



University for Peace



Permanent Mission of the Republic of
Azerbaijan to the UN Office and other
International Organizations in Geneva

Conference

Impacts of Illegal Economic Activities in Conflict Areas on Human Rights

Concept Note

Introduction

While the forces of globalisation have increased the number, scope and power of business enterprises both nationally and internationally and extended income opportunities in many corners of the world, adverse human rights impacts of trans-border economic and business activities have been challenging the global community for years.

At a time when the multilateralism is under constant attack with international institutions becoming weaker and protracted crisis situations awaiting their solutions based on international law, new armed conflicts continue to emerge in different parts of the world and result in political, economic and social hardships, mass violations of human rights, and unprecedented increase in forced internal and cross-border displacement.

Human rights impacts of business activities are further exacerbated in times of armed conflicts, thus aggravating the already miserable situation of their victims. In many cases, those exercising control over the conflict-affected territories aim to sustain their illegitimate authority and occupation by encouraging illegal business activities in those territories by providing wide range of incentives to foreign companies, like leasing out vast areas of land almost free of charge, tax incentives and other benefits at the expense of violation of property and other rights of pre-conflict constituency of these territories which has already been expelled/ethnically cleansed in violation of international law. Lack of legitimate governance and rule of law, and highly dependence of occupying regimes on foreign investors serve as attractive incentives for outside businesses.

Subsequently, in recent years, illegal business activities in conflict-affected territories have proliferated, and their implications on civil, political, economic, social and cultural rights of conflict victims have further grown in scope and complexity. The conflict-affected territories too often become the hub of terrorism, human, arms and drug trafficking, and other crimes. The globalization and emerging digital economy has added up to the complexity of the abovementioned negative implications requiring more holistic and forward looking approaches.

Present environment

The applicability of international human rights law in situations of armed conflicts was broadly debated over the past several years¹. Nonetheless, nowadays it is widely recognized among the international community that since human rights obligations derive from the recognition of inherent rights of all human beings and that these rights can be

¹ Lubell Noam, Challenges in Applying Human Rights Law to Armed Conflict, International Review of the Red Cross.

affected both in times of peace and in times of war, the international human rights law shall continue to apply in situations of armed conflicts. Moreover, nothing in universal human rights treaties indicates that these treaties do not apply in times of armed conflicts. Hence, the two bodies of law – international human rights law and international humanitarian law – are considered to be complementary sources of obligations in situations of armed conflicts².

Human rights aspect of business and other economic activities in times of conflict and in post conflict situations include the respect for human rights obligations by the occupying State/the State exercising effective control over the territories, human rights responsibility of the business entities conducting economic activities in conflict-affected territories, and the third party obligations of the home States of the business entities.

While international human rights obligations of the States are clearly engraved in the international bill of human rights with their requirements, limitations and effects in situations of armed conflict elaborated by international and regional courts, and the UN, human rights responsibilities of businesses with regard to conflict situations still remain to be improved.

Pursuant to increased recognition and plea that business shall also be bound by ensuring respect for human rights, in 2011 the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights in its resolution 17/4³. With the aim to promote the effective and comprehensive implementation of human rights by business community, the Human Rights Council established the Working Group on the issue of human rights and transnational corporations and other business enterprises⁴.

Along with State's existing obligations to respect, protect and fulfil human rights and fundamental freedoms and the importance of having appropriate and effective remedies in place, the Guiding Principles underline the human rights responsibilities of business enterprises and require them to conduct human rights due diligence to identify and prevent potential and actual adverse human rights impacts of their business activities. As the risk of gross human rights violations, including continuous violation of property rights and systemic discrimination is heightened in conflict situations, businesses are expected to be even more cautious when they are invited to invest and/or function in conflict-affected areas.

As required by the Guiding Principles, business enterprises should respect the standards of international humanitarian law in the situations of armed conflict. The international humanitarian law explicitly prohibits an occupier from amending the territory's laws, altering its demographics by facilitating new settlements, pillage, plundering and exploitation of natural resources as well as destruction and/or unlawful appropriation of public and private property in occupied territories⁵. It is thus important to make sure that businesses have special due diligence mechanisms to ensure that their activities do not directly or indirectly contribute to and facilitate illegal activities of an occupying power and armed groups in violation of the above-mentioned provisions of international law.

Since illegal activities in conflict-affected territories, such as changing its demographics, destruction and unlawful appropriation of property, are designed as war crimes under international criminal law⁶, entailing individual criminal responsibility, illegal business activities can expose the owners or executive officers of the business enterprises functioning in conflict-affected territories to the risk of being deemed complicit in grave human rights abuses and war crimes under international criminal law.

States have a duty to ensure that all their natural and legal persons, wherever located, abide by international obligations, including respect of human rights and avoid the trade or other economic activity in and with regard to conflict-affected areas, which produces "conflict diamonds" effect and contribute to fuelling and prolongation of conflict.

² UN Publication on International Legal Protection of Human Rights in Armed Conflict, HR/PUB/11/01 page 6.

³ https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

⁴ <https://www.ohchr.org/en/issues/business/pages/wghrandtransnationalcorporationsandotherbusiness.aspx>.

⁵ Hague Regulations of 1907 and Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949.

⁶ Rule 156. Definition of War Crimes, ICRC, Customary IHL Database https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156.

Despite the Guiding Principles' acceptance as a universal and inclusive framework for businesses to be guided with in upholding their human rights responsibilities, a significant gap remains with regard to clear guidance for businesses when it comes to their conflict related activities. Moreover, the Guiding Principles remain to be only a voluntary framework and are based on good will of the UN Member States and business communities.

In 2014, at its 26th session the Human Rights Council adopted resolution 26/9 by which it decided “to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises”⁷. Although still under discussion, this legally binding instrument, as it is seen from its draft presented to the Member States for the first reading in October 2018⁸, will legally oblige the global community of the Member States and businesses to comply with their human rights obligations.

Alongside with a number of important aspects of ensuring human rights in the context of any business activities of transnational character, this initial draft also underlines the necessity of undertaking actions with a view to identifying, preventing and mitigating the human rights-related risks of business activities in conflict-affected areas. Having a provision of binding nature on this issue is certainly a step forward. However, the draft needs to be further extended to address multi-faceted and complex elements and impacts of illegal economic and other dealings in and with regard to the conflict-affected areas, on human rights of victims of the conflicts, including their property rights.

Objectives

The Conference aims at discussing the above-mentioned issues, in particular:

- to exchange views on the current international framework which the UN Member States, business enterprises, NGOs and individuals should refer to in their activities to avoid violations of international law;
- to search for possible judicial remedy mechanisms to be used by individuals, groups and communities to resolve violations of their rights by business activities in the relevant conflict-affected areas;
- to take stock of the progress achieved in elaboration of the international legally binding instrument and to make sure that it will aim, *inter alia*, at closing the existing gap of accountability for human rights violations by business enterprises in general and generated by their activities in conflict-affected areas in particular;
- to discuss third party obligations for illegal economic and other activities in conflict-affected territories, including legal consequences of the involvement, directly or indirectly/by action or inaction, of the UN Member States as well as natural and legal persons within their jurisdiction, in economic and other activities in conflict-affected areas.
- to deliberate on the nexus between unlawful economic and other dealings in and with regard to the conflict-affected territories and prolongation of conflicts.

⁷ http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/9.

⁸ <https://www.ohchr.org/en/hrbodies/hrc/wgtranscorp/pages/igwgontnc.aspx>.