NOVA SCHOOL OF LAW

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RESPONSIBLE DISENGAGEMENT: THE CORPORATE EXODUS FROM RUSSIA

Thesis to obtain a Master's Degree in Law,

in the specialty of Law and Management

Supervisor:

Dr. Claire Bright, Professor of the NOVA School of Law

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I hereby declare that the work I present is my own work and that all my citations are correctly acknowledged. I am aware that the use of unacknowledged extraneous materials and sources constitutes a serious ethical and disciplinary offence.

Isabel Carloto Ruivo

To my cherished loved ones who departed too soon,

This thesis stands as a tribute to the lasting impact you've had on my life. Your memory lives on in the dedication, determination, and resilience that you instilled in me. Your guidance and love continue to shape my journey, and I am forever grateful for the time we shared.

With heartfelt remembrance,

Isabel

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The body of the thesis has 103186 characters, including spaces and references.

Abbreviations

CSBP – Conflict Sensitive Business Practices

CSDDD – Corporate Sustainability Due Diligence Directive

EU – European Union

HRDD – Human Rights Due Diligence

HHRDD – Heightened Human Rights Due Diligence

ICL – International Criminal Law

IHL – International Humanitarian Law

IHRL – International Human Rights Law

MNEs – Multinational Enterprises

NGO – Non-Governmental Organization

OECD – Organisation for Economic Co-operation and Development

UN – United Nations

UNWG – United Nations Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises

UNGPs – United Nations Guiding Principles on Business and Human Rights

Abstract

The idea that businesses have a responsibility to respect human rights, both in their own operations and throughout their global value chains, has originally been crystallised in the United Nations Guiding Principles on Business and Human Rights (UNGPs) on the grounds of moral principles and social expectations (i.e. a business' social license to operate) and it is now increasingly becoming a legally binding obligation under the legislative developments. These developments have become particularly relevant given the growth in size and influence of multinational enterprises (MNEs) in recent years, and the impact that their activities might have on human rights.

In light of this perspective, and in response to the heightened tensions that unfolded on the 24th of February 2022, numerous multinational enterprises have decided to withdraw from or suspend their operations in Russian territory. This master's thesis aims to demonstrate how multinational enterprises can responsibly disengage from business relationships in conflict-affected areas, such as Russia, as part of the corporate responsibility to respect human rights. Building on this investigation into responsible disengagement, the dissertation will further delve into potential challenges associated with remaining or withdrawing from Russia, providing a comprehensive understanding of the complex dynamics surrounding multinational enterprises in conflict-affected areas.

Keywords: Business and Human Rights; Human Rights Due Diligence; Conflict-affected Areas; Responsible Disengagement; Ukraine; Russia.

Resumo

A ideia de que as empresas têm a responsabilidade de respeitar os direitos humanos, tanto nas suas operações como ao longo das suas cadeias de valor globais, foi originalmente consagrada nos Princípios Orientadores das Nações Unidas sobre Direitos Humanos e Empresas (UNGPs), com base em princípios morais e expectativas socias (ou seja, a licença social para operar das empresas) e está a tornar-se cada vez mais uma obrigação legal vinculativa no âmbito dos desenvolvimentos legislativos. Estes desenvolvimentos tornaram-se particularmente relevantes dada a dimensão e influência crescentes das empresas multinacionais nos últimos anos, e o impacto que as suas atividades podem ter nos direitos humanos.

À luz desta perspetiva, e em resposta às tensões crescentes que se verificaram a partir de 24 de fevereiro de 2022, várias empresas decidiram retirar-se ou suspender as suas operações em território russo. Esta tese de mestrado visa demonstrar como as empresas multinacionais se podem desvincular de forma responsável de relações comerciais em áreas afetadas por conflito armado, como a Rússia, enquanto parte da responsabilidade corporativa de respeitar os direitos humanos. A dissertação aprofundará ainda os potenciais desafios associados à permanência ou saída das empresas multinacionais da Rússia, proporcionando uma compreensão abrangente das dinâmicas complexas em torno das empresas que operam em zonas afetadas por conflito armado.

Palavras-chave: Empresas e Direitos Humanos; Diligência Devida de Direitos Humanos; Zonas Afetadas por Conflito Armado; Saída Responsável; Ucrânia; Rússia.

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"to be human is to be responsible; [...] to be aware, when setting one stone, that you are building a world." – Antoine de Saint-Exupéry

I. Introduction

On the 24th of February 2022, Russia began a military invasion of Ukraine which was swiftly recognized as an "act of aggression"[1] . Nonetheless, international law and the European Court for Human Rights acknowledge that Russia's military invasion of Ukraine dates back to 2014[2].

Over the past years, Russia has pursued a militaristic and annexationist policy towards its neighbouring countries. Notably, there was a conflict against Moldova from 1990 to 1992, the war in the Donbass region in 2014 and the annexation of Crimea in Ukraine. These were the initial phases of the expansion that led to the invasion of Ukraine in 2022. Events of this nature endanger the future of democracy in Europe and the survival of humanity itself, given Russia's explicit nuclear weapons threats.[3]

Russia's invasion of Ukraine prompted widespread international condemnation, subsequently resulting in the implementation of severe and coordinated sanctions. [4] These sanctions covering finance, imports, exports, travel and individuals were imposed on Russian businesses, industries and businessmen[5] as an attempt to stop the military offensive. Concurrently, international and state prosecutors initiated

[1] European External Action Service, 'EU Statement Regarding Russia's Unprovoked and Unjustified Military Aggression Against Ukraine' (2023), Available at: https://www.eeas.europa.eu/eeas/eu-statement-regarding-russia%E2%80%99s-unprovoked-and-unjustified-military-aggression-against-ukraine (Accessed 27 July 2023).

[2] Atlantic Council, 'ECHR Ruling Confirms Russian Invasion of Ukraine Began in 2014' (2023), Available at: https://www.atlanticcouncil.org/blogs/ukrainealert/echr-ruling-confirms-russian-invasion-of-ukraine-began-in-2014/ (Accessed 26 September 2023).

[3] Leave Russia, 'About the Project' (2022), Available at: https://leave-russia.org/about-project#whyleave (Accessed 13 October 2022).

[4] CEPR (Centre for Economic Policy Research), 'Global Economic Consequences of the War in Ukraine: Sanctions, Supply Chains, and Sustainability' (2022), Available at: https://cepr.org/system/files/publication-files/172987-global_economic_consequences_of_the_war_in_ukraine_sanctions_supply_chains_and_sustainability.pdf (Accessed 11 January 2023).

[5] Global Rights Compliance, 'The Responsibility of Businesses Engaged in Russia' (2022), Available at: https://globalrightscompliance.com/2022/03/03/the-responsibility-of-businesses-engaged-in-russia/ (Accessed 16 December 2022).

investigations into potential war crimes to hold those responsible accountable and offer restitution to the victims.

Amidst these international efforts, the economic sanctions, strategically directed at critical sectors of the Russian economy, were designed to de-escalate the invasion and compelled numerous private enterprises to withdraw from the country.[6] This strategic maneuver aimed to exert pressure on the Russian economy, compelling it to halt the conflict in Ukraine.[7] However, as the global community contends with geopolitical challenges, a distinct yet interconnected principle holds paramount: business enterprises must respect human rights. It is the global standard of expected conduct[8] that remains independent of a State's capacity or willingness to fulfil its human rights obligations. Even in cases where a State, as is the current situation with Russia, deviates from its international obligations, the expectation for businesses to honour human rights persists unchanged.[9].

Businesses must avoid becoming complicit in violations of humanitarian law and infringing on human rights.[10] [11] This is why numerous companies have proactively chosen to suspend their operations in Russia.

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[6] Business & Human Rights Resource Centre, 'Business Response to the Russian Invasion of Ukraine' (2022) https://www.business-humanrights.org/en/from-us/briefings/business-response-to-the-russian-invasion-of-ukraine/ (Accessed 19 September 2022).

[7] Leave Russia, 'About the Project' (2022), Available at: https://leave-russia.org/about-project#whyleave (Accessed 13 October 2022).

[8] United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011), Commentary on Guiding Principle 11, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 21 October 2023).

[9] Organisation for Economic Co-operation and Development, 'OECD Guidelines for Multinational Enterprises on Responsible Business Conduct' (2023), Available at: https://www.oecd.org/daf/inv/mne/48004323.pdf (Accessed 29 October 2023).

[10] United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011), Guiding Principle 11, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 21 October 2023).

[11] Office of the High Commissioner for Human Rights, 'The Corporate Responsibility to Respect Human Rights: An Interpretive Guide' (2012), Available at: https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf (Accessed 28 November 2023).

When operating in conflict-affected and high-risk areas, the potential for companies to become entangled in severe human rights violations is more significant.[12] This underscores the necessity for businesses to carry out Heightened Human Rights Due Diligence to avoid causing, contributing to, or being directly linked to adverse human rights impacts.

Civil society and NGOs, among others, have also been exerting pressure on businesses to use their influence in order to cease the ongoing conflict. Public scrutiny of corporate responses to the invasion has been growing since the beginning of the war. Consumers have even gone so far as to threaten boycotts against businesses, prompting numerous companies to withdraw from Russia.[13]

Several legal, economic, reputational, ethical, and operational reasons have prompted the withdrawal of diverse multinational enterprises from the country[14]. However, certain companies still maintain specific business links, clientele, and operations within Russian territory. As the conflict endures, it becomes imperative for businesses to assess the enduring risks associated with their operations in Russia and to ensure their responses align with established human rights standards.

This thesis explores the complexities of maintaining business activities or investments in Russia, which might unintentionally contribute to the criminal regime and the ongoing conflict. Furthermore, it analyses the potential adverse human rights impacts that could arise from hastily disengaging from the territory without a comprehensive plan. As a result, it argues that business enterprises need to thoughtfully evaluate the implications of both maintaining their presence in and departing from Russia.

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[12] Responsible Minerals Initiative, 'Conflict Affected and High-Risk Areas (CAHRAs)', Available at: https://www.responsiblemineralsinitiative.org/minerals-due-diligence/risk-management/conflict-affected-and-high-risk-areas/ (Accessed 23 October 2023).

[13] Jolanta Zralek, 'Consumer Boycotts in the Time of War Crisis: An Efficient Citizenship Strategy or a Temporary Spurt of Solidarity' (2022), Available at: https://scholar.stjohns.edu/cgi/viewcontent.cgi?article=1166&context=jovsa (Accessed 29 August 2023).

[14] Jeffrey A. Sonnenfeld and Steven Tian, 'Some of the Biggest Brands Are Leaving Russia. Others Just Can't Quit Putin' (Yale Insights, 2022), Available at: https://insights.som.yale.edu/insights/some-of-the-biggest-brands-are-leaving-russia-others-just-cant-quit-putin (Accessed 15 November 2023).

II. Human Rights Due Diligence

In alignment with the global commitment to upholding human rights, both the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises underscore the imperative for businesses to uphold human rights.[15][16]

The UNGPs emerged as a response to the escalating impact of business activities on human rights. Endorsed in 2011 by the UN Human Rights Council, these principles provide a comprehensive framework for states and businesses to proactively prevent, address, and rectify human rights violations within corporate operations and global supply chains. The UNGPs are structured around three fundamental pillars: the State's duty to protect human rights, the corporate responsibility to respect human rights, and the imperative of ensuring victims have access to effective remedy.[17]

In parallel, the OECD Guidelines for Multinational Enterprises, first published in 1976 and regularly updated, are recommendations on responsible business conduct directed at multinational enterprises operating in or from countries adhering to the Guidelines. They establish non-legally binding principles and standards covering various business ethics issues, including human rights and the environment. The

[15] United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011), Guiding Principle 11, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 4 December 2023).

[16] Organisation for Economic Co-operation and Development (OECD), 'OECD Guidelines for Multinational Enterprises'(2011), Available at: https://www.oecd.org/daf/inv/mne/48004323.pdf (Accessed 4 December 2023).

[17] United Nations Development Programme (UNDP), 'United Nations Guiding Principles on Business and Human Rights Brochure', Available at: https://www.undp.org/sites/g/files/zskgke326/files/migration/in/UNGP-Brochure.pdf (Accessed 5 November 2023).

