

Dutch Institutional Investors and Investments related to the Occupation of the Palestinian Territories

Research report

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Research report

VBDO

The Dutch Association of Investors for Sustainable Development in co-operation with:



February 2014

Foreword



Sustainable investment is based on the understanding that money has a social, environmental and economic impact on society.

Sustainable investing aims at creating value and reducing risks. Criteria for sustainable investment go beyond mere legal requirements. This can pose problems for companies and investors, as they may need or prefer a common and agreed set of criteria. Corporate Social Responsibility (CSR) policy aims to advance such frameworks. To advance CSR, it is particularly pertinent to take account of the ethical dimension of decisions concerning investment. But how should we understand the ethical dimensions involved in a decision concerning investment?

A method to understand the ethical dimension of a sustainable investment is to involve the stakeholders associated with the investment. Suppliers, customers, employees and civil society usually have a fair idea about the potential impact a company or investor may make with a particular investment.

To judge the ethical dimension, reference is provided in international guidelines, such as the Human Rights Declaration, the Principles of Responsible Investment (PRI) and the UN Global Compact. The OECD-guidelines for Multinational Enterprises provide an important framework. Most western governments, including The Netherlands, are signatories to these instruments. They apply to investors and companies based in the signatory countries. They provide a useful guide for investments. Non-compliance might lead to a case being brought to the National Contact Point in a certain signatory country, followed by mediation. However, given the negative impact such proceedings may have on the reputation of a company, it is usually understood to be better to avoid these in the first place.

International law may also provide a basis for decisions on the sustainability of investments, especially regarding the political nature of investments. Verdicts by the International Court of Justice (ICJ) can at times provide clear guidance for investments and company involvement.

Companies and investors usually do not want to get involved in politically sensitive areas. However, not taking any action can also have consequences. The VBDO promotes sustainable investment, including by working with investors and companies on practical ways to operate in areas that are still ill-defined and complex.

With this publication, the VBDO tries to provide insight for investors to deal with investments in the occupied Palestinian territories. How to understand the political issues involved? How to determine what a correct position should be? Should investors avoid the occupied Palestinian territories or rather engage?

I would like to thank ICCO, Cordaid en PAX for its contribution to this research, and I hope it provides help for investors to make their investments sustainable and to take up their responsibility to realise sustainable investment in the occupied Palestinian territories.

Giuseppe van der Helm

Executive Director VBDO

Summary

Over the past few years major developments in the field of sustainable investment have positively changed the debate on the relationship between business and human rights. The UN Global Compact, the Principles for Responsible Investment (PRI) and OECD-guidelines are often used as standards for Environmental, Social and Governance (ESG) integration, engagement, voting and screening.

Investment related to the occupation of the Palestinian territories is regarded as politically sensitive. This issue is high on the agenda today. While the debate is continuing, many institutional investors are still unfamiliar with the legal and moral aspects of these investments. The Dutch/European business community has many ties with Israel or with the Israeli business community. This, combined with the risk of being (in)directly involved in violations of international humanitarian law and human rights resulting from investments potentially associated with the occupation of Palestinian territories, has initiated this research aiming to develop clear recommendations.

The report aims to provide recommendations for Dutch institutional investors on how to assess investments related to the occupation of the Palestinian territories, through:

1. Clarifying the applicable international legal framework aspects and responsible investment guidelines on investments related to the occupation of the Palestinian territories and providing tools on how to use these;
2. Presenting an overview of how Dutch institutional investors deal with this subject and on the obstacles that they perceive;
3. Offering practical recommendations on how to deal with this issue.

It is important to stress that this report does not focus on the investments within the state of Israel itself that have no links with the occupation of the Palestinian territories. This report focuses on investments specifically related to the occupation of the Palestinian territories. The recommendations can however also be applied to other cases related to an occupied territory where international humanitarian law is applicable.

This research has been conducted on the basis of the following approaches: a review of relevant literature, a questionnaire, qualitative interviews and the provision of clarification on international law from a legal expert.

The legal framework that applies to the occupied Palestinian territories is based on international humanitarian law and human rights law. An important element is that the Israeli settlements are (being) built in breach of international humanitarian law and in violation of human rights. Companies active in the settlements in the occupied Palestinian territories might therefore contribute themselves to breaches of international humanitarian law and human rights violations, and consequently have a responsibility to act in order to redress such breaches and violations under international law. This is also the case for the investors investing in such companies.

International humanitarian law is brought within the scope of the OECD guidelines and the related UN Guiding Principles ('Ruggie Framework'), which are incorporated in the OECD guidelines. The Ruggie Principles stipulate that '(...) *in situations of armed conflict enterprises should respect the standards of international humanitarian law.*'

Most institutional investors underscore the importance of staying close to their responsible investment policy and the applicable international legal frameworks to obtain and maintain an objective, neutral base for assessment. As a large majority of institutional investors adhere to international guidelines on responsible investment and as the issue of the occupied Palestinian territories has become progressively more public, it is necessary that institutional investors are working pro-actively to implement their responsible investment policy on this topic. Institutional investors state that information and guidance on this topic is welcome.

On the basis of the results a three steps approach to implement a policy on this theme has been developed:

STEP 1: MAKE SURE THERE IS SUFFICIENT INFORMATION AVAILABLE

To make the responsible investment policy applicable to investments related to the occupation of the Palestinian territories, it is first of all important that an institutional investor has sufficient background information on which its policy can be based.

STEP 2: DEFINE A POLICY REGARDING THIS TOPIC

It is advisable to specify the policy on this topic, but derived from general policy lines and guidelines, so that specific policy decisions are consistent with and based on the relevant legal frameworks and human rights guidelines.

STEP 3: IMPLEMENT THE POLICY

It is important for institutional investors to know how and when certain instruments can be used to implement this policy. A certain (escalating) order in the use of the instruments is being proposed:

ESG information & integration: Make sure that there is sufficient information on the (level of) involvement and the materiality of involvement of a certain investment.

Engagement: When it is clear that companies are involved in activities related to the occupation of the Palestinian territories that are not in line with the investor’s own responsible investment policy, an engagement process can be started. It is important to select the right companies for engagement and to take the specific situation into account.

Voting policies: When engagement is not successful, a link to the voting policies of the investor can be made, for example by voting against the (re-)appointment of the executive / supervisory board, the annual report or the discharge of board members. Furthermore, specific questions can be asked or a statement on the issue can be made.

Exclusion: When a company did not want, or was not able to make any changes to its policies or activities during engagement, a company can be excluded from the investment universe of an institutional investor.

Figure 1 shows how institutional investors can set up and implement a policy related to the occupied Palestinian territories.

