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Remain or withdraw?

Corporate Purpose and the Implementation of the Conflict-Sensitive
Due Diligence Approach in the Ukrainian war

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Recognition

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Abstract

This master's thesis aims to demonstrate the possible relationship and contribution of corporate purpose¹ and ethics² in making decisions to maintain, suspend or terminate business operations in territories of armed conflict and in implementing the sensitive approach of Business and Human Rights Due Diligence (BHRDD).³ The paper presents an overview of the war in Ukraine and the sanctions that organizations, nations and corporations apply to Russia⁴ from an economic and human rights perspective.

It will address the second part of the United Nations Guiding Principles on Business and Human Rights (UNGPs),⁵ which deals with the corporate responsibility to respect human rights in the sense of avoiding violation of the rights of others and dealing with adverse impacts that may occur and which applies to all companies in all situations. As a joint statement by major business associations, including the International Chamber of Commerce, made very clear,⁶ it exists even if national laws are misapplied, or not applied at all.

The principles of HRDD will be elaborated in view of the possibility of effective implementation at the stage of assessing the actual and potential human rights impacts, and more specifically on the possible human rights consequences in case of suspension of business activities.⁷

¹ Rey Carlos, Miguel Bastons and Phil Sotok, *Purpose-Driven Organizations Management Ideas for A Better World* (Palgrave Macmillan 2019) 4.

² Sebastian Vaduva and others, *Moral leadership in Business Towards a Business Culture of Integrity* (Springer 2016).

³ Andreas Graff and Andrea Iff, *Enhanced Human Rights Due Diligence in Conflict Affected and High-Risk Areas* (Swisspeace 2016), <<https://www.connectingbusiness.org/system/files/2018-11/Enhanced-Human-Rights-Due-Diligence-in-Conflict-Affected-and-High-Risk-Areas.pdf>> accessed 19 April 2022.

⁴ Oliver Gordon, 'What will be the impact of Western sanctions on Russia?' (*Energy Monitor*, 9 March 2022) <<https://www.energymonitor.ai/special-focus/ukraine-crisis/what-will-be-the-impact-of-western-sanctions-on-russia>> accessed 20 April 2022.

⁵ OHCHR (2011a), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (OHCHR 2011) <https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf> accessed 19 April 2022.

⁶ ICC, 'ICC mobilises business worldwide' (*ICC*, 07 February 2021) <<https://iccwbo.org/publication/joint-business-statement-on-the-oecd-committee-on-digital-economy-policys-work-to-develop-an-instrument-setting-out-high-level-principles-or-policy-guidance-for-trusted-government-access-to-p/>> accessed 20 April 2022.

⁷ Wallbrook, 'Russia's Invasion of Ukraine' (*Wallbrook*, April 2022) <<https://www.wallbrook.com/russias-invasion-of-ukraine-companies-have-a-responsibility-to-respect-human-rights>> accessed 20 April 2022.

The paper also draws up within the viewpoint of brand purpose, ethical philosophy and corporate ethical elements that can bring out the real meaning of a honest conduct in all spheres.

Abbreviations and Short Forms

BHRDD:	Business and Human Rights Due Diligence
BHR:	Business and Human Rights
CSR:	Corporate Social Responsibility
CRR:	Corporate Responsibility to Respect
GC:	Global Compact
GPs:	Guiding Principles
HRW:	Human Rights Watch
HRDD:	Human Rights Due Diligence
IHL:	International Humanitarian Law
ILO:	International Labour Organization
MNE:	Multi National Enterprises
NGO:	Non-Governmental Organizations
OECD:	Organisation for Economic Co-operation and Development
SDG:	Sustainable Development Goals
SRSG:	Secretary Representative of the Secretary General
TNCs:	Transnational Corporations
UN:	United Nations
UNGC:	United Nations Global Compact for Business
UNGPs:	Guiding Principles on Business and Human Rights
UNHRC:	United Nations Human Rights Council
UNIMIB:	Università degli Studi di Milano-Bicocca
VPs:	Voluntary Principles on Security and Human Rights
WG:	Working Groups

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CHAPTER ONE: GENERAL ORIENTATION

1.1 Introduction

The effects of business activities on human rights⁸ and their resonance throughout their operations have never been more evident. From employees to contract workers, from customers to supply chain actors, from communities around their locations to end users of products or services, everyone can be impacted positively or negatively, directly or indirectly, as a result of a corporate activity. It can also be attested that these risks of affecting fundamental human rights are greater in fragile contexts, such as situations of armed conflict and post-conflict settings.

The Voluntary Principles on Security and Human Rights (VPs),⁹ launched in 2000, contributed to some progress in understanding the relationship between business and human rights, but the link between business, conflict and peace only became clearer with the adoption of the Global Compact's Business for Peace¹⁰ platform, the UN Guiding Principles on Business and Human Rights (UNGPs) and the Sustainable Development Goals.

There is a legal, social, and economic complexity present in the face of these conflicts, whose corporate actors can in various ways influence or contribute in a prevailing manner to the shape, development and escalation of armed hostility.¹¹

The international instruments and standards mentioned above, also receive the important support of the OECD Guidelines,¹² which guide companies to conduct sensitive Due Diligence in order to

⁸ UNGP Reporting Framework, 'How Can Businesses Impact Human Rights?' (UNGP Reporting Framework, September 2017) <<https://www.ungpreporting.org/resources/how-businesses-impact-human-rights/>> accessed 2 May 2022.

⁹ Shell, *The Voluntary Principles on Security and Human Rights: Overview of Implementation by Shell in 2021* (Shell 2021) <https://www.shell.com/sustainability/our-approach/commitments-policies-and-standards/_jcr_content/par/expandablelist_copy/expandablesection_co_586096026.stream/1650545644059/8274fede195756b957f0dac72ff043008638bd7a/shell-vpshr-annual-report-external.pdf> accessed 2 May 2022.

¹⁰ Michelle Breslauer, 'Business Advancing Peace' (United Nations Global Compact 2022) <<https://www.unglobalcompact.org/take-action/action/peace>> accessed 3 May 2022.

¹¹ Maria Prandi and others, *Companies in Conflict Situations* (Institut Català Internacional per la Pau 2013) 22.

¹² OECD (2018), *OECD Due Diligence Guidance for Responsible Business Conduct* (OECD 2018) 3 <<http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>> accessed 3 May 2022.

assess and prevent serious risks of involvement or complicity in human rights abuses and violations of International Humanitarian Law (IHL),¹³ which complements and sets rules to limit the effects of armed conflict and restrict the means and methods of warfare.

With the unprecedented economic sanctions against Russia implemented by Western nations for its invasion of Ukraine,¹⁴ companies and investors find themselves in a position to review their operations on Russian territory, which in many cases includes suspending activities while the conflict continues or leaving the country permanently. In this case, not only commercial or reputational issues are at stake, but also the level of human rights violations that, for instance, an abrupt departure could cause.

To fulfill its responsibility to respect human rights under the 2011 UNGPs, a company must conduct HRDD. To be effective, HRDD must be firmly grounded in the corporate purpose¹⁵ and the culture of the company, which through its values and ethical principles create strong arguments that respect human rights, as well as the broad mix of legal risks of corporate involvement in business in abusing human rights, including with regard to maintaining or shutting down operations due to sanctions or the consequence of war.

¹³ International Committee of the Red Cross, *Business and International Humanitarian Law* (ICRC 2006) 9 <https://www.icrc.org/en/doc/assets/files/other/icrc_002_0882.pdf> accessed 4 May 2022.

¹⁴ Gordon (n 4).

¹⁵ John Sherman (2021), *Human Rights Due Diligence and Corporate Governance* (Harvard Kennedy School 2021) 1 <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/CRI_WP_79_Final.pdf> accessed 4 May 2022.

1.2 Background

The factional invasion of Ukraine by Russia has caused states to apply coordinated sanctions covering various areas and commercial, political and financial activities in both countries.¹⁶

While the attack does not stop, there are growing concerns about the consequences of these sanctions, such as the exodus of companies of various sizes and segments that operate in these two countries, fleeing the hostility and the possible negative impact on their business.

Since the beginning of the conflict, a considerable number of companies have already announced or accomplished their exit from those territories, and many of them without measuring the true harmful effect and the responsibility to respect the human rights of employees and other stakeholders.

Going by the understanding that several aspects are at risk for companies that decide to remain operating in Russia or Ukraine, nevertheless, attention to the implementation of human rights Due Diligence does not occur often.¹⁷

The UNGPs on Business and Human Rights (UNGPs), states that in situations of armed conflict, businesses should conduct enhanced HRDD to identify,¹⁸ prevent and mitigate heightened risks and adopt a conflict-sensitive approach. Other international standards and also HL reaffirm these criteria and emphasize the grave risk and exposure of violations of various forms of human rights.

¹⁶ Sebastian Shehadi, 'How foreign companies in Ukraine are supporting the war effort', (*Investment Monitor*, 2022) <<https://www.investmentmonitor.ai/special-focus/ukraine-crisis/foreign-companies-ukraine-supporting-war-effort-russia>> accessed 3 May 2022.

¹⁷ Business & Human Rights Resource Centre (2022b), 'Russian invasion of Ukraine: *Analysis of Companies Human Rights Due Diligence, Business and Human Rights Resource Center*', (*Business & Human Rights Resource Centre*, 2022), <<https://www.business-humanrights.org/en/from-us/briefings/business-response-to-the-russian-invasion-of-ukraine/>> accessed 3 May 2022.

¹⁸ OHCHR (2011c), *What do the UN Guiding Principles on Business and Human Rights say about protecting and respecting human rights against business-related adverse impacts in conflict contexts?* (OHCHR 2011) 1. <<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/WG/WhatdotheUNGPsayaboutconflict.pdf>> accessed on 3 May 2022.

It is crucial for companies to understand that they are not neutral actors even when they do not take sides in a conflict such as the Russian invasion of Ukraine.

1.3 Statement of problem

The activities of private companies may involve violations of the fundamental rights of individuals and communities, including forced labor, slavery, and inhuman or degrading treatment.¹⁹ They can also have negative impacts on the environment and the livelihoods of local communities that affect their rights, including the human right to life.²⁰ The risks of affecting fundamental human rights are greater in fragile contexts, such as during armed conflicts, in the aftermath of conflicts, and when companies shut down their operations for these reasons.

The UNGPs state that companies should implement: Business and Human Rights Due Diligence (BHRDD) processes to ensure that human rights in the course of their business activities are respected.

There is also consensus on the urgency of a treaty that can be applied as a mechanism for companies to respect human rights.²¹ On the other hand, companies find it difficult to implement the above mechanisms because many of them have not yet incorporated the fundamentals of these principles into their values, corporate purpose and governance.²²

Through evaluations and rating initiatives, it was pointed out that the great majority of companies do not put into practice the requirements set by these international standards and the GPs. There are gaps in the current implementation of corporate risk disclosure and HRDD processes. The Working Group reports conclude that Due Diligence and remediation of actual impacts are not

¹⁹ Michele Bachelet, 'Human Rights Panel on adverse effects of climate change on human rights' (*reliefweb*, 28 June 2022) <<https://reliefweb.int/report/world/human-rights-council-panel-adverse-effects-climate-change-human-rights-people-vulnerable-situations-michelle-bachelet-un-high-commissioner-human-rights>> accessed 4 July 2022.

²⁰ Alan S. Gutterman, 'Businesses' Impacts on Human Rights' (*American Bar Association*, 17 March 2021) <https://www.americanbar.org/groups/business_law/publications/blt/2021/04/human-rights/> accessed on 12 June 2022.

²¹ David Bilchitz, 'The Necessity for a Business and Human Rights Treaty' (2016) 1 (2) *Business Human Rights Journal* 203.

²² Tima Bansal, 'Corporate Purpose should guide your company's position on the war of Ukraine' (2022) *Forbes* <<https://www.forbes.com/sites/timabansal/2022/04/01/your-corporate-purpose-should-guide-your-position-on-the-russian-war-on-ukraine/?sh=a444dfb57a10>> accessed 4 May 2022.

being done in practice.²³ The absence of clear purposes that can translate corporate policies creates governmental gaps that make it impossible to implement the tools established by these standards

1.4 Research objectives

The aims of this research are three-fold, including the following:

1. Present an overview of the Russian invasion of Ukraine and how companies operating in Ukrainian or Russian territory are responding to this situation and their need to implement HRDD's conflict sensitive approach.
2. To make an alignment between key international standards and norms, including International Humanitarian Law (IHL), to corporate purpose and ethics, and how a possible harmony of these mechanisms and philosophies, through a holistic approach, could help in strategic decision-making, especially in regards to conflict situations and in HRDD awareness and implementation.
3. To make recommendations and proposals on how ethical leadership and corporate purpose can help in the implementation of HRDD, especially with the particular characteristics of armed conflicts and the assessment of the impacts on these rights in case of corporate permanence or exit.

1.5 Research questions

The research question that this thesis aims to answer is: how can corporate purpose help companies through its values and ethical leadership to implement Conflict Sensitive Due Diligence by measuring possible human rights impacts, which includes the sudden departure of a business?

²³ OHCHR (2018), *Corporate human rights Due Diligence: emerging practices, challenges and ways forward* (OHCHR 2018) <<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/ExecutiveSummaryA73163.pdf>> accessed on 12 June 2022.

The research question also addresses the following sub-questions:

1. How can corporate purpose guide a company's position?
2. What are the challenges in implementing Human Rights Due Diligence?
3. What do international norms and standards set as regulations in a possible business closure in conflict areas and how is the sensitive approach being conducted by some companies that remain, suspend or terminate their operations in Ukraine or Russia?

1.6 Research methodology

The method used in this thesis will be scientific literature, documentary and online research. This research will expose the legal landscape, standards, the UNGPs, Human Rights Due Diligence, Branding and Ethics. The thesis will be structured in such a way as to interconnect the disciplines of law, principles of ethical philosophy, branding and brand purpose.

In addition, case studies with analysis and a qualitative interview with the CEO of a German-based energy company will be used. It is important to note that the energy company has, however, asked to remain confidential, and therefore the company's name will not be published.

1.7 Presentation

The research paper is divided into five parts, represented by chapters. The first part provides a general orientation and presents an introduction, bringing to light a historical overview, concepts, the problem, and the objectives.

The second and third parts discuss the theme "The Corporate Responsibility to Respect (CRR), divided into (CRR-I) and (CRR-II). (CRR-I) brings the main international instruments and standards and their application to the legal and operational complexity of companies in conflict areas, as well as the realization that businesses are a non-neutral actors. It also explores the principle of extraterritoriality in the human rights context, the concept of Corporate Social Responsibility and the stakeholder engagement approach.

(CRR-II) focuses on the concept of HRDD, which consists of mapping possible impacts and adopting control measures to address possible risks and prevent, mitigate and, where appropriate, repair possible human rights violations caused - directly or indirectly - by companies operations and how Due Diligence should be implemented specifically for armed conflicts. It also discusses corporate complicity, the involvement of technology companies, and exit or permanence strategies of companies operating in these conflict-affected areas.

The fourth part provides a theoretical framework on ethical thinking from a Kantian perspective and links this principle to corporate purpose, serving as a support for the responsibility to respect and the implementation of the conflict-sensitive approach to armed conflict of human rights Due Diligence.

Lastly, the fifth part will conclude the thesis as well as listing recommendations for the future.