Guidelines aim to align MNEs with national policies, societal expectations, and ethical standards.[18]

In accordance with these normative standards, enterprises must actively work to prevent or mitigate adverse human rights impacts which they cause, to which they contribute, or to which they are directly linked by a business relationship[19]. To comply with this responsibility, companies should conduct Human Rights Due Diligence (HRDD)[20], a continuous process tailored to risk factors[21] and adapted to the company's size, nature and operational context.[22] This process encompasses four key components: assessing actual or potential adverse human rights, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.[23]

A crucial aspect of an effective HRDD process involves significant engagement with stakeholders[24], including employees, supply chain workers, community

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[18] Organisation for Economic Co-operation and Development (OECD), 'OECD Guidelines for Multinational Enterprises' (2011), Available at: https://www.oecd.org/daf/inv/mne/48004323.pdf (Accessed 10 November 2023).

[19] United Nations Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011), Guiding Principle 13, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 30 November 2023).

[20] United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, (2011), Guiding Principle 17, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 30 November 2023).

[21] Office of the High Commissioner of Human Rights, Corporate Responsibility to Respect Human Rights (2012), Available at: https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf (Accessed 28 November 2023).

[22] United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011), Guiding Principle 17, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 30 November 2023).

[23] United Nations Development Programme (UNDP), Human Rights Due Diligence Interpretive Guide Available at: https://www.undp.org/sites/g/files/zskgke326/files/2022-10/HRDD%20Interpretive%20Guide_ENG_Sep%202021.pdf (Accessed 17 November 2023).

[24] Business & Human Rights Resource Centre, "Human Rights Due Diligence & Impact Assessment", Available at: https://www.business-humanrights.org/en/big-issues/un-guiding-principles-on-business-human-rights/human-rights-due-diligence-impact-assessment/ (Accessed 15 October 2022).

members, subcontractors, users, and consumers.[25] This engagement is particularly vital given that due diligence should be adapted to the nuances of risks[26]. It is particularly crucial to contemplate how these risks might disproportionately affect individuals from groups or populations that may be at a higher risk of becoming socially vulnerable and marginalized.[27] This includes human rights defenders, foreigners, women[28], people with disabilities, children[29], indigenous people[30], refugees, the elderly, LGBTQI+ individuals, and members of religious, ethnic, racial, and linguistic minorities, among others.[31] Moreover, some individuals may have intersectional attributes (such as, for example, indigenous women), which can amplify their vulnerability.[32] While International Human Rights Law (IHRL) does not impose a direct obligation on businesses to exit Russia, circumstances such as regional, national, or international sanction regimes can mandate their withdrawal from the region. Several businesses have ceased their operations in Russia due to the economic sanctions imposed entities such as the US, the EU, and the UK, among others. Furthermore, some multinational corporations have opted to suspend their activities within Russian territory for different reasons. This

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[25] Ibid.

[26] United Nations Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011), Guiding Principle 18, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 30 November 2023).

[27] Ibid.

[28] UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, "Gender dimensions of the Guiding Principles on Business and Human Rights: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises", Available at: https://digitallibrary.un.org/record/3822962 (Accessed 25 July 2023).

[29] UNICEF (United Nations Children's Fund), "The Children's Rights and Business Principles" Available at: https://www.unicef.org/media/96136/file/Childrens-Rights-Business-Principles-2012.pdf (Accessed 25 July 2023).

[30] UN Declaration on the Rights of Indigenous Peoples, Available at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf (Accessed 25 July 2023).

[31] BSR (Business for Social Responsibility), 'BSR Rapid-HRDD Political Armed Conflict Tool', Available at: https://www.bsr.org/files/BSR-Rapid-HRDD-Political-Armed-Conflict-Tool.pdf (Accessed 26 June 2023).

[32] The Inter-Ministerial Committee on Policy Promotion for the Implementation of Japan's National Action Plan on Business and Human Rights, 'Guidelines on Respecting Human Rights in Responsible Supply Chains' (2022), Available at: https://www.meti.go.jp/english/policy/economy/biz_human_rights/1004_001.pdf (Accessed 26 February 2023).

decision stems from being indirectly impacted by sanctions, as well as concerns related to legal, financial, and reputational risks. Additionally, ethical and human rights considerations have also played a role in the voluntary suspension of operations by these enterprises.[33]

Moreover, additional International Criminal Law (ICL) and International Humanitarian Law (IHL) standards are applied to companies and their directors in situations of armed conflict[34]. Companies engaged in investments or partnerships with Russia face the risk of aiding, supporting, or facilitating the violation of international law promoted by the country. This could potentially lead to accusations of direct, indirect, or silent[35] complicity with the actions of the Russian government.[36]

The voluntary divestment of multinational enterprises carries significant economic implications that could prove effective in response to Russia's invasion of Ukraine. However, these sudden exits may also have adverse effects concerning conflict and human rights.

In recent years, there has been a notable global shift towards transforming HRDD expectations into hard law. Several countries, including France[37], Germany[38] and the Netherlands[39] have recognized the need for enforceable mechanisms to ensure businesses uphold human rights throughout their operations and supply chains and

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[33] Irene Pietropaoli, 'Part 1: Do Foreign Companies Have a Responsibility Under International Law to Leave Russia?' (2022), Available at: https://www.biicl.org/blog/33/part-1-do-foreign-companies-have-a-responsibility-under-international-law-to-leave-russia (Accessed 22 September 2023).

[34] Business & Human Rights Resource Centre, "Lafarge lawsuit re complicity in crimes against humanity in Syria", Available at: https://www.business-humanrights.org/en/latest-news/lafarge-lawsuit-re-complicity-in-crimes-against-humanity-in-syria/ (Accessed 12 September 2022).

[35]Andrew Clapham and Salma Jerbi, 'Business and Human Rights: A Pivotal Moment' (2001), Available at: https://media.business-humanrights.org/media/documents/files/reports-and-materials/Clapham-Jerbi-paper.htm (Accessed 25 June 2023).

[36] Irene Pietropaoli, 'Part 1: Do Foreign Companies Have a Responsibility Under International Law to Leave Russia?' (2022), Available at: https://www.biicl.org/blog/33/part-1-do-foreign-companies-have-a-responsibility-under-international-law-to-leave-russia (Accessed 22 September 2023).

[37] Duty of Vigilance Law, No. 2017-399, 27 March 2017, France.

[38] Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz), BGBl. I S. 3214, 11 June 2021, Germany.

[39] Dutch Parliament Introduces Corporate Accountability Bill, CORE Coalition (2022), Available at: https://corporatejustice.org/news/dutch-parliament-introduces-corporate-accountability-bill/ (Accessed 29 November 2023).

have been at the forefront of adopting legislation that mandates HRDD. These legislative measures typically require companies to identify and mitigate risks, and provide remedies for any human rights violations linked to their operations. The aim is to ensure that corporations proactively address and prevent adverse human rights impacts associated with their business activities.

In parallel with these efforts, the European Union (EU) has been spearheading legislative initiatives to mandate robust HRDD practices. A significant stride in this direction is the Corporate Sustainability Due Diligence Directive (CSDDD)[40] which underscores the EU's commitment to ensuring responsible business conduct. This directive aims to establish a comprehensive framework obliging companies to conduct thorough human rights assessments throughout their operations and supply chains. By delineating explicit requirements for risk identification, mitigation and remediation of human rights violations associated with business activities, the EU endeavours to instil a proactive approach among corporations. The Directive aligns with international standards, reflecting the EU's dedication to fostering sustainable and socially responsible business practices. As businesses navigate these complex decisions, the challenge lies in ensuring that responsible disengagement strategies are employed, aligning with established international standards, ethical considerations, and evolving legislative frameworks.

[40] Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence (2022), Page 71 final, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071 (Accessed 26 May 2023).

III. Heightened Human Rights Due Diligence

The operational context of an enterprise plays a fundamental role in determining the appropriate actions it should take to uphold human rights. When operating within conflict-affected areas, businesses encounter complex legal, socio-economic, and operational challenges, among others. In alignment with the European Commission's perspective, conflict-affected and high-risk areas, as defined in Regulation (EU) 2018/1149[41] , encompass regions experiencing a state of armed conflict or fragile post-conflict situations. Additionally, the definition extends to areas characterized by weak or non-existent governance and security, such as failed states. Notably, the Commission includes within this classification regions marked by widespread and systematic violations of international law, including significant human rights abuses. In these regions, the risk of human rights infringements becomes more pronounced, encompassing specific concerns like security, the right to life, and ethnic discrimination.[42] To address these complexities, the UNGPs outline the necessity for Heightened Human Rights Due Diligence processes and the incorporation of a conflict-sensitive approach. This approach allows businesses to assess their connection to the conflict and potential links to adverse impacts.

The UN Working Group on the issue of human rights and transnational corporations and other business enterprises (UNWG) recognized the added complexities of implementing the Guiding Principles within conflict-affected areas. Therefore, in 2020, they produced the 'Business, Human Rights, and

[41] European Union, Commission Recommendation (EU) 2018/1149 of 10 August 2018 on non-binding guidelines for the identification of conflict-affected and high-risk areas and other supply chain risks under Regulation (EU) 2017/821 of the European Parliament and of the Council. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018H1149&rid=1 (Accessed 28 May 2023).
[42] Office of the High Commissioner for Human Rights, Corporate Responsibility to Respect Human Rights (2012). Available at: https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf (Accessed 28 November 2023), p. 21.

Conflict-Affected Regions: Towards Heightened Action' report [43], which introduces an elevated HRDD standard. This standard expands the responsibility of business enterprises beyond identifying and mitigating human rights impacts to encompass a conflict sensitivity analysis. Consequently, businesses must now also address the effects of their operations within the context of the conflict itself and its underlying causes.[44]

Integrating conflict-sensitive business practices (CSBP) into standard Human Rights Due Diligence procedures is crucial for enhancing them and addressing the unique challenges present in conflict-affected areas. [45] A conflict-sensitive approach enriches HRDD across numerous stages: commitment, assessment, addressing and remediation, reviewing, and reporting. This methodology empowers organizations to better grasp the conflict context, more accurately identify human rights risks, develop effective measures to prevent and address impacts on both human rights and the conflict, and ensure that actions taken as part of human rights procedures do not inadvertently cause harm.[46]

A comprehensible framework, developed by Professors Andreas Graf and Andrea Iff [47] offers a clear overview of the proposed integration of CSBP into HRDD. This scheme is notably valuable for its insights and guidance in this regard.

[43] UN Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises (UNWG), 'Business, Human Rights and Conflict-Affected Regions: Towards Heightened Action' (2020) UN Doc A/75/212, Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/190/21/PDF/N2019021.pdf?OpenElement (Accessed 29 January 2023).
[44] Daniel Aguirre, Irene Pietropaoli, 'Heightened Human Rights Due Diligence in Practice: Prohibiting or Facilitating Investment in Conflict Affected Areas?' Journal of Human Rights Practice (Volume 15, Issue 2,2023), Page 542, Available at: https://academic.oup.com/jhrp/article/15/2/541/7180193 (Accessed 25 August 2023).
[45] Andreas Graf and Andrea Iff, 'Enhanced Human Rights Due Diligence in Conflict Affected and High-Risk Areas', Available at: https://www.swisspeace.ch/articles/enhanced-human-rights-due-diligence-in-conflict-affected-and-high-risk-areas (Accessed 17 March 2023).
[46] Ibid.
[47] Andreas Graf and Andrea Iff, 'Respecting Human Rights in Conflict Regions: How to Avoid the 'Conflict Spiral'' (Business and Human Rights Journal, 2016), Available at: https://www.researchgate.net/publication/304184414_Respecting_Human_Rights_in_Conflict_Regions_How_to_Avoid_the_'Conflict_Spiral' (Accessed 18 March 2023).