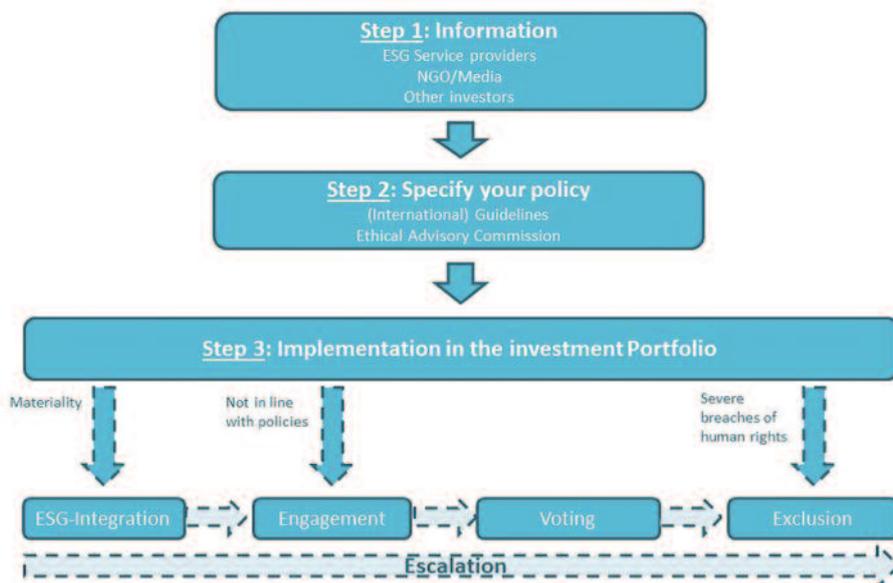


Figure 1 Graphical overview of creating and implementing a policy

FACILITATING IMPLEMENTATION

A responsible investment policy can benefit from the following recommendations:

- *Transparency* about the ESG policy makes a position more solid. When an action is taken as a result of a publicly known policy, it is less likely to be discarded as an ad hoc activity.
- An *Ethical Advisory Committee* can be helpful in designing or strengthening a responsible investment policy. A committee consisting of independent knowledgeable experts provides depth in ESG decisions. As an independent commission, it gives the ESG a more independent position, making it easier to defend.
- *Co-operation*: for smaller institutional investors it can be particularly interesting to pool resources for information gathering and exchange best practises to strengthen limited capacity. Co-operation on engagement saves time, capacity and financial resources. It might increase impact when investors work together around engagement. A round table for institutional investors and relevant actors to discuss, share information and deepen knowledge on this issue is also recommended.

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1. Introduction

Over the past few years there have been major developments in the field of sustainable investment. The UN Global Compact, United Nations-backed Principles for Responsible Investment (PRI) and OECD guidelines are increasingly used as standards for mandates and concepts such as ESG integration, engagement, voting and screening. Most subjects concerning responsible investment are focused on issues on which the public has a clear and undivided opinion such as environmental pollution or child labour. Politically sensitive issues however, are more challenging for institutional investors. Such areas might be seen as more 'political' and institutional investors are deterring action on their part on the grounds that their agenda is not political.

Investments related to the occupation of the Palestinian territories is one such case. Many institutional investors are unfamiliar with the legal and moral aspects of investments related to the occupation of the Palestinian territories, and are unaware of the associated risks and responsibilities. Such investments could bring them into (in)direct involvement in violations of international law and human rights. The reports "Dutch economic links with the occupation"¹ and the Norwegian report "Dangerous Liaisons: Norwegian ties to the Israeli Occupation"² have indicated such risks. It is important to stress that this report does not focus on the investments within the state of Israel itself that have no links with the occupation of the Palestinian territories.

This topic has been a focal point of public debate since Dutch firms Royal HaskoningDHV, Vitens and PGGM decided to stop their involvement or investments in activities related to the occupation of the Palestinian territories, referring to international law and human rights as a ground for their decisions.

The main goal of this report is to provide recommendations for Dutch institutional investors on how to assess investments related to the occupation of the Palestinian territories. To this end it provides:

1. Clarification of applicable legal framework and responsible investment guidelines on investments related to the occupation of the Palestinian territories and provides tools on how to deal with it;
2. An overview of how Dutch institutional investors address this subject and the obstacles that have been identified in the process;
3. Practical recommendations on how to approach this topic.

We hope that the recommendations will serve institutional investors as a first step to become more acquainted with the (legal) aspects of investments related to the occupation of the Palestinian territories and to have the tools to translate these insights into policy and practice.

¹ Profundo (2013). *Dutch economic links to the occupation*. See: <http://www.cordaid.org/nl/publicaties/dutch-economic-links-occupation>

² Norwegian People's Aid & the Norwegian Union of Municipal and General Employees (2013). *Dangerous Liaisons: Norwegian ties to the Israeli Occupation*. Norway. See: http://www.npaid.org/Media/20_Files/Om-oss/Annual-reports/Dangerous-liaisons

2. Methodology

The research focused on Dutch institutional investors (pension funds, insurance companies and banks) and their investments related to the occupation of the Palestinian Territories.

The research used four different ways for gathering data: a review of literature, after which an online survey was disseminated among Dutch institutional investors. Input was solicited from an expert on legal questions. Last but not least, qualitative interviews were held to gain in-depth knowledge on the subject.

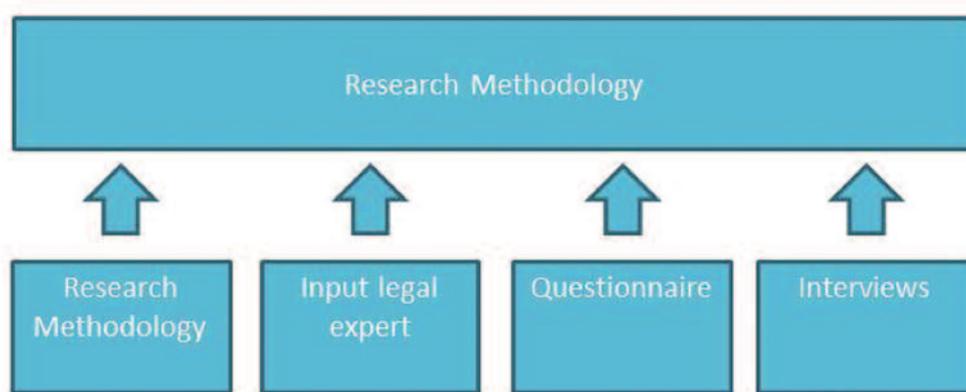


Figure 2 General overview of the Research Methodology

2.1 Scope

The report limits itself to investments related to the occupation of the Palestinian territories, which are the areas commonly known as the West Bank (Including East Jerusalem) and the Gaza Strip, demarcated by the Armistice (or Green) Line and occupied by Israel since 1967.

The recommendations are also applicable to the Golan Heights, which are not part of the Palestinian Territories but are Syrian, occupied since 1967 and annexed by Israel in 1981.

It is important to stress that the report does not focus on the investments within the state of Israel itself that have no links with the occupation of the Palestinian territories.