It should be noted that during the development of the research some limitations were encountered, including the fact that one of the companies interviewed preferred to keep its name confidential. Another difficulty was finding executives willing to talk about a situation that is still unstable and uncertain.

CHAPTER TWO: THE CORPORATE RESPONSIBILITY TO RESPECT (I)

2.1 Introduction

The Corporate Responsibility to Respect Human Rights and Business Relationships

“Companies must respect human rights. This means that they must avoid infringing on the human rights of others and must address the adverse human rights impacts with which they are involved.”²⁴ (Guiding Principle 11, UNGPs)

The idea of corporate responsibility to respect human rights is primarily driven by social expectations resulting from international human rights standards and principles.²⁵ The UNGPs recommend that companies take a considerable variety of measures to ensure that human rights issues are properly taken into account in their operations,²⁶ regardless of state capabilities or willingness to meet their own human rights obligations, and do not diminish these obligations in any case.

Proactivity becomes an important element in this context, where companies not only address their negative outcomes, but also avoid them by preventing and mitigating impacts directly linked to their sphere of operations, which includes business partnerships, supply chains, and various stakeholders.

As cited, the responsibility to respect is a standard of conduct expected by the international community and means avoiding infringing on the rights of others and consistently addressing the potential adverse impacts of business activities, whether they occur directly or through their business partnerships and corporate relationships.

²⁴ National Action Plans on Business and Human Rights (2011a), ‘Guiding Principle 11’ (*Global NAPs*, June 2011) <<https://globalnaps.org/ungp/guiding-principle-11/>> accessed 1 July 2022.

²⁵ OHCHR (2012b), *The Corporate Responsibility to Respect Human Rights - An Interpretive Guide* (OHCHR 2012) <https://www.ohchr.org/sites/default/files/Documents/Publications/HR.PUB.12.2_En.pdf> accessed 30 June 2022.

²⁶ Beata Faracik, *Implementation of the UN Guiding Principles on Business and Human Rights* (EU 2017) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU\(2017\)578031_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU(2017)578031_EN.pdf)> accessed 8 May 2022.

2.2 The connection between business corporations and human rights

The world has always gone through dominant challenges throughout history,²⁷ such as conflicts, pandemics, economic downturns and natural disasters, among others. There is also the wide gap between the rich and poor. Conflict and low economic standards tend to generate, as a consequence, the unprecedented violation of human rights.²⁸

Globalization has brought with it many advantages,²⁹ such as the opening of markets, but it has further exposed the world to these abuses. Corporations have come to occupy more powerful positions than states, which thereby allowed them to have a great influence on the political and social structure of the globe. These large corporations have come to be known as "Trading Companies" or Transnational Corporations (TNCs), which have received great benefits in this relatively new economic order.³⁰

Businesses have an ability like few others, to influence the evolution of human rights. They have great potential to bring economic, social and cultural improvements, especially to those who need them most, such as people living in developing countries. This can be achieved through job creation and advances in technology and science, among other ways.³¹

These companies with a presence in other territories, can promote the economic development of the country in which they operate, and can contribute to a better life and a full exercise of human rights, such as health, food, access to information, housing, and the right to freedom.³²

²⁷ Patricia Clavin, 'Turbulence and the Lessons of History' (*International Monetary Fund*, June 2022) <<https://www.imf.org/en/Publications/fandd/issues/2022/06/turbulence-and-the-lessons-of-history-patricia-clavin>> accessed 8 May 2022.

²⁸ Federal Foreign Office, Preventing Crises, Resolving Conflicts, Building Peace (Federal Foreign Office 2017) <<https://www.auswaertiges-amt.de/blob/1214246/057f794cd3593763ea556897972574fd/preventing-crises-data.pdf>> accessed 8 May 2022.

²⁹ UN (2007), 'Globalization and Interdependence' (*United Nations Office for ECOSOC Support and Coordination*, 2007) <<https://www.un.org/esa/coordination/globalization.htm>> accessed 8 May 2022.

³⁰ Jack N. Behrman, 'Transnational Corporations in the New International Economic Order' (1981) 12 (1) *JIBS* 29-42 <<http://www.jstor.org/stable/154417>> accessed 9 May 2022.

³¹ OHCHR (2020b), 'Ensuring that business respects human rights during the Covid-19 and beyond' (*OHCHR*, April 2020) <<https://www.ohchr.org/en/statements/2020/04/ensuring-business-respects-human-rights-during-covid-19-crisis-and-beyond>> accessed 8 May 2022.

³² Karl Thompson, 'Arguments for Transnational Corporations in Development', (*Revise Sociology*, February 2017) <<https://revisesociology.com/2017/02/28/transnational-corporations-benefits-development/>> accessed 15 June 2022.

On the other hand, it can become an imminent threat to the full enjoyment of these rights,³³ through its own conduct or through complicity in the violation of people's rights indirectly. The obligation to protect human rights used to fall on states, but the great power and risk of violation of these rights by private actors has brought this state-centric model into question.

Companies were able to violate human rights for a long time without being held responsible for this conduct, by taking advantage of gaps in existing laws, therefore exploiting the breaches of existing regulatory regimes.³⁴

All efforts to promote corporate social responsibility recognize both the positive aspects and negative consequences of these business activities. In addition to commercial corporations being economically powerful, they also have the ability, through their internal mechanisms and influence in external spheres, to evade domestic laws and their enforcement.³⁵

International standards, especially those promulgated by the United Nations, are increasingly important for corporate social responsibility to be effective. With the complexity of the global economy, the need for certain conduct to be held accountable becomes even more relevant to the international community.³⁶

With the lack of understanding and clarity about these human rights obligations³⁷ on the part of companies, profit overrides any and all commercial motivation, making ethical and commercially responsible behavior near impossible, especially when opportunism and influence dominate.

³³ OHCHR (2021b), 'OHCHR and Business and Human Rights - About Business and Human Rights' (*OHCHR*, June 2021) <<https://www.ohchr.org/en/business-and-human-rights>> accessed 8 May 2022.

³⁴ IOE, 'Key developments in mandatory human rights Due Diligence and supply chain law' (*IOE*, September 2021) <<https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=156042&token=ee1bad43bfa8dbf9756245780a572ff4877a86d5>> accessed 11 May 2022.

³⁵ Kletia Noti and others, *Corporate social responsibility (CSR) and its implementation into EU Company law* (Policy Department for Citizen's Rights and Constitutional Affairs 2020) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658541/IPOL_STU\(2020\)658541_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658541/IPOL_STU(2020)658541_EN.pdf)> accessed 11 May 2022.

³⁶ OHCHR (2020c), 'International Standards on Business and Human Rights' (*OHCHR and Business and Human Rights*, 2020) <<https://www.ohchr.org/en/business/international-standards>> accessed 12 May 2022.

³⁷ OHCHR (2012a), *Human Rights Indicators - A Guide to Measurement and Implementation* (OHCHR 2012) <https://www.ohchr.org/sites/default/files/Documents/Publications/Human_rights_indicators_en.pdf> accessed 13 May 2022.

Today, it can be affirmed that there has been an advance in this issue. At the international level businesses have been mentioned in different human rights instruments, which impose certain duties on these companies³⁸, such as equal opportunities and equal treatment in the workplace, as well as respect for people's rights and safety. Corporations must refrain from involvement in war crimes, crimes against humanity, genocide, torture. They have also to protect workers' rights and maintain a safe working environment, with payment of fair compensation. Companies must recognize freedom of association and collective bargaining, respect for the sovereignty of states, local communities and indigenous peoples, consumer and environmental protection.³⁹

2.3 Non-State Actors and Human Rights

As stated above, business has a significant impact on human rights, both positive and negative. Legal mechanisms are essential for companies to understand the importance of following these standards. They have a duty to respect human rights in all spheres of their operations.

Business can have negative impacts on their employees, customers, communities and their entire supply chain with regard to their products and services.

The UN Human Rights Council, which unanimously approved the UNGPs, has established through these mechanisms the global standards for preventing and addressing human rights violations associated with business activity.⁴⁰

³⁸ Ionel Zamfir, *Towards a binding international treaty on business and human rights* (European Parliament Research Service 2018) <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/620229/EPRS_BRI\(2018\)620229_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/620229/EPRS_BRI(2018)620229_EN.pdf)> accessed 14 May 2022.

³⁹ University of Minnesota Human Rights Library, 'Human Rights Principles and Responsibilities for Transnational Corporations and Other Business Enterprise' (*University of Minnesota Human Rights Library*, 2002) <<http://hrlibrary.umn.edu/principlesW-OutCommentary5final.html>> accessed 14 May 2022.

⁴⁰ OHCHR (2011b), *The UN Guiding Principles on Business and Human Rights - An Introduction* (OHCHR 2011) 2 <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf> accessed 15 May 2022.

The principles elaborated on include the following:

- States have a duty to protect human rights;
- Businesses have a responsibility to respect human rights at all times;
- Victims always have access to remedies.

It can also be pointed out that companies can play a role in proactively advancing human rights⁴¹ within their own operations - from the rights and conditions of the workplace that supplies their workforce to using their influence to ensure that supply chains are free of any form of exploitation. Business and Human Rights are closely related, and this includes areas of conflict, where the possibility of rights violations is even more real and prominent.⁴² For this reason, it is necessary to pay special attention to every corporate movement, whether entry, operational permanence, or exit, so that the impacts can be measured and prevented.

2.4 Exploring Extraterritoriality in the Human Rights Context

The theme of the role and limits of the extraterritoriality of business and human rights⁴³ has been discussed for some time and is a central component in understanding what is established as the conduct and responsibility of the main actors in this matter. Professor John Ruggie,⁴⁴ who was the UN Secretary General's Special Representative on Business and Human Rights (SRSG), in one of several meetings on the relationship between countries and multinational corporations established in their territories, stressed the need for states to be vigilant that companies operating under their jurisdictions do not violate, contribute to, or endanger the human rights of employees, communities, and other stakeholders.⁴⁵

⁴¹ Business & Human Rights Resource Centre (2022c), 'Russian invasion of Ukraine' (*Business & Human Rights Resource Centre*, July 2022) <<https://www.business-humanrights.org/en/big-issues/russian-invasion-of-ukraine/>> accessed 14 May 2022.

⁴² Jake Sherman (2001), *Private Sector Actors in Zones of Conflict: Research Challenges and Policy Responses* (International Peace Academy 2001) <https://www.ipinst.org/wp-content/uploads/publications/pdf_report_private_sector.pdf> accessed 15 May 2022.

⁴³ UN (2010), *Exploring Extraterritoriality in Business and Human Rights: Summary Note of Expert Meeting* (UN 2010) <<https://media.business-humanrights.org/media/documents/files/media/documents/ruggie-extraterritoriality-14-sep-2010.pdf>> accessed 15 May 2022.

⁴⁴ Institute of Human Rights and Business, 'Patron John Ruggie' (*IHRB*, 2017) <<https://www.ihrb.org/about/patron/john-ruggie>> accessed 15 May 2022.

⁴⁵ Susan Aaronson and Ian Higham, 'John Ruggie and the Struggle to Develop International Human Rights Standards for Transnational Firms' (2013) 35 (2) *Human Rights Quarterly* 333-64 <<http://www.jstor.org/stable/24518019>> accessed 13 July 2022.

Within the UN's "Protect, Respect and Remedy" framework, extraterritoriality was distributed across six different regulatory areas: anti-corruption, securities, antitrust, criminal law, general civil cases, and the environment.⁴⁶ The SRSG explores the use of measures with extraterritorial implications and the exercise of direct extraterritorial jurisdiction over private actors or activities abroad and suggests that the different ways in which states can influence the conduct of private actors can be understood in the distinction between measures with extraterritorial implications and direct extraterritorial jurisdiction, demonstrating that extraterritoriality covers a wide range of possible regulatory actions and that, as noted by the SRSG, not all of them are equally likely to trigger objections in all circumstances.

These discussions on this subject demonstrate the clear support of UN human rights bodies and non-governmental organizations for the principle of extraterritoriality,⁴⁷ with the argument that international human rights law imposes an obligation on states to enforce this principle as a way, as elaborated above, to monitor and establish control over the activities of companies that operate in their territories.

2.5 The Global Compact

Introduced in 2000, by the then UN Secretary General, Kofi Annan, the Global Compact came with the purpose of establishing a global pact, through a voluntary instrument that proposes ethical behavior to all businesses in the world. These companies sign a commitment to honor the 10 principles established in this Global Compact,⁴⁸ which in return supports those global signatory companies that are committed to responsible business practices in the areas of human rights, labor, environment, and corruption and that contribute to the goals of sustainable development in order to create a better world.

⁴⁶ Jennifer Zerk, *Extraterritorial Jurisdiction: Lessons for the Business and Human Rights Sphere from Six Regulatory Areas*, (Harvard Corporate Social Responsibility 2010) <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crj/files/workingpaper_59_zerk.pdf> accessed 16 May 2022.

⁴⁷ Nadia Bernaz, 'Enhancing Corporate Accountability for Human Rights Violations: Is Extraterritoriality the Magic Potion?' (2013) 117 (3) *Journal of Business Ethics* 493-511 <<http://www.jstor.org/stable/42001865>> accessed 21 May 2022

⁴⁸ UN Global Compact (2004), 'The Ten Principles of the UN Global Compact' (*UN Global Compact*, June 2004) <<https://www.unglobalcompact.org/what-is-gc/mission/principles>> accessed 21 May 2022.

The 10 principles set out in the GC define a company's value framework and approach to doing business. These principles were collectively grounded in the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention against Corruption.

The 10 Principles for Business of the United Nations Global Compact include:

“Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.”⁴⁹

The main purpose of these principles is to promote honesty in business relations, therefore, member companies are expected to carry out their activities with integrity and to benefit people and the planet through their products and services.

The environmentally responsible posture is widely expected of the companies that are part of this pact, especially in relation to climate change, water and sanitation, energy, biodiversity, and food

⁴⁹ Ibid.

and agriculture, recognizing the link between environmental issues, and social and development priorities.

Social sustainability⁵⁰ must be a priority for member companies, specifically in human rights, women's empowerment and gender equality, children, indigenous peoples, people with disabilities, and people living in poverty. While these are the responsibilities of governments, the pact believes that the protection of human rights is also a responsibility of business, which must also contribute to the respect of these rights by creating jobs, developing goods and services, promoting public policies that support social sustainability, and making social investments.

2.6 The UN Guiding Principles

In June 2011, the United Nations Human Rights Council formally endorsed the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework. They are 31 principles that seek to innovatively provide a global standard for preventing and addressing the risk of adverse human rights impacts linked to business activity, as drafted by UN Special Representative and UN Secretary-General for Business and Human Rights, John Ruggie. The Guiding Principles (GPs) are the result of six years of in-depth research and consultation around the world⁵¹ on key human rights and business issues.

More than a decade has passed since the formal presentation of these principles which recognise in the three pillar approach the idea of protecting human rights in the context of business activity: States have a duty to protect human rights; businesses have a responsibility to respect human rights; and victims affected by business-related human rights issues should have access to remedies.

The aforementioned "protect, respect, and remedy" pillars, which reflect Ruggie's view of the human rights responsibilities of both states and businesses from an international law perspective,

⁵⁰ Candriam Academy, 'United Nations Global Compact' (*Candriam Academy*, February 2017) <<https://academy.candriam.de/un-global-compact/>> accessed 21 May 2022.