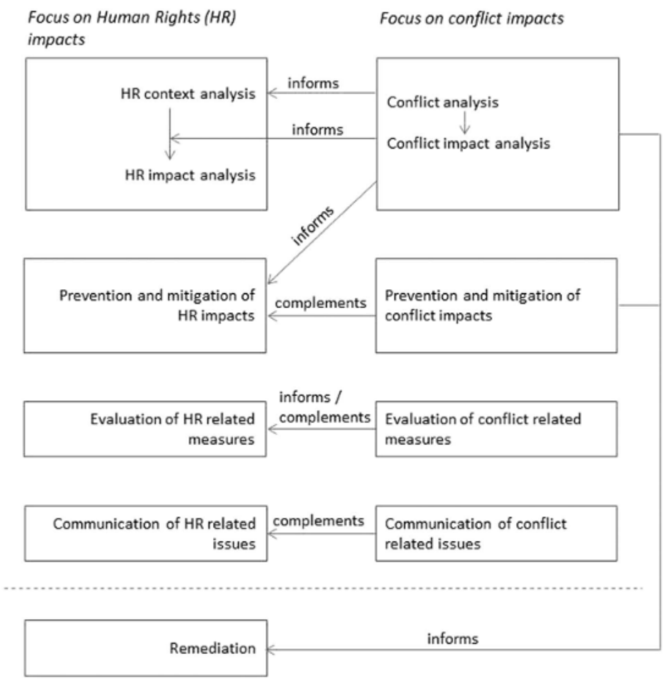

Figure 1 - Overview integrated approach

Heightened Human Rights Due Diligence (HHRDD) is a process that extends a business' responsibility to respecting human rights beyond mere identification and mitigation of human rights impacts. It encompasses a consideration of how their operations intersect with the ongoing conflict, reflecting a responsible stance of "doing no harm" to both human rights and the conflict context.[48]

Undertaking Heightened Human Rights Due Diligence serves as a means for companies to ensure that their operations and business relationships do not contribute to violations of IHL and IHRL or exacerbate the conflict. In essence, HHRDD functions as a preventative mechanism, rather than a reactive response to a crisis.[49] This process entails several critical components, namely an expansion of stakeholders consulted, a more elaborate analysis of business relationships within a complex environment where ongoing consultation may not be feasible, a

[48] Irene Pietropaoli, 'Heightened Human Rights Due Diligence: Reflections on Sudan, Ukraine, Russia, and Myanmar' (Enact, 2022), https://www.enact.se/heightened-human-rights-due-diligence-reflections-on-sudan-ukraine-russia-and-myanmar/ (Accessed 29 August 2023).
[49] Ibid.

revaluation of conflict-sensitive leverage, the usage of grievance mechanisms, and the establishment of a public policy for benchmarked responsible exits.[50]

Concerning responsible disengagement, the Corporate Sustainability Due Diligence Directive has a fundamental role in defining the actions that businesses should take when operating in conflict-affected areas and, notably, during disengagement. The CSDDD incorporates a framework of public law supervision and enforcement, allowing for both public and private enforcement. It establishes best-effort obligations on companies, potentially leading to legal responsibility of the company and its subsidiaries in case of non-compliance. Moreover, the directive stipulates that national laws must include provisions for civil liability, exposing companies to potential damages resulting from breaches of the CSDDD.[51]

The Directive highlights that responsible disengagement is a pivotal concept to managing business relationships, particularly in contexts where adverse impacts are identified. In the amendments adopted by the European Parliament on June 1, 2023, regarding the proposal for a directive on Corporate Sustainability Due Diligence[52], key topics were emphasized. Primarily, businesses should either temporarily suspend commercial relationships while pursuing prevention and mitigation efforts or terminate the relationship due to the potential adverse impacts associated with its continuation. Secondly, the amendments stress the importance of prioritization of engagement over termination, which should be a measure of last resort.

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[50] Daniel Aguirre, Irene Pietropaoli, 'Heightened Human Rights Due Diligence in Practice: Prohibiting or Facilitating Investment in Conflict Affected Areas?' (Journal of Human Rights Practice, Volume 15, Issue 2, 2023), Page 542, Available at: https://academic.oup.com/jhrp/article/15/2/541/7180193 (Accessed 25 August 2023).

[51] Loyens & Loeff, 'The Corporate Sustainability Due Diligence Directive (CSDDD): The Position of the European Parliament and the Impact', Available at: https://www.loyensloeff.com/insights/news--events/news/the-corporate-sustainability-due-diligence-directive-csddd-the-position-of-the-european-parliament-and-the-impact/ (Accessed 11 December 2023).

[52] European Parliament, 'Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence' (TA-9-2023-0209_EN), Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0209_EN.pdf (Accessed 11 December 2023).

Special attention is given to situations involving child labour and women in precarious labour conditions, emphasizing that disengagement should be avoided if it exacerbates adverse impacts on vulnerable groups. On the other hand, in cases of state-imposed forced labour, companies are directed to terminate the business relationship. Notably, companies are cautioned against disengagement without first taking appropriate measures to prevent or mitigate potential adverse impacts. They are required to assess whether the adverse impacts of disengagement would outweigh the benefits of mitigation and, if so, businesses should refrain from disengaging.

In summary, the amendments introduced by the European Parliament to the CSDDD place a deeper emphasis on engagement, mitigation efforts, and the impact on vulnerable groups, in comparison to the European Commission's initial proposals. These forward-looking adjustments align with the principles of the international business and human rights' framework, as encapsulated in the UNGPs and the OECD guidelines. In addition to these amendments, it is essential to recognize that the CSDDD retains its paramount significance. Irrespective of the specific alterations introduced, the directive has the potential to become a fundamental instrument, ensuring a commitment by businesses to uphold human rights standards.

IV. Responsible Disengagement

As previously highlighted, the UNGPs emphasize that businesses should conduct Human Rights Due Diligence to prevent and mitigate adverse human rights impacts.[53] During this process, businesses are expected to assess and address impacts with which they are connected to through their activities.

In relation to businesses exiting Russia, the first (assessing actual or potential adverse human rights impacts) and second (integrating and acting upon the findings) steps of the due diligence process hold significant relevance.

Guiding Principle 19 asserts that "to prevent and mitigate adverse human rights impacts, business enterprises should (…) take necessary action.". The appropriate action varies depending on whether the enterprise causes or contributes to an adverse impact, or if the impact is solely connected to its operations, products, or services through a business relationship. Moreover, the extent of the enterprise's leverage in addressing the adverse impact also influences the course of action.[54]

The commentary on this principle[55] further clarifies the steps required. If a business enterprise causes or may cause an adverse impact on human rights, it should take appropriate action to cease or prevent it. If it contributes or may contribute to an adverse human rights impact, it should take necessary steps to

[53] United Nations Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011), Guiding Principle 17, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 21 October 2023).
[54] United Nations Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011), Guiding Principle 19, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 21 October 2023).
[55] United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011), Commentary on Guiding Principle 19, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf(Accessed 21 October 2023).

cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible.

On the other hand, in cases where a business identifies an impact that is directly associated with its operations, products, or services through a business relationship with another entity, the situation becomes more intricate, particularly because the company holds limited control over whether these impacts take place.

According to Guiding Principle 15, business relationships encompass connections with business partners, entities within the value chain, and any other non-State or State entity that is directly linked to a company's business operations, products, or services.[56]

Government entities are also included in these business relationships and, given the unilateral attack initiated by the Russian government on Ukraine, businesses located in Russia could potentially be at risk of contributing, or being directly linked, to severe human rights abuses.

When a business identifies an adverse human rights impact linked to its operations, products, or services through a business relationship (e.g., governments, subsidiaries, buyers, suppliers, distributors, or joint-venture partners)[57], specific steps should be taken.

Several factors are relevant to determine the appropriate action in situations where an impact is caused by an entity with which an enterprise has a business relationship. These factors include how crucial the relationship is to the enterprise, the severity of the abuse, potential adverse consequences on human rights from

[56] United Nations Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011), Guiding Principle 15, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 21 October 2023).

[57] United Nations Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, 'Gender dimensions of the Guiding Principles on Business and Human Rights: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises', Page 14, Available at: https://digitallibrary.un.org/record/3822962 (Accessed 25 July 2023).

terminating the relationship, and the enterprise's leverage over the concerned entity.[58]

The UN Office of the High Commissioner for Human Rights (OHCHR) has developed a decision matrix that visually outlines the logic behind businesses' decision-making processes. This matrix can guide a company in disengaging from a business relationship based on the significance of the relationship to the enterprise and the level of influence it possesses over the business partner.

[58] United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011), Commentary on Guiding Principle 19, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf(Accessed 21 October 2023).

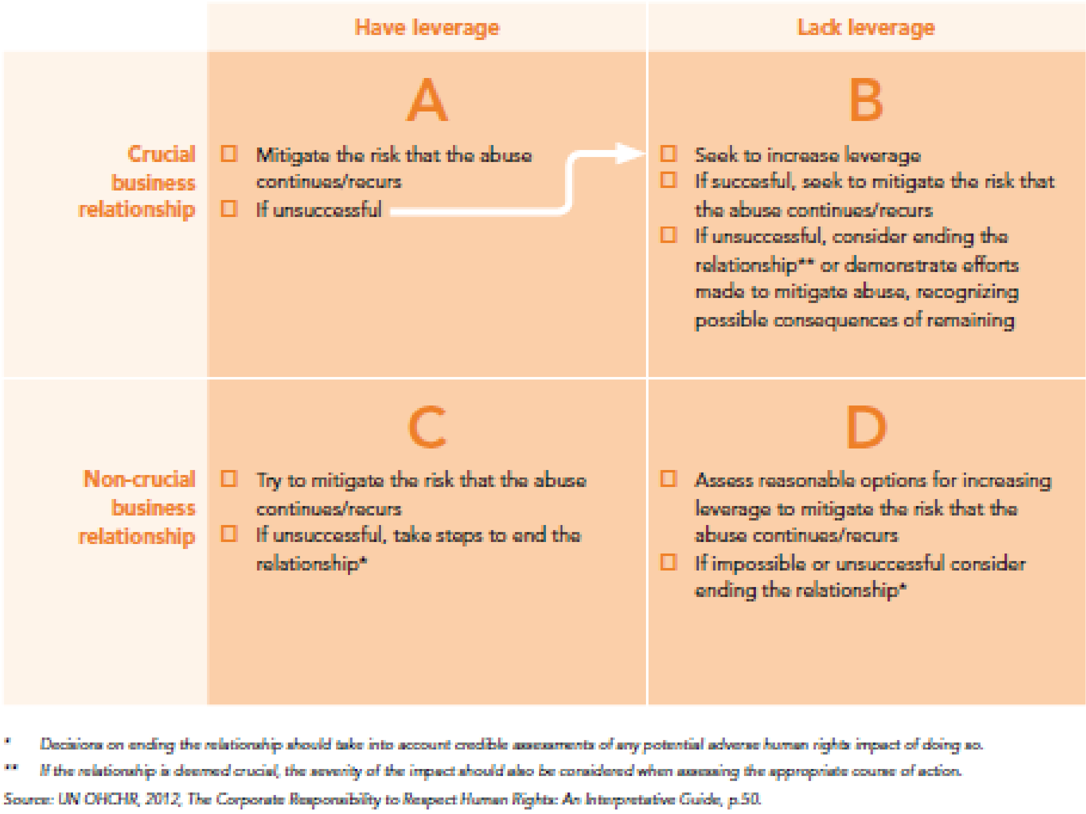

Figure 2 - UNGP decision matrix on addressing adverse impacts caused by a business relationships[59]

This decision matrix depicted in Figure 2 is applicable to existing business relationships.

According to the UNGPs, HRDD should be initiated as early as possible when developing a new activity or entering a business relationship, considering that human rights risks can be either heightened or mitigated during the initial stages, when contracts and other agreements are being structured.[60] If a company

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[59] OHCHR, 'The Corporate Responsibility to Respect Human Rights: An Interpretive Guide' (2012), Available at: https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf (Accessed 28 November 2023).

[60] United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011), Commentary on Guiding Principle 17, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf(Accessed 21 October 2023).

contemplates establishing a new relationship with a third party that has a history of human rights violations, the company should first evaluate the potential to utilize this relationship to mitigate violations related to its operations, products, or services. Ensuring leverage, possibly through contractual terms, is key. If the assessment indicates this possibility, the associated risks of entering such a relationship might be considered acceptable, provided that the company undertakes actions to minimize these risks. However, if the assessment reveals that the company's capacity to mitigate such risks is limited, or the risks are high, refraining from entering the relationship is recommended.[61]

The prospect of disengagement can also serve as a valuable tool within the Human Rights Due Diligence process. It can be employed early on in a business relationship to increase leverage over the business partner, thus enhancing the effectiveness of efforts to address adverse impacts. By incorporating the option of disengagement from the beginning and maintaining its presence throughout the partnership, companies can potentially improve their ability to address negative impacts without necessarily severing the relationship entirely.

To make this approach meaningful, the option of disengagement must carry credibility and substantial weight. In this way, the potential for disengagement can play a fundamental role in preventing and mitigating human rights impacts by incentivizing business partners to enhance their human rights performance.[62] In instances where the partner demonstrates resistance and inadequacy in addressing these impacts, the importance of including the possibility of disengagement becomes pronounced, as it can serve as a catalyst, motivating the partner to engage more effectively.