2.2 Definitions

- *Responsible investment*: “Combines investors’ financial objectives with their concerns about social, environmental, ethical and corporate governance issues”³
- *Engagement*: “Activities and active ownership through voting of shares and engagement with companies on Environmental, Social and Governance (ESG) matters. This is a long-term process seeking to influence behaviour or increase disclosure.” In this report this definition is followed, but the dialogue process and the voting policies are treated separately.⁴

³ Eurosif (2013). *Shareholder Stewardship: European ESG Engagement Practice 2013*.
See: <http://www.eurosif.org/research/european-stewardship>

⁴ See note 3

- **Voting:** Shareholders use their voting rights or file proposals in (annual) shareholder meetings to pressure companies to report on and improve their environmental and social performance. Filing proposals is a common instrument used by a wide range of shareholders.⁵
- **Exclusion:** “An approach that excludes specific investments or classes of investment from the investible universe such as companies, sectors, or countries.”⁶
- **ESG-integration:** The explicit inclusion of ESG risks and opportunities by asset managers into traditional financial analysis and investment decisions based on a systematic process and appropriate research sources.⁷

2.3 Literature

A literature review was performed to provide insight of useful guidelines and recommendations for institutional investors. Scientific databases such as “web of science” and “Scopus” were used. Besides scientific literature relevant practitioners based literature was used.

2.4 Input legal expert

By means of desk research and with input from a legal expert, a chapter is compiled in which the applicable legal framework is described. In addition, responsible investment guidelines are outlined and a description is given of twelve selected companies that in different ways may be contributing to breaches of international humanitarian law in relation to the occupation of the Palestinian territories.

2.5 Questionnaire

On the basis of the desk research, a questionnaire was sent to 50 Dutch pension funds, 30 Dutch insurance companies and 10 Dutch banks. The questionnaire focused on their human rights policy and as to whether their policy included a focus on human rights violations related to the occupation of the Palestinian territories, whether (and how) this policy is implemented and how the investor reports on this topic.

The questionnaire was sent out stipulating that the answers would be aggregated and that respondents would remain anonymous. The response rate was 31% (29 responses), which we consider as adequate for this study.

2.6 Interviews

Based on the results of the questionnaire, interviews were held with three institutional investors and one financial service provider. In these qualitative, semi-structured interviews the dilemmas and possible recommendations for institutional investors were discussed in depth.

⁵ TKAC, P. (2006). One Proxy at a Time: Pursuing Social Change through Shareholder Proposals. Economic Review. Third Quarter 2006. Federal Reserve Bank of Atlanta. Economic Review; Wagemans, F.A.J.; van Koppen, C.S.A. & Mol, A.P.J. (2013). *The effectiveness of socially responsible investment: a review. Journal of Integrative Environmental Sciences.*

⁶ Reserve Bank of Atlanta. Economic Review; Wagemans, F.A.J.; van Koppen, C.S.A. & Mol, A.P.J. (2013). The effectiveness of socially responsible investment: a review. *Journal of Integrative Environmental Sciences.*

⁷ See note 1

3. Background

3.1 The Israeli occupation of the Palestinian territories

After the Arab-Israeli war of 1948/49 an armistice line was established, determining Israel's borders with the Gaza Strip and the West Bank. This line is commonly known as the 'Green Line', part of the internationally recognized border of the State of Israel.

Since the Six-Day war of June 1967, Israel has occupied the West Bank (including East-Jerusalem), the Gaza Strip and the Golan Heights. The West Bank and the Gaza Strip are known as the Occupied Palestinian Territories while the occupied Golan Heights formally remain part of Syria. See map Figure 3.

The Oslo Accords (1993) created separated Areas in the Palestinian territories. Area A, comprising approximately 18 per cent of the West Bank and Gaza is under the control of the Palestinian Authority; Area B, representing 22 per cent of Palestinian rural areas, is under Palestinian civil control, while the Israeli army exercises security control; and Area C, comprising an estimated 60 per cent of the territory, is under full Israeli control for purposes of security, planning and construction.

Since 1967, Israel has built colonies, or 'settlements', in the occupied territories. The settlements offer space for Israeli settlers and their corporations, are connected with infrastructure to Israel, and are protected by the army. Israeli domestic law applies in these settlements. The settlements form Israeli enclaves in the occupied territory.



Figure 3 Israel and the occupied territories ⁸

⁸ OCHA OPT, Humanitarian Atlas December 2012, map S1, p. 3.

See: http://www.ochaopt.org/documents/ocha_opt_humanitarian_atlas_dec_2012_web.pdf

ries and cut the occupied territories into fragmented parts. In the West Bank, including East Jerusalem, more than 520,000 settlers live in around 100 'outposts' (settlements not authorised by Israel) and 150 settlements.⁹ The Syrian Golan heights, annexed by Israel in 1981, houses 20,000 Israeli settlers in 30 settlements. In the Gaza Strip 21 settlements were dismantled in 2005.¹⁰

The building and expansion of settlements continues. As a consequence more than 40 % of the West Bank is inaccessible to Palestinians. Besides settlements, there are around 20 Israeli industrial zones in the West Bank, sometimes linked to a settlement, sometimes not, in which international companies operate. Israeli companies say they offer jobs for Palestinians, the Israeli research bureau Who Profits' disputes this claim and states that due to the daily hardships with which Palestinians live as a result of the occupation, they have no choice other than to seek work in the settlements.¹¹

As the map below shows, the Jordan Valley is virtually inaccessible to Palestinians. 86% of the Jordan Valley and the Dead Sea is under the de facto jurisdiction of the settlement regional councils.¹² In this fertile area settlers have established greenhouses producing fruits, vegetables and flowers for export. Next to agriculture, settlements also exploit mineral extraction and Israeli's pump out water for use in the settlements and industrial zones, and in Israel, while denying the Palestinians access to their natural resources including the minerals of the Dead Sea and to sufficient water for their own needs and development.¹³ In 2002, Israel started to build the Separation Wall, of which 85% is built on land in the occupied Palestinian territories. The wall creates inroads into the West Bank, curling around a number of settlements and de facto annexing these lands. The Wall separates East Jerusalem (and the Palestinians living in it) from its hinterland (the West Bank), having a negative impact on its economy, and divides the West Bank into 2 parts. The Wall, as well as the settlements, are built in breach of international humanitarian law, as confirmed by the Advisory Opinion of the International Court of Justice (ICJ) of July 9, 2004. This is discussed in more detail in the next chapter.

