

15 May 2026

Committee on Economic, Social and Cultural Rights
via email: ohchr-cescr-armedconflicts@un.org

RE: Draft General Comment & State Obligations in the context of business activities in armed conflict

To the Honourable Committee members:

Dr. Anil Yilmaz Vastardis is an Associate Professor of Law and Director of the Essex Business and Human Rights Project at the University of Essex (U.K.). Dr. Tara Van Ho is an Associate Professor of Law at St. Mary's University (Texas, U.S.A.), and Honorary Senior Lecturer at the University of Essex (U.K.).¹ We have been working on issues related to business and human rights in situations of armed conflict for over 15 years each, and hope our contribution assists the Committee in addressing the intersection of the Covenant, armed conflict, and business activities.

In our submission we address five broad issues related to States obligations when the Covenant intersects with both Business and Human Rights and the Laws of Armed Conflict:

- (1) The interaction and complementarity between the Covenant, international humanitarian law (“IHL”), and business & human rights;
- (2) The need for guidance on heightened human rights due diligence;
- (3) Taxation as a financial contribution to States in armed conflict, which also implicates when businesses should stay or leave a conflict-affected area;
- (4) Regulating arms companies to secure Covenant rights;
- (5) The responsibility of businesses to provide remedies.

Our submission builds upon, but does not repeat the findings of:

- this Committee’s General Comment No. 24;
- findings of the International Court of Justice on the interaction of IHL and human rights;²
- the U.N. Guiding Principles on Business and Human Rights (“UNGPs”);³
- the reports of the U.N. Working Group on Business and Human Rights related to conflict-affected areas;⁴
- the report of the U.N. Special Rapporteur on Palestine dated 2 July 2025;⁵ and

¹ Affiliations for identification purposes only. Views are the authors’ and should not be attributed to affiliated institutions.

² <https://www.icj-cij.org/sites/default/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>, ¶ 25; <https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf> ¶¶ 106-113; <https://www.icj-cij.org/sites/default/files/case-related/116/116-20051219-JUD-01-00-EN.pdf> ¶¶ 205-221, 237-250; <https://www.icj-web.leman.un-icc.cloud/sites/default/files/case-related/186/186-20240719-jud-01-00-en.pdf> ¶¶ 97-102.

³ A/HRC/17/31, in particular Principles 7 and 23 and their Commentary.

⁴ *E.g.*, A/HRC/75/212; A/HRC/50/40/Add.4; <https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide>; <https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>

⁵ A/HRC/59/23.

- the Maastricht Principles (2011)⁶.

1. The interaction of the Covenant, UNGP, and International Humanitarian Law

Most, if not all, armed conflicts harm the realization of Covenant rights, either by attacks, the denial of food, water, or healthcare as a method of war, or through the redirection of financial resources that would otherwise be used to realize Covenant rights.⁷ Some of these harms are lawful as a matter of IHL: parties to a conflict are allowed to target buildings in which members of the enemy military are present, including homes, schools, businesses, and, exceptionally, hospitals; they can make mistakes in their targeting without breaching IHL; and they can also determine that the military advantage gained by an attack is worth the damage done to a civilian structure or life.⁸ If a party to the conflict makes a good faith mistake, they may have lawfully attacked and destroyed a civilian structure without it being an internationally wrongful act. In these circumstances, the State has not breached IHL as *lex specialis* and therefore cannot be said to have breached the Covenant.⁹ We believe that a business can continue to operate in a context where the parties make a good faith effort to abide by IHL (including by investigating, prosecuting, and punishing breaches of IHL) so long as the business maintains heightened human rights due diligence (“hHRDD”) to identify, mitigate, and remediate the business’s impacts on individual rights as well as on the conflict dynamics. We elaborate on hHRDD in the next section.

In recent years, however, we have witnessed States engage in systemic violations of IHL that treat abuses of Covenant rights as a means and method of warfare: starving civilians, including by firing upon them as they attempt to access life-saving food and humanitarian supplies; the intentional destruction of civilian homes; targeted attacks and destruction of ambulances and hospitals; targeted killings of doctors and humanitarian aid workers; and the use of unlawful settlements to wrongfully deny occupied populations access to their land, water, and natural resources. Each of these actions constitutes a war crime.¹⁰ In those cases, businesses can play a significant role in facilitating the breaches of IHL and the Covenant. A business may have supplied materials or technology to a party to the conflict, which were then used to mount unlawful attacks or to construct or maintain unlawful settlements. Businesses may be responsible for *causing or contributing* to human rights harms arising from those IHL violations.¹¹ Understanding whether a business has *caused or contributed to* these harms, as those terms are used in the UNGPs, requires a complex inquiry into the power, independence, and mitigation measures of the business as well as the severity and predictability of the violations.¹² Businesses that supplied weapons or arms to a State (or non-state actor) that attempts in good faith to abide by IHL are less likely to have *caused or contributed to* individual IHL violations than those that supply equipment to a party known to engage in routine violations.¹³

⁶ <https://www.cesr.org/extra-territorial-obligations-human-rights-beyond-borders/>

⁷ We find it unnecessary to identify the theoretical situations in which this could not be true as we have not seen these situations arise in reality.