[61] Office of the High Commissioner for Human Rights, 'The Corporate Responsibility to Respect Human Rights: An Interpretive Guide' (2012), Available at: https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf (Accessed 28 November 2023).

[62] Mariëtte van Huijstee, Lydia de Leeuw, and Joseph Wilde-Ramsing, Should I Stay or Should I Go? (Centre for Research on Multinational Corporations, SOMO, 2016), Available at: https://www.somo.nl/wp-content/uploads/2016/04/Should-I-stay-or-should-I-go-4.pdf. (Accessed 1 November 2023).

Shifting the focus to pre-existing business relationships, the enterprise's leverage is a determinant factor in shaping appropriate courses of action. According to the UNGPs, leverage is perceived as a business's ability to exercise influence over an entity in practice[63], and if a business has leverage to prevent or mitigate adverse human rights impacts, it should exercise it. While the precise response hinges on the specifics of each case, businesses that significantly contribute to the Russian economy or hold direct affiliations with the Russian government through, for example, joint ventures, inherently have heightened influence and, thus, leverage over it.[64]

Leverage can be exercised through various means, encompassing traditional commercial levers, as contracts, as well as through unilateral or collective engagement.[65] Such exercise of leverage demands context-sensit1ive judgment to determine what actions align with reasonability within the given circumstances.[66]

In instances where a business lacks leverage, efforts should be directed towards increasing it. Leverage over an entity within a business relationship can be used or expanded through mechanisms like, for example, providing support, training and capacity-building, or engaging in exertions to pressure the entity to prevent and mitigate impacts.[67]

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[63] United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011), Commentary on Guiding Principle 19, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 21 October 2023).

[64] Global Rights Compliance, 'The Responsibility of Businesses Engaged in Russia', Available at: https://globalrightscompliance.com/2022/03/03/the-responsibility-of-businesses-engaged-in-russia/ (Accessed 25 July 2023).

[65] United Nations Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, 'Gender dimensions of the Guiding Principles on Business and Human Rights: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises', Available at: https://digitallibrary.un.org/record/3822962 (Accessed 25 July 2023), page 14.

[66] Jonathan Bonnitcha and Robert McCorquodale, 'The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights' (European Journal of International Law Vol. 28, No. 3, 2017), Page 915, Available at https://academic.oup.com/ejil/article/28/3/899/4616670 (Accessed 17 January 2023).

[67] Organisation for Economic Co-operation and Development, 'OECD Guidelines for Multinational Enterprises on Responsible Business Conduct' (2023), Available at: https://www.oecd.org/daf/inv/mne/48004323.pdf (Accessed 29 October 2023).

The exercise and enhancement of leverage stand as key components of an effective HRDD process. [68] However, the OECD Guidelines acknowledge practical limitations on the extent of leverage a business has or may be able to build, contingent upon attributes such as product or service characteristics, the number of suppliers and business relationships, supply chain intricacies, and the nature of the relationship or adverse impact in question. [69]

In the context of the current invasion of Ukraine, it is vital to take into account the specific dynamics of the business relationship. Notably, the entity responsible for the adverse impact holds the status of a sovereign State. This fact prompts us to consider that businesses might encounter limitations in wielding leverage, and they may also face challenges in attempts to enhance it.

Ultimately, if a business enterprise lacks the leverage needed to prevent or mitigate the adverse human rights impacts and is unable to increase it, the enterprise should consider ending the relationship, while factoring in credible assessments of potential adverse impacts stemming from the exit. [70]

However, if a relationship is deemed “crucial” for the enterprise, terminating the business affiliation introduces additional challenges. The extent to which a business relationship is crucial to the enterprise must be taken into consideration according to both the UNGPs and the OECD Guidelines when deciding whether to disengage. Nonetheless, the UNGPs lack specific criteria or an objective standard for determining when a business relationship is “crucial or essential”,

[68] Jonathan Bonnitcha and Robert McCorquodale, 'The Concept of ‘Due Diligence’ in the UN Guiding Principles on Business and Human Rights' (European Journal of International Law Vol. 28, No. 3, 2017) , Page 915, Available at: https://academic.oup.com/ejil/article/28/3/899/4616670 (Accessed 17 January 2023).
[69] Organisation for Economic Co-operation and Development, 'OECD Guidelines for Multinational Enterprises on Responsible Business Conduct' (2023), Available at: https://www.oecd.org/daf/inv/mne/48004323.pdf (Accessed 29 October 2023).
[70] United Nations Human Rights Council, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework’ (2011), Commentary on Guiding Principle 19, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 21 October 2023).

aside from the situation mentioned in the commentary to Guiding Principle 19.[71] "Crucial" relationships pertain to those providing products or services essential to the enterprise's operations, where reasonable alternative sources are limited or non-existent .[72]

For instance, if a MNE heavily relies on a Russian-based manufacturer for a unique and specialized component vital to its production process, and there are no feasible alternatives that can meet the same standards or specifications, then this relationship could be deemed crucial. In such a scenario, terminating the business affiliation might introduce significant challenges, potentially disrupting the company's supply chain, production, and overall operations. In contrast, where the relationship is not deemed "crucial" to the enterprise, finding a suitable, more rights-respecting replacement may be relatively straightforward.

Furthermore, the severity of the abuse must be taken into consideration. The gravity of the abuse dictates the urgency of the enterprise's response and, in instances of particularly severe harm, disengaging might be the appropriate course of action for businesses.

In the absence of a precise definition of severe human rights violations, factors as scale and scope (i.e. the gravity of the impact and the number of people affected by it) and the irremediability of the impact (which refers to any limits on the ability to restore those affected to a situation, at least, equal or equivalent to their situation

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[71] Office of the United Nations High Commissioner for Human Rights, 'Business and Human Rights in Challenging Contexts' (OHCHR, 2022), Available at: https://www.ohchr.org/sites/default/files/documents/issues/business/bhr-in-challenging-contexts.pdf (Accessed 5 December 2023).

[72] United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011), Commentary on Guiding Principle 19, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf(Accessed 21 October 2023).

before the impact occurred) guide the assessment of severity.[73] [74] [75] Criteria used to assess if the harm reaches a level of "too severe" encompass indications of war crimes or other grave breaches of International Humanitarian Law, crimes against humanity, the crime of aggression, genocide, and/or direct or indirect assistance to non-state armed groups.[76] The Ukraine conflict illustrates these indicators vividly, with substantial civilian casualties, displacement, and humanitarian crises underscoring the high scope, scale, and irremediability of the impacts.

The invasion of Ukraine had led to numerous deaths from both parties of the conflict. There were more than 700 civilian casualties in Ukraine.[77] Additionally, more than 5 million people are internally displaced, more than 6 million refugees from Ukraine have been recorded globally and more than 17 million people are in need of humanitarian assistance.[78] Therefore, we can consider that, according to the criteria presented by the UNDP, that the scope is high, since a large number of people were affected by the conflict. Regarding the scale, we can consider that it is also high, because the abuse involves severe impacts on the physical, mental and emotional well-being of people and communities. Lastly, due to the consequences of the war that were mentioned above, we can consider that irremediability is high

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[73] United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011), Commentary on Guiding Principle 14, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf(Accessed 21 October 2023).

[74] United Nations Development Programme (UNDP), 'Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide', Available at: https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide?gad_source=1&gclid=CjwKCAiA98WrBhAYEiwA2WvhOtrU2LLEbMHj3e-cEnLg6dz75aV4QfRPEG3wxYaHL_Nl2BvBqQIYSxoC9bMQAvD_BwE (Accessed 15 November 2023).

[75] Shift, Mazars LLP, UN Guiding Principles Reporting Framework, (2015), https://shiftproject.org/wp-content/uploads/2015/02/UNGPReportingFramework_withguidance2017.pdf (Accessed 27 June 2023).

[76] Global Rights Compliance, 'The Responsibility of Businesses Engaged in Russia' (2022), Available at: https://globalrightscompliance.com/2022/03/03/the-responsibility-of-businesses-engaged-in-russia/ (Accessed 16 December 2022).

[77] Office of the High Commissioner for Human Rights (OHCHR), 'Ukraine: Civilian Casualty Update - 31 July 2023', (2023), Available at: https://www.ohchr.org/en/news/2023/07/ukraine-civilian-casualty-update-31-july-2023 (Accessed 5 August 2023).

[78] UNHCR, 'Ukraine Emergency', Available at: https://www.unrefugees.org/emergencies/ukraine/ (Accessed 5 August 2023).

since that many impacts of human rights abuses (for instance, the deaths) can never be remedied.

Ultimately, businesses should assess whether terminating a relationship would lead to adverse consequences on human rights, as we will analyse further in the following chapter.

In conclusion, several factors, including the extent of leverage a company holds over its business partner, the severity of the abuse, the importance of the business relationship to the company, and the ramifications of disengagement, should collectively inform the decision on whether to end a relationship.

Terminology-wise, the term "disengagement" can either pertain to the act itself or the process of withdrawing from a business relationship. For the context of this thesis, we align with SOMO's perspective on the concept of disengagement, defining it as the decision-making process culminating in the act of terminating a business relationship.[79]

Both the Guidelines for Multinational Enterprises and the Guiding Principles, refer to disengagement as a means to address adverse human rights impacts. While these legal instruments are largely aligned, minor disparities exist in relation to disengagement.[80]

The OECD Guidelines refer to disengagement in: "Appropriate responses with regard to the business relationship may include (…) **as a last resort, disengagement from a business relationship** either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. Where it is possible for enterprises to continue the

[79] Mariëtte van Huijstee, Lydia de Leeuw, and Joseph Wilde-Ramsing, Should I Stay or Should I Go? (Centre for Research on Multinational Corporations, SOMO, 2016), Available at: https://www.somo.nl/wp-content/uploads/2016/04/Should-I-stay-or-should-I-go-4.pdf. (Accessed 1 November 2023).
[80] Ibid.

relationship and demonstrate a realistic prospect of, or actual improvement over time, such an approach will often be preferable to disengagement.”.[81]

On the other hand, the UNGPs address disengagement in*:* “If the business enterprise has *leverage* to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. (…) There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider **ending the relationship**, taking into account credible *assessments of potential adverse human rights impacts* of doing so.”.[82]

The Guidelines position disengagement as a measure of “last resort”, indicating that engagement with business partners is the preferred approach for multinational business enterprises to prevent and mitigate adverse human rights impacts to which they may have contributed or to which they are directly linked through a business relationship.

On the opposite side, the UNGPs refrain from using the term “disengagement”. Instead, they employ the phrase "ending the relationship". Nevertheless, the UNGPs emphasize the importance of first engaging with business partners and utilizing the company's leverage to address adverse impacts on human rights. "Ending the relationship" should only be contemplated if the enterprise lacks leverage and cannot enhance it.

In both the UNGPs and the OECD Guidelines, the concept of leverage is a cornerstone in both mitigation efforts and the decision-making process around disengagement. As outlined earlier, if a business enterprise contributes to, or is directly linked to an adverse human rights impact, it should “take the necessary

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[81] Organization for Economic Co-operation and Development (OECD), OECD Guidelines for Multinational Enterprises (2011), Commentary on Chapter 2, paragraph 25 (emphasis added), Available at: https://www.oecd.org/daf/inv/mne/48004323.pdf (Accessed 30 November 2023).

[82] United Nations Human Rights Council, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework’ (2011), Commentary on Guiding Principle 19, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf(Accessed 21 October 2023).

steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible”.[83]

The OECD Guidelines suggest that appropriate responses regarding the business relationship may involve continuing the relationship or temporarily suspending it, both while pursuing ongoing risk mitigation. As a last resort, businesses may consider disengagement based on factors such as the general feasibility of mitigation, the success or failure of previous mitigation attempts, and the severity of the impact. Nonetheless, if businesses can continue the relationship and show a realistic potential for improvement over time, this approach is often favoured over disengagement.[84]

If an enterprise's business relationship is associated with severe adverse impacts on human rights, a more expeditious exit should be pursued. Both the Guiding Principles and the OECD Guidelines underline the importance of considering credible assessments of potential adverse impacts before disengaging from a business partner. Nonetheless, both standards emphasize the importance of active engagement over disengagement.

Despite the emphasis on engagement, it is essential to recognize the potential pitfalls of irresponsible disengagement. In other conflict scenarios, businesses have been accused of failing to establish and communicate a responsible disengagement strategy. For instance, Myanmar saw numerous businesses departing after the military coup in February 2021.[85] The country is now marked by ongoing gross human rights violations, multiple conflicts, alleged international

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[83] United Nations Human Rights Council, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework’ (2011), Guiding Principle 14, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 21 October 2023).