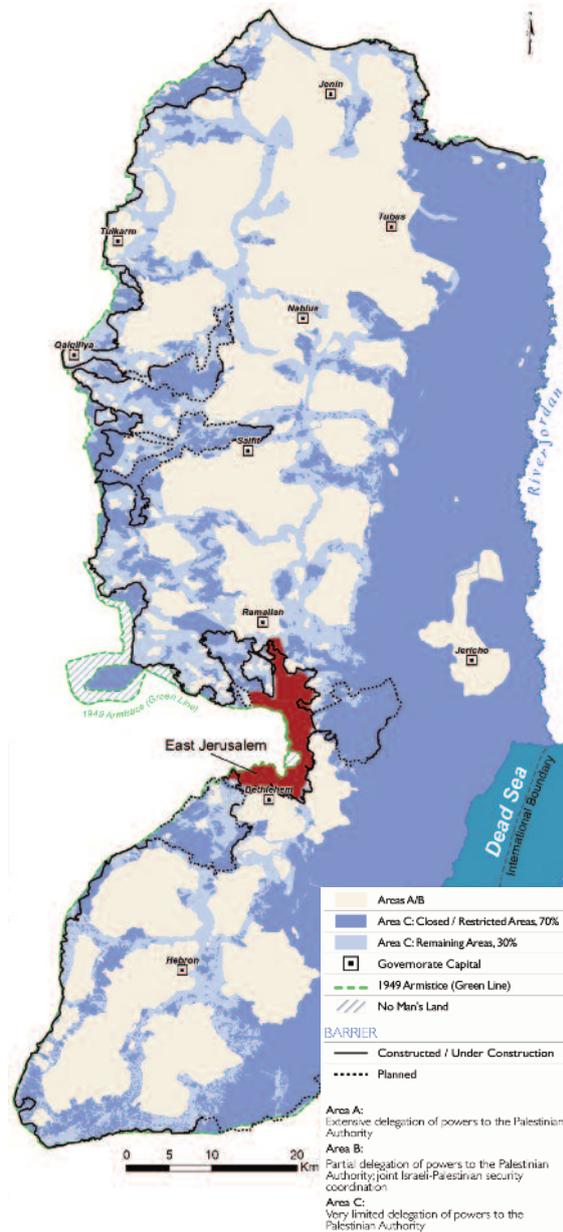


Figure 4 Israeli settlements in the West Bank¹⁴

⁹ OHCHR (2014). *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*. p. 7. See: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/FFM/FFMSettlements.pdf>

¹⁰ Wikipedia (2014b). Israeli settlement. See: http://en.wikipedia.org/wiki/Israeli_settlement

¹¹ Who Profits (2013). Position paper: *Palestinian workers in settlements*. See: <http://whoprofits.org/content/palestinian-workers-settlements>

¹² See note 2, p. 15

¹³ Al Haq (2013). *Water for one people only: Discriminatory Access and 'Water-Apartheid' in the OPT*. See: <http://www.alhaq.org/publications/Water-For-One-People-Only.pdf>

¹⁴ OCHA OPT, Humanitarian Atlas December 2012, map S22, p. 24.

See: http://www.ochaopt.org/documents/ocha_opt_humanitarian_atlas_dec_2012_web.pdf

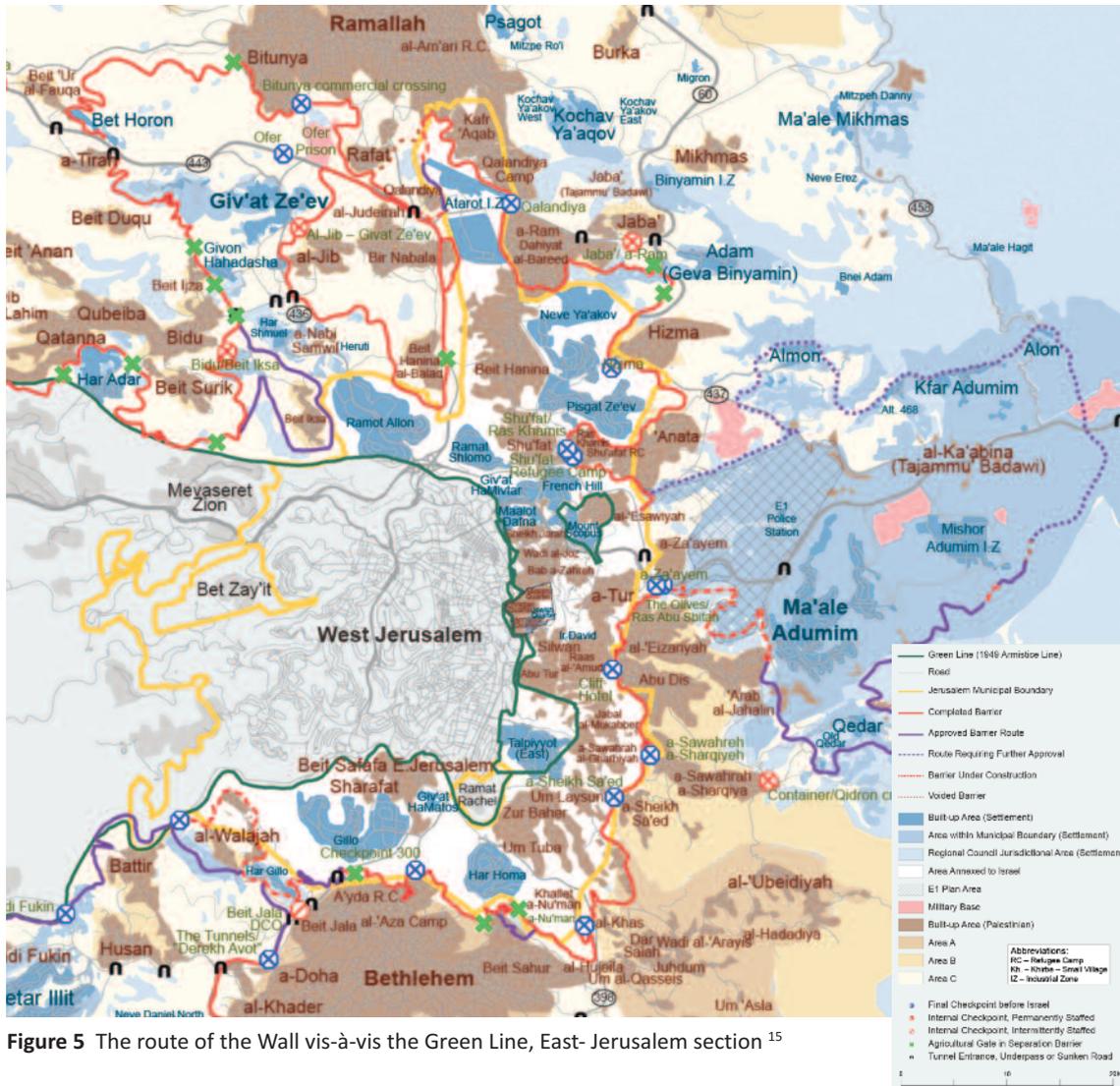


Figure 5 The route of the Wall vis-à-vis the Green Line, East- Jerusalem section ¹⁵

The Wall, the settlements, the settler road network and its associated regime, checkpoints and roadblocks have a negative impact on Palestinian individual and collective rights and the Palestinian economy.

According to the Israeli economist Shir Hever, the occupation of the Palestinian territories used to be profitable until the eighties, after which the expansion of settlements and the increasing military costs related to the first intifada consumed, and continue to consume, an ever growing part of the Israeli public budget. After the outbreak of the second intifada, the Israeli leadership privatised many military roles, including the maintenance of checkpoints and defense of the settlements. This, together with the construction of the Separation Wall in 2002, led to an increasing number of business opportunities.¹⁶

This ‘privatisation’ of the occupation and the role of private companies is important within the scope of this report, in which the responsibility of the companies and its investors in relation to this issue will be addressed.

