertinent to private businesses. These include rules on: use of force by public or private entities that provide security services to businesses; humane treatment of civilians, including people deprived of liberty; protection of public and private property; avoiding forced displacement; protection of the natural environment; working conditions; food, water and other essential supplies; occupied territory; and manufacture of and trade in weapons and other technologies.

## **What are the legal risks for private businesses?**

The failure of a business to respect IHL carries a risk of criminal and civil liability. These risks can in some circumstances arise directly under international law, but most often arise from and are enforced under national law. Such liabilities can attach to either or both the individual personnel of a business, including management, and the corporate entity. Liability can arise not only when the personnel of the business themselves are directly involved in violating IHL, but also when they or the corporate entity are complicit in violations carried out by others.

## What protection can IHL offer to private business personnel and assets?

IHL can protect the personnel and assets of private companies from the effects of armed conflicts. Civilian personnel and assets of a business are protected against direct attack. Incidental injury or damage to them must also be taken into account when determining whether attacks against legitimate military objectives would be disproportionate. However, the publication also explains the limited circumstances in which such protection can be lost. It also outlines IHL rules that are relevant to confiscation or seizure of company assets by parties to an armed conflict.

## How can businesses improve respect for IHL?

Many businesses already have frameworks in place to meet their human rights responsibilities, for example, through human rights policies, due diligence processes and risk management frameworks, personnel training, board/director education programmes or sustainability reporting. However, in situations of armed conflict, existing measures need to be *enhanced* by integrating IHL rules and principles.

As a starting point, examples of good practices include the following:

1. A **public commitment** by the business to respect IHL, in addition to human rights.
2. Adopting effective corporate **policies, rules and processes** to ensure the company and its personnel comply with and promote compliance with IHL.
3. **Training** that ensures company personnel have the knowledge and capacity:
  - (a) to comply with, and make use of and promote compliance with IHL, or to identify when a situation calls for them to seek competent advice in this regard.
  - (b) to be aware of the protections that company personnel and assets are entitled to under IHL, as well as the circumstances in which such protection is lost.
4. **Risk analysis and management** frameworks that identify, reduce and manage risks arising from situations of armed conflict, including occupation and non-compliance with IHL, for example, by mapping conflict-affected contexts that are relevant to its operations or by identifying corporate activities that may impact or be impacted by the effects of the conflict on civilian populations, people deprived of liberty, and the sick and wounded.
5. Taking positive corporate action to **promote respect** for IHL, including by partners, suppliers, sub-contractors or other third parties.
6. Internal and external **reporting** on implementation, including, for instance, by providing information about IHL compliance in the business' regular sustainability or shareholder reporting.
7. Internal processes that **deal with non-compliance** with IHL, including violations committed by or against corporate personnel. (Such internal processes are in addition of course to any criminal investigations by public authorities.)

Specific measures can integrate several of these good practices at the same time. Companies should, for instance, require that security providers contracted by the company be trained in IHL and vetted to ensure that they and their

personnel do not have a record of violations or other relevant misconduct. This measure reflects an effective use of internal policies, rules and processes, and involves training, managing risk and taking action to promote respect for IHL by others.

## Putting it into practice: national legal context and practical tools

Applicable national laws must also be considered when assessing the specific legal obligations of a private business entity and its personnel, including company directors and other members of management. While national laws cannot validly displace IHL obligations that apply directly to a person or entity, national laws can extend or operationalize IHL obligations beyond what is directly or specifically provided for in international law.

Training on IHL that is specifically tailored to business actors in a given national context may be offered by local National Red Cross and Red Crescent Societies. For instance, Australian Red Cross has produced a number of training materials, jointly with RMIT University, which are shared publicly with businesses and business schools around Australia. Australian Red Cross has also published *an overview* of the ways corporations may be held liable for war crimes in Australia. Similarly, French Red Cross will soon launch new French-language practical tools, explaining how IHL applies to the private sector under French law, based on IHL training it provides to private companies, particularly in the defense industry.

These and other practical tools and guidance are listed in the final section of the *publication*. In all cases, businesses should consult legal experts and other experts for more specific advice where necessary.

## Who is the new publication for and how can it help?

The publication is primarily intended for businesspeople, particularly corporate legal counsel and others in corporate compliance or human rights due diligence roles. It also aims to answer questions that humanitarian practitioners, legal experts, government officials and others frequently ask about business and IHL. It revises and replaces an ICRC brochure on the topic published in 2006 and has benefited from a localized version of the 2006 brochure, published by the Australian Red Cross and RMIT University in 2020.

On behalf of the ICRC, Australian Red Cross, and French Red Cross, we hope the new publication will make many more businesses aware of why and how IHL may be relevant to them. We expect too that it will serve as the starting point for further dialogue and concrete measures to ensure full integration of knowledge and respect for IHL into their corporate culture, processes and practices.

## See also

- ICRC/Australian Red Cross/French Red Cross, *Private Businesses and Armed Conflict: An introduction to relevant rules of international humanitarian law*, November 2024
- Cordula Droege, *Championing IHL compliance in contemporary armed conflict: the 2024 ICRC Challenges Report*, 9 October 2024
- Fauve Kurnadi and Adaena Sinclair-Blakemore, *Investing in the laws of war: international humanitarian law and the financial sector*, 3 August 2023

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