⁸ See, <https://ihl-databases.icrc.org/en/customary-ihl/v1> at rules 1-37.

⁹ *Supra* note 2.

¹⁰ See, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule156;>

https://casebook.icrc.org/a_to_z/glossary/settlements

¹¹ See, generally, [https://commons.stmarytx.edu/facarticles/812/;](https://commons.stmarytx.edu/facarticles/812/)
https://www.cardozociclr.com/files/ugd/bc0e09_96103a708f16452c815167899b1cc822.pdf.

¹² *Ibid.*

¹³ [https://www.cardozociclr.com/files/ugd/bc0e09_96103a708f16452c815167899b1cc822.pdf;](https://www.cardozociclr.com/files/ugd/bc0e09_96103a708f16452c815167899b1cc822.pdf)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6660998.

In addition to participating in harms through specific business relationships, businesses may be responsible for causing or contributing to harms where they make significant contributions to the economy of an aggressor state, a so called “war economy”, with the knowledge that the party is engaged in widespread and systematic violations of human rights.¹⁴ We address this below.

2. The need for mandatory heightened human rights due diligence

UNGPs require businesses to respect human rights in all contexts by identifying and preventing actual or potential human rights risks posed by their products, activities and business relationships.¹⁵ A key mechanism for realizing this responsibility to conduct human rights due diligence, a process undertaken to identify, account for, prevent and mitigate impacts a business *causes, or contributes to, or is directly linked to* through its business relationships. A business that *causes or contributes to* an adverse impact on human rights owes remedies; a business that is *directly linked to* a harm must exercise its leverage to affect change in the conduct of its business partners.¹⁶ Given the inherent and heightened risks of violations in armed conflicts and other complex environments, businesses should adapt their due diligence process to hHRDD. In hHRDD, businesses examine their relationship to individual human rights violations *and* to the larger dynamics of a conflict, including through their relationship with different actors in a conflict. As part of the hHRDD process, businesses should consider whether their impact on the conflict is severe enough to necessitate terminating business relationships or leaving a territory altogether.¹⁷ For businesses involved in the provision of essential goods or services or sources of employment in a conflict affected area, hHRDD will enable them to determine the impact of their continued operation on the realization of rights connected to their operations.¹⁸ It is through the hHRDD process that the business should identify the measures it must implement to mitigate the potential harmful impacts of its decision to remain or exit.

The UNGPs capture situations broader than grounds for legal liability under many domestic laws. To adequately protect Covenant rights, States should make it mandatory for their business nationals to undertake hHRDD in conflict-affected areas. Germany’s experience provides a real-world experiment on the need for mandatory HRDD. In its 2016 National Action Plan on Business and Human Rights (“NAP”), the German government indicated that it would only regulate if an insufficient number of businesses voluntarily implemented an adequate human rights due diligence process within the next 4 years.¹⁹ A 2020 survey by the Germany government found only 13% to 17% of relevant German businesses did so.²⁰ A subsequent response by the German corporation thyssenkrupp to the U.N. Working Group on Business

¹⁴ <https://repository.essex.ac.uk/41769/> at pp. 17-30.

¹⁵ UNGP Principle 11.

¹⁶ See, UNGP, Pillar 2.

¹⁷ See, A/75/212 at para 43; <https://www.ohchr.org/sites/default/files/documents/issues/business/bhr-in-challenging-contexts.pdf>; <https://repository.essex.ac.uk/41769/>; https://www.cardozociclr.com/files/ugd/bc0e09_96103a708f16452c815167899b1cc822.pdf; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6660998.

¹⁸ <https://repository.essex.ac.uk/41769/>.

¹⁹ The government set a goal of 50% of businesses with more than 500 employees. <https://www.auswaertiges-amt.de/resource/blob/610714/fb740510e8c2fa83dc507afad0b2d7ad/nap-wirtschaft-menschenrechte-engl-data.pdf> at p. 10.

²⁰ <https://www.dw.com/en/many-german-firms-ignore-partners-human-rights-abuses/a-54542681>. Germany subsequently adopted a law but has refused to implement it and will instead rely on the European Union’s corporate sustainability due diligence directive. <https://www.esgtoday.com/new-german-coalition-government-eliminates-sustainability-due-diligence-law/>

& Human Rights affirms that businesses are often unwilling to implement hHRDD absent government regulation.²¹ We have had similar responses from several other businesses in our own work. Given that, under current global economic conditions, many businesses have not and will not pursue hHRDD on their own account, States fail in their obligation to protect Covenant rights when they do not adopt laws requiring businesses to undertake hHRDD in conflict-affected areas.