¹⁵ See: http://www.ochaopt.org/documents/ocha_opt_humaitarian_atlas_dec_2012_web.pdf

¹⁶ Hever, S. (2010). *The political economy of Israel's occupation*. Pluto Press p. 52-53

3.2 International law and the occupied Palestinian territories

by Phon van den Biesen, attorney at law

Introduction

The question of what the legal consequences are for individuals and companies that do business with parties involved in an armed conflict, or what the consequences may be, is still very much a current one. In the Netherlands this question was most keenly apparent during the Van Anraat case.¹⁷ But in the Riwal case too it emerged that a Dutch company had strayed too far.¹⁸ The fact that the law, in particular international law, and more specifically still, humanitarian law and human rights, is relevant to everyday business decisions has been manifest yet again very recently. On 10 December 2013 Dutch water company Vitens announced its withdrawal from a partnership with Israeli water company Mekorot. The partnership was focused, amongst other things, on the installation of drinking water supplies in settlements for which water would be drawn from Palestinian soil. In a press statement Vitens says that it “[attaches] great importance to integrity and abides by national and international law and legislation”.¹⁹

This topic is elaborated in more detail below, in particular on the basis of the situation concerning the Israeli settlements in Palestine. The focus on Palestine is not because this problem does not occur elsewhere²⁰ but precisely because the Dutch/European business community currently has many ties with Israel, or with the Israeli business community. Political views all too readily predominate in every discussion about the Israeli settlements policy. The line of approach adopted below is exclusively legal in nature and political statements are avoided.

Relevant law

Both humanitarian laws of war and human rights law are applicable to the occupied Palestinian and Syrian territories. Humanitarian law has been primarily laid down in the Geneva Conventions²¹ and is set forth in nationally and internationally applicable criminal law. For Human Rights, first and foremost, the European Convention on Human Rights is applicable, but as far as the subject matter of this report is concerned, it chiefly concerns the comparable UN Human Rights Treaty.²² The Security Council and the United Nations General Assembly have declared in their statements and resolutions that Israel wrongfully occupied the Palestinian territories in 1967 and wrongfully continues to occupy them. In 2004, the most authoritative judicial body of the UN, the International Court of Justice issued an *Advisory Opinion*.²³ The Court determined that the Fourth Geneva Convention of 12 August 1949 is applicable to this occupation and that the establishing of settlements in occupied territory shall be deemed to be in direct contravention of this Convention, in particular Article 49, paragraph 6:

¹⁷ Frans van Anraat supplied chemicals to Saddam Hussein, who used them to murder tens of thousands of Kurds in Northern Iraq. He was given a prison sentence for complicity and involvement in war crimes.

¹⁸ Riwal (Crane hire firm) escaped prosecution in the Netherlands for its involvement in the construction of the Israeli Wall. In a press statement the Public Prosecutor explained its decision not to take the matter any further and emphasised: “Dutch companies are required to refrain from any involvement in violations of the International Crimes Act (Wet Internationale Misdrifven) or the Geneva Conventions.”

¹⁹ Vitens (2013). *Vitens beëindigt samenwerking Mekorot*.

See: <http://www.vitens.nl/overvitens/organisatie/nieuws/Paginas/Vitens-beëindigt-samenwerking-Mekorot.aspx>

²⁰ In this context reference is usually made to the situation in Morocco-Western Sahara

²¹ ICRC (2010). *Geneva Conventions*. See: <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/>

²² Overheid (2013). *International Covenant on Civil and Political Rights*. See: http://wetten.overheid.nl/BWBV0001017/geldigheidsdatum_18-12-2013

²³ *Advisory Opinions* by the International Court of Justice differ from the judgments of the Court since it is not a matter of settling a dispute between two or more states but about answering a question from a body of the United Nations. With such a question other UN bodies can learn from the Court how a specific matter needs to be evaluated properly from a legal perspective. The *Opinion*, in the establishment of which in principle all Member States of the UN are involved, subsequently provides the status of the law in relation to the issue that forms the subject matter of the question. If the Court here has interpreted a Convention this interpretation is therefore just as binding as that Convention itself is for those States that are party to the Convention. The *Opinion* about the Wall, the matter at stake here, moreover clearly illustrates that legally binding character: at the end of the Opinion the Court also formulates the specific obligations which arise in this specific case for the Nations concerned from the interpretation of the law issued by the Court.

“The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.”²⁴

For the sake of completeness herewith the text of the relevant provision:

“Art. 49. – (6) The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

The Court found:

“construction of the wall severely impedes the exercise by the Palestinian people of its right to self-determination and is therefore a breach of Israel's obligation to respect that right.”

and also concluded:

“The construction of the wall and its associated regime (...) contravene Article 49, paragraph 6, of the Fourth Geneva Convention.

(...)

“Construction of the wall (...) and its associated regime are contrary to international law.”

(...)

“All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation (...); all States parties to the Fourth Geneva Convention (...) have in addition the obligation (...) to ensure compliance by Israel with international humanitarian law as embodied in that Convention.”²⁵

Article 85 (4) of the First Protocol accompanying the Geneva Conventions also states that breach of Article 49 (6) of the Fourth Geneva Convention must be regarded as a ‘grave breach’ of the Protocol and a war crime. Classification as ‘grave breach’ is important because Article 86, paragraph one, imposes the obligation on contracting parties to prosecute the perpetrators responsible for these breaches. Breach of said Article 49, therefore, falls within Dutch criminal law as a war crime, allowing criminal proceedings to be brought against the individual suspected of such. Not only can the alleged perpetrator be pursued but also the person who assists in committing the criminal offence.²⁶

That the matter at stake here concerns a situation in conflict with International Law has long been the view held by the European Union, and this has recently been upheld once again by the European “Minister for Foreign Affairs”:

“Settlements are illegal under international law and threaten to make a two-state solution impossible. The EU has repeatedly urged the Government of Israel to immediately end all settlement activities in the West Bank, including in East Jerusalem, (...).”²⁷

The EU stance is (naturally) the one also held by the Netherlands and one that is upheld repeatedly. Thus, recently in response to Parliamentary Questions, the Minister for Foreign Affairs said that the Cabinet ‘[deems] the Israeli settlements as illegal and an obstacle to peace.’²⁸

The fact that the International Court of Justice declared the Fourth Geneva Convention of 12 August 1949 to be applicable to the occupation of the Palestinian territories makes that also other provisions of this Convention should be considered relevant to our topic. This, then, would include Article 53 which declares any ‘destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary

²⁴ I.C.J. Reports (2004). *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*. para. 10. <http://www.icj-cij.org/docket/files/131/1671.pdf>

²⁵ See note 24

²⁶ See the aforesaid Riwal case

²⁷ Ashton, C. (2013). High Representative of the European Union for Foreign Affairs and Security Policy. Brussels, 31 May 2013. A 275/13

²⁸ Rijksoverheid (2013a) *Beantwoording Kamervragen over illegale Israëlische nederzettingen*.

See: <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2013/01/18/beantwoording-kamervragen-over-illegale-israelische-nederzettingen.html>

by military operations'. Also here, complicity to these acts - in principle - creates liability for the complicit party. Aside from these breaches of humanitarian law here it is also about breach of the Palestinian people's human rights.