⁵¹ Mark Taylor, 'A Glass Filling Up - Reflections on the first-year anniversary of the UN Guiding Principles on Busin' (*Institute of Human Rights and Business*, June 2012) <<https://www.ihrb.org/other/commentary-anniversary-ungps>> accessed 21 May 2022.

address the legal dimensions concerning the state's duty to prevent, investigate, and punish human rights abuses by non-state actors and also the corporate responsibility to respect human rights beyond philanthropic compliance.⁵² This responsibility is a global expectation, which companies can fulfill by "knowing and showing" that they do not infringe on human rights, and this includes all internationally recognized rights.

After this period of time, remarkably much has been achieved in terms of accomplishments, but it can also be recognized that there is still a long way to go, although these guidelines offer a path of transformation toward a future where people and business can live together and thrive in harmony.

2.7 The realisation of business as non-neutral actors

*"Businesses are not neutral actors in conflict contexts. Companies should conduct rapid human rights Due Diligence to see how their business relationships and activities impact the rights of community members and employees."*⁵³

— Jenny Vaughan Managing Director BSR's Human Rights Working Group

There are many challenges faced by businesses when operating in areas of armed conflict,⁵⁴ so they must avoid contributing to violations of human rights or humanitarian law standards and recognize the fundamental need to adopt a sensitive Due Diligence approach to conflict, particularly to assist in understanding the dynamics and escalation of armed confrontation and how business relates to it, as this paper will address further ahead and how it is emphasized in the UNGPs.

The instability of the state exposes the environment to a certain operational complexity, where human rights abuses become more likely to occur, occasioned also by the actions of businesses in

⁵² OHCHR (2012) (n Error! Bookmark not defined.).

⁵³ Jenny Vaughan (2021a), 'Businesses are not neutral actors in conflict contexts' (*Twitter*, February 2021) <<https://twitter.com/jennybusvaughan/status/1364663654419849216>> accessed 23 May 2022.

⁵⁴ Business & Human Rights Centre (2022a), 'Operating in conflict-affected contexts: An introduction to good practice' (*Business and Human Rights Resource Centre*, March 2022) <<https://www.business-humanrights.org/en/blog/operating-in-conflict-affected-contexts-an-introduction-to-good-practice/>> accessed 24 May 2022.

such settings. That is the reason for which additional legal obligations may apply to businesses and those who work for them.

Companies also need to be aware of the immense responsibility they have with regard to international humanitarian law,⁵⁵ assuming that failure to do so can result in civil and criminal liability or prosecution for war crimes and crimes against humanity, as determined by the Geneva Conventions and their Additional Protocols,⁵⁶ which are the core of international humanitarian law.

Business operations cannot violate international norms and standards or contribute to the intensification of these conflicts, so analyzing and implementing a plan to address and reduce these risks is of fundamental importance.

Due Diligence, which will be presented further, when implemented by companies, they must take into account the specific characteristics of the conflict context and the territory where it occurs. This conflict-sensitive approach can highlight the patterns of vulnerability of certain groups and minorities. Another key factor is the human rights consequences of withdrawal or permanence of a business in a region,⁵⁷ taking into account that withdrawal may bring more negative impacts than remaining, in addition to post-conflict impacts.

2.8 The main international instruments and legal standards

To help prevent and address the negative impacts that business can have on human rights, through positive collaboration, the International Labour Organization (ILO),⁵⁸ the Organization for

⁵⁵ International Committee of the Red Cross, 'Business and international humanitarian law: An introduction to the rights and obligations of business enterprises under international humanitarian law' (*ICRC*, November 2011)

<<https://www.icrc.org/en/doc/resources/documents/misc/business-ihl-150806.htm>> accessed 23 May 2022.

⁵⁶ Legal Information Institute Cornell Law School, 'Geneva Conventions and their additional protocols' (*LI*, 2017)

<https://www.law.cornell.edu/wex/geneva_conventions_and_their_additional_protocols#:~:text=The%20Geneva%20Convention%20and%20their,become%20victims%20of%20armed%20conflicts> accessed 26 May 2022.

⁵⁷ Business & Human Rights Resource Centre (2022a) (n 54).

⁵⁸ International Labour Organization (2021), *The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights* (ILO 2021) <https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/briefingnote/wcms_800261.pdf> accessed 25 June 2022.

Economic Cooperation and Development (OECD),⁵⁹ and the United Nations (UN) have developed instruments that establish that all companies have a responsibility to prevent and address the adverse impacts that they are involved with, including in their supply chains, and that these responsibilities go beyond legal requirements.

The implementation of international corporate responsibility standards has also become essential for companies to contribute to the Sustainable Development Goals (SDGs),⁶⁰ which positively assist economic growth and development by avoiding and effectively addressing adverse impacts on people, the environment, and society.

The three main instruments that serve as a reference for responsible business and outline how companies can act responsibly are the ILO's Tripartite Declaration of Principles⁶¹ concerning Multinational Enterprises and Social Policy (ILO MNE Declaration), the OECD Guidelines for Multinational Enterprises (OECD MNE Guidelines),⁶² and the UN Guiding Principles on Business and Human Rights (UN Guiding Principles). They are aligned among themselves and complement each other.

ILO - International Labour Organization

The ILO Tripartite Declaration of Principles on Multinational Enterprises and Social Policy has the role of guiding enterprises and encouraging the positive contributions that enterprises can make to economic and social progress and to minimizing and resolving difficulties in their operations.

The OECD - Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises are recommendations from governments to companies on how to act responsibly. They cover all areas of corporate responsibility, including

⁵⁹ International Labour Organization (2022), 'How Labour Inspectors are supporting employers and workers in Ukraine' (*ILO*, July 2022) <https://www.ilo.org/budapest/whats-new/WCMS_850406/lang--en/index.htm> accessed 26 May 2022.

⁶⁰ UN Department of Economic and Social Affairs, 'Do you know all 17 SDGs' (*UN Department of Economic and Social Affairs*, 2016) <<https://sdgs.un.org/goals>> accessed 23 May 2022.

⁶¹ International Labour Organization (2017), 'Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy' (*ILO*, 2017) <<https://www.ilo.org/empent/areas/mne-declaration/lang--en/index.htm#:~:text=MNE%20Declaration->>> accessed 1 June 2022.

⁶² OECD (2011), *OECD Guidelines for Multinational Enterprises* (OECD 2011) <<https://www.oecd.org/daf/inv/mne/48004323.pdf>> accessed 1 June 2022.

labor and human rights issues, the environment, disclosure, bribery, consumer interests, science and technology, competition, and taxation. The Guidelines were adopted in 1976 and last updated in 2011 to include a chapter on human rights in line with the UN Guiding Principles. The OECD Guidelines for Multinational Enterprises also present considerations regarding the situation of companies operating in difficult environments, including armed conflict or combat zones, and provides guidance on the implementation of conflict-sensitive conduct for companies sourcing minerals or metals from conflict-affected and high-risk areas, known as the Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2016).

The UN Guiding Principles on Business and Human Rights

The UNPGs on Business and Human Rights focus on avoiding and addressing adverse human rights impacts related to business, which are characterized in the already mentioned 3 pillars: (1) the duty of the state to protect against human rights abuses by third parties, including business enterprises, (2) the independent responsibility of business enterprises to respect human rights, meaning that they must avoid infringing on the human rights of third parties and must address the adverse human rights impacts with which they are involved, and (3) the need for those harmed by business-related activities to have access to effective remedy.

IHL - International Humanitarian Law

In addition to the standards mentioned, there is a complementary and specific framework for conflict scenarios, which introduces additional rules of which the relevant stakeholders need to be aware of. IHL includes both states and non-state actors and individuals or anyone connected with armed conflict. The rules are first established to then apply the limitations of armed conflict and restrict the means and methods of warfare. The Voluntary Principles on Security and Human Rights and the International Code of Conduct for Private Security Service Providers are also considered complementary standards because they provide recommendations on how to conduct risk assessment and analysis "in relation to contractual, procurement, and labor standards."⁶³

⁶³ Nils Rosemann, 'International Code of Conduct for Private Security Providers' (*IHRB*, November 2010), <<https://www.ihrb.org/focus-areas/commodities/commentary-international-code-of-conduct-for-private-security-providers>> accessed 13 July 2022.

2.8.1 Peace Justice and Strong Institutions

To foster responsible and sustainable business, to build inclusive and stable societies, and to achieve all of the UN SDGs in a meaningful way, Peace, Justice and Strong Institutions are essential elements. While the themes under the Sustainable Development Goal 16 (SDG 16) are inherently a duty of the state, there is a responsibility and commitment for companies to do their parts, through their own values and purposes, their management capabilities, corporate and brand strategies, internal policies and governance, operations and relationships. The UN Global Compact's Platform for Action for Peace, Justice and Strong Institutions⁶⁴ promotes corporate engagement to achieve these goals, based on transparency and leadership that transforms the lives of others.

In many cases, high levels of armed violence and insecurity have a destructive impact on a country's development, resulting in negative outcomes on economic growth, and triggering sexual violence, exploitation, and torture crimes, among others. In this context and as attested, companies are not neutral actors and their decisions, relationships, presence or departure from a territory cause relevant impacts on human rights, which can be measured and prevented by conflict-sensitive Due Diligence, guided by a platform of values that can be rooted in the heart of every company.

2.9 Corporate Social Responsibility and Human Rights

Companies are expected to conduct their business in a transparent and responsible manner and fulfill their social role as an institution. The concept of corporate social responsibility has strands and interpretations that are not always positive. For some it is an important responsibility to a society, for others a way to maintain a good image.⁶⁵

⁶⁴ Patrick Keuleers, 'Peace, Justice and Strong Institutions' (*UN Academic Impact*, 2015) <<https://www.un.org/en/academic-impact/page/peace-justice-and-strong-institutions>> accessed 3 June 2022.

⁶⁵ Mark Anthony Camilleri, 'Corporate sustainability and responsibility: creating value for business, society and the environment' (2017) *AJSSR* 2 59-74 <<https://doi.org/10.1186/s41180-017-0016-5>> accessed 3 June 2022.

However, Corporate Social Responsibility (CSR) and Business and Human Rights (BHR) are broadly related, even though they have significant differences. CSR, focuses on voluntarism⁶⁶ where companies are encouraged to engage in philanthropic activities for the good of societies, which in a way brings benefits to their business, especially in terms of reputation.

This concept is based on the view that these entities should consider social objectives that go beyond financial purposes.⁶⁷ There is the goal of generating profit for the development of the company, but this development must go beyond the boundaries of the company and generate benefits for its employees and society as a whole.

Human rights are rights designed to protect individual values. Previously, states were the only rights holders and the only subject that could violate international human rights law,⁶⁸ today any person who is a bearer of rights and duties in international law is subject to the international legal order. Therefore, in addition to states, non-state actors also have obligations and this includes commercial entities, which have a responsibility to respect human rights.

As mentioned above, CSR makes companies voluntarily assume social, environmental and ethical standards in their operations, and has a duty to consider social objectives beyond those of profitability, so respect for human rights is a key element in this concept.

Principles of the UN Global Compact expanding CSR

As mentioned above, the UN Global Compact is a voluntary global initiative,⁶⁹ which aims to expand the concept and practice of CSR in various areas of human rights, environment and anti-corruption. As attested, the entities that commit to this conduct, align their practices to the principles universally agreed by the international community as those expressed in the Universal

⁶⁶ Anita Ramasastry, 'Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability' (2015) 14 (2) *Journal of Human Rights* 237-59, University of Washington School of Law Research Paper No. 2015-39 <<https://ssrn.com/abstract=2705675>> accessed 4 June 2022.

⁶⁷ Klaus Dieter Wolf and others, *The Business of Human Rights: An Evolving Agenda for Corporate Responsibility* (Zed Publishers, 2011) 2.

⁶⁸ Manfred Nowak, *Human Rights – A Handbook for Parliamentarians* (no. 8, OHCHR 2005) <<https://www.refworld.org/docid/46cea90d2.html>> accessed 11 July 2022.

⁶⁹ OECD (2009), *Annual Report on the OECD Guidelines for Multinational Enterprises 2008 PART II Chapter 6 Overview of Selected Initiatives and Instruments Relevant to Corporate Social Responsibility* (OECD 2009) 236 <<https://www.oecd.org/corporate/mne/40889288.pdf>> accessed 3 June 2022.

Declaration of Human Rights, the Rio Declaration on Environment and Development, the ILO Declaration on Fundamental Principles and Rights at Work and the UNGC Principles, which state that companies should respect the protection of internationally proclaimed human rights and ensure that they are not party to abuses. When this practice happens, society is benefitted and the democratic rule of law prevails.

2.9.1 The approach of engaging Stakeholders

Stakeholder engagement is a key concept in materializing a company's efforts to comply with its corporate responsibility to respect human rights and to consistently realize the implementation of the UNGPs.⁷⁰

Notably, many human rights impacts can be related to stakeholder engagement challenges. Some human rights experts have demonstrated that despite being a powerful tool, it is still misused.⁷¹

Stakeholder engagement is oblique to the UN Guiding Principles on Business and Human Rights, and to fulfill its responsibility to protect human rights the understanding and proper implementation of this practice by businesses is paramount, which must be established and developed on an ongoing basis and with the direct participation of stakeholders.

According to the UN Guiding Principles on Business and Human Rights, there are key moments in which the various parties should be consulted and that the process should follow the strategic steps presented below:⁷²

⁷⁰ The Global Compact Network Germany 2014, *Stakeholder Engagement in Human Rights Due Diligence - A Business Guide* (Global Compact Network Germany twentyfifty Ltd. 2014) <https://www.globalcompact.de/migrated_files/wAssets/docs/Menschenrechte/stakeholder_engagement_in_humanrights_due_diligence.pdf> accessed 4 June 2022.

⁷¹ Faracik (n 26).

⁷² Alison Taylor and Charlotte Bancillon, *Five-Step Approach to Stakeholder Engagement* (BSR 2019) <https://prod-edxapp.edx-cdn.org/assets/courseware/v1/9c75b1f4b668f786d32a777261529227/asset-v1:DelftX+RI102x+2T2019+type@asset+block/BSR_Five-Step_Guide_to_Stakeholder_Engagement.pdf> accessed 5 June 2022.

- 1) Engagement Strategy:** Establish vision and level of ambition for future engagement, and review past commitments.
- 2) Stakeholder Mapping:** Define criteria to identify and prioritize stakeholders, and select engagement mechanisms.
- 3) Preparation:** Focus on long-term goals to drive the approach, determine logistics for engagement, and set the rules.
- 4) Engagement:** Conduct the engagement itself, ensuring equitable stakeholder input and mitigating tension while maintaining focus on priorities.
- 5) Action Plan:** Identify opportunities from feedback and determine actions, revisit goals, and plan next steps for follow-up and future engagement.

Notwithstanding, for an effective implementation of this strategy, it is essential to develop an inclusive and participatory stakeholder engagement plan,⁷³ taking into account the differentials and particularities of each stage of the process, which must be continuous. This is crucial for the success of this structure and the fulfillment of the responsibility to respect human rights, especially when operating in conflict regions and high-risk areas.

This engagement with stakeholders must be done from the very beginning of a business's operation, in order to identify, select, and listen to local stakeholders, to promote peace and consequent prosperity in these areas, and to avoid a possible escalation of conflict controversies.

