



6 February 2023

Attn: GSSB Secretariat
Global Sustainability Standards Board

By email: gssbsecretariat@globalreporting.org

Dear Global Sustainability Standards Board

**Re: Public Comment GSSB Work Program 2023-2025
The integration of international humanitarian law and armed conflict sensitivity into
GRI Standards**

We welcome this opportunity to submit to the Global Sustainability Standards Board (GSSB) our comments on the draft GSSB Work Program 2023-2025, specifically Consultation Annex 2 regarding the development of new Topic Standards (pages 27-29). Australian Red Cross, RMIT University and the International Committee of the Red Cross (ICRC) wholeheartedly welcome the references to international humanitarian law (IHL) and conflict sensitivity into the draft GSSB Work Program 2023-2025, and encourage their greater integration into the GSSB's activities.

We encourage the GSSB to not only consider the importance and relevance of IHL and conflict sensitivity when revising existing standards, but to prioritise these topics when developing new GRI standards. Indeed, we recommend the development of a stand-alone conflict sensitivity and IHL standard.

The undersigned are well-placed to offer these comments and recommendations. Australian Red Cross and RMIT University have engaged in a multi-year collaboration engaging the Australian and global corporate community on the relevance of IHL to business and developing guidance and educational resources. The ICRC, considered 'custodians of IHL', draws on decades of constructive dialogue with State and non-State actors, including companies, in armed conflict situations.

It is our shared assessment that businesses with operations in, or connections to, conflict-affected areas are not sufficiently equipped with the knowledge and tools they need to respond to the specific risks that arise in conflict contexts, for instance the implementation of heightened human rights due diligence. Further, we have found there is a lack of awareness among businesses of the unique rights, protections and responsibilities that flow directly from IHL – *the* legal framework that regulates armed conflict.

IHL and conflict sensitivity in reporting

An IHL/conflict sensitivity GRI standard would respond to a clear need within the responsible business sector. How to engage in armed conflict situations is a major “sustainability/ESG” question confronting many companies, and one which the war in Ukraine has certainly brought to the fore. Many responsible companies are seeking frameworks and responses to manage their engagement with conflict situations.

A GRI standard would not only provide a practical framework to report (and act) on IHL and conflict sensitivity, but would provide a powerful signal to investors and the entire ESG community that this issue of armed conflict should be prioritised in their sustainability reporting and considerations. Doing so would also echo the United Nations Guiding Principles on Business and Human Rights that call for a focus on conflict-affected areas, as it is there that the most egregious human rights abuses occur. It would also build on existing legal obligations such as those under the US Dodd-Frank and EU Conflict Minerals Regulation, which are intended to mitigate corporate harms in conflict zones. However, GRI standards could go beyond the limited reporting requirements of these laws, for instance by applying to all sectors and range of activities that impact conflict-affected communities, not just those related to the extraction of natural resources.

Commendably, the GSSB and GRI have been willing to lead on providing industry human rights reporting frameworks, and keep its standards up to date with various governance requirements for industry, including GRI 412 on human rights assessment and ensuring alignment with the UN Guiding Principles on Business and Human Rights and OECD Guidelines on Multinational Enterprises.

The GRI has independent standards on child labour, security practices, indigenous peoples, and non-discrimination. The addition of an IHL/conflict sensitivity standard would continue this practice, and reinforce the GRI’s position as a leader in providing human rights reporting frameworks and guidelines that are responsive to both business needs and emerging governance requirements. In the interim, guidance for reporting entities on how and where IHL and conflict sensitivity could be incorporated into existing standards is recommended.

What are IHL and conflict sensitivity?

IHL – also known as the laws of war or the law of armed conflict – is the specialist body of law that regulates situations of armed conflict. Its fundamental aim is to limit suffering in war by protecting persons who are not taking part in the fighting (such as civilians, wounded soldiers and prisoners of war) and regulating the means and methods of warfare, including particular types of weapons.

Importantly, IHL is not the same as human rights law. The two sets of international law are complementary and both strive to protect the lives and dignity of individuals, but they are also distinct, contained in different treaties and have developed separately over time. In situations of armed conflict, additional legal obligations arise under IHL – adding to, and in some

circumstances replacing, the rules and principles of human rights law – extending responsibilities to anyone with a close connection to the conflict, including companies and their personnel.

Failure to comply with IHL may translate into criminal and civil liabilities. In the most serious cases of IHL violations, companies and associated individuals may face war crimes charges and prosecutions. There have been, and continue to be, high profile prosecutions and investigations of corporate involvement in war crimes in several jurisdictions, including France and the United States.

A conflict sensitive approach emphasises effectively preventing, managing and addressing conflict, including by seeking to understand conflict dynamics and related risks. Companies conduct a conflict sensitivity analysis to identify how they relate to these dynamics and how to avoid causing, exacerbating or driving conflict.