*"Their rights to freedom of self-determination, non-discrimination, freedom of movement, equality, due process, fair trial, not to be arbitrarily detained, liberty and security of person, freedom of expression, freedom of access to places of worship, education, water, housing, adequate standard of living, property, access to natural resources and effective remedy are being violated consistently and on a daily basis."*²⁹

Thus, the actual annexation of parts of the occupied territory, results in the breach of the provisions contained in Article 1 and in Article 12 of the UN Human Rights Treaty (right to self-determination or right to freedom of movement and freedom of establishment).³⁰

LEGAL POSITION OF COMPANIES DIRECTLY INVOLVED

Do private companies have anything to do with international-judicial standards? The answer to this question is yes. The International Red Cross, the initiator and guardian of the Geneva Conventions, says the following on the matter:

*"International humanitarian law does not just bind States, organized armed groups and soldiers - it binds all actors whose activities are closely linked to an armed conflict. Consequently, although States and organized armed groups bear the greatest responsibility for implementing international humanitarian law, a business enterprise carrying out activities that are closely linked to an armed conflict must also respect applicable rules of international humanitarian law."*³¹

The aforementioned Frans van Anraat is currently serving a prison sentence as a consequence of his sale of chemicals to Saddam Hussain. It is not just about criminal accountability and liability but also about liability under civil law. A party that is guilty of breaching humanitarian law or of violating human rights or of assisting in such breaches is acting, in principle, unlawfully under civil law vis-à-vis the disadvantaged party. Applied to the Israeli settlements in Palestine: a company involved in perpetuating the (ongoing) existence of these settlements, for example by ensuring properly functioning utilities, is acting, in principle, unlawfully under civil law vis-à-vis the disadvantaged parties and, therefore, runs serious risks. The Red Cross consequently warns:

*"In view of the above, business enterprises operating in zones of armed conflict should use extreme caution and be aware that their actions may be considered to be closely linked to the conflict even though they do not take place during fighting or on the battlefield. Likewise, it is not necessary for business enterprises and their managers to intend to support a party to the hostilities for their activities to be considered to be closely linked to the conflict."*³²

Although not apparent from reporting on the matter it is, therefore, very likely that it was with this in mind that Dutch companies such as Vitens and Royal HaskoningDHV have withdrawn from settlement-related projects. Royal HaskoningDHV formulated this as follows:

*"Royal HaskoningDHV has today advised the client it has decided to terminate the contract for the Kidron wastewater treatment plant project. (...)
Royal HaskoningDHV carries out its work with the highest regard for integrity and in compliance with international laws and regulations. In the course of the project, and after due consultation with various stakeholders, the company came to understand that future involvement in the project could be in violation of international law."*³³

²⁹ Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem. See: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/FFM/FFMSettlements.pdf>

³⁰ See note 19

³¹ ICRC (2006). *Business and international humanitarian law*, p. 14. See: http://www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf

³² See note 26

³³ Royal HaskoningDHV (2013). *Royal HaskoningDHV terminates its involvement in the wastewater treatment plant in East Jerusalem*. See: <http://www.royalhaskoningdhv.com/en/news/royal-haskoningdhv-terminates-its-involvement-in-the-wastewater-treatment-plant-in-east-jerusalem/727>

Many companies set great store by publicly committing to respecting human rights. They do this, for example, by declaring compliance with the *Guidelines for Multinational Enterprises* of the Organisation for Economic Cooperation and Development (OECD).³⁴ In this connection, the Ruggie Principles in particular are relevant. They have been incorporated in the OECD-guidelines and specifically state:

*"12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights - understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work."*³⁵

In the corresponding *commentary* related to Principle 12 it is expressly stipulated that '(...) in situations of armed conflict enterprises should respect the standards of international humanitarian law', thus the Geneva Conventions have also been brought under the scope of these *principles*.

LEGAL POSITION OF COMPANIES / INSTITUTIONS INDIRECTLY INVOLVED

The examples of Vitens and Royal HaskoningDHV demonstrate the consequences of *direct involvement* of corporations in maintaining, strengthening or expanding settlements in the occupied territories. So what would the situation be for corporations that are indirectly involved? These questions may be relevant for the financial sector, such as banks, insurance companies and pension funds. The Ruggie Principles, discussed in section 3.3, deal with such situations, especially in Principles 13 and 19, and formulate an active role for the investors: in instances where serious adverse human rights impacts are at stake, the corporation (bank, insurance company or pension fund) should either try to use its influence to end the violations or withdraw from financing them if this would turn out not to be possible.³⁶

The Ruggie Principles do not differentiate between the position of institutions that are holding either a majority- or minority- shareholders' position in the corporation that is closer to the human rights violations than this particular financial institution. This seems to be only logical since from the perspective of responsibility there would not be a principled difference between minority and majority shareholders. All shareholders have responsibility. This position is confirmed by, among others, *the National Contact Point for the OECD-Guidelines for Multinational Enterprises* of the Dutch Ministry of Foreign Affairs.³⁷

The UN *Special Rapporteur on the situation of human rights in the Palestinian territories* provides further legal analysis in his Report of 10 September 2013.³⁸ Financing criminal activities falls within the definition of criminal complicity as long as it is established that the financier was (or should have been) aware of the crimes that are being (or to be) committed. If the indirect activities are considered to constitute complicity under international criminal law, then civil liability for these activities may come into play as well.

³⁴ Nationaal Contactpunt OESO-richtlijnen (2014). *De richtlijnen in 't kort*. See: <http://www.oesorichtlijnen.nl/oeso-richtlijnen/de-richtlijnen-t-kort>

³⁵ OHCHR (2012). *The corporate responsibility to respect Human Rights: An Interpretive Guide*.
See: http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf

³⁶ Sustainalytics (2011). Raising the Bar on Human Rights: *What the Ruggie Principles Mean for Responsible Investors*.
See: http://www.sustainalytics.com/sites/default/files/ruggie_principles_and_human_rights.pdf

³⁷ Nationaal Contactpunt OESO-richtlijnen (2013a). *Final Statement*. Section 3.4.
See: <http://www.oesorichtlijnen.nl/sites/dev.oesorichtlijnen.nl/files/final-statement-somo-bothends-apg-abp2.pdf>

³⁸ UN Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967 (2013). *General Assembly*. A/68/376, 10 September 2013, para 41.
See: <http://unispal.un.org/UNISPAL.NSF/0/296CF21249B48B5B85257C0D00684C44>

In January 2014 PGGM, one of the largest Dutch pension fund service providers, announced that it withdrew its investments in five Israeli banks given 'their involvement in financing Israeli settlements in the occupied Palestinian territories.' PGGM added that '[t]his was a concern, as the settlements in the Palestinian territories are considered illegal under international humanitarian law.'³⁹

PGGM is not the first financial institution to draw these conclusions. In his Report mentioned earlier the UN Special Rapporteur, Prof. Richard Falk, provides a list of Funds that preceded the PGGM decision:

*"In relation to civil liability, certain financial entities have demonstrated an increasing awareness of corporate social responsibility and the potential legal ramifications relating to Israeli settlements. The Norwegian Government Pension Fund Global excluded the construction company Shikun & Binui because of its involvement in the construction of settlements. The Ethical Council of four of the largest pension funds in Sweden excluded Elbit Systems because of its involvement in the construction and maintenance of the wall. The New Zealand Government Superannuation Fund divested from Elbit Systems, Africa-Israel Investments Limited and its subsidiary Danya Cebus, and Shikun & Binui because of their participation in either the construction of settlements or the Wall."*⁴⁰

3.3 Relevant frameworks for CSR and responsible investment

In general, and consequently in the case of the occupation of the Palestinian Territories, responsible investment guidelines are *subordinate* to international humanitarian law. Responsible investment guidelines are designed in *addition* to existing legislation, to address environmental, social and governance issues for corporations which are not embedded within a legal framework. Thus International humanitarian law provides the basis for any analysis of the situation.