2.9.2 From corporate responsibility to accountability

As mentioned, CSR is a tool of corporate strategy that does not reflect in obligations to companies, nor to their shareholders. The voluntary nature of the model makes some form of legal responsibility impossible and also opened the way for companies to propagate CSR practices for strategic interests while,⁷⁴ in several cases, violating human rights.

⁷³ Global Compact Network Germany (2014) (n 70).

⁷⁴ Mallika Tamvada, 'Corporate social responsibility and accountability: a new theoretical foundation for regulating CSR' (2020) *Int J Corporate Soc Responsibility* 5 2 <<https://doi.org/10.1186/s40991-019-0045-8>> accessed 8 June 2022.

Realizing these gaps,⁷⁵ some international organizations have had some initiatives to make CSR more effective. Some of the major developments to this end, including the United Nations Global Compact, Global Reporting, the Code Project, and the Organization for Economic Cooperation and Development (OECD) guidelines, among others, have emerged as mechanisms and frameworks to ensure that companies fulfill their responsibilities to respect human rights.

Although, these guidelines, such as those of the OECD,⁷⁶ do not have a mechanism to verify if companies adhere to these guidelines or those of the Global Reporting Initiatives (GRI) and the Global Compact, which are guidelines that also operate on a voluntary basis without the force of law, some sources suggest that CSR⁷⁷ is actually an obligation and not an optional voluntary provision for companies, as it is directly related to the primary functions of companies such as legal obligations and accountability. In this matter, there is a moral responsibility of companies through the business relationship and the associated number of consequences caused by the presences of these companies, which strengthens the argument that CSR is an obligation to society through its relationship to the core business functions that are delegated to companies, and this in itself provides a solid basis for CSR regulation.

2.10 Conclusion

In conclusion, the UN Guiding Principles express the fundamental importance of the corporate responsibility to respect human rights as a minimum standard of business conduct,⁷⁸ paired with relevant social expectations, and supported by international norms and standards. The expressed corporate commitment to respect human rights embodies the highest and most representative point regarding the understanding and implementation of this responsibility in recent times. With this concept as a reference, a wide range of innovations in law has been developed, bringing together various actors from the governmental, corporate, and civil society sectors.

⁷⁵ Noti and others (n 35).

⁷⁶ Kathryn Gordon, *The OECD Guidelines and Other Corporate Responsibility Instruments: A Comparison* (2001) (5) OECD Working Papers on International Investment <<http://dx.doi.org/10.1787/302255465771>> accessed 8 June 2022.

⁷⁷ Esther Hoffmann, Christian Dietsche and Christine Hobelsberger, 'Between mandatory and voluntary: non-financial reporting by German companies' (2018) 26 *NachhaltigkeitsManagementForum* 47-63 <<https://doi.org/10.1007/s00550-018-0479-6>> accessed 9 June 2022.

⁷⁸ Faracik (n 26).

Notorious is that there is still much to be developed and advanced in these initiatives to guide businesses away from human rights abuses, but one can already consider it a milestone towards a change in paradigms and behavior of companies in their own countries and in their supply chains, especially when they operate in conflict areas.⁷⁹

⁷⁹ Livio Sarandrea, 'Business and human rights; what to expect from a 10-year-old' (*United Nations Development Programme*, June 2021) <<https://www.undp.org/blog/business-and-human-rights-what-expect-10-year-old>> accessed 9 June 2022.

CHAPTER THREE: THE CORPORATE RESPONSIBILITY TO RESPECT II HUMAN RIGHTS DUE DILIGENCE AND CONFLICT SENSITIVE APPROACH

3.1 Introduction

Under the Responsibility to Protect, companies operating in areas where conflict occurs need to conduct specific and enhanced human rights Due Diligence,⁸⁰ with a sensitive eye to the particular issues surrounding this environment. Tools to prevent abuse and escalation of violence should be elaborated, as well as the development of conflict-sensitive operational-level grievance mechanisms. The approach should include the direct participation of local groups and communities.

According to a report by the UN Working Group on Business and Human Rights,⁸¹ the goal of heightened action is to provide guidance to businesses on how to behave and operate in areas of armed conflict, to prevent human rights violations by applying key steps and measures to address human rights abuses, which become more susceptible under these conditions. This is relevant in view of the increase in conflicts around the world,⁸² such as the current war in Ukraine.

According to reports by the Human Rights Council of the UNGPs, the number of conflicts has nearly tripled,⁸³ with a considerable increase in battle deaths and forced displacement by war, violence, and persecution. Climate change and global challenges such as the COVID-19 pandemic

⁸⁰ Gerald Pachoud and Siniša Milatović, *Heightened Human Rights Due Diligence for business in conflict-affected contexts: A Guide* (United Nations Development Programme 2022)

<https://www.undp.org/sites/g/files/zskgke326/files/2022-06/UNDP_Heightened_Human_Rights_Due_Diligence_for_Business_in_Conflict-Affected_Contexts_V2.pdf> accessed 9 June 2022.

⁸¹ OHCHR (2019), *UN Working Group on Business and Human Rights' project on business, conflict and human rights* (OHCHR 2019) <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/BCHR_consultation_28Nov.pdf> accessed 28 June 2022.

⁸² UN (2020), 'A New Era of Conflict and Violence' (*UN*, 2020) <<https://www.un.org/en/un75/new-era-conflict-and-violence>> accessed 9 June 2022.

⁸³ OHCHR (2020a), 'Doing business in conflict areas: UN report details actions to avoid fuelling human rights abuse and stoking violence' (*OHCHR*, October 2020) <<https://www.ohchr.org/en/press-releases/2020/10/doing-business-conflict-areas-un-report-details-actions-avoid-fuelling-human>> accessed 11 June 2022.

also contribute to deteriorating the situation and to exposing people, especially the most vulnerable, to permanent situations of risk and human rights violations.⁸⁴

Respect for international humanitarian rights standards in situations of armed conflict is featured in the UNGPs, although the document does not specifically mention a different type of Due Diligence for conflict-affected regions, it encompasses the proportionality principle that states, "the higher the risk, the more complex the processes"⁸⁵ of Due Diligence, thus the importance of taking special care with the topic.

3.2 Due Diligence in International Law

According to Kulesza,⁸⁶ in international law, Due Diligence represents a bridge between State responsibility and International Responsibility. Due Diligence has International Law as its principle and outlines its evolving character.

The conceptual and policy framework proposed by the Guiding Principles in 2011, brought an approach that also encompasses the relationship between business and human rights, which defines the responsibility of business to respect human rights, grounded in the expectations and desires that a society has in relation to business. The mentioned Guiding Principles, endorsed by the UNHRC, received various international regulatory instruments that address corporate responsibility for human rights violations.

Due diligence is the core basis of these Guiding Principles⁸⁷ and lists the steps that a company must take to become aware of, prevent, and address adverse human rights impacts. This term, Due Diligence, has been defined to develop an alignment on its content. The origin of Due Diligence

⁸⁴ OHCHR, Human Rights Council Concludes Fiftieth Regular Session after Adopting 23 Resolutions and One Decision (OHCHR, October 2022) <<https://www.ohchr.org/en/taxonomy/term/1203>> accessed 11 June 2022.

⁸⁵ Gabriela Quijano and Carlos Lopez, 'Rise of Mandatory Human Rights Due Diligence: A Beacon of Hope or a Double-Edged Sword?' (2021) *Business and Human Rights Journal* Cambridge University Press 241-254.

⁸⁶ Joanna Kulesza, *Due Diligence in International Law* (Brill 2016), 19.

⁸⁷ Jonathan Bonnitcha and Robert McCorquodale, 'The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights' (2017) 28 (3) *EJIL* 899-919 <<https://doi.org/10.1093/ejil/chx042>> accessed 24 June 2022.

is in Roman law,⁸⁸ but in International Law it functions mainly as a standard of conduct that defines the responsibility of a state in relation to the conduct of third parties, which takes into account the care that one has to take so that unexpected glitches do not happen, failures that can compromise lives and the preservation of this essential good.

The UNGPs emphasize the importance of the Due Diligence process as a mechanism to make companies live up to their responsibilities, and this should encompass a company's responsibility for its own adverse human rights impacts and its responsibility for the human rights impacts of third parties with whom it does business. For this reason, companies seeking to implement the Guiding Principles need to have a good understanding of the standard⁸⁹ and how the mechanism is conducted, to avoid adverse human rights impacts, and victims of potential corporate human rights violations should also have an understanding of the responsibilities recognized by the Guiding Principles and what applies if human rights violations occur due to a company's lack of diligence.

3.3 OECD Due Diligence as a guide to Responsible Business Conduct

It is important to remember that companies can play an important role in contributing to economic stability and development, environmental respect, and social progress.⁹⁰ This can happen when the potential adverse impacts that are the result of their direct or indirect operations are minimized.

As mentioned above, the OECD⁹¹ recommends through its guidelines that companies conduct Due Diligence to identify, prevent, or mitigate potential adverse impacts. They provide practical support for these guidelines to be successfully implemented and for companies to address adverse impacts related to their employees, the environment, corrupt practices, the communities where these companies operate, supply chains, and other business relationships.

⁸⁸ John Ruggie and John Sherman, 'The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale' (2017) 28 (3) EJIL 921-928 <https://scholar.harvard.edu/files/john-ruggie/files/the_concept_of_due_diligence_ruggie_sherman.pdf> accessed 11 June 2022.

⁸⁹ Faracik (n 26).

⁹⁰ OHCHR (2011a) (n 5).

⁹¹ OECD (2018) (n 12).

These guidelines also make an effort to get governments and other stakeholders aligned on the necessity of implementing Due Diligence, so that companies are guided by responsible business conduct.⁹²

As mentioned, the UNGPs on Business and Human Rights as well as the ILO Tripartite Declaration of Principles on Multinational Enterprises and Social Policy also contain important Due Diligence recommendations, and this Guideline can help companies implement them.⁹³

National Contact Point

National Contact Points (NCPs) have the task of raising awareness of the OECD Guidelines among companies, trade unions and civil society. They also act as mediators between the different parties in the event of a complaint due to an alleged violation of the Guidelines.⁹⁴

There is a commitment by countries that join the OECD to promote the Guidelines by establishing a National Contact Point to which different stakeholders can expose companies they consider to have breached the Guidelines.⁹⁵ The NCP in turn undertakes to provide information and promote the implementation of the Guidelines, and to serve as a forum for dialogue on issues related to their implementation. Although the NCP cannot review court decisions, it can issue recommendations and mediate between interested parties.⁹⁶

Since their creation, NCPs have already set good examples of enforcing these guidelines, such as the efforts of the Dutch NCP, which in 2020⁹⁷ assisted in the labor union recognition of workers in the Bangladeshi telecommunications industry. According to the NCP's determination, the Dutch company did not act in accordance with what should be respected in the Guidelines.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Government Offices of Sweden, 'National Contact Points' (*Government Offices of Sweden*) <<https://www.government.se/government-policy/enterprise-and-industry/national-contact-points2/>> accessed 16 June 2022.

⁹⁷ Kinnari Bhatt and Gamze Erdem Türkelli, 'OECD National Contact Points as Sites of Effective Remedy: New Expressions of the Role and Rule of Law within Market Globalization?' (2021) 6 *Business and Human Rights Journal* 423 <<https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/oecd-national-contact-points-as-sites-of-effective-remedy-new-expressions-of-the-role-and-rule-of-law-within-market-globalization/EE9990CD1EC9599027FEA66D9B5C3A77>> accessed 18 June 2022.

A year earlier, the Brazil NCP made a recommendation in a specific mandate that called for evidence of Due Diligence that should have been performed by a multinational company.⁹⁸

In 2018, the French NCP applied an OECD guidance for investors that resulted from Due Diligence in a property transfer of an American hotel. This allowed workers to exercise their rights under Chapters IV and V of the Guidelines.⁹⁹

In 2017 the company Heineken paid €1.1 million to former employees of the company.¹⁰⁰ The monetary compensation that resulted from an NCP claim brought by a group of former employees of a Heineken affiliated company in the Democratic Republic of Congo, which was referred to the Dutch NCP as a result of a series of allegedly unfair dismissals carried out years earlier.

There is recognition from the international community of the great benefits that the NCPs have brought; their Guidelines have been able to address a considerable amount of cases since 2000, especially with regard to ensuring and respecting human rights. But, as scholars point out, the NCPs have not yet reached the potential that it could. Further implementation of the Guidelines is needed, and they need to be globally known. Companies and governments should treat the topic as fundamental, and this has not been happening, with some exceptions, as is the case in Germany. More financial and human resources need to be allocated to the NCPs so that they can fulfill their role effectively.¹⁰¹

⁹⁸ Katharine Booth, 'OECD Watch's annual 'State of Remedy' report finds NCPs still largely failing to facilitate effective remedy outcomes in 2021' (*OECD Watch*, June 2022) <<https://www.oecdwatch.org/oecd-watches-annual-state-of-remedy-report-finds-ncps-still-largely-failing-to-facilitate-effective-remedy-outcomes-in-2021/>> accessed 24 June 2022.

⁹⁹ OECD France, *OECD Guidelines for Multinational Enterprises National Contact Point Peer Reviews: France* (OECD France 2018), <<https://mneguidelines.oecd.org/France-NCP-Peer-Review-2018-EN.pdf>> accessed 24 June 2022.

¹⁰⁰ OECD Watch, 'Former employees vs. Heineken - Unlawful dismissals by Heineken's subsidiary in eastern DRC' (*OECD Watch*, 2015), <<https://www.oecdwatch.org/complaint/former-employees-vs-heineken/>> accessed 25 June 2022.

¹⁰¹ Marine Richert, 'National Contact Points: A key mechanism for the respect of human rights?' (*ELSA Law Review*, January 2020), <<https://lawreview.elsa.org/national-contact-points>> accessed 25 June 2022.

3.4 Due Diligence During an Armed Conflict

The risks of serious human rights violations increase considerably when businesses operate in contexts where armed conflict occurs.¹⁰² There is a real possibility of loss of life and restriction of freedoms for all those directly and indirectly linked to the business, as well as communities and other stakeholders.

To prevent and mitigate human rights risks in high-risk contexts, companies must conduct more detailed human rights Due Diligence, especially when it is assumed that companies are not neutral actors, as they bring financial assets and interfere in the environment, causing positive or negative impacts on this context.

The term high risk refers to situations of armed conflict as well as territories with inconsistent governance or rule of law;¹⁰³ where corruption is more systemic and social instability is more widespread, opening space for ethnic and religious inequalities and human rights violations.

These interactions of social, political, environmental, and economic factors foster an environment where violence and human rights abuses are more likely to occur.

Businesses typically operate within regulatory environments, but these are inconsistent with international human rights standards¹⁰⁴ and do not provide sufficient strong mechanisms to prevent human rights abuses. In this environment the probability of companies engaging in corruption is inherent, as instability is conducive to this practice, such as bribery and money laundering. A prevalent feature where there is no strong rule of law is a judiciary composed of members aligned with the government and lacking the independence required to maintain neutrality in the process, opening loopholes for corporate complicity in human rights abuses and escalating violence.

¹⁰² Business and Human Rights Forum, *Due Diligence: Defining 'Conflict-Affected' and 'High-Risk Areas'* (Business and Human Rights Forum 2013)
<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/ForumSession2/Events/3Dec.1.SideEventProposal_GenevaAcademy.pdf> accessed 25 June 2022.

¹⁰³ Sherman (2021) (n 15).