[84] Organisation for Economic Co-operation and Development, 'OECD Guidelines for Multinational Enterprises on Responsible Business Conduct' (2023), Available at: https://www.oecd.org/daf/inv/mne/48004323.pdf (Accessed 29 October 2023).

[85] Reuters, 'Foreign Companies With Ties to Myanmar Military Under Scrutiny', Available at: https://www.reuters.com/article/myanmar-politics-foreign-companies-idUSL8N2U12AI/ (Accessed 29 November 2023).

crimes, and more, leading several enterprises to divest.[86] While most companies conducted human rights impact assessments (HRIAs), they often fell short of the Heightened Human Rights Due Diligence process defined by the United Nations[87], which in turn led to criticism, complaints, and legal actions.

Take the example of Telenor, a Norwegian telecommunications multinational, which withdrew from Myanmar following the coup. Myanmar exemplifies an area affected by armed conflict, characterized by sustained gross human rights violations, alleged international crimes, several conflicts, the absence of remedy and where businesses struggle to comply with their responsibility to respect.[88] Telenor's divestment was driven by human rights concerns. Yet, despite its HRDD processes, some authors[89] argue they were not aligning with the UNWG's report and responsible investment policies, which led to Telenor being criticized by civil society. A complaint was even lodged at the OECD National Contact Point, prompted by Telenor's sale of its Myanmar operations to unknown or suspicious buyers after the military coup.[90]

In Russia, it has not been demonstrated that any of the enterprises that withdrew from the territory have conducted Heightened HRDD or have prepared a responsible exit strategy in advance, despite the pre-existing human rights issues and prior unlawful acts of aggression promoted by Russia.

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[86] Office of the High Commissioner for Human Rights (OHCHR), 'Human Rights Council Hears People in Myanmar Continue to Suffer Profound Human Rights Harms', Available at: https://www.ohchr.org/en/news/2023/03/human-rights-council-hears-people-myanmar-continue-suffer-profound-human-rights-harms (Accessed 29 November 2023).

[87] Enact, 'Heightened Human Rights Due Diligence: Reflections on Sudan, Ukraine, Russia, and Myanmar', Available at: https://www.enact.se/heightened-human-rights-due-diligence-reflections-on-sudan-ukraine-russia-and-myanmar/ (Accessed 29 August 2023).

[88] Daniel Aguirre, Irene Pietropaoli, 'Heightened Human Rights Due Diligence in Practice: Prohibiting or Facilitating Investment in Conflict Affected Areas?' Journal of Human Rights Practice (Volume 15, Issue 2,2023), Page 542, Available at: https://academic.oup.com/jhrp/article/15/2/541/7180193 (Accessed 25 August 2023).

[89] Ibid.

[90] Business & Human Rights Resource Centre, 'Complaint Against Telenor for Irresponsible Disengagement from Myanmar', Available at: https://www.business-humanrights.org/en/latest-news/complaint-against-telenor-for-irresponsible-disengagement-from-myanmar/ (Accessed 6 March 2023).

Within these high-risk areas, it is imperative to identify and mitigate systemic violations through an ongoing Heightened Human Rights Due Diligence process. Additionally, the prospect of disengagement should be considered in advance by responsible companies, who should establish a "public, benchmarked, rights-based exit strategy.".[91]

[91] Irene Pietropaoli, 'Heightened Human Rights Due Diligence: Reflections on Sudan, Ukraine, Russia, and Myanmar' (Enact, 2022), https://www.enact.se/heightened-human-rights-due-diligence-reflections-on-sudan-ukraine-russia-and-myanmar/ (Accessed 29 August 2023).

V. Responsible Disengagement and the Russian War

Businesses can find themselves connected to conflict scenarios in several ways. Either directly, by providing financial, logistical, military or any other kind of assistance to one of the conflict parties.

An illustrative case is the Lafarge scandal, where the multinational cement company faced severe allegations. In November 2016, 11 former Syrian employees and two NGOs filed a criminal complaint against Lafarge for alleged abuses committed in Syria by its subsidiary, Lafarge Cement Syria (LCS). The company was charged for complicity in war crimes, crimes against humanity, financing of a terrorist enterprise, deliberate endangerment of people's lives, and forced labour. The charges were based on Lafarge's decisions to maintain its business activities in Syria between 2011 and 2014, during the Syrian Civil War. In order to do so, Lafarge allegedly bought raw materials from various jihadist groups, including ISIS (Islamic State of Iraq and the Levant), and negotiated safe passage for its workers and products in exchange for substantial compensations. The legal proceedings have been ongoing, with the French Supreme Court overturning certain dismissals in September 2021, and further developments continuing into 2023. This case serves as a stark reminder of the intricate ethical dilemmas and legal consequences businesses face when operating in conflict-affected areas.[92]

Alternatively, businesses can have indirect ties by inadvertently influencing the dynamics of the conflict or one of the involved parties, even if without intending to do so.[93] This complexity underscores the imperative for enterprises to exercise

[92] Business & Human Rights Resource Centre, 'Lafarge lawsuit (re complicity in crimes against humanity in Syria)'. Available at: https://www.business-humanrights.org/en/latest-news/lafarge-lawsuit-re-complicity-in-crimes-against-humanity-in-syria/ (Accessed 28 October 2023).

[93] Australian Red Cross and RMIT, Doing Responsible Business in Armed Conflict: Risks, Rights and Responsibilities, 2020. Available at: https://www.redcross.org.au/globalassets/cms-

meticulous caution when operating in conflict-affected regions. The challenges faced by businesses operating in such areas can be considerable, prompting decisions to suspend or terminate operations. Nevertheless, those actions should be executed responsibly.[94]

The swift measures undertaken by North American and European governments created an environment of legal and financial hostility for businesses in Russia.[95] This compelled many to leave the country in order to eliminate the reputational risk associated with violating sanctions, whether intentionally or accidentally. This corporate exodus, collectively undertaken, marked an unprecedented contrast to previous conflicts such as those in Syria, Yemen, or the coup in Myanmar, characterized by being limited and muted business responses.

While the sanctions regime was an important driver of exits, additional factors contributed, including the rise of responsible (ESG) investments, the influence of social movements like Black Lives Matter and #MeToo, and the growing pressure from consumers. These dynamics prompted businesses and investors to more weigh more profoundly ethical implications in their decision-making processes.[96]

However, these abrupt departures introduced challenges, particularly in terms of concerning the understanding of the conflict and implementing measures to prevent and mitigate the associated impacts of disengaging from a conflict-affected area.

The initial step of a HRDD process involves identifying and assessing actual or potential adverse human rights impacts associated with business activities. This

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migration/documents/ihl--no-ihl/doing-responsible-business-in-armed-conflict-final-publication-web.pdf (Accessed 17 September 2023).

[94] Laura Íñigo Álvarez, Empresas a operar em áreas de conflito: Quadro legal, riscos e obrigações, 2022. Available at: https://www26.e-goi.com/recursos/3dafbf3f7351ad04ea57caa0017f569d/Image/Practical-Brief-NOVA-companies-in-conflict-areas.pdf (Accessed 17 October 2023).

[95] Alan Beattie, 'Sanctions More Than Ethics Have Spurred Corporate Flight from Russia' (Financial Times, 2022). Available at: https://www.ft.com/content/fed1ebb5-e97d-424f-a313-2bb0d1cb8181 (Accessed 6 April 2023).

[96] Business & Human Rights Resource Centre, 'Ukraine: Responsible Business Conduct in a War of Aggression' (2022). Available at: https://www.business-humanrights.org/en/blog/ukraine-responsible-business-conduct-in-a-war-of-aggression/ (Accessed 23 May 2023).

often requires engaging in dialogue with stakeholders to obtain a comprehensive understanding of these adverse effects. Unfortunately, the rushed nature of many exits from Russia hindered this consultation process and proper conflict analysis.

While numerous multinational enterprises expressed their intent to leave Russia since the war's onset, only a few have completed the departure process. This is evident from the Yale CELI List of companies[97] and the KSE database[98]. Exiting a business relationship, especially in the context of an entire country, presents numerous challenges in terms of costs and logistics. Consequently, such decision is typically viewed as a last resort, considered by companies and investors only when the repercussions of not leaving are potentially severe.

In this context, Professors Klaus E Meyer and Saul Estrin have identified four sets of challenges faced by businesses when considering withdrawal from a conflict-affected region.[99] Firstly, global interdependence of operations poses a challenge. Businesses with operations dispersed worldwide, interlinked by intricate flows of people, technology, and products, encounter a complex decision-making process when closing a subsidiary. The degree of interdependence fluctuates depending on the subsidiary's role. For instance, subsidiaries primarily involved in sales and services, exemplified by companies like McDonald's and Decathlon, might demonstrate low interdependence. Conversely, subsidiaries involved in the production of critical raw materials or intermediating products not easily obtainable elsewhere for the parent organization, as exemplified by Rockwool, experience high interdependence, posing potential disruptions to operations.

[97] Yale Center for Environmental Law & Policy (CELI), 'List of Companies Leaving and Staying in Russia'. Available at: https://www.yalerussianbusinessretreat.com/ (Accessed 10 October 2023).
[98] KSE Institute, 'Companies that Have Curtailed Russian Operations'. Available at: https://docs.google.com/spreadsheets/u/1/d/1EFlhBQYyvRdSn4U6CY2yomeHEhTqbMKS/htmlview (Accessed 10 October 2023).
[99]Saul Estrin and Klaus E Meyer, 'Why it’s so difficult for companies to leave Russia' (2023). Available at: https://blogs.lse.ac.uk/businessreview/2023/03/28/why-its-so-difficult-for-companies-to-leave-russia/ (Accessed 15 September 2023).

Moreover, specific industries, notably the automotive sector, encounter heightened intricacies in interdependencies due to the movement of knowledge and products across different countries. This increased complexity further adds to the challenges of the exit process, as businesses strive to prevent supply quality issues and operational disruptions when reshaping their supply chains due to the closure of an operation.

Nonetheless, the study conducted by KSE[100] uncovered that multiple businesses within the automotive industry have already withdrawn from Russian territory. This departure is particularly relevant due to the potential indirect support these companies may have unintentionally provided to Russia's military capabilities, especially concerning transportation. For instance, by furnishing spare parts for trucks, planes, and tanks, these businesses inadvertently contributed to the military's logistics and operational capacities. Considering that military operations rely heavily on vehicles for transporting essential supplies and equipment to the front lines during military operations, the implications of such support are substantial.[101]

In light of this dynamic, it is both reasonable and appropriate that several automobile and truck manufacturers, such as Ford[102] and Volkswagen[103], have made the decision to discontinue their operations in Russia. This strategic move reflects a conscious effort to avoid inadvertently bolstering military capabilities and underscores the complex ethical considerations that arise in conflict-affected areas.

[100]Kyiv School of Economics, '52nd Issue of the Regular Digest on Impact of Foreign Companies Exit on RF Economy'. Available at: https://kse.ua/about-the-school/news/52nd-issue-of-the-regular-digest-on-impact-of-foreign-companies-exit-on-rf-economy/ (Accessed 5 September 2023).
[101] Michael Posner, 'The Ukraine Crisis: How Corporations Should Respond To Russia’s Invasion' (Forbes, 2022). Available at: https://www-forbes-com.cdn.ampproject.org/c/s/www.forbes.com/sites/michaelposner/2022/03/10/the-ukraine-crisis-how-corporations-should-respond-to-russias-invasion/amp/ (Accessed 19 May 2022).
[102] Ford Closed Its Business in Russia (Leave Russia, 2022). Available at: https://leave-russia.org/ford (Accessed 28 December 2022).
[103] Volkswagen Group Closed Its Business in Russia (Leave Russia, 2022). Available at: https://leave-russia.org/volkswagen-group (Accessed 28 December 2022).

Secondly, there are ethical challenges that demand careful consideration. As both professors emphasized, business enterprises bear moral obligations towards the inhabitants of a country. These responsibilities extend beyond their workforce, encompassing specific industries that carry additional societal duties.