The previous paragraph shows that international law is also applicable for companies and investors. It is important to note that a large percentage of investors have (in)directly stated that they follow international law through several frameworks for Corporate Social Responsibility and Responsible Investment. The three best known are:

- The UN Global Compact
- The Principles for Responsible Investment (PRI) Initiative
- The OECD Guidelines for Multinational Enterprises, Ruggie Framework, UN Guiding Principles

Most of the large Dutch institutional investors have signed on to one or more of these guidelines.

UN GLOBAL COMPACT

Launched in 2004, the UN Global Compact is a United Nations initiative for businesses to encourage them to adopt sustainable and socially responsible policies, laid down in ten principles on human rights, labour, the environment and anti-corruption. To date, over 10,000 companies and organisations from over 130 countries have subscribed to the Global Compact.⁴¹

³⁹ PGGM (2014). *Statement regarding exclusion of Israeli banks*. 8 January 2014.

See: <https://www.pggm.nl/english/what-we-do/Documents/Statement%20PGGM%20exclusion%20Israeli%20banks.pdf>

⁴⁰ See note 38, para. 46

⁴¹ Nationaal Contactpunt OESO-richtlijnen (2013b). *Persbericht Partijen bereiken overeenstemming in "POSCO-zaak"*, p. 16.

See: http://www.oesorichtlijnen.nl/sites/dev.oesorichtlijnen.nl/files/persbericht_ncp_18_september_2013.pdf

The ten principles of the Global Compact are:

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

Labour Standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.⁴²

The UN Global Compact works towards the vision of a sustainable and inclusive global economy that delivers lasting benefits to people, communities and markets. To help realise this vision, the initiative seeks to:

- Mainstream the Global Compact's ten principles in business strategy and operations around the world; and
- Catalyse business action in support of UN goals and issues, with emphasis on collaboration and collective action.⁴³

The principles on Human Rights are particularly important in the case of the occupied Palestinian territories. The Global Compact contains no mechanisms to sanction member companies for non-compliance with the Compact's principles.⁴⁴

PRINCIPLES FOR RESPONSIBLE INVESTMENT (PRI) INITIATIVE

Launched in 2006 by the UN Global Compact and UNEP Finance initiative, the Principles for Responsible Investment (PRI) Initiative is a partnership between the United Nations and global investors. It is built as an international network of investors working together to increase the level of responsible investment. By implementing the six PRI principles, signatories contribute to the development of a more sustainable global financial system.⁴⁵

The six principles of the PRI are:

Principle 1: We will incorporate ESG issues into investment analysis and decision-making processes.

Principle 2: We will be active owners and incorporate ESG issues into our ownership policies and practices.

Principle 3: We will seek appropriate disclosure on ESG issues by the entities in which we invest.

Principle 4: We will promote acceptance and implementation of the Principles within the investment industry.

Principle 5: We will work together to enhance our effectiveness in implementing the Principles.

Principle 6: We will each report on our activities and progress towards implementing the Principles.⁴⁶

⁴² Compact, U. G. (2013). *The Ten Principles*. See: <http://www.unglobalcompact.org/abouttheGC/TheTenPrinciples/index.html>

⁴³ UN Global Compact (2010). *Overview of the UN Global Compact*. See: <http://www.unglobalcompact.org/AboutTheGC/index.html>

⁴⁴ See note 41

⁴⁵ PRI (2012). *Annual Report 2012*. See: <http://www.unpri.org/viewer/?file=files/Annual%20report%202012.pdf>

⁴⁶ PRI (2013). *The Six Principles*. See: <http://www.unpri.org/about-pri/the-six-principles/>

⁴⁷ See note 43

⁴⁸ See note 44

Pension funds, insurance companies, sovereign wealth and development funds, investment managers and service providers have signed on to the PRI. The Principles are voluntary and aspirational but the goal of the PRI is to increase the interest of institutional investors in environmental, social and corporate governance (ESG) issues.⁴⁷

PRI asks that attention be given to the social responsibility investors have with respect to investment. This is reflected in the introduction to the principles: "...we believe that environmental, social and corporate governance (ESG) issues can affect the performance of investment portfolios (to varying degrees across companies, sectors, regions, and asset classes and through time). We also recognise that applying these Principles may better align investors with broader objectives of society".⁴⁸

Principle 1 and 2 call the investor to be active on human rights. Transparency is key in this initiative; institutional investors should be open in the pursuit of their actions and in reporting. The PRI seeks to strengthen accountability by increasing transparency and clarifying assessment objects.⁴⁹

The PRI is less about giving detailed instructions to investors on how they should implement these principles in practice and therefore implementation differs between investors. There is also no specific guidance within the PRI on how to act on human rights and/or the occupied Palestinian territories in particular. However principles 1 and 2 are a call to investors not be passive with respect to human rights and to be an active owner on these issues.

OECD-GUIDELINES & RUGGIE FRAMEWORK

The OECD-Guidelines for Multinational Enterprises are an annex to the OECD Declaration on International Investment and Multinational Enterprises. They provide principles and standards for responsible business conduct for multinational corporations operating in or from countries that adhere to the Declaration. The Guidelines are not legally binding but states have the duty to protect human rights.⁵⁰ The Netherlands is a signatory to the OECD-guidelines.⁵¹

The six guidelines of the OECD regarding human rights are:

1. Respect human rights; which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.⁵²

Regarding human rights, the UN Guiding Principles, also known as the Ruggie Framework, were fully integrated in the OECD-guidelines in 2011. The Ruggie Framework, named after UN Special Representative on Business and Human Rights John Ruggie, was unanimously adopted by the UN Human Rights Council in June 2011. The framework

⁴⁹ Malk Sustainability Partners (2012). UN Principles for Responsible Investment (UNPRI): *A Guide for Private Equity Fund Managers*. See: <http://www.malksp.com/wp-content/uploads/2012/07/UNPRI-Guide-for-Private-Equity-Fund-Managers.pdf>

⁵⁰ OECD (2008). *OECD Guidelines for Multinational Enterprises*. Paris, France. See: <http://www.oecd.org/corporate/mne/1922428.pdf>

⁵¹ See note 48

is based on the following three pillars:

- The duty of the State to protect people against human rights abuses by third parties (duty to protect)
- Corporate responsibility to respect human rights (responsibility to respect)
- The right of victims to have access to effective remedy, both judicial and non-judicial (*access to remedy*).^{53 54}

Besides the responsibility to respect human rights, companies have to map and reduce human rights risks in their supply chain. This is called *due diligence*.