¹⁰⁴ Jenny Vaughan (2021b), 'Business in Conflict-Affected and High-Risk Contexts' (*BSR*, November 2021)
<<https://www.bsr.org/en/our-insights/report-view/business-in-conflict-affected-and-high-risk-contexts>> accessed 26 June 2022.

Corporate human rights abuses in such contexts can include land grabbing and displacement and exacerbate pre-existing conflicts that generate sociopolitical instability.

As previously mentioned, the UNGPs state that businesses should conduct HRDD in order to "identify, prevent, mitigate and account for how they address their human rights impacts." Businesses should therefore conduct enhanced human rights Due Diligence in these contexts.

Businesses can meet their human rights obligations in high-risk contexts by implementing the following components of enhanced human rights Due Diligence:¹⁰⁵

- 1) Identify and monitor high-risk contexts:** identify high-risk contexts, with a focus on countries where the company has a presence;
- 2) Identify and prioritize human rights risks:** assess human rights risks in a conflict-sensitive manner;
- 3) Get involved:** engage early, widely, regularly, and securely with local stakeholders.
- 4) Anticipate and respond to crisis;**
- 5) Strengthen contingency procedures for responding to crises;**

HRDD when given this enhanced approach, incorporates conflict sensitivity, preventing atrocities, transitional justice, and peacebuilding structures into Due Diligence processes, going beyond what is required by the UNGPs. Additional and ongoing analysis is also highly recommended to understand local social, political, environmental, and economic dynamics and how business activity can exacerbate conflict and tensions.

¹⁰⁵ Graff and Iff (n 3).

3.5 Human Rights Corporate complicity

Human rights risks are understood as the potential adverse impacts of business enterprises on human rights. Potential impacts should be addressed through prevention or mitigation, while actual impacts - those that have already occurred - should be subject to remediation, as defined in principle 22 of the UN Guiding Principles on Human Rights.¹⁰⁶

Complicity is defined as the implication of one company in a human rights violation that another company, entity, government, individual, or other group is causing. The risk of complicity in human rights abuse can be particularly high in areas with weak governance and/or where human rights abuse is widespread, such as in areas of armed conflict. However, it must be understood that the risk of complicity exists in all sectors and in all countries.

The requirement to respect human rights, in accordance with the UNGPs, points to the avoidance of complicity, which is another way, in addition to their own direct business activities, that companies risk violating human rights. The risk of an allegation of complicity is reduced if a company has a systematic approach to human rights management, including Due Diligence processes that cover the entity's business relationships. Such processes should identify and prevent or mitigate human rights risks with which the company may be involved by links to its products, operations, or services.

Complicity can be defined when a commercial enterprise contributes or is perceived to contribute to negative human rights impacts caused by parties not directly linked to the enterprise.¹⁰⁷ Furthermore, complicity is usually determined by an act or omission by a company, or individual representing a company, that contributes in some way to realizing a human rights abuse or when it has knowledge that the act or omission could provide such a contribution.

¹⁰⁶ Gro Nystuen, Andreas Follesdal and Ola Mestad, *Human Rights, Corporate Complicity and Disinvestment* (Cambridge University Press 2011) 224.

¹⁰⁷ Rachel Davis, 'The UN Guiding Principles on Business and Human Rights and conflict-affected areas: state obligations and business responsibilities' (2012) 94 (887) *International Review of the Red Cross* 961-979 <<https://doi.org/10.1017/S1816383113000350>> accessed 27 June 2022.

Principle 17 of the UNGPs points out that "most national jurisdictions prohibit complicity in the commission of a crime and a number allow for criminal liability of business," as well as allowing civil actions based on a business's contribution to harm.¹⁰⁸

In the international context, the same understanding points out that "the weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is the knowing provision of practical assistance or encouragement that has a substantial effect on the commission of a crime."¹⁰⁹ Nevertheless, allegations of complicity are not limited to situations in which one company could be held legally responsible for its involvement in the human rights abuse committed by another. The media, civil society organizations, trade unions and others can allege complicity in a much broader range of circumstances, such as when a company may appear to benefit from human rights abuse by another actor, and may lobby the company to play an advocacy role.

Some believe that just the presence¹¹⁰ of a company in an area of conflict and the payment of taxes where serious and systematic human rights abuses occur does not make the organization complicit in these abuses. However, some actors in society take a different view and may put pressure on companies to play an advocacy role in such circumstances. Accusations of complicity can arise in various contexts, including:¹¹¹

- 1) **Direct complicity:** when a company provides goods or services that it knows will be used to carry out the abuse.
- 2) **Beneficial complicity:** when a company benefits from human rights abuses, even if it did not contribute to or positively cause them.
- 3) **Silent complicity:** when a company is silent or inactive to systematic or ongoing human rights abuses.

¹⁰⁸ National Action Plans on Business and Human Rights (2011c), 'Guiding Principle 17' (*Global NAPs*, June 2011) <<https://globalnaps.org/ungp/guiding-principle-17/>> accessed 13 July 2022.

¹⁰⁹ UN Global Compact (2004) (n 48).

¹¹⁰ Florian Wettstein, 'The Duty to Protect: Corporate Complicity, Political Responsibility, and Human Rights Advocacy.' (2010) 96 (1) *Journal of Business Ethics* 33-47 <<http://www.jstor.org/stable/40836187>> accessed 13 July 2022.

¹¹¹ UN Global Compact (2004) (n 48).

3.6 Technology companies as part of the conflict

Since the beginning of the war in Ukraine, several technology companies have announced measures to somehow combat problems such as harmful disinformation. State-sponsored or state-affiliated media have been blocked, among other security measures that have been added to the package to protect civil society.¹¹²

Some reports prepared by Human Rights Watch (HRW),¹¹³ indicate that the measures taken to combat disinformation have been weak or ineffective, falling far short of expectations and raising questions about whether these companies, such as Google, Microsoft, and Facebook, are fulfilling their responsibilities to respect human rights.

As HRW reports, there is a chronic under-investment in addressing human rights issues in countries where these companies offer these services and enjoy a certain level of credibility with their audiences. Ukraine is one such country. According to HRW, which has released a paper on the human rights accountability of these companies, it is important to understand what companies did before and during the crisis, and to what extent they are fulfilling their responsibility to respect human rights. This paper provides information on what companies should and should not do in a conflict, recommending more clarity, consistency, and transparency in actions wherever their services are used.

As mentioned previously, the UNGPs, provide guidance that businesses have a responsibility to respect human rights and remedy abuses. They are expected to avoid infringing on human rights and to take steps to address adverse human rights impacts directly linked to their practices or operations. The actions that corporations take must meet international human rights standards and be performed in a transparent and accountable manner.

¹¹² Human Rights Watch (2022a), 'Technology and Rights' (*Human Rights Watch*, 2022)
<<https://www.hrw.org/topic/technology-and-rights>> accessed 28 June 2022.

¹¹³ Human Rights Watch (2022b), 'Tech Companies Should Prioritize Rights in Ukraine' (*Human Rights Watch*, 2022)
<<https://www.hrw.org/news/2022/03/16/tech-companies-should-prioritize-rights-ukraine>> accessed 28 June 2022.

To this end, access to data is key, to learn whether companies are respecting human rights, including those in the fields of disinformation, hate speech, and incitement to violence.

3.7 Sensitive Business Risk Methodology

The UNGPs give companies some flexibility to implement human rights risk assessment approaches. They encompass different expectations, needs and levels of understanding and maturity regarding these business approaches to human rights Due Diligence.¹¹⁴

The process can vary from company to company, some of them initially analyze the risks of adverse human rights impacts in a generalist way, precisely to have a broader and more modular view of their entire company. After this more general knowledge, they can delve deeper into the necessary areas and apply human rights Due Diligence.

Other companies start by assessing potential risks in a specific way that may be linked to a product, service, or supply chain, which serves as a parameter for developing measures in an objective and centralized manner.

Some other companies use existing assessments to incorporate human rights aspects into their processes, such as the following methodology that assesses business risk and human rights impacts with reference to the schematic process ¹¹⁵

1. Determine scope and evaluation of plan
2. Develop assessment methodology and plan for stakeholder engagement
3. Collect data
4. Analyze data and prioritize issue areas
5. Define and implement follow actions

¹¹⁴ OHCHR (2021a), 'An authoritative global framework on business and human rights turns 10' (*OHCHR*, 17 June 2021), <<https://www.ohchr.org/en/stories/2021/06/authoritative-global-framework-business-and-human-rights-turns-10>> accessed 13 July 2022.

¹¹⁵ Madeleine Koalick, Deniz Utlü and Philipp Bleckmann, *Assessing Human Rights Risks and Impacts - Perspectives from Corporate practice*, (Global Compact Network Germany German Institute for Human Rights 2016) <https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/HRIA_Assessing_Human_Rights_Risks_and_Impacts_Perspectives_from_corporate_practice.pdf> accessed 28 June 2022.

6. Monitor compliance report performance and reassess if necessary

According to the Guiding Principles, it is necessary to change the paradigm of looking only at the organization's own risks, such as legal and reputational perspectives, it is necessary to have an approach and methodology based on adverse impacts on human rights.¹¹⁶

The UNGPs point out that a selected approach, in most cases, does not consider the real impacts. It is important that companies make clear, whether the concern is with the company itself or whether this concern relates to the people who are right holders. The choice of methodology must have an objective and this must be communicated by the company. At the same time, this requires that civil society and other stakeholders are aware of the context, to know what to expect and how to integrate with the Due Diligence framework.

It is necessary to take into account the time before, during and after a commercial activity or project, in the latter case it is important to also consider the exit or closure of an operation, as will be presented later. The autonomous evaluation should also include environmental and social impacts, as well as the scope of human rights.

The quantitative or qualitative degree of standardization of the data collection methodology should also be considered in the project, as well as the standard of approach to identification, consultation, and participation by affected stakeholders and groups, especially vulnerable and marginalized ones.

Implementation should be carried out with own funding only or with the support of external consultants or independent experts.

¹¹⁶ UN (2021), *UNGPS 10+ A Roadmap for the Next Decade of Business And Human Rights* (UN Working Group on Business and Human Rights 2021) <<https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>> accessed 13 July 2022.

3.8 Including conflict in mandatory Due Diligence laws

Due diligence is a very recurrent topic lately, especially in the face of the current conflict in Ukraine, where gaps are beginning to be perceived in the legislation on this particular topic, which does not present provisions on conflict and security.¹¹⁷

For almost 50 years, the UN has been discussing the relationship between human rights and the impact of transnational corporations,¹¹⁸ first with the creation of the UN Center on Transnational Corporations in the 1970s and the International Code of Conduct for business, both already extinct.

In the early 2000s, the proposal to create binding "Standards" for corporate accountability was put forward, which resulted in the aforementioned Global Compact. Then, Prof. John Ruggie was appointed as Special Representative of the Secretary-General on the issue of Human Rights, Transnational Corporations and other Businesses, which resulted in the UN Guiding Principles, an important milestone in this issue that deals with the relationship between business and human rights.

The European Union, which has already demonstrated a strong commitment to the agenda of sustainable development and climate change, has recently published, through the European Commission, a normative proposal to institute a human rights and environment Due Diligence obligation, called "Sustainable Corporate Due Diligence",¹¹⁹ which foresees the Due Diligence obligation regarding the global production chain of companies, including their subsidiaries, commercial partners, contractors, suppliers, and service providers in a broad manner.

This proposal can have a significant effect on the conduct of companies, especially those operating in conflict-affected contexts where these businesses face serious risks of involvement or

¹¹⁷ Claude Voillat and Ashley Nancy Reynolds, 'Why conflict must be included in mandatory Due Diligence laws' (*Business & Human Rights Resource Centre*, May 2022), <<https://www.business-humanrights.org/en/blog/why-conflict-must-be-included-in-mandatory-due-diligence-laws/>> accessed 28 June 2022.

¹¹⁸ Radu Mares, 'Regulating transnational corporations at the United Nations - the negotiations of a treaty on business and human rights' [2022] *The International Journal of Human Rights* <<https://doi.org/10.1080/13642987.2022.2036133>> accessed 28 June 2022.

¹¹⁹ Zamfir (n 38).

complicity in human rights abuses and violations of international humanitarian law. It is therefore necessary, now, more than ever before for companies to strengthen their Due Diligence processes with the conflict-sensitive approach in order to understand the dynamics of conflict and related risks.

3.9 Business departure of a conflicting country - Responsible Exit

*“It may seem a strange notion to give the private sector a role in conflict prevention or resolution, but multinational corporations (MNCs) do have some characteristics that make them suitable companions in a well-tailored strategy for peace and stability. Their presence in a country can give incentives for prosperity, for rebuilding society and its institutions, and for improving respect for human rights. Their role is not mediating between warring factions, with one eye on the Nobel Peace Prize, because that requires an expertise truly beyond the core business of an MNC. It is precisely through performing its core business that the private sector can foster stability in a country or region”*¹²⁰

— Karolien Bais

Many are the human rights challenges faced by companies when operating in conflict-affected areas. The UNGPs highlight the need to implement Due Diligence processes that take a conflict-sensitive¹²¹ approach to avoid gross human rights violations. This approach is intended to prevent and assess potential impacts by seeking to understand the dynamics of the conflict and related risks.

As previously mentioned, the vulnerability of the state and its governance, can contribute to increase the risks of companies influencing the escalation of the conflict and contributing to human rights abuses. To this end, the Geneva Centre for Security Sector Governance and the International Committee of the Red Cross have developed guidance on practices for companies operating in these contexts.¹²²

¹²⁰ Karolien Bais and Mijnd Huijser, *The Profit of Peace Corporate Responsibility in Conflict Regions* (Paperback 2005) 3.

¹²¹ Graff and Iff (n 3).

¹²² ISSAT, ‘Providing strategic and operational support to reinforce the international community’s capacity to assist security and justice reform’ (*DCAF Geneva Centre for Security Sector Governance ISSAT*, 2020) <<https://issat.dcaf.ch/>> accessed 29 June 2022.

One such guidance concerns the human rights implications when a company withdraws from this area of conflict or decides to stay. Depending on the case, withdrawal can have more negative than positive impacts, especially when this company is responsible for providing basic necessities or other key services. However, companies need to be aware that this balance between positive and negative consequences can change according to the scenario.

The exit strategy should therefore be clear, even if the company has not yet decided to withdraw, taking into consideration the possible impacts on employees, the community, and other stakeholders. The company should draft a plan to mitigate the loss of employment and income for employees and contractors, with consideration of both short-term and long-term strategies that make sense in the local context.

In the specific case of the conflict in Ukraine, many companies have already suspended or ended their activities in Russia,¹²³ many others are still in the process.

The UNGPs refer to disengagement as an option for addressing negative human rights impacts from a business relationship, but do not directly address the situation in conflict-affected areas, rather expressing that "at all times, companies need to be aware of any risks that a particular course of action may pose to affected stakeholders and take them into account in their decisions."¹²⁴

This means that in a conflict-affected scenario, exit planning must consider more than just leaving a region and saving the company, it must assess the impacts of exit in relation to employees, business partners, communities, and other people related directly and indirectly to the business, and develop strategies to prevent and mitigate harm.

¹²³ CNN Business Staff, 'Here are the companies pulling back from Russia' (*CNN Business*, 6 April 2022) <<https://edition.cnn.com/2022/03/02/business/companies-pulling-back-russia-ukraine-war-intl-hnk/index.html>> accessed 1 July 2022.