Unfortunately, very few States have such laws. Neither France's Duty of Vigilance law²² nor Norway's Transparency Act²³ reference the specific concerns of conflict-affected areas or the need for hHRDD. Only the European Union's corporate sustainability due diligence directive ("CSDDD") indicates that businesses should adopt their due diligence processes to address "particular geographic and context risk factors," and ensure they comply with IHL.²⁴ Under that law, businesses will be allowed to rely on guidance from the European Commission that accounts for the UNDP's hHRDD guidance.²⁵

We ask the Committee to explicitly note that the obligation to protect necessitates States enforcing hHRDD standards through their domestic legal system. Additionally, States should be encouraged to adopt specific guidance for businesses on the remainder of the issues in this submission.

3. Taxation's Double-Edged Sword and When Businesses Should Stay or Leave

Taxes often generate the bulk of a State's "maximum available resources" ("MAR"). As such, businesses that stay in a situation of armed conflict can help a State meet its Covenant obligations. Yet, businesses paying taxes can also contribute to economies of war and occupation. In doing so, we submit, they may *cause or contribute to* adverse human rights impacts (as those terms are used in the UNGP).²⁶

It is clear, for example, that a business that financially contributes to a non-state armed group engaged in widespread and systematic violations can be complicit in the armed group's war crimes. It is less clear when a business's tax payments to a State may *cause or contribute to* the State's violations of IHL. OHCHR has noted, in a footnote on business operations in "challenging contexts" that the payment of taxes is not a contribution to a State's adverse human rights impacts, "apart from exceptional circumstances where a business is a very significant tax contributor to a government that is involved in gross violations of human rights."²⁷ In support of this point, the OHCHR cites a 2008 Report by the Special Representative of the Secretary General on business and human rights, where he stated: "Mere presence in a country, paying taxes, or silence in the face of abuses is unlikely to amount to the practical assistance required for legal liability."²⁸ This conclusion did not, however, address the broader expectations of the UNGP (which were still in development at this time). Neither the OHCHR guidance nor Ruggie's report rule out that in some circumstances a business may fail to respect human rights and *contribute to* a State's adverse human

²¹ See, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=29085>; <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=38545>

²² <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/>

²³ <https://www.regjeringen.no/contentassets/c33c3faf340441faa7388331a735f9d9/transparency-act-english-translation.pdf>

²⁴ <https://eur-lex.europa.eu/eli/dir/2024/1760/oj>, Preamble ¶ 42, Article 19(2)(d). We have reservations about the CSDDD unrelated to this submission.

²⁵ Ibid.

²⁶ See, <https://commons.stmarytx.edu/facarticles/812/>

²⁷ <https://www.ohchr.org/sites/default/files/documents/issues/business/bhr-in-challenging-contexts.pdf>, FN 12

²⁸ A/HRC/8/5, para. 77.

rights impacts, including violations of the Covenant, by paying taxes. Assessing whether a business is appropriately contributing to MAR, or inappropriately contributing to human rights violations, is complex.

We analyze this issue in our report, *Which Business Owe Reparations for Staying in Russia*, and we summarize our findings here.²⁹ Each business should undertake hHRDD to determine whether they should stay or leave, taking into account how either decision might impact human rights and conflict dynamics. Where a business is a significant tax contributor in a state which sustains an illegal war or occupation leading to gross human rights violations, hHRDD must address whether the business is knowingly enabling the maintenance of the illegal situation. To decide whether to exit, the business does not need to be the sole enabler, but its tax payments should be making a notable contribution to the war economy. We have found that where a business has the power and independence to leave a situation in which prolonged and serious violations of human rights and IHL are the consequence of systemic government policy decisions, and for which the business is unable or unlikely to be able to influence an alternative choice, remaining and continuing to pay taxes might be enabling gross human rights violations more than it is contributing to MAR. This necessarily requires distinguishing the responsibilities of transnational and domestic businesses; determining which goods and services are essential enough to justify staying even where a business would otherwise need to leave a situation; and what constitutes a responsible exit.³⁰

Our report contains a more thorough discussion of how to evaluate whether to stay or not, and what is expected of businesses responsibly exiting a conflict-affected area, but it is worth noting that we also differentiate businesses on the basis of whether they provide goods and services necessary for the realization of human rights, with specific reference to economic, social and cultural rights. Businesses that provide, for example, food in line with the human right to food, or medicines that fulfil the human right to health can remain in a situation they would otherwise need to leave under certain conditions. To do so, they need to undertake hHRDD and identify and implement other steps necessary to mitigate the risks that their operations could be co-opted for military purposes. They should pay particular attention to the gendered impacts of their presence, and ensure their operations are not diverted to military service at the expense of civilian welfare. We believe this strikes the appropriate balance to address the rights of a citizen of a State engaged in systematized violations of IHL and the rights of victims of the conflict. We also believe this balance aligns with other findings in international law and transitional justice.³¹ We hope that the Committee will elaborate on its approach to this tension.