For businesses providing essential services, opting to depart may potentially exacerbate human rights impacts when compared to remaining. Critical services encompass those whose disruption could lead to severe consequences for individuals and communities, covering vital aspects such as well-being, safety and basic needs. This includes essential sectors like energy, finance, water, transport and emergency services.[104] [105] [106]

A nuanced situation also arises when a company furnishes vital foods, medicine and healthcare services in a country, as exiting could potentially amplify negative human rights repercussions. In the sectors vital to the well-being of individuals, the decision to disengage may not be the optimal choice. The withdrawal of such businesses could adversely impact the rights to health and life and affect disproportionately vulnerable segments of society. Notably, food producers and retailers like AUCHAN[107], that cater to individuals with lower incomes, could exacerbate this impact.

This might be the reason why, as it is shown in the study promoted by KSE, the withdrawal rate from businesses in these sectors was lower.[108] Instances such as Nestlé's response to sanctions reflect the intricate nature of decision-making in

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[104] Copernicus Emergency Management Service, 'Crisis, Conflict, and Critical Assets'. Available at: https://sea.security.copernicus.eu/domains/crisis-conflict-and-critical-assets/ (Accessed 26 June 2023).
[105] B4Ukraine, Essential Goods and Services. Available at: https://b4ukraine.org/what-we-do/essential-goods-services (Accessed 24 November 2023).
[106] B4Ukraine Coalition, Kyiv School of Economics, Business and Human Rights Resource Centre, and Investor Alliance for Human Rights, 'The Business of Leaving: How Multinationals Can Responsibly Exit Russia' (2023). Available at: https://www.business-humanrights.org/en/latest-news/report-the-business-of-leaving-how-multinationals-can-responsibly-exit-russia/ (Accessed 29 November 2023).
[107] Le Monde, 'Auchan explique rester en Russie "pour le bien de ses salariés et des clients"'. Available at: https://www.lemonde.fr/economie/article/2022/03/27/auchan-explique-rester-en-russie-pour-le-bien-de-ses-salaries-et-des-clients_6119313_3234.html (Accessed 26 April 2023).
[108] Kyiv School of Economics, '52nd Issue of the Regular Digest on Impact of Foreign Companies Exit on RF Economy'. Available at: https://kse.ua/about-the-school/news/52nd-issue-of-the-regular-digest-on-impact-of-foreign-companies-exit-on-rf-economy/ (Accessed 1 September 2023).

conflict-affected areas. Nestlé took measures to curtail imports and exports to Russia while continuing to providing essential and basic foods to the local population.[109] Additionally, they stopped advertising and suspended all capital investment in Russian territory.[110] Nonetheless, the company was intensively criticized for "carrying business as usual", especially by the Ukrainian president.[111] This criticism highlighted the complexities involved in navigating the distinction between essential and non-essential goods.

Furthermore, the term "essential goods and services" itself lacks a universally accepted definition[112], leading to a lack of clarity and consistency across different countries and contexts. International organizations[113], legal regimes, and humanitarian and civil society organizations use their own definitions, making it challenging for stakeholders, especially in conflict-affected areas, to determine what goods and services are truly essential. This ambiguity also raises questions about ensuring accessibility to those in need and preventing the term's misuse.

To address these challenges, a contextual and conflict-sensitive approach is crucial when determining the scope and meaning of essential goods and services. In the context of the war in Ukraine and ongoing operations in Russia, prioritizing life-saving medicines not manufactured locally while excluding readily available items like food and hygiene products is essential. The continued production, distribution, and import of locally available and non-essential goods indirectly sustain the

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[109] Nestlé, 'Update on Ukraine and Russia'. Available at: https://www.nestle.com/ask-nestle/our-company/answers/update-ukraine-russia (Accessed 19 November 2023).
[110] Ibid.
[111] Brooke Rolfe, 'Nestlé Accused of War Crimes by Ukraine Foreign Minister Over Ongoing Trade in Russia' (2022). Available at: https://www.news.com.au/world/europe/nestle-accused-of-war-crimes-by-ukraine-foreign-minister-over-ongoing-trade-in-russia/news-story/a5ee4556052b7dda2bae779c526a95df (Accessed 8 January 2023).
[112] Business & Human Rights Resource Centre, 'New Study: Responsible Business Conduct in Time of War - Implications for Essential Goods & Services Providers in Ukraine'. Available at: https://www.business-humanrights.org/en/latest-news/new-study-responsible-business-conduct-in-time-of-war-implications-for-essential-goods-services-providers-in-ukraine/ (Accessed 1 December 2023).
[113] World Trade Organization, Lessons Learned from the Experience–Sharing Sessions on Trade in COVID-19 Related Goods. Available at: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/MA/409.pdf&Open=True (Accessed 4 December 2023).

resources enabling Russian aggression. This approach aims to prevent the perpetuation of conflict by focusing on items that are genuinely essential and critical for the well-being of the local population.[114]

Similarly, Danone maintained its production and distribution of essential dairy products and infant nutrition to meet the needs of the local population.[115] As external criticism mounted, companies like Nestlé and Danone altered their language to avoid emphasizing "essentiality" and began using expressions as “affordable, shelf-stable products” or “everyday food and hygiene products”.[116] Regardless of which nomenclature might be adequate, the decision to exit conflict-affected areas is neither simple nor immediate, given the associated impacts that must be carefully considered.

Moreover, businesses from the healthcare and pharmaceutical industries, which provide essential medicines and medical treatments, also face complex ethical dilemmas. For instance, Bayer AG, a multinational pharmaceutical and biotechnology company, ceased non-essential operations in Russia and Belarus while continuing to provide critical healthcare and agriculture products to the population. As they mentioned, “withholding essential healthcare and agriculture products from the civilian populations – like cancer or cardiovascular treatments, health products for pregnant women and children as well as seeds to grow food – would only multiply the war’s ongoing toll on human life.”.[117] Leaving people without these vital goods could significantly infringe on human rights.

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[114] B4Ukraine Coalition, Kyiv School of Economics, Business and Human Rights Resource Centre, and Investor Alliance for Human Rights, 'The Business of Leaving: How Multinationals Can Responsibly Exit Russia' (19 September 2023). Available at: https://www.business-humanrights.org/en/latest-news/report-the-business-of-leaving-how-multinationals-can-responsibly-exit-russia/ (Accessed 29 November 2023).
[115] Christian Hartmann, 'French Food Group Danone Suspends Investments in Russia' (Reuters, 2022). Available at: https://www.reuters.com/business/retail-consumer/french-food-group-danone-suspends-investments-russia-2022-03-06/ (Accessed 29 January 2023).
[116] Mondelez International, 'Statement on our Operations in Russia'. Available at: https://www.mondelezinternational.com/news/statement-on-our-operations-in-russia/ (Accessed 10 July 2023).
[117] Bayer, 'Ukraine'. Available at: https://www.bayer.com/en/ukraine (Accessed 29 September 2023).

When a business is responsible for providing essential goods and services to the population, the ramifications of its departure become even more profound. In such cases, if a business chooses to disengage, it bears the obligation to substantiate the reasons justifying its exit and outline the measures it will undertake to address potential human rights impacts. This demonstration should include a clear plan detailing how the population will maintain access to these vital products and services, which could involve identifying alternative companies capable of stepping in to provide what is needed.

On the other hand, if the business opts to remain, it must equally be prepared to substantiate its decision within a human rights context. This justification should be transparent and easily understandable for stakeholders.[118] While there isn't a specific legal document mandating that businesses providing essential services or products must pay extra heed to the consequences of their departure, international standards emphasize responsible disengagement. This leads us to believe, following the insights of authors such as Laura Iñigo Álvarez[119], Mariëtte van Huijstee[120], Lydia de Leeuw[121], and Joseph Wilde-Ramsing[122], that this aspect should be among the factors considered before making the decision to withdraw. By aligning their choices with these principles, businesses can navigate the intricate ethical and operational terrain, ensuring their actions prioritize both human rights and the welfare of the population they serve.

Furthermore, the fate of assets post-disengagement poses another layer of ethical concern. Consider the scenario presented by Unilever[123], wherein they raised

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[118] Ruth Green, 'From atrocities to accountability' (International Bar Association, 2022). Available at: https://www.ibanet.org/From-atrocities-to-accountability (Accessed 12 December 2022).
[119] Laura Íñigo Álvarez, Empresas a operar em áreas de conflito: Quadro legal, riscos e obrigações, 2022. Available at: https://www26.e-goi.com/recursos/3dafbf3f7351ad04ea57caa0017f569d/Image/Practical-Brief-NOVA-companies-in-conflict-areas.pdf (Accessed 17 October 2023).
[120] Mariëtte van Huijstee, Lydia de Leeuw, and Joseph Wilde-Ramsing, Should I Stay or Should I Go? (Centre for Research on Multinational Corporations, SOMO, 2016), Available at: https://www.somo.nl/wp-content/uploads/2016/04/Should-I-stay-or-should-I-go-4.pdf. (Accessed 1 November 2023).
[121] Ibid.
[122] Ibid.
[123] Daniel Thomas, 'Unilever: Cornetto maker defends decision to stay in Russia' (BBC, 2023). Available at: https://www.bbc.com/news/business-66101852 (Accessed 16 May 2023).

apprehensions that their business and brands could be seized and operated by the Russian state if abandoned.

These concerns are especially pronounced for companies possessing distinct intellectual property, customer data, and technologies that could potentially be wielded by the Russian government to perpetuate abuses. Take the case of the Finnish company Nokia, which halted its sales in Russia in response to the Ukraine invasion. Despite this, it left equipment and software unattended, inadvertently allowing the government to exploit the nation's largest telecommunications network for digital surveillance.[124]

An additional focal point of concern is whether disengagement might inadvertently create an opening for third parties, including Russian entrepreneurs, to navigate around the sanction regime and exploit emerging business prospects that materialize due to the void left by departing Western companies.

However, even if the sale or transfer of assets initially appears to benefit the Russian economy, a closer examination of the long-term implications reveals that it is not always the case. The absence guidance, expertise and support from the departing company could pose serious challenges to its Russian plants, potentially leading to a decline in their value. Furthermore, the loss of access to innovative technologies, specialized management practices, and intellectual property could severely impede the performance and innovation capabilities of these plants.

Similarly, the transfer of assets to another entity in Russia does not ensure long-term benefits for the Russian economy. The departure of a well-established company from the Russian market may result in a gap that is not easily filled by other players. The new owner may lack the same level of expertise, resources or global networks as the existing company, potentially leading to decreased

[124] Adam Satariano, Paul Mozur, and Aaron Krolik, 'When Nokia Pulled Out of Russia, a Vast Surveillance System Remained' (New York Times, 2022). Available at: https://www.nytimes.com/2022/03/28/technology/nokia-russia-surveillance-system-sorm.html (Accessed 28 June 2023).

productivity, reduced competitiveness, and missed opportunities for growth. The withholding of patented technology by the selling company could further disrupt the market , denying the buyer the benefits of years of research, development and technology.[125]

Thirdly, there are also operational challenges intertwined with the process of selling a business. Dissolving a fully functional business might lead to financial setbacks and could trigger responses from the host government. Additionally, the imposition of sanction regimes by Western governments has compounded the complexities for businesses seeking buyers for their Russian operations.

Additionally, when businesses withdraw for ethical reasons, they must seek out buyers who are committed to upholding human rights, including considerations like not supplying the military and maintaining employment norms. In cases where an exit is abrupt and lacks a premeditated strategy, a multitude of employees might find themselves without salaries, potentially leading to their recruitment into the military forces.

These challenges encompass a spectrum of intricacies related to securing a buyer. Nevertheless, another crucial aspect demands attention: the potential unviability of the subsidiary as a self-sustaining business unit.

In the fourth place, in their analysis, both professors underscored the substantial bargaining power that governmental authorities in the host nation may have over the subsidiaries of multinational enterprises functioning within that territory. The presence of foreign companies is governed by the legal framework of the host country, which may encompass legal obligations that hinder the smooth withdrawal of businesses from regions like Russia.

[125] B4Ukraine Coalition, Kyiv School of Economics, Business and Human Rights Resource Centre, and Investor Alliance for Human Rights, 'The Business of Leaving: How Multinationals Can Responsibly Exit Russia' (19 September 2023). Available at: https://www.business-humanrights.org/en/latest-news/report-the-business-of-leaving-how-multinationals-can-responsibly-exit-russia/ (Accessed 29 November 2023).

An abrupt exit could result in legal action by the authorities or business partners. This challenge is even more pronounced in heavily regulated sectors, such as telecommunications and finance, where the sale of a business unit necessitates regulatory approvals for mergers and acquisitions.