¹²⁴ OHCHR (2011a) (n 5).

3.10 Conclusion

This chapter was intended to provide an overview of recommendations and obligations that can be applied to companies in case of conflict. Human Rights Due Diligence¹²⁵ policies define the responsibility of companies with regard to this practice, which includes preventing negative impacts on employees, communities and other stakeholders from occurring. These policies are guided by the UNGPs,¹²⁶ where the concept of human rights Due Diligence is described in Guiding Principles 17 and 18 of the UNGP. These principles were developed based on the concept of proportionality which states: the higher the risk, the more complex the processes. This statement leads us to interpret that the risks of major human rights abuses increase considerably in areas affected by armed conflict, so the sensitive approach in the Due Diligence process should be implemented under these conditions.

The UN has developed specific principles¹²⁷ for higher actions for states and companies. In the specific case of companies:

- Principle 12 elucidates that the scope of corporate responsibility to be respected may be broader in conflict-affected contexts, as "in situations of armed conflict, companies should respect the norms of international humanitarian law" (IHL);
- Principle 17 addresses the issue of corporate "complicity" mentioned here; and
- Principle 23 elaborates on a recommendation that companies treat the risk of causing or contributing to serious human rights abuses as a matter of legal compliance.

In principle 12, these legal obligations, can be applied to companies and their personnel. IHL embraces the entire territory of the states engaged in a conflict, regardless of whether the fighting takes place there or not.

In conclusion, this chapter has sought to demonstrate the critical importance of conducting Due Diligence by companies operating in contexts affected by conflict or conflict risk situations, as

¹²⁵ Ellen Campbell and others, *Due Diligence obligations of International organizations under International law (International Organizations Clinic At New York University School Of Law 2017)* <<https://www.nyuilp.org/wp-content/uploads/2018/07/NYI204.pdf>> accessed 30 June 2022.

¹²⁶ OHCHR (2011a) (n 5).

¹²⁷ OHCHR (2012) (n Error! Bookmark not defined.).

well as adopting a conflict-sensitive approach to analyzing potential impacts on employees, communities, particularly those in vulnerable situations (including women, minorities, children and marginalized groups), re-evaluate needs and impacts as conflict emerges or dynamics change.

Another key point in this context is the need to carefully reflect on and weigh the human rights implications of withdrawing these companies from the conflict-affected context versus the human rights implications of staying put. If a company's operations aggravate the conflict or cause or contribute to unrelenting human rights harm, it may be necessary to withdraw to avoid causing harm. On the other hand, if a company provides essential services, withdrawal may have more negative impacts than positive ones. Lastly, companies should also be aware that as changes occur over time, the balance between positive and negative effects may shift.

CHAPTER FOUR: ETHICS AND CORPORATE PURPOSE ALIGNED WITH THE RESPONSIBILITY TO RESPECT

4.1 Introduction

Some time ago, corporate responsibility for human rights was a distant topic.¹²⁸ Some were skeptical that companies had any ethical responsibility for this issue. Others doubted that human rights made sense, and if they made sense at all, it was up to states to guarantee them.

With the globalization of business, this situation has changed.¹²⁹ The significant size and power of these private organizations raised new human rights issues. New forms of abuses took shape, especially with the presence of multinational companies in new territories. Some companies have recognized and acted to ensure that their actions do not infringe international norms and standards or violate the human rights of employees, communities and multiple stakeholders, but the vast majority have not followed this path; even today, they are still reluctant to respond to UN guidelines and principles or other institutional efforts to create codes of conduct that can serve as a basis for litigation against them. Above that, the understanding of what the concept of human rights is and a company's responsibilities concerning these rights are not very clear.

Data shows that the attention for human rights impacts positively the performance of a business, by improving relations with the various direct and indirect audiences and also it contributes to the reputation and retention of employees.¹³⁰

Today, companies are in the focus of civil society and the international community as never before, as they fight for competitive advantage in the context of this reality. Today their consumers not

¹²⁸ George Brenkert, 'Business Ethics and Human Rights: An Overview' (2016) 1 Business and Human Rights Journal 277-306 <<https://doi.org/10.1017/bhj.2016.1>> accessed 1 July 2022.

¹²⁹ Andreas Georg Scherer and Guido Palazzo, 'The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and its Implications for the Firm, Governance, and Democracy' (2011) 48 (4) Journal of Management Studies 899-931 <<https://onlinelibrary.wiley.com/doi/10.1111/j.1467-6486.2010.00950.x>> accessed 1 July 2022.

¹³⁰ OHCHR (2000), *Business and Human Rights: A Progress Report* (OHCHR 2000) <<https://www.ohchr.org/sites/default/files/Documents/Publications/BusinessHRen.pdf>> accessed 3 July 2022.

only make decisions based on product selection, prices or services, they evaluate what a company says, what it does beyond its market engagement, and what role it plays in society.¹³¹

Many organizations such as Nike, Gap and Disney, have had their reputations dented and consequently their brand values diminished, when they have outsourced production to developing countries to take advantage of lower costs. Numerous layoffs and plant closings occurred when their names were associated with human rights abuses in the value chains.

There are two approaches under business ethics to the question of whether companies have human rights obligations,¹³² including the moral approach and the institutional approach. The first is based on the conception of human rights as essential pre-existing. The second refers to the human rights present in the UDHR and international documents that were created afterwards. Therefore, both from a moral and institutional point of view, they guide us to understand that human rights play a central role in framing the responsibilities of business.

The corporate purpose¹³³ unites the essence of a business, which is a human value, to a mission of transformation, which is above profit. This purpose has as its pillars ethics and intrinsic personality values. These true values will guide the company to an honest and transparent posture, based on integrity and respect for individuals.

¹³¹ Wolf and others (n 67) 30.

¹³² Brenkert (n 128128).

¹³³ Marjo Lips-Wiersma, *Purpose Beyond Profit - Towards a Spiritual Foundation for Corporate Responsibility* (George Starcher 2013) 12.

4.2 Ethics as a core virtue

“Two things fill the mind with ever new and increasing admiration and awe, the more often and steadily we reflect upon them: the starry heavens above me and the moral law within me. I do not seek or conjecture either of them as if they were veiled obscurities or extravagances beyond the horizon of my vision; I see them before me and connect them immediately with the consciousness of my existence.”¹³⁴

— Immanuel Kant, Critique of Practical Reason

Businesses play a key role in the development of the world economy and affects the organizational structure of cities, communities and families. They contribute significantly in terms of tax revenues and is a mechanism for generating employment and social ascension. Business and trade are the potential forces in a society and should also have a role in endorsing peace and prosperity for people, assuming they are properly conducted. This is why it is important to determine the value and depth of trade and business policies, which must be based on a sound philosophy.

The basis for the development of regulatory systems and mechanisms, as well as normative standards, is based on the concepts of human dignity, which gives us the possibility to build a more peaceful and harmonious society, supported by the concepts of respect, dignity, justice and equality, fundamental principles of human rights.¹³⁵

Immanuel Kant's thought formulates an essential conception for the evolution of human rights and defines as reason, the only palatable way to determine and measure moral actions. For Kant, morality cannot be marked by subjective parameters, but by a transcendent referential, therefore, immutable and that is installed as a broad base that encompasses other existential values, which cannot be limited to personal or cultural values.¹³⁶

¹³⁴ Columbia College, ‘Kant’s Tombstone in Kaliningrad’ (*Columbia University in the City of New York*) <<https://www.college.columbia.edu/core/content/kant's-tombstone-kaliningrad>> accessed 3 July 2022.

¹³⁵ Marlen van den Ecker, ‘Human Rights by Virtue of Reason - Kant's latent contribution to the Declaration of Human Rights’ (Friedrich-Schiller-University of Jena, 30 November 2019) <https://www.researchgate.net/publication/337940285_Human_Rights_by_Virtue_of_Reason_-_Kant%27s_latent_contribution_to_the_Declaration_of_Human_Rights> accessed 3 July 2022.

¹³⁶ Monika Betzler, *Kant's Ethics of Virtue* (De Gruyter, Inc 2008) 7.

The creation of the UN represents a response of the international community to the atrocities of the Second World War and incorporates to the pillars of human rights the moral philosophy and the thought of Immanuel Kant, moral, which according to the thinker, must come accompanied by virtuosity to establish itself permanently and this question is not about fulfilling all the duties of virtue, but fulfil from the motive and purpose of duty. "The fulfilment of the motive of duty is a necessary condition for a specific virtue."¹³⁷

In other words, a morally virtuous action, must be taken by right reason, that is, a "perfect good will: it must be grounded in an obedience that goes beyond personality and that the principle of dignity consists in this universal capacity to rationalize the good, our purposes must be judged in terms of this morality. This comprehension regarding virtue is important for understanding and applying this principle to business ethics, which explains that the quality of this virtue lies in the ability and competence to combat some external forces.

One's conscience, manages conflicts in moral choice and deals with the consequences of these choices by also making oneself a value of these moral principles. This is the signalling that individual is on the path to a virtuous life.

Virtue is enduring, and they are always reference points for any particular action that reflects on the whole. They enable flourishing and prosperity because it is in the whole and not just in some points. Kant writes: "*Virtue is always in progress and yet it always starts from the beginning. It is always in progress because, considered objectively, it is an ideal and unattainable, while the constant approach to it is a duty*".¹³⁸

¹³⁷ Claus Dierksmeier, 'Kant on Virtue', (2013) J Bus Ethics 113 597-609 <<https://doi.org/10.1007/s10551-013-1683-5>> accessed 4 July 2022.

¹³⁸ Immanuel Kant, *The Metaphysics of Morals* (Cambridge University Press 1996) 19.

4.3 Integrity beyond CSR

The various voluntary practices that companies develop in an attempt to mitigate their impacts on civil society are relevant to prevent or at least to tackle issues of human rights abuses. What is debated, however, is whether these practices are sufficient to address these impacts.¹³⁹

With the fall of the Berlin Wall, the process of accelerated globalization¹⁴⁰ began and the consequent expansion of business and sectorization of production processes. This diversification resulted in the emergence of global supply chains with a complex system of transnational labour, which raised the standard of living of local communities and at the same time the risks of human rights violations such as forced labour, human trafficking, child labour,¹⁴¹ damage to communities that lost their livelihoods, access to health care and pollution, among others.

With the evolution of cases of violations and recurrent manifestations from NGOs and civil society, companies have sought ways to respond to these different allegations of involvement in human rights violations, one of these ways was the CSR, that develops voluntary initiatives to mitigate these impacts. Codes of conduct and internal standards were created, as well as verifications in the supply chain, which not only served to reduce the negative consequences of such actions, but also to improve the reputation of companies.

Because of its' not legally binding nature, CSR¹⁴² generated mistrust about its legitimacy and relevance, originating permanent debates between civil society and companies, that diverged between voluntarism and obligation.

¹³⁹ John Ruggie, 'The Corporate Responsibility to Respect Human Rights' (*Harvard Law School Forum on Corporate Governance*, 15 May 2010) <<https://corpgov.law.harvard.edu/2010/05/15/the-corporate-responsibility-to-respect-human-rights/>> accessed 4 July 2022.

¹⁴⁰ Drew Keeling, 'Fall of Berlin Wall, Rise of Globalization' (*Wharton Magazine*, 5 November 2014) <<https://magazine.wharton.upenn.edu/digital/fall-of-berlin-wall-rise-of-globalization/>> accessed 4 July 2022.

¹⁴¹ International Labour Organization (2014), 'Forced labour, modern slavery and human trafficking' (*International Labour Organization*, 2014) <<https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>> accessed 5 July 2022.

¹⁴² Elizabeth George, 'Can Corporate Social Responsibility Be Legally Enforced?' (2011) *Forbes* <<https://www.forbes.com/sites/uhenergy/2019/10/11/can-corporate-social-responsibility-be-legally-enforced/?sh=5032f2a73d44>> accessed 1 July 2022.

The adoption of the UNGPs in 2011 marks this step beyond CSR and understanding business and human rights as an even more representative mechanism. The UNGPs confirmed for the first time the responsibility of corporations to respect these rights within their business activities.

After this initiative, several international laws and standards were drafted, which include the obligation of companies to conduct human rights Due Diligence processes, which assess the impacts of the actions of companies in their areas of operations, including conflict zones, whose approach should be specific.

The UNGP's brought in one of its three pillars the responsibility of companies to respect human rights, which avoid infringing them, both in their direct activities and in their commercial relations. Therefore, a company must fulfil its responsibility to respect policies and processes, including:

- A high-level policy commitment to respect human rights, supported by operational-level policies, training, and incentives that embed the commitment throughout the organization;¹⁴³
- Human rights Due Diligence processes through which the company:
 1. Assesses the actual and potential human rights impacts arising from its own activities and through its business relationships;¹⁴⁴
 2. Integrates the findings of these and takes steps to prevent or mitigate adverse impacts;¹⁴⁵
 3. Tracks the effectiveness of its efforts to address human rights impacts;¹⁴⁶ and
 4. Is prepared to communicate these efforts to affected stakeholders and others.¹⁴⁷

¹⁴³ National Action Plans on Business and Human Rights (2011b), 'Guiding Principle 16' (*Global NAPs*, June 2011) <<https://globalnaps.org/ungp/guiding-principle-16/>> accessed 1 July 2022.

¹⁴⁴ National Action Plans on Business and Human Rights (2011d), 'Guiding Principle 18' (*Global NAPs*, June 2011) <<https://globalnaps.org/ungp/guiding-principle-18/>> accessed 1 July 2022.

¹⁴⁵ National Action Plans on Business and Human Rights (2011e), 'Guiding Principle 19' (*Global NAPs*, June 2011) <<https://globalnaps.org/ungp/guiding-principle-19/>> accessed 2 July 2022.

¹⁴⁶ National Action Plans on Business and Human Rights (2011f), 'Guiding Principle 20' (*Global NAPs*, June 2011) <<https://globalnaps.org/ungp/guiding-principle-20/>> accessed 2 July 2022.

¹⁴⁷ National Action Plans on Business and Human Rights (2011g), 'Guiding Principle 21' (*Global NAPs*, June 2011) <<https://globalnaps.org/ungp/guiding-principle-21/>> accessed 2 July 2022.

- The provision of, or cooperation in, legitimate processes to remedy human rights harm that the business has caused or contributed to, which may include non-judicial operational level grievance mechanisms.¹⁴⁸

In conclusion, the UNGPS are a global authoritative standard on business and human rights and represent a benchmark that goes beyond Corporate Social Responsibility and voluntarism.

4.4 The meaning of corporate purpose

"The purpose of the corporation must be defined as creating shared value, not just profit per se. This will drive the next wave of innovation and productivity growth in the global economy. It will also reshape capitalism and its relationship to society, and legitimize business again as a powerful force for positive change."

— Porter (2011): Creating Shared Value ¹⁴⁹

Purpose is closely related to an individual's life values and his or her need to interact with others and the world around. They are life guides that inspire actions.¹⁵⁰

A company that finds its purpose, through its true values, establishes an engaging relationship with its employees, generating loyalty and admiration.¹⁵¹ This contributes to companies achieving sustainable growth, and this development is reflected in all its stakeholders, who also reap the rewards of this evolution. Purpose-driven companies become living organisms that network and become active agents of respect for the planet and its inhabitants.¹⁵² This enables the development

¹⁴⁸ OHCHR (2011a) (n 5).