4. Regulating Arms companies

The 2013 Arms Trade Treaty obligates States Parties to develop an export licensing regime for conventional arms, munitions, components and parts (collectively referred to as “arms”). As part of this process, States are obliged to assess, *inter alia*, the likelihood that the arms will be used in serious violations of human rights. States should be reminded that the Arms Trade Treaty’s obligations are also a reflection of the State’s due diligence obligations under the Covenant, the two being mutually reinforcing, and should be pursued in a transparent and non-discriminatory manner.³² Additionally, a State’s assessment should be complemented by arms companies’ own hHRDD. Unfortunately, even arms companies with experience in hHRDD often fail to undertake hHRDD on their clients before entering into contracts with States in which there are significant concerns about compliance with IHL. States should be

²⁹ <https://repository.essex.ac.uk/41769/>

³⁰ Ibid.

³¹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6760078

³² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6660998

reminded that they need to adopt adequate legislation to ensure businesses in the arms sector, in particular, undertake their own, independent hHRDD analysis. States and businesses should be encouraged to share their findings with one another to enhance each actor's analysis of the situation.

5. Remedies and Reparations During the Post-War Period

Remedying and repairing violations of the Covenant in post-conflict societies can be complicated. States employing transitional justice often use domestic reparations programmes to provide standardized reparations for particular types of harms. These programmes have often addressed property losses that implicate both civil and political rights and economic, social and cultural rights.³³ States Parties should be reminded of their obligation to remedy violations of the Covenant, and to ensure that their businesses remediate their contribution to adverse human rights impacts, including through domestic reparations where appropriate.

Businesses that cause and contribute to adverse impacts on human rights are expected to remedy and repair victims under the UNGP. Structuring remedies and repairs in conflict-affected territories is a complex task, and host States, home States and businesses need to consider whether an individual business should create its own mechanism for remediation or whether it should participate in a larger domestic reparations programmes established by the relevant States. A good example of the distinction comes from the financial arrangement between cement manufacturer Lafarge and ISIS, which was the basis of criminal convictions in French courts.³⁴ Individual employees who were required to enter ISIS-controlled territory were harmed by the company's activities and should receive targeted reparations. Yet, a much larger number of Syrians, and particularly Yazidi, suffered from the financial contribution Lafarge made to ISIS. It would be inappropriate to require Lafarge to singularly repair *all* victims of ISIS, but it should be required to make a contribution to a larger fund aimed at this reparatory work.

Unfortunately, the experience of South Africa—which asked businesses to voluntarily contribute to a reparation fund following the end of apartheid—indicates that businesses are unlikely to voluntarily contribute to reparations funds. Home States' international assistance and cooperation obligations should include offering the necessary legal support (regulatory, administrative and prosecutorial) to secure financial contributions and reparations from businesses implicated in past conflict-related violations of the Covenant. Home States should be encouraged to adopt legislation that would support efforts to secure appropriate reparations from business actors.

Finally, we ask the Committee to remind States (and businesses) that contributing to humanitarian or development assistance is not the same thing as remedying a violation of the Covenant. Too often, we have seen businesses justify their decision to stay in a situation they shouldn't by pointing to contributions they are making to humanitarian or development assistance. While these contributions are an appropriate expression of *corporate social responsibility*,³⁵ they are not an adequate or effective application of the business responsibility to respect human rights or of the State's obligation to protect human rights.³⁶

³³ See, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2893733

³⁴ <https://www.ecchr.eu/en/press-release/lafarge-convicted-of-financing-terrorism-in-syria-a-historic-ruling-in-the-fight-for-corporate-accountability/>

³⁵ See, <https://digitalcommons.law.uw.edu/faculty-articles/734/>

³⁶ A/HRC/50/40/Add.4; <https://www.business-humanrights.org/en/latest-news/report-which-businesses-owe-reparations-for-staying-in-russia-a-policy-report-on-business-and-human-rights-responsibilities-to-ukraine/> pp. 37-38.

We are happy to answer any questions the Committee has for us on these issues.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Anil Yilmaz Vastardis', with a large circular flourish at the beginning.

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A handwritten signature in blue ink, appearing to read 'Tara Van Ho', with a stylized, cursive script.

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