In addition to legal complexities, instances of asset expropriation by Russian authorities further complicate the landscape. Notably, Wintershall, a German energy conglomerate, reported a significant expropriation of its assets in Russia. This underscores the vulnerabilities linked to holding valuable intellectual property and technologies in conflict-affected regions. [126]

The shifting legal context in Russia amplifies the risk factors for multinational companies operating in the region. The recent introduction of laws with far-reaching implications for the human rights responsibilities of businesses adds another layer of complexity. A case in point is the law issued by Putin in July 2022 [127], allowing the imposition of economic measures to support counterterrorism and operations beyond Russia's borders. These measures compel companies to provide goods and services to support such operations under the threat of severe penalties for non-compliance.

Moreover, Putin's mobilization decree in September 2022 mandates companies to aid in soldier recruitment, armament of the Russian army and provision of vital information for the war effort. This has led to businesses inadvertently becoming sources of new recruits. [128] [129] For instance, investigations have revealed that

[126] Patricia Nilsson, 'Energy group Wintershall seeks to sue Kremlin over seized Russian assets' (Financial Times, 2023). Available at: https://www.ft.com/content/59930e0f-b4fe-4b15-950f-696f1bfd1e14 (Accessed 28 July 2023).

[127] Mobilization in Russia and Corporate Complicity in War Crimes: Real Legal Risks for Multinationals Still Working in Russia, (B4Ukraine, 2022). Available at: https://b4ukraine.org/whats-new/russias-partial-mobilization (Accessed 06 July 2023).

[128] Nataliya Popovych, 'International Business in Russia Risks Slipping from Compliance to Complicity' (Business & Human Rights Resource Centre, 2023). Available at: https://www.business-humanrights.org/en/blog/international-business-in-russia-risks-slipping-from-compliance-to-complicity/ (Accessed 31 March 2023).

[129] New Kremlin Regulation Raises Risks for the 1600 International Companies Left in Russia (B4Ukraine, 2023). Available at: https://b4ukraine.org/whats-new/new-kremlin-regulations (Accessed 30 March 2023).

several thousand employees from German companies were called up under these provisions. [130]

The situation evolved further in March 2023, when Russia's president issued a decree enabling the suspension of shareholders' rights and imposition of external management under martial law conditions. This decree empowers the Russian government to take control of companies that fail to meet state defence contracts, leading to a form of "partial nationalization.[131]

The evolving legal environment [132] underscores the need for multinational companies remaining in Russia to acknowledge their compliance with legal obligations, even if those obligations indirectly support the military activities that potentially violate international law. [133] This intricate legal landscape demands that businesses constantly adapt to new legislative actions, potentially making them unwittingly complicit in violations.[134]

Beyond the challenges highlighted by the professors and discussed earlier, it is imperative to contemplate additional consequences when deciding whether to withdraw from Russia. An important factor in this context is the isolation of the Russian population from the global internet[135]. Notably, technology giants like Microsoft, Apple, and Google have exited Russia, a move that could elevate the

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[130] Ella Skybenko, 'Duty Failure: Scant Evidence of Effective Due Diligence by Companies Operating in Russia' (Business & Human Rights Resource Centre, 2023). Available at: https://www.business-humanrights.org/en/blog/duty-failure-scant-evidence-of-effective-due-diligence-by-companies-operating-in-russia/ (Accessed 30 March 2023).
[131] Mark Trevelyan, 'Putin Amends Law to Ensure State Defence Orders Are Properly Met' (Reuters, 2023). Available at: https://www.reuters.com/world/europe/putin-amends-law-ensure-state-defence-orders-are-properly-met-2023-03-03/ (Accessed 19 April 2023).
[132] B4Ukraine Coalition, Kyiv School of Economics, Business and Human Rights Resource Centre, and Investor Alliance for Human Rights, 'The Business of Leaving: How Multinationals Can Responsibly Exit Russia' (2023). Available at: https://www.business-humanrights.org/en/latest-news/report-the-business-of-leaving-how-multinationals-can-responsibly-exit-russia/ (Accessed 29 November 2023).
[133] Russia Lets International Companies Disregard Foreign Shareholders. It's Time to Disregard Russia (B4Ukraine, 2023). Available at: https://b4ukraine.org/whats-new/russia-lets-international-companies-disregard (Accessed 18 February 2023).
[134] New Kremlin Regulation Raises Risks for the 1600 International Companies Left in Russia (B4Ukraine, 2023). Available at: https://b4ukraine.org/whats-new/new-kremlin-regulations accessed 30 March 2023.
[135] Russia: With Tech Firms Pulling Out, Internet Spiraling into Isolation" (Human Rights Watch, 2022). Available at: https://www.hrw.org/news/2022/03/14/russia-tech-firms-pulling-out-internet-spiraling-isolation (Accessed 9 March 2023).

risk of the population disconnected from the global internet.[136] In a landscape with limited media pluralism and restricted access to social media platforms[137], Russians could be deprived of unaltered information that counters government narratives.

Conversely, exiting Russia could serve as a means to raise awareness among the Russian population about the gravity of the conflict in Ukraine. Given the dominance of state-controlled media and propaganda, the departure of businesses might serve as a significant tool in informing the public about the true severity of the situation.

Numerous considerations must be carefully evaluated before arriving at a decision to leave the country, yet it is equally important to acknowledge the substantial risks that come with maintaining a presence in Russia. Enterprises that collaborate with or invest in state-owned Russian enterprises find themselves at a heightened risk of inadvertently aiding, abetting, or facilitating the country's violations of international law. Similarly, companies dealing in weapons, military equipment, or dual-use technologies with military applications risk becoming directly implicated in ongoing crimes. However, it is essential for businesses to also consider their engagements in sectors such as gas, oil, and surveillance software.[138]

Additionally, the growing recognition that businesses involved in joint ventures with the Russian government or intertwined with state-owned and military-

[136] Victor Zhu, 'The Human Rights Risks of Doing Business in Russia Following the Invasion of Ukraine' (University of New South Wales Human Rights Blog, 2022). Available at: https://www.humanrights.unsw.edu.au/students/blogs/risks-business-russia-invasion-ukraine (Accessed 6 August 2023).

[137] Dan Milmo, 'Russia Blocks Access to Facebook and Twitter' (The Guardian, 2022). Available at: https://www.theguardian.com/world/2022/mar/04/russia-completely-blocks-access-to-facebook-and-twitter (Accessed 8 January 2023).

[138] Adam Satariano, Paul Mozur, and Aaron Krolik, 'When Nokia Pulled Out of Russia, a Vast Surveillance System Remained' (New York Times, 2022). Available at: https://www.nytimes.com/2022/03/28/technology/nokia-russia-surveillance-system-sorm.html (Accessed 28 June 2023).

controlled entities [139] [140] may contribute to International Humanitarian Law violations led BP, a British oil company, to abandon its 20 percent stake in Rosneft, a Russian state-controlled oil enterprise.[141] [142]

The Prosecutor General's Office of Ukraine has documented over 70 thousand war crimes committed by the Russian Armed Forces in Ukraine since the invasion's outset. As previously emphasized, both the personnel and material resources of companies might be exploited in support of the invasion and other atrocities. The awareness of these risks among businesses that opt to remain in Russia removes any potential reliance on wilful blindness and may establish the required 'intent' standard under the Rome Statute.[143]

Navigating the intricate interplay between the implications for human rights and the ongoing conflict, coupled with the imperative of sustaining economic ties presents a significant challenge for companies considering whether to withdraw from Russia. Should an enterprise's operations exacerbate the conflict or contribute to human rights violations, leaving Russia may become a necessity. [144] However, it is essential to acknowledge that such decisions are far from straightforward.

Our research has uncovered additional factors that merit attention by businesses deliberating their exit from Russia. Operational considerations had a meaningful

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[139] Irene Pietropaoli, 'Heightened Human Rights Due Diligence: Reflections on Sudan, Ukraine, Russia, and Myanmar' (Enact, 2022). Available at: https://www.enact.se/heightened-human-rights-due-diligence-reflections-on-sudan-ukraine-russia-and-myanmar/ (Accessed 29 August 2023).
[140] Global Rights Compliance, 'The Responsibility of Businesses Engaged in Russia' (2022). Available at: https://globalrightscompliance.com/2022/03/03/the-responsibility-of-businesses-engaged-in-russia/ accessed 16 December 2022.
[141] The New York Times. (2022). BP to Sell Stake in Russian Oil Giant Rosneft Amid Ukraine Crisis. Available at: https://www.nytimes.com/2022/02/27/business/bp-rosneft-oil-stake.html (Accessed 3 March 2023).
[142] BP. (2022). 'Statement on Media Reports Regarding BP's Exit from Russia' BP. Available at: https://www.bp.com/en/global/corporate/news-and-insights/press-releases/statement-on-media-reports-regarding-bps-exit-from-russia.html (Accessed 3 March 2023).
[143] Nataliya Popovych, 'International Business in Russia Risks Slipping from Compliance to Complicity' (Business & Human Rights Resource Centre, 2023). Available at: https://www.business-humanrights.org/en/blog/international-business-in-russia-risks-slipping-from-compliance-to-complicity/ (Accessed 31 March 2023).
[144] British Institute of International and Comparative Law (BIICL), "Do Foreign Companies Have a Responsibility under International Law to Leave Russia?". Available at: https://www.biicl.org/blog/33/do-foreign-companies-have-a-responsibility-under-international-law-to-leave-russia (Accessed 22 September 2023).

role in prompting companies to depart from the Russian territory. The disruption of transportation routes and supply chains had substantial impact on many enterprises, influencing their decisions to withdraw.[145]

Furthermore, numerous businesses have chosen to disassociate themselves from Putin's regime due to reputational considerations. The pressure exerted by civil society on multinational enterprises to take meaningful actions aimed at pressuring the Russian government into ending the war has further propelled exit decisions.

Criticism has been levelled at several multinational enterprises for their continued presence in Russia, owing to the substantial profit taxes paid to the State[146]. It is important to note that maintaining economic ties with Russia, even indirectly, can inadvertently support its war efforts. While there are arguments that might rationalize a business' presence in Russian territory, particularly when providing essential goods and services, such justifications encounter greater challenges for businesses in sectors like gas and oil. The substantial revenues stemming from oil and gas exports significantly contribute to the Russian budget. This financial importance prompted the G7 to establish a price cap for Russian oil in 2022, aiming to curtail profits that directly benefit Putin's administration.[147]

Mondelez, for instance, has been labelled by Ukraine's National Agency for the Prevention of Corruption (NAPC) as an "international sponsor of war."[148] This designation carries substantial repercussions for the company's reputation. Being listed as an "international sponsor of war" in the WorldCheck compliance

[145] Nguyen Hoang Tien. (2022). 'Russia-Ukraine War and Risks to Global Supply Chains' ResearchGate. Available at: https://www.researchgate.net/publication/361701652_Russia-Ukraine_war_and_risks_to_global_supply_chains (Accessed 7 July 2023).
[146] The B4Ukraine Project. (2023). 'The Lucrative Business of Staying: Corporate Foreign Enablers of the Kremlin's War' B4Ukraine. Available at: https://b4ukraine.org/what-we-do/business-of-staying (Accessed 7 August 2023).
[147] B4Ukraine Coalition. (2023). 'Report: Unfinished Business. International Business Exits from Russia since the Beginning of the Full-scale Invasion of Ukraine' Business & Human Rights Resource Centre. Available at: https://www.business-humanrights.org/en/latest-news/report-unfinished-business-international-business-exits-from-russia-since-the-beginning-of-the-full-scale-invasion-of-ukraine/ (Accessed 15 April 2023).
[148] Jessica DiNapoli, Reuters, 'Mondelez Singled Out for Boycott Over Russia Business - Memo' (2023). Available at: https://www.reuters.com/business/retail-consumer/mondelez-singled-out-boycott-over-russia-business-memo-2023-06-16/ (Accessed 17 October 2023).

database, used by insurance companies and banks to assess risks, could limit Mondelez's access to corporate and personal finances.

Though some businesses that opt to remain in Russia have faced accusations of indirectly financing the war through taxes, and despite potential reputational damage, it is important to recognize that such indirect contributions are unlikely to establish legal liability. As aptly stated by Professor John Ruggie, "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.”.[149]

In addition, it is important to note that when contemplating the departure of companies from Russia, the primary emphasis should not be placed on the financial loss they might face. This is due to the fact that the earnings from Russia typically constitute a small portion of most companies’ total revenue. This becomes particularly relevant given the potential for extensive global corporate boycotts, which could have more detrimental effects. In addition, it is noteworthy that numerous business enterprises that chose to withdraw experienced a favourable reputational enhancement.[150] This highlights the multifaceted nature of the decision-making process, where considerations extend beyond immediate financial implications to encompass broader reputational and global maker dynamics.