¹⁴⁹ Michael Porter and Mark Kramer, 'Creating Shared Value' (2011) Harvard Business Review <<https://hbr.org/2011/01/the-big-idea-creating-shared-value>> accessed 7 June 2022.

¹⁵⁰ Psychology Research and Reference, 'Search for Meaning in Life' (*Psychology Research and Reference*, 2022) <<http://psychology.iresearchnet.com/social-psychology/prosocial-behavior/search-for-meaning-in-life/>> accessed 7 June 2022.

¹⁵¹ Andreas Eisingerich, Deborah MacInnis and Martin Fleischmann, 'Moving Beyond Trust: Making Customers Trust, Love, and Respect a Brand' (*MIT Sloan Management Review*, December 2021) <<https://sloanreview.mit.edu/article/moving-beyond-trust-making-customers-trust-love-and-respect-a-brand/>> accessed 2 July 2022.

¹⁵² Caterina Bulgarella, 'Purpose-Driven Companies Evolve Faster Than Others' (2021) Forbes <<https://www.forbes.com/sites/caterinabulgarella/2018/09/21/purpose-driven-companies-evolve-faster-than-others/?sh=6ccfdfe855bc>> accessed 2 July 2022.

of a responsible culture of doing business, that tends to build relationships supported by ethics and honesty, and this becomes a management tool that directs all the activities of a business.

"Purpose unifies management, employees, and communities. It drives ethical behavior and creates essential check on actions that go against the best interests of stakeholders." The purpose guides culture, provides a framework for consistent decision making, and ultimately helps sustain long-term financial returns for your company's shareholders."

— Fink (2019): Larry Fink's 2019 Letter to CEOs: Profit and Purpose¹⁵³

4.5 Redefining corporate purpose

Milton Friedman,¹⁵⁴ one of the most prominent advocates of free markets, elaborates that “there is one and only one social responsibility of business - to use its resources and engage in activities designed to increase its profits.”¹⁵⁵ A concept that has established itself as a guide for entrepreneurs and shareholders, which in addition to value, essential to any business, holds that the sole purpose of a company's existence is to maximize profitability.¹⁵⁶ According to him, a company can only provide a better quality of life for its employees and consequently for a community when it grows and has more profitability, and can also increase its commitment to social programs.¹⁵⁷

Differently from Friedman's thought, some contemporary scholars formulate that ethics should be above any interest and that the goal of the company should be to serve the interests of all those who are part of its points of contact, this includes its customers, suppliers, employees, and society in general.¹⁵⁸

¹⁵³ Larry Fink, ‘Profit and Purpose’ (*Black Rock*, 2019) <<https://www.blackrock.com/americas-offshore/en/2019-larry-fink-ceo-letter>> accessed 2 July 2022.

¹⁵⁴ Pierre Lemieux, ‘Milton Friedman’ (*Econlib*, 2019) <<https://www.econlib.org/milton-friedman-2/>> accessed 4 July 2022.

¹⁵⁵ Milton Friedman and Rose D. Friedman, *Capitalism and Freedom* (first published 1962, University of Chicago) 133.

¹⁵⁶ Milton Friedman, ‘Capitalism and Freedom’ in Ralph Raico (ed), *New Individualist Review* (Liberty Fund 1961) <<https://oll.libertyfund.org/page/friedman-on-capitalism-and-freedom>> accessed 4 July 2022.

¹⁵⁷ Taylor Tepper, ‘Milton Friedman on The Social Responsibility of Business, 50 Years Later’ (2020) *Forbes Advisor* <<https://www.forbes.com/advisor/investing/milton-friedman-social-responsibility-of-business/>> accessed 29 June 2022.

¹⁵⁸ Michael Smith, ‘Sustainable Businesses Needs Purpose Beyond Profit’ (*Initiatives of Change Switzerland*, 22 July 2021) <<https://www.iofc.ch/stories/sustainable-businesses-needs-purpose-beyond-profit>> accessed 29 June 2022.

A new way of thinking and acting

In 2019, a new CSR standard was set when the Business Roundtable issued a Statement on the Purpose of a Corporation,¹⁵⁹ which replaces shareholder primacy with a balanced approach where corporations perform their activities for the benefit of multiple stakeholders.

Based on ethics and common sense, the participants agreed on the new criteria for these responsibilities, which are:

- Deliver value to customers;
- Invest in employees;
- Deal fairly and ethically with suppliers;
- Supporting the local communities; and
- Creating long-term value for shareholders.

Naturally, there is a fear on the part of business owners and shareholders that this commitment to different stakeholders may cause the company to make less profit,¹⁶⁰ attesting that every time there is an attempt to increase employee salaries or interfere so that products cost less for consumers, the company loses out on earnings and remuneration. This thought is in line with Friedman's position, mentioned above.

According to what was established in the Roundtable and those who believe in this reasoning, however, as the remuneration of employees improves and products are more affordable to the final consumer, they become loyal to that company, which positively impacts the company's bottom line. A transparent, responsible, and ethical company not only contributes to a better quality of life for its employees, the communities where it operates, and the environment, but also grows in value, credibility, and profitability.¹⁶¹

¹⁵⁹ Business Roundtable (2019a), 'Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans'' (*Business Roundtable*, 19 August 2019) <<https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>> accessed 4 July 2022.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

To do this companies are encouraged to put into practice the attributes of four fundamental pillars,¹⁶² which in turn have a close connection with the corporate purpose attributes to be presented further on. They should pay attention to:

- 1) Treatment of their employees, including pay disparities, health and safety, diversity, and benefits;
- 2) Consequences to the planet: impact on the environment, such as greenhouse gas emissions and conservation of natural resources;
- 3) Prosperity: contributions to the community, including employment and paying taxes; and
- 4) Governance: companies' mission, operating strategies, and commitment to high standards of ethical behavior.

The distribution of wealth and inequality in terms of opportunities is a major cause of conflict.¹⁶³ Companies can play an important role as catalysts and important agents of transformation in this scenario, by dealing ethically with all issues involving their environment.¹⁶⁴ When talking about corporate purpose, one automatically recognizes that the actions and interactions of a company with society cannot be a one-way street. A company gets back everything it generates in the form of economic advancement and brand value. In this context the profit-driven corporate purpose is giving way to a more ethical way of operating, taking into account all levels of influence and responsibilities towards different publics, as well as external stakeholders, communities, and the environment.

¹⁶² Business Roundtable (2019), *Statement on the Purpose of a Corporation* (Business Roundtable 2019) <<https://s3.amazonaws.com/brt.org/May-2022BRTStatementonthePurposeofaCorporationwithSignatures.pdf>> accessed 4 July 2022.

¹⁶³ Rens Willems, 'When do inequalities cause conflict? - Focus on citizenship and property rights?' (*The Broker*, 21 November 2012) <<https://www.thebrokeronline.eu/when-do-inequalities-cause-conflict/>> accessed 5 July 2022.

¹⁶⁴ Commonwealth Forum of National Human Rights Institutions, 'Business and Human Rights' (*Commonwealth Forum of National Human Rights Institutions*, May 2022) <<https://cfnhri.org/human-rights-topics/business-and-human-rights/>> accessed 3 July 2022.

4.6. The corporate purpose guiding the responsibility to respect

As managers and market scientists embrace the importance and real need for corporations to be socially responsible and that the purpose of a corporation¹⁶⁵ is to "create value for all stakeholders," it is safe to say that brand purpose has become a major corporate narrative, based on the consensus that society and diverse investors are best served by companies that focus on sustainable value creation and respect human rights.

This drives these companies to increasingly implement responsible behaviors as they develop their activities. By realigning their corporate purposes with stakeholder management and environmental responsibility, this suggests that responsible business practices create economic and social value.

“The corporate responsibility to respect human rights means avoiding violation of the rights of others and addressing the adverse impacts that may occur. It applies to all companies in all situations. As a joint statement of leading business associations, including the International Chamber of Commerce, made very clear, it exists even if national laws are misapplied or not applied at all.”
—John Ruggie, Special Representative of the Secretary-General on business and human rights¹⁶⁶

In this context, a statement of purpose encourages the company to establish better corporate governance that is more transparent and socially responsible,¹⁶⁷ which is directly linked to the responsibility to respect human rights. This well-articulated and clearly expressed purpose harmonizes business goals with social duties.

This structure, which is developed from the inside out, has the great power to engage and inspire everyone who is part of a company's culture, directly and indirectly, and helps companies to develop a rational plan for sustainable and balanced growth.

¹⁶⁵ Camilleri (n 65).

¹⁶⁶ Ruggie (139).

¹⁶⁷ Noti and others (n 35).

The purpose guides companies toward the future that, as mentioned before, become living organisms that act in a network, assuming a responsibility for the common good and for all those who are part of this network.

These corporate values, can enable a responsible culture of doing business - with ideals for innovation, newly developed markets, and broader target groups. It is a corporate philosophy that assumes a responsibility for economic activity in the environment of all stakeholders, users and also non-users of the service provided by the company.

*“In order for a company to implement its commitment, respect for human rights must become part of the company's culture or "DNA" - it must be an integral part of how it operates. Embedding is about creating the right 'macro-level' environment for a policy to be effective in practice. It includes training, performance and accountability structures, tone at the top of top management and the board of directors, and a sense of shared responsibility for knowing the company's human rights commitments”.*¹⁶⁸

The corporate purpose establishes, within the scope of a framework of values, an important direction for the company's sustainable development based on a culture of integrity.¹⁶⁹ These organized values and systematically distributed, enable managers to clearly understand the:

- (1) **Philosophical Attributes** - those linked to the ethical and moral aspects of the brand, such as corporate and business conduct; honesty, transparency, choice of customers and business partners, as well as political profiles.
- (2) **Human Attributes** - attributed to how the company deals with people; and
- (3) **Physical Attributes** - related to the products and services offered and their consequent impact on the world. These attributes form the basis of corporate behavior and guide its attitudes in all its spheres. They are human and true values

¹⁶⁸ Doing Business With Respect for Human Rights, ‘Getting in into the Company’s DNA’ (*Doing Business With Respect for Human Rights*)
<<https://www.businessrespecthumanrights.org/en/page/343/embedding#:~:text=In%20order%20for%20a%20company,to%20be%20effective%20in%20practice>> accessed 2 July 2022.

¹⁶⁹ Henry Devries, ‘Is Integrity A Core Value Of Your Brand?’ (2021) Forbes
<<https://www.forbes.com/sites/henrydevries/2021/08/19/is-integrity-a-core-value-of-your-brand/?sh=73fa87046da5>> accessed 2 July 2020.

originating from those who create the company or those who transfer these aspects into management.

The corporate purpose is profound because it is in the human essence of a brand and represents its reason for existing and transforming what is around it. It is above profit and incremental growth.¹⁷⁰

With purpose connected to corporate attitudes, the responsibility to respect becomes part of the nature of business and a necessity to fulfil an existential mission, rather than conduct motivated by pressure from civil society. In this way, it becomes an essential and moral obligation at the same time.

4.7 Business Position on the war of Ukraine

The role of leadership is of crucial importance in giving effect to the UNPGs. This commitment needs to be rooted in a senior business leadership, so that the responsibility to respect rights is embedded in all of the company's activities and actions, at all of its different levels.¹⁷¹

More than ever, companies are speaking out, exposing their attitudes and intensifying their reactions to the war in Ukraine.¹⁷² The difference is that today companies make decisions based on their corporate purposes and strategic positioning. Besides the statements against the conflict and the Russian invasion, coming from companies like Accenture, Bayer, Microsoft, among others, these companies have been acting and making decisions that in most cases reflect in short-term losses.¹⁷³

Clearly, the war has deeply affected the corporations, their employees, and their partner companies that operate in this territory. Previously, companies had a neutral posture in relation to events of

¹⁷⁰ Hitesh Bhasin, 'What are Brand Attributes and its Importance in Branding' (*Marketing 91*, 17 December 2019) <<https://www.marketing91.com/brand-attributes/>> accessed 3 July 2022.

¹⁷¹ UN Global Compact (2018), *Human Rights: The Foundation of Sustainable Business* (UN Global Compact 2018) <https://globalcompact.at/wp-content/uploads/2020/12/publications_Human-Rights-The-Foundation-of-Sustainable-Business.pdf> accessed 5 July 2022.

¹⁷² Lila MacLellan, 'The response to Ukraine will change the way companies react to conflicts' (*Quartz at work*, 14 March 2022) <<https://qz.com/work/2140897/how-companies-are-talking-about-the-war-in-ukraine-with-employees/>> accessed 23 June 2022.

¹⁷³ Aida Khalilova, 'What are Digital Europe members doing to support Ukraine?' (*Digital Europe*, 2022) <<https://www.digitaleurope.org/warinukraine/what-are-digitaleurope-members-doing-to-support-ukraine/>> accessed 5 July 2022.

this nature, but today some have a conduct expected by all, including employees and managers and civil society.¹⁷⁴ This conduct is described in their corporate brand manuals, which already present a company's purpose and values.

Cases of corporate purpose guiding decisions

There are several geopolitical uncertainties and therefore it is necessary for companies to have this clear purpose to take the right direction. These decisions must be anchored in what the brand has as ethical principles and core values.¹⁷⁵

In this scenario, the vast majority of companies follow popular yearning and speak out to remain neutral, which can be risky because in many cases, these responses are incompatible with the brand's beliefs and values.

Some companies anchor themselves in their purpose and not only speak out verbally, but take actions consistent with their values, as per the following examples:

Starbucks

The company Starbucks¹⁷⁶ made clear its position regarding the Russian invasion and temporarily shut down operations in the country and guaranteed financial support to employees and their families in this territory, all within the scope of its corporate mission: "Inspire and nurture the human spirit - one person, one cup, one neighbourhood at a time".

The suspension of business activities in the mentioned territory occurred in 130 stores. The company pledged royalties from Russian stores to humanitarian efforts in Ukraine and donated \$500,000 to the Red Cross, within these actions structured by the brand's positioning and conflict-sensitive approach to Human Rights Due Diligence.

¹⁷⁴ Andrew Cheatham, 'A Look at Neutrality Now - and After the Ukraine War' (*United States Institute of Peace*, 28 April 2022) <<https://www.usip.org/publications/2022/04/look-neutrality-now-and-after-ukraine-war>> accessed 7 July 2022.

¹⁷⁵ Alan Ohnsmann, 'A Moment Of Truth For Corporate "Purpose": Ukraine Is Re-Shaping What It Means To Take A Stand' (2022) *Forbes* <<https://www.forbes.com/sites/davidarmano/2022/05/09/a-moment-of-truth-for-corporate-purpose-ukraine-is-re-shaping-what-it-means-to-take-a-stand/?sh=5833c48c5e8d>> accessed 3 July 2022.

¹⁷⁶ Markus Roman, 'Starbucks turns its back on Russia' (*Food Service*, 25 May 2022) <<https://www.food-service.de/international/int-news/ukraine-war-starbucks-turns-its-back-on-russia-51901>> accessed 6 July 2022.

KPMG

Global consulting firm KPMG,¹⁷⁷ which preferred to cut its operation in Russian territory, following its principles that say, "*we are a purpose-driven, value-driven organization that believes in doing the right thing.*"¹⁷⁸ In this regard, they have decided to remove their operations in Russia and Belarus and provide transitional support for the approximately 4500 employees.