The relevance of IHL and conflict sensitivity to business

It is globally recognised that businesses operating in conflict-affected areas – as well as those with supply chains, partners or customers in these environments – face heightened risks of involvement in serious violations of human rights and humanitarian law. Additionally, businesses may unintentionally contribute to the grievances and drivers of conflict. This includes unique risks under IHL, as distinct from more commonly understood human rights-related risks. For example:

- Committing or being complicit in **pillage**, that is, acquiring property or natural resources without the freely given consent of the owner;
- Criminal liability risks relating to **military occupation**, for example involvement, participation or assistance in settling civilians in occupied territories, and maintaining or developing settlements;
- Committing or being complicit in the **forced displacement of, or attacks on, civilians** for a reason relating to armed conflict; and
- Losing the **protected civilian status** afforded to businesses by failing to carefully manage their operations, personnel and connections to the ongoing armed conflict, thus becoming a **potential military objective** (for instance, when company security providers engage in hostilities).

Recommendations

Respect for IHL is a crucial facet of achieving responsible business conduct in conflict-affected areas and in helping to safeguard the lives and dignity of the local communities affected. It is our hope that continued commitment from the GSSB to consider and integrate IHL into GRI standard setting will further global efforts to see the adoption of genuinely conflict-sensitive approaches to business in conflict-affected areas, while also strengthening the quality offerings of the GRI. With this in mind, we reiterate our initial recommendations:

- **IHL/conflict sensitive-specific standard:** first, and foremost, the development of a topic-specific standard on IHL and armed conflict, with corresponding reporting guidance.
- **Gap analysis of existing GRI standards and guidance:** an assessment of existing GRI standards and guidance to identify potential areas for IHL and conflict sensitivity inclusion in reporting; and
- **Education/training in IHL:** support for the enhancement of education and training in IHL and conflict sensitivity among businesses.

Conclusion

The ongoing conflict in Ukraine, and corporate responses to it, have highlighted the need for greater corporate awareness of business risks and responsibilities, and the legal protections afforded to business actors, under IHL. Beyond Ukraine, the impact of armed conflicts – from Myanmar to Yemen, Mali, Afghanistan and many more – continues to be felt by individuals, communities and the environment across the globe. It is clear that all societal actors have a role to play in minimising human suffering in such situations. Indeed, there is a need and an opportunity for the GSSB to take up this responsibility.

A ‘Human Rights Standard’ for responsible business reporting, which does not include mention of IHL or conflict sensitivity is, in our opinion, incomplete. A GRI topic standard, and a navigation document or some other form of reporting guidance on IHL, must be introduced in order to comprehensively assess corporate impact and guide their behaviour in conflict contexts. Australian Red Cross, RMIT University and the ICRC would welcome the opportunity to support or assist in the development of such an initiative.

Yours sincerely,



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List of relevant resources (written or edited by the undersigned)

- Australian Red Cross and RMIT University, *Doing Responsible Business in Armed Conflict: Risks, Rights and Responsibilities* (June 2020)
<https://www.redcross.org.au/getmedia/7ef922ac-7360-4bd9-97f9-fb9517547eba/Doing-Responsible-Business-in-Armed-Conflict-final-publication-WEB.pdf.aspx>
- Australian Red Cross and RMIT University, *Seven Indicators of Corporate Best Practice in International Humanitarian Law* (January 2021)
<https://www.redcross.org.au/getmedia/7a742c8c-e184-4c0b-9146-ae4e2edef8bc/7-indicators-of-corp-best-prac-FINAL-2021.pdf.aspx>
- Geneva Centre for Security Sector Governance, International Committee of the Red Cross, and Geneva Center for Business and Human Rights, *Addressing Security and Human Rights Challenges in Complex Environments: A Practical Toolkit* (2022)
<https://securityhumanrightshub.org/toolkit/a-practical-toolkit.pdf>
- Jonathan Kolieb, 'Don't forget the Geneva Conventions: achieving responsible business conduct in conflict-affected areas through adherence to international humanitarian law,' *Australian Journal of Human Rights* (2020) Vol. 26:1, 142-164.
<https://doi.org/10.1080/1323238X.2020.1792137>
- Fauve Kurnadi and Jonathan Kolieb, 'The importance of the laws of war to companies', *The Laws of War Blog*, Australian Red Cross (2021)
<https://www.redcross.org.au/stories/ihl/the-importance-of-the-laws-of-war-to-companies/>
- Australian Red Cross and RMIT University, *War, Law and Business: A Module on IHL for Future Business Leaders* (an interactive, online training module on IHL for business) (2021) <https://ihl.redcross.org.au/>