The Framework's second pillar - corporate responsibility to respect human rights - is divided into a set of foundational principles and a set of operational principles. The foundational principles describe the normative basis for businesses' activities, whereas the operational principles provide guidance as to how to practically translate the principles in day-to-day business.

The foundational principles for corporate responsibility to respect human rights are:

- 11 Business enterprises should respect human rights. They should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights - understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.
13. The responsibility to respect human rights requires that business enterprises:
 - (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
 - (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.
14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.
15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:
 - (a) A policy commitment to meet their responsibility to respect human rights;
 - (b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
 - (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.⁵⁵

⁵² OECD (2013). OECD Guidelines for Multinational Enterprises

See: http://www.oesorichtlijnen.nl/sites/www.oesorichtlijnen.nl/files/oeecd_guidelines_for_mnes_official_publication.pdf

⁵³ Business and Human Rights Resource Centre (2013). UN "Protect, Respect and Remedy" Framework.

See: <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework>

⁵⁴ MVO Nederland (2013). *Ruggie Beleidskader*. See: <http://www.mvonderland.nl/content/keurmerken-en-richtlijnen/ruggie-framework>

⁵⁵ Human Rights Council (2011). *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*.

See: <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>

The operational principles for corporate responsibility to protect human rights are:

16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy

Human rights due diligence

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.

19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response.

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders.⁵⁶

Furthermore, Ruggie states in the 23rd principle (Issues of context):

23. In all contexts, business enterprises should:

- (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate.
- (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements.
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

The Ruggie Principles are quickly becoming the new standard against which progress in the field of business and human rights is measured: adopted by the UN, being an integral part of OECD-guidelines and being translated into national action plans, Ruggie Principles offer a profound base. The Ruggie Framework is not voluntary as compared to the UN Global Compact and PRI. Moreover, it provides a comprehensive set of practical guidelines/tools as to how to apply the framework and to work in accordance to them. At the end of 2013 the Netherlands, launched its national action plan business and human rights based on the Ruggie Principles, being one of the first OECD countries to do so.⁵⁷

⁵⁶ See note 53

⁵⁷ Rijksoverheid (2013). Documenten en publicaties: Nationaal Actieplan bedrijfsleven en mensenrechten.

See: <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2013/12/20/nationaal-actieplan-bedrijfsleven-en-mensenrechten.html>

Sustainalytics considers the following elements of the Ruggie Framework to be important as best practices for the responsible investment policies and implementation of institutional investors:

- “Reference to international human rights standards such as the nine core human rights treaties as well as relevant labour standards.
- The integration of human rights considerations into all financial activities ranging from investments, loans and fixed income to project finance activities.
- References to stakeholders, including an institutional investor’s own employees, customers, affected communities, and others.
- Reference to specific human rights themes that are frequently known to have an impact on companies and investors, such as the rights of indigenous peoples, labour rights or the right to freedom of expression.
- A commitment to establish formal mechanisms for dialogue with all relevant stakeholders, including civil society and governmental bodies, on human rights matters.
- Commitment to a full due diligence process including risk assessments, transparency, the adoption of implementation programs and mechanisms, and monitoring and reporting.”⁵⁸

Another important feature of the OECD-guidelines is the right of victims to have access to effective remedy. This means that persons who are affected by human rights violations by companies should have access to effective judicial and non-judicial grievance mechanisms. All countries that signed the OECD-guidelines, create OECD National Contact Points to monitor implementation and provide access to effective remedy for victims.

It is interesting to note that the responsibility is not limited to the company itself. Exposure of institutional investors towards human rights issues is largely through lending and investment activities. The degree of this exposure depends on the nature of the financing activity.⁵⁹

Majority as well as minority shareholders are held accountable when breaches of human rights occur. In a recent case against the South-Korean firm Posco the Dutch NCP stated that ABP, as a minority shareholder, had a responsibility to practice due diligence and to use its influence to diminish and eliminate the human rights breaches by Posco.⁶⁰ This was in general terms already confirmed by the Ruggie Framework.⁶¹ This means that (minority) shareholders complying to the OECD-guidelines have the obligation to practice due diligence and to use their influence when human rights breaches occur regarding the occupied Palestinian territories and in other cases.

3.4 Involvement of companies

To illustrate different ways in which companies might contribute to breaches of international law and human rights law in relation to the occupation of the Palestinian territories, this section describes the involvement of twelve companies. These companies are not chosen because involvement is limited to these companies, but because they provide an overview of the different ways companies can be involved.

A reason to provide an overview of different types of involvement related to the occupation is that the United Nations fact-finding mission that investigates the implications of the Israeli settlements on Palestinian people’s rights states in its report that business enterprises have enabled, facilitated and profited from the settlements.⁶²

⁵⁸ See note 34, p. 15

⁵⁹ Sustainalytics (2011). Raising the Bar on Human Rights: *What the Ruggie Principles Mean for Responsible Investors*. See: http://www.sustainalytics.com/sites/default/files/ruggie_principles_and_human_rights.pdf

⁵⁸ See note 39

⁶⁰ UN office of the high commissioner for Human Rights (2013). *The issue of the applicability of the Guiding Principles on Business and Human Rights to minority shareholdings*. 26 April 2013. See: http://www.regjeringen.no/pages/36798927/ohchr_nbim.pdf

⁶¹ See note 9

⁶² See note 2, p. 19

It is important to stress that the involvement of these companies and their relationship to the occupation of the Palestinian territories differs in size, (in)directness and type. Besides the different ways of involvement, the seriousness of contributions to the occupation also differs.

Involvement can occur in several forms: some corporations deliver services, such as building infrastructure in the occupied territories (Africa-Israel, Veolia); others extract non-renewable natural resources (Heidelberg Cement), or provide essential materials for the construction of the Wall or settlements; some provide machinery which destroys Palestinian homes and infrastructure (Caterpillar, Volvo); others develop and provide technology and systems contributing to Israel's military control and restriction of movement (HP, Elbit, Motorola), and provide security services to prisons and military installations (G4S). There is also a variety of forms of presence in settlements and industrial zones, like offices, branches or production facilities or provision of non-military services (Sodastream, Dexia, Israeli banks).⁶³

The twelve companies were named by the sources provided in this chapter, as related to the occupation of the Palestinian territories. When available, also the reaction of the company itself is provided. It is recommended that investors form their own judgment on the basis of the sources named in this report, their own research and on the basis of the information provided by the companies themselves on if these companies are operating according to international law and their own guidelines. Engagement can be a useful tool to discuss this topic with the company and gain more information on their activities and position.

AFRICA ISRAEL / AFI GROUP

AFI Group is an international holdings and investments group, focusing on real-estate, construction, infrastructure, industry and hotels. The company builds in settlements like Modi'in Illit, Ma'ale Edomim, Har Homa and others through its subsidiary construction firm Danya Cebus. The company also owns 26% of Alon Group, which has a monopoly over gas supply to the Gaza Strip, and controls the Blue Square retail chain, which has branches and offices in multiple settlements throