Stringent Due Diligence and Corporate Climate Harm in Conflict-Affected Contexts

Amanda Kron*
Lund University, Lund, Sweden
amanda.kron@jur.lu.se

Following the International Court of Justice (ICJ) Advisory Opinion on obligations of states in respect of climate change, it is clear that there is a heightened duty for states to act with due diligence and take appropriate measures to prevent climate harm.[1] This duty includes an obligation for states to take 'necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction'.[2] The stringent due diligence of states will thus have an effect on state regulation of emissions by private actors, which will in turn impact the requirements placed on corporate due diligence.

Businesses can contribute to significant climate harms in conflict-affected contexts.[3] Sectors with large climate footprints frequently operating in conflict-affected contexts include energy, extractives and critical minerals, but also corporations contributing to deforestation. Situations of armed conflict are often characterised by an environmental governance vacuum, with limited state monitoring, institutional capacity, and compliance.[4] The regulation and monitoring of private actors and their potential adverse impacts on climate change thus become even more important in conflict-affected contexts, with heightened requirements for home states. The text engages with three sources of obligations in this context: the ICJ Advisory Opinion, Guiding Principle 7 of the United Nations Guiding Principles on Business and Human Rights (UNGPs) and Principle 10 of the International Law

---

* Doctoral Candidate, Lund University.

1 ICJ, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, ICJ Reports 2025, 86 (para. 138): 'the Court recognizes that the standard of due diligence for preventing significant harm to the climate system is stringent'.

2 ICJ, *Climate Change* (n. 1), para. 428.

3 The text will primarily use the terms conflict-affected contexts or areas, which are the terms used by the UN Working Group on Business and Human Rights and the International Law Commission.

4 David Jensen and Amanda Kron, 'Environmental Peacebuilding and the United Nations', in: Ashok Swain and Joakim Öjendal (eds), *Routledge Handbook of Environmental Conflict and Peacebuilding* (Routledge 2018), 121-142 (134).

DOI 10.17104/0044-2348-2026-3-815

Commission (ILC) Principles on Protection of the Environment in Relation to Armed Conflicts.

This text accordingly explores the duty of states to regulate climate impacts by corporate actors in conflict-affected contexts. In particular, it contends that the stringent due diligence duty of states should inform equally stringent regulations and corporate due diligence requirements on climate harm. The requirement of regulatory due diligence for states and associated due diligence requirements for corporations can pave the way for a greater focus on prevention and a more holistic understanding of potential climate harms.

In fact, such requirements and instruments for corporate due diligence in the face of climate harms can draw on the understanding of heightened due diligence required in conflict-affected and high-risk contexts by the UNGPs. Heightened due diligence is referenced in the commentary to UNGP 7 on supporting business respect for human rights in conflict-affected areas. Importantly, UNGP 7 falls under Pillar I of the UNGPs, and focuses on the duty of states to protect human rights. This duty includes taking all appropriate measures (including regulatory) and to 'review whether their policies, legislation, regulations and enforcement measures effectively address this heightened risk, including through provisions for human rights due diligence by business'.[5]

Later analyses by the United Nations Working Group on Business and Human Rights (UN Working Group) have confirmed and built on this understanding. The 2018 report from the UN Working Group regarding human rights due diligence notes that a 'key aspect' of fulfilling the state duty to protect against human rights abuses by businesses 'is to use available regulatory levers',[6] and emphasises that 'in high-risk operating environments, such as conflict-affected areas, business enterprises need to exercise heightened human rights due diligence'.[7] A 2022 guide developed by United Nations Development Programme (UNDP) and the UN Working Group states that the practical consequence of heightened human rights due diligence is 'that for a business to know and show that it respects human rights in conflict-affected contexts, it needs to identify and assess not only actual or potential adverse human rights impacts, but also actual or potential adverse

---

[5] Human Rights Council, 'Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie', 21 March 2011, UN Doc. A/HRC/17/31, Annex.

[6] UNGA, 'Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises: Note by the Secretary-General', 16 July 2018, UN Doc. A/73/163, paras 63-64.

[7] UNGA Note by the Secretary-General (n. 6), para. 14 (c).

 DOI 10.17104/0044-2348-2026-3-815

impacts on conflict that the company may cause or contribute to through its own activities, or that may be directly linked to its operations, products or services'.[8] The requirement for heightened due diligence thus means that businesses need to include a greater focus on the *context* as well as people potentially and actually impacted in their assessments. Arguably, the same requirement for a holistic and context-oriented approach would apply to actual or potential adverse climate impacts that the company may cause or contribute to through its own activities, or that may be directly linked to its operations, products or services.

With higher risks, greater care is thus required by the company in question.[9] This is significant in relation to environmental harm given the preventative focus of due diligence in general and of heightened due diligence in particular.[10] If there is a high risk of environmental degradation and climate emissions, the company would need to consider impacts of environmental degradation as a core part of its business. Accordingly, corporations operating in conflict-affected areas would be under an obligation to identify and assess adverse climate impacts (as well as associated harm to human rights). In order to identify potential climate harms, impact assessments undertaken by corporations should be substantive and encompass direct, indirect, and cumulative climate emissions.[11]

The emphasis on stringent due diligence for states in the context of climate change and the associated duty to regulate private actors could also inform the understanding and application of Principle 10 of the ILC Principles on Protection of the Environment in Relation to Armed Conflicts – calling on states to take 'appropriate measures aimed at ensuring that business enterprises operating in or from their territories, or territories under their jurisdiction, exercise due diligence with respect to the protection of the environment, including in relation to human health, when acting in an area affected by an armed conflict'.[12] In the context of armed conflicts and climate change, the

[8] UNDP, 'Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide', 2022, 14, available at: <https://www.undp.org/sites/g/files/zskgke326/files/2022-06/UNDP_Heightened_Human_Rights_Due_Diligence_for_Business_in_Conflict-Affected_Context.pdf>; last access 30 June 2026.

[9] Daniel Aguirre and Irene Pietropaoli, 'Heightened Human Rights Due Diligence in Practice: Prohibiting or Facilitating Investment in Conflict Affected Areas?' Journal of Human Rights Practice 15 (2023), 541-558 (543).

[10] Aguirre and Pietropaoli (n. 9), 542: 'Accordingly, heightened HRDD is not a response to a crisis – it is a preventative mechanism.'

[11] See e. g. ICJ, *Climate Change* (n. 1), Joint Declaration of Judges Bhandari and Cleveland, paras 11-17.

[12] UNGA, 'Report of the International Law Commission: Seventy-Third Session (18 April-3 June and 4 July-5 August 2022)', 2022, UN Doc. A/77/10, Chapter V.

above analysis indicates that stringent due diligence for states requires a greater focus on preventative measures in fragile contexts, and heightened requirements for continuous state monitoring and assessment of corporate due diligence regulations and measures.

 DOI 10.17104/0044-2348-2026-3-815