Should businesses opt to disengage after a thorough assessment of potential outcomes, it is imperative they do so with a profound sense of responsibility. Our research underscores the importance of business enterprises conducting robust Human Rights Due Diligence in conflict-affected areas in order to identify and mitigate impacts stemming from both continued presence and withdrawal.

[149] John Gerard Ruggie, 'Protect, Respect and Remedy: A Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises' (United Nations, 2008), United Nations Digital Library. Available at: https://digitallibrary.un.org/record/625292 (Accessed 25 November 2023).

[150] Jeffrey Sonnenfeld, Steven Tian, and Steven Zaslavsky, 'Businesses that Refuse to Leave Russia are Experiencing the Greatest Costs' (Business & Human Rights Resource Centre, 2022). Available at: https://www.business-humanrights.org/en/latest-news/opinion-businesses-that-refuse-to-leave-russia-are-experiencing-the-greatest-costs/ (Accessed 25 November 2023).

Businesses should endeavour to identify, prevent, cease, or mitigate the impacts of disengagement on stakeholders. In conflict-affected areas, meticulous identification of involved stakeholders is imperative. Stakeholder engagement assumes a significant role in the due diligence process. It is through, for example, engaging with communities, consulting NGO's, seeking advice from embassies, among other entities, that businesses may gain insights into the diverse impacts that multiple decisions may have on stakeholders. In scenarios where stakeholder engagement proves unfeasible, businesses should consult "credible and independent experts."[151]

In addition, businesses should assess whether they are causing, contributing to the impacts or if such adverse impacts are directly linked to their operations, products, or services through a business relationship. Consequently, they should decide on appropriate actions, which might involve disengagement. Nevertheless, as previously highlighted, this decision-making process is intricate and requires consideration of various factors.

Companies must not only uphold their Code of Conduct and adhere to the laws of the operating country as a baseline[152] but should also leverage their influence to ensure ongoing compliance with these laws among the entities they are in business with. Moreover, enterprises may act together with other companies, utilizing their combined influence to prevent and address adverse human rights impacts. These collaborative efforts can amplify the pressure on entities causing harm.

Furthermore, the enterprise must continue to conduct risk-based due diligence in its supply chains, underscoring the proactive role that companies can play in upholding ethical standards and mitigating human rights risks throughout their operations and exit strategies.

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[151] United Nations Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011). Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Accessed 21 October 2023).
[152] Ibid.

Transparency also remains a paramount principle. Businesses should openly disclose their existing footprint in the country, articulate the reasons for disengaging, and outline strategies to alleviate potential withdrawal impacts. Responsible disengagement involves taking reasonable, appropriate measures to avert adverse human rights repercussions related to withdrawal.[153] Operational exit plans should encompass the timeframes involved in the withdrawal, ongoing heightened due diligence activities, and a thorough analysis of supplier dependencies on the enterprise.

Addressing the well-being of affected workers and communities is another vital aspect. Throughout the implementation of exit plans, businesses must facilitate remedies for workers in their supply chains and actively work towards preventing suppliers from engaging in human rights violations. It is imperative to communicate to suppliers that worker contract termination should only occur when essential, adhering to local laws as outlined in resources like the International Labour Organization's summaries.[154]

Our research encountered challenges in gathering information about the measures taken by multinational enterprises to prevent and mitigate impacts on the conflict and human rights during their exit from Russia. Despite these challenges, noteworthy examples such Inditex, the parent company of Zara, have come to light, demonstrating their commitment through initiatives like providing financial support to affected employees.[155]

In conclusion, responsible disengagement strategies in conflict-affected areas encompass a spectrum of considerations, raging from curtailing the risk of

[153] Organisation for Economic Co-operation and Development, 'OECD Guidelines for Multinational Enterprises on Responsible Business Conduct' (2023), Available at: https://www.oecd.org/daf/inv/mne/48004323.pdf (Accessed 29 October 2023).
[154] Ippei Tsuruga, Saw U Ler Moo, 'Employment Termination in Myanmar: Rules and Payments on Separation' (2021). Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_840699.pdf (Accessed 13 October 2023).
[155] 'Zara owner Inditex ceases trading in Russia ‘temporarily’' (The Guardian, 2022). Available at: https://www.theguardian.com/world/2022/mar/05/zara-owner-inditex-ceases-trading-in-russia-temporarily-ukraine-sanctions (Accessed 26 June 2023).

complicity to engaging with stakeholders, ensuring transparency, presenting sustainable alternatives, and, though not examined in this thesis, facilitating access to remedy, among various other aspects.

VI. Conclusions and final remarks

The most authoritative global standards concerning the intersection of business and human rights, namely the UNGPs and the OECD Guidelines, emphasize the critical importance for businesses to safeguard human rights. To fulfil this obligation, businesses must undertake Human Rights Due Diligence. In conflict-affected areas, where the risk of adverse human rights impacts is enhanced, a heightened Human Rights Due Diligence process becomes imperative. This comprehensive approach assesses and addresses not only the impact on human rights, but also on the conflict itself.

HRDD should encompass adverse human rights impacts that the business enterprise may cause, or contribute to through its own activities, as well as impacts that may be directly linked to its operations, products, or services by a business relationship. When a business becomes entangled in such impacts through a business relationship, leveraging influence to prevent or mitigate these effects becomes crucial.

Initiating HRDD at an early stage, in alignment with the Guiding Principles, holds paramount significance, particularly when embarking on new activities or partnerships. This proactive engagement plays a pivotal role in identifying and addressing escalating risks associated with human rights.

Furthermore, when considering partnering with entities known for violations, evaluating the potential for risk reduction through the relationship becomes essential. Based on this evaluation, the decision to engage is determined by the capacity to mitigate risks through contractual means.

Proactive approaches that enterprises can adopt to reduce vulnerabilities to human rights issues include incorporating provisions within agreements that grant ample influence to influence affiliated entities to adhere to human rights standards.

Additionally, companies should wield the potential of disengagement as leverage, enhancing the ability to mitigate impacts by leveraging early integration and continued deliberation. This approach ensures the credibility and impact of disengagement, motivating partners to enhance their human rights performance and effectively preventing and mitigating impacts.

As a pre-emptive step, businesses must also develop a premeditated exit plan, outlining the conditions that would initiate a withdrawal.

Operating in conflict-affected regions poses challenges, but they are not insurmountable. International standards emphasize engagement over disengagement. However, when leverage is insufficient and cannot be strengthened, businesses should contemplate ending a business relationship. Factors such as the severity of harm, the significance of the business relationship, and the effects of disengagement should also be weighed when making this decision.

The decision-making process should be individualized, considering the unique circumstances of each business and sector. It should involve a thorough assessment of potential human rights consequences associated with disengagement versus maintaining the business relationship. The preferred course of action should be the one that has the least negative impacts on human rights and the conflict. Nevertheless, both withdrawal and engagement have various impacts that difficult the decision.

When a thorough HHRDD process indicates that the potential human rights and conflict impacts of suspending operations or exiting the conflict-affected area are outweighed by the potential impacts of remaining, companies must ensure that their decisions align with responsible business conduct standards and opt not to withdraw. Effective HHRDD involves continuous monitoring of human rights impacts, active use of influence to mitigate and remedy harms, meaningful consultations with affected rights-holders, and the development of a well-considered disengagement plan, should disengagement be necessary. Additionally, transparent communication about these efforts with relevant stakeholders is indispensable.[156]

On the other hand, if opting for withdrawal, especially in conflict-affected areas, businesses should do so responsibly. Stakeholder engagement remains a central strategy, both prior to and subsequent to terminating a business relationship, informing the disengagement plan and helping businesses understanding the broader implications of their decisions on stakeholders and the conflict itself. Thus, meticulous exit planning is imperative for companies, as abrupt disengagements hinder the ability to consult stakeholders and fully understand their potential impact on the conflict and human rights.

Post-decision, businesses should continue to monitor and mitigate lingering impacts, aligning their actions with human rights principles and conflict sensitivity. Moreover, the dynamic nature of conflict-affected regions necessitates ongoing HRDD, as potential shifts in the balance of consequences over time may require adjustments to businesses' strategies.[157]

However, effective HRDD implementation remains a challenge. Only a few[158] businesses effectively carry out this process. Operating in conflict-affected areas presents more complex challenges, and international standards are often not adequately adapted to such contexts. Ambiguous concepts in the standards, particularly regarding disengagement, such as "cruciality", "severity," and

[156] B4Ukraine Coalition, Kyiv School of Economics, Business and Human Rights Resource Centre, and Investor Alliance for Human Rights, 'The Business of Leaving: How Multinationals Can Responsibly Exit Russia' (2023). Available at: https://www.business-humanrights.org/en/latest-news/report-the-business-of-leaving-how-multinationals-can-responsibly-exit-russia/ (Accessed 29 November 2023).

[157] 'Operating in Conflict-Affected Contexts: An Introduction to Good Practice' (Business & Human Rights Resource Centre, 2022). Available at: https://www.business-humanrights.org/en/blog/operating-in-conflict-affected-contexts-an-introduction-to-good-practice/ (Accessed 17 January 2023).

[158] 'Russian Invasion of Ukraine: What Companies Have to Say About Their Human Rights Due Diligence' (Business & Human Rights Resource Centre, 2022). Available at: https://www.business-humanrights.org/en/latest-news/russian-invasion-of-ukraine-what-companies-have-to-say-about-their-human-rights-due-diligence/ (Accessed 20 January 2023).

"leverage.", contribute to this complexity, making it difficult for businesses to navigate their human rights obligations.

The Russia case underscores the consequences of inadequate HRDD. Even though Russia was a high-risk area since 2014, there is no evidence that businesses developed adequate exit plans, resulting in abrupt departures with limited disclosure. The details of specific measures taken by companies when exiting the country remain difficult to obtain, as they solely disclose limited information due to concerns about potential repercussions.

Hopefully, in the future, a more comprehensive analysis of their actions will be possible. Nonetheless, it can be asserted that had these companies conducted HHRDD before entering the Russian market, or responded promptly to the annexation and invasion of Crimea by assessing human rights impacts and other operational, financial, reputational and legal risks, more judicious decisions could have been made, thereby avoiding the costly uncertainties they currently face.[159]

Despite the distressing aspects of the conflict, positive outcomes emerged. The heightened media coverage, coupled with rigorous sanctions imposed on Russia and the public scrutiny on businesses operating within the country, prompted enterprises to place greater emphasis on human rights considerations. This fostered improvements in, or at least contemplation of implementing, robust HRDD processes. The corporate exodus from Russia may serve as a catalyst for positive change in other conflict-affected areas[160]. Additionally, it can significantly raise awareness among investors regarding the responsibility of invested companies to uphold human rights. Investors can influence human rights impacts by exerting

[159] B4Ukraine Coalition, Kyiv School of Economics, Business and Human Rights Resource Centre, and Investor Alliance for Human Rights, 'The Business of Leaving: How Multinationals Can Responsibly Exit Russia' (2023). Available at: https://www.business-humanrights.org/en/latest-news/report-the-business-of-leaving-how-multinationals-can-responsibly-exit-russia/ (Accessed 29 November 2023).

[160] Elisabeth Braw, 'Easy to Say Goodbye to China but Hard to Untangle' (Politico, 2023). Available at: https://www.politico.eu/article/easy-goodbye-china-russia-west-war-ukraine/ (Accessed 19 November 2023).

pressure on the companies they invest in, compelling them to acknowledge vulnerabilities and take steps to mitigate them.

In the foreseeable future, new mandatory regulations concerning HRDD are on the horizon. A prime example is the Corporate Sustainability Due Diligence Directive that carries the potential to profoundly influence the prevention and resolution of corporate human rights violations. However, the true efficacy of these laws will only become apparent as time progresses.

In conclusion, businesses bear a multitude of responsibilities in upholding human rights. This journey might involve the pivotal decision of whether to withdraw from a conflict-affected area, as exemplified by the recent developments in Russia. Regardless of the chosen path, it is imperative for companies to actively address potential repercussions, thereby underscoring their unwavering commitment to responsible and ethical conduct amidst the ever-evolving landscape of geopolitical challenges.

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