Bayer

Fulfilling what is expressed in its corporate purpose, which is to promote "Health for all - Hunger for none", the company came to the conclusion, that it should maintain the operation, regardless of the geopolitical situation, committing to take appropriate measures to protect 700 employees and created a fund of 3 million euros to assist 27,000 Ukrainian patients with food and medicine.¹⁷⁹

These are some examples that can demonstrate the importance of brand purpose in helping make corporate decisions that respect human rights and align with the company's brand values.¹⁸⁰

4.8 Uber conflict sensitive approach Case

Research centers and also civil society have been following the private sector's movement since the beginning of the conflict in Ukraine.¹⁸¹ As mentioned, the UNGPs state that in situations of armed conflict,¹⁸² companies should conduct a Due Diligence with a human rights-sensitive and situation-specific approach. The risks of serious human rights abuses in such scenarios become even more prominent, including violations of IHL.

¹⁷⁷ KPMG, 'Navigating uncertainty during the Ukraine crisis' (*KPMG*, 2020) <<https://home.kpmg/uk/en/home/insights/2022/03/ukraine-crisis-resources.html>> accessed 28 June 2022.

¹⁷⁸ Jeanette Reilly, 'Proud of KPMG Deutschland.' (*LinkedIn*) <https://www.linkedin.com/posts/jeanette-reilly-4047212_we-believe-we-have-a-responsibility-along-activity-6906533996692680704-_0t-?trk=posts_directory> accessed 7 July 2022.

¹⁷⁹ Bayer AG, 'Bayer Statement on Ukraine', (*Bayer AG*, 2022) <<https://www.bayer.com/en/ukraine>> accessed 1 July 2022.

¹⁸⁰ UN Global Compact 2018 (n 171).

¹⁸¹ Yale School of Management, 'Over 1,000 Companies Have Curtailed Operations in Russia – But Some Remain' (*Yale School of Management*, 13 July 2022), <<https://som.yale.edu/story/2022/over-1000-companies-have-curtailed-operations-russia-some-remain>> accessed 06 July 2022.

¹⁸² OHCHR (2011a) (n 5).

Some companies operating in the region of armed conflict or in Russia responded to a questionnaire prepared by the Business and Human Rights Resource Center,¹⁸³ about the sensitive approach of human rights Due Diligence and what measures these companies were taking to avoid possible violations.

The company Uber, for example, was one such company taking part in this survey.¹⁸⁴ The tech group began operating in Ukraine in 2016 through a platform that provides independent transportation services that are more affordable than a conventional taxi. Before the invasion of Ukraine, Uber organized a committee with key people from the company's governing board to assess the risks and mitigating measures in case of a possible escalation of the conflict.

Early in these meetings, consultations were held with employees, partners, local government officials, to understand the situation and prepare to take appropriate measures. The company also sought to hear from people in the local communities to measure potential impacts from a possible interruption of the platform's operation in that region. Humanitarian organizations were also involved in the process, to identify how the company could help to mitigate such impacts and increase monitoring of probable cybercrimes that are more likely to happen due to security vulnerability.¹⁸⁵

In the letter in which Uber communicates the suspension of services in Ukraine, the company explains the reasons and connected to the purpose of reimagining the way the world moves for the better, presents some actions with the intention of mitigating the impacts of the conflict.

The company suspended service in Ukraine in response to the opening war wave of ground attacks, airstrikes and missile bombings that threatened cities across the country. After consultation with local authorities and social sector partners, and with additional security-enhancing measures, they

¹⁸³ Business & Human Rights Centre (2022), *Survey Questions* (Business & Human Rights Resource Centre 2022) <https://media.businesshumanrights.org/media/documents/Company_survey_Business_and_Human_Rights_Resource_Centre_March_2022.pdf> accessed 6 July 2022.

¹⁸⁴ Business & Human Rights Centre (2022b) (n 17).

¹⁸⁵ Uber Newsroom, 'Supporting Ukraine' (*Uber*, 2 March 2022) <<https://www.uber.com/newsroom/supporting-ukraine/>> accessed 6 July 2022.

restarted services in five cities where the security situation has stabilized. In each of these cities they provided free rides to the local government and humanitarian organizations to help transport both aid workers and relief supplies. For other trips, they are not charging any fees to ensure that any payment for trips in Ukraine goes in full to local drivers.¹⁸⁶

These measures, according to the brand's CEO Dara Khosrowshahi, will help to alleviate the situation outside Ukraine as well. The company has made a commitment to donate a considerable amount of money to international relief efforts. As stated on their website, it was launched a donation campaign in the United States and Europe that also managed to raise a representative amount. All the actions were supported by the brand's pillars. Some organizations have benefited from the initiative, such as the International Rescue Committee, the International Committee of the Red Cross, and the United Nations World Food Program. The company has also been offering Uber unlimited free rides at the Polish border to help transport arriving Ukrainian refugees, as well as unlimited free rides around Polish cities for users to drop off donated essential materials for refugees at NGO collection sites.¹⁸⁷

Companies operating in Russia

“While Uber does not operate in Russia, Uber does hold a minority stake in a joint venture that operates a ride-hailing platform in the country. On February 28, 2022, Uber announced that in light of the war in Ukraine, the company is pursuing an accelerated divestiture of this minority stake and will remove its executives from the joint venture's board of directors. Regarding sanctions, Uber has a dedicated team of compliance experts that provides ongoing monitoring to ensure compliance with evolving sanctions regimes in the United States, United Kingdom, EU and elsewhere targeting Russian entities and individuals.”

Dara Khosrowshahi – CEO Uber

¹⁸⁶ Centre de Ressources sur les Entreprises et les Droits de l'Homme, ‘Uber response’ (*Business & Human Rights Resource Centre*, 21 March 2022) <<https://www.business-humanrights.org/fr/derni%C3%A8res-actualit%C3%A9s/uber-response/>> accessed 3 July 2022.

¹⁸⁷ UN News (2022b), ‘Ukraine: WFP teams up with Uber, in boost for pinpoint aid deliveries’ (*UN News*, 8 June 2022), <<https://news.un.org/en/story/2022/06/1119952>> accessed 3 July 2022.

4.9 Conclusion

This chapter has sought to demonstrate the importance of ethical values and corporate purpose in the alignment of business strategies, particularly with regard to the activities of these companies in armed conflict zones and the decisions businesses should take when choosing partners, staying and withdrawing from these territories of operation, as well as applying the sensitive approach of human rights Due Diligence.

Globalization brought profound transformations in the way economic¹⁸⁸, political, social and cultural relations were established. Several benefits could be felt in these aspects and also in the improvement of the living conditions of several communities spread around the world. On the other hand, its negative or problematic effects have become more and more apparent, generating a major international crisis, which has culminated in the present armed conflict in Ukraine.

There is a broad consensus in the international community that business enterprises have a basic responsibility to respect human rights.¹⁸⁹ This means that businesses should avoid infringing on the rights of others and should address the adverse human rights impacts in which they are involved. From this understanding came the UNGPs.

One of the pillars of these principles is the responsibility to respect, which presents human rights Due Diligence as one of the measures that a business should take to become aware of, prevent, and address adverse impacts on these rights. In the UNGPs' understanding, a company can have an adverse impact on human rights through its own operations, by causing or contributing to adverse impacts, or by being directly linked to adverse impacts through its business relationships, even if it has not directly contributed to those impacts. The responsibility to respect extends throughout companies' operations and value chains and refers to all internationally recognized human rights.

¹⁸⁸ National Geographic, 'Effects of Economic Globalization' (*National Geographic*, 2022)
<<https://education.nationalgeographic.org/resource/effects-economic-globalization>> accessed 28 May 2022.

¹⁸⁹ OHCHR (2011a) (n 5).

Corporate purpose¹⁹⁰ is not just a market promise, it is an ethical commitment that the company is willing to make to its stakeholders and to society. It is a framework of values that guide commercial institutions to an honest path, paved by those attributes inherent to the human essence of a brand.

It is worth remembering that a brand is not a logo¹⁹¹, an identity, or a language system. It is a living and active organism whose fundamental mission is to bring transformation and contribute positively to the good of the world through its products and services. A company that expresses its purpose through its actions represents an important agent of respect and improvement in the lives of all those who are part of its community and relate directly and indirectly with its culture and presence.

¹⁹⁰ GlobeOne, 'Purpose' (*GlobeOne*, 25 March 2022) <<https://globe-one.com/blog/what-is-corporate-purpose/#:~:text=%E2%80%9CCorporate%20purpose%20is%20the%20higher,to%20the%20company's%20value%20creation>> accessed 03 July 2022.

¹⁹¹ Hardy Brands, 'Your Logo is not a Brand' (*Hardy Brands*, 6 March 2018), <<https://www.hardybrands.com/brand-blog/your-logo-is-not-a-brand#:~:text=brand%20isn't,A%20brand%20is%20not%20a%20logo.,product%20or%20service%20you%20provide>> accessed 02 July 2022.

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.1 General Conclusions and observations

In order to argue about the importance of corporate purpose and its relationship with human rights, this paper made an analysis from a legal, ethical and brand value point of view and how the harmonization of these elements becomes a possibility to assist in the implementation of human rights Due Diligence, more specifically in the elaboration of the sensitive approach in an armed conflict and that can define the permanence or withdrawal of a business operation from a territory in a responsible way.

Human rights are important to business, because all those who are part of a business corporation's touch points, directly or indirectly, expect business to respect human rights. Increasingly, companies are being held accountable for human rights impacts in their internal and external operations, supply chains, and business relationships. There are financial and reputational risks involved when companies do not respect human rights. On the other hand, companies that practice good corporate citizenship and develop internal policies that reference their core and intangible values, sustain their freedom to conduct business, and pave the way to build a brand that carries the power to positively transform societies and the world.

They can play a vital role in protecting human rights, which are essential to corporate sustainability. These policies and processes can be adopted by companies worldwide through a systematic approach that integrates responsibilities into their daily operations. In practice, companies are expected to know and show how to minimize harm to people. The UNHRC 's endorsement of the UNGPs was a milestone. These principles have now become the expected standard of business conduct for companies. They define expectations for business conduct on human rights and state that all companies - regardless of size and sector - have a responsibility to respect human rights.

Other initiatives and industry standards, including the ISO 26000 Guiding Standard on Social Responsibility, the OECD Guidelines for Multinational Enterprises, the IFC performance standards, the UN Global Goals, and the UN Global Compact human rights principles have aligned their content with the UNGPs. The UN Guiding Principles are driving change across industries and sectors.

Today, the armed conflict in Ukraine, initiated by Russia and condemned by the UN General Assembly,¹⁹² has brought incalculable damage. Companies operating in this context face major human rights challenges.

With the recognized "Act of Aggression",¹⁹³ companies and investors operating or investing in the region must avoid contributing to violations of international humanitarian law. In this case, the extra measures expressed by the UNGPs are made necessary by the more explicit risks of serious human rights violations. A conflict-sensitive approach is crucial, given the vulnerability of the situation and the importance of understanding the dynamics of the conflict.

In this context, companies need to act quickly so as not to contribute to the escalation of the conflict and so that employees and communities are not affected by the impacts. Companies like Uber, Bayer, and KPMG made decisions based on their purpose and values, which helped them make responsible choices about whether to suspend, withdraw, or stay in this territory.

“Establishing a good purpose for the organization, with business sense and consistent with the common good of the society, is primordial for a conscious management,”
—Domènec Melé, Holder of the Chair of Business Ethics, IESE Business School, Spain¹⁹⁴

¹⁹² UN News (2022a), ‘General Assembly resolution demands end to Russian offensive in Ukraine’ (*UN News*, March 2022) <<https://news.un.org/en/story/2022/03/1113152>> accessed 26 May 2022.

¹⁹³ Amnesty International, ‘Russia/Ukraine: Invasion of Ukraine is an act of aggression and human rights catastrophe’ (*Amnesty International*, 1 March 2022), <<https://www.amnesty.org/en/latest/news/2022/03/russia-ukraine-invasion-of-ukraine-is-an-act-of-aggression-and-human-rights-catastrophe/>> accessed 26 May 2022.

¹⁹⁴ Rey, Bastons and Sotok (n 1).

5.2 Recommendations

Recommendation 1

Human rights Due Diligence applies to a company's core activities and should be directly linked to the company's culture, values and purpose. In many situations, companies seek to conduct their business activities and decisions guided by ethics, but are not aware of the existence, nor the importance of implementing Due Diligence. It is therefore necessary to bring this mechanism to the attention of these companies and also to civil society, which has the power to influence compliance. Forums to hold workshops on risk management and adverse impacts on rights are important, but the initiative to bring to the level of awareness of companies the need to unite brand purpose and human rights Due Diligence is fundamental.

Recommendation 2

Today several companies are reviewing their operations in Russia, Ukraine and Belarus, several others have already suspended or shut down operations in these territories, so another recommendation is that companies around the world ensure that Due Diligence with the human rights sensitive approach is carried out, primarily to prevent them from violating the various human rights most susceptible in situations such as this. It is important that companies look beyond sanctions, they need to understand through their purpose that they have an essential responsibility to respect human rights, which stem from themselves. International norms and standards exist to ensure that the dignity of people who are part of a company's value chain is not infringed upon.

Recommendation 3

In order to ensure the effective implementation of human rights Due Diligence, it is essential that all employees of the company are involved in the process or at least are aware of the need for this implementation, not just employees in management positions. This communication can be done

through the institutionalization of communication channels and data storage systems that can be made available at all points of operation of the corporation.

Finally, Corporate leadership must shift from an organization-centric view to a co-created participatory view, where multiple stakeholders help build and enhance the value of the company, but most importantly benefit from it. It is essential for a company to meet the needs and desires of its stakeholders by adopting a conscious approach based on responsibility and commitment to ethical and honest practices.

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Annex: Interview

The brief interview was given by the managing director of a company operating in the energy sector in Europe, who only agreed to do so if his and his company's names were kept confidential.

1) In what segment does your company operate?

We operate in the energy market. We provide energy technology.

2) What is the company's decision regarding staying or closing operations in Russian territory?

It is a very difficult decision. First of all, we decided that we will follow, of course, all the laws, all the rules and all the sanctions. That is the most important thing for us. Secondly, we think about maintaining our presence there and not withdrawing. Interestingly, if you look at companies, this is what most companies are doing.

3) What did the company take into consideration to make this decision?

We took many things into consideration. First of all we thought about our employees. We are responsible for our employees. They are part of our company and we can't just leave employees alone. Secondly, we took into consideration that we have a responsibility to our customers who operate our technology in very dangerous environments that require service and maintenance, otherwise sooner or later people will die. Thirdly, we take into consideration the impact on society as such. As an energy company, we have a big contribution to make to people's power and warmth, and that is a responsibility for basic supplies that we don't take lightly. So those were the three things we thought about. Our employees, our customers, and society.

We also asked ourselves whether or not this is the right thing to do and whether or not our decision would have any impact on policy that we don't agree with, that we don't support, which we don't think is right, and even then, we thought about whether it's right to punish people for the actions of their politicians and we don't think it's fair to do so.

4) Does your company have a clear business goal?

Yes

5) How did the corporate purpose help the company to make this decision?

Well, the purpose is the guiding star and if you look at the purpose, it gave clear guidance on what to do. Yes, it is a very difficult situation. We are not happy about it, but at the end of the day we do what we can do, but we also do what we need to do and of course we obey all the laws and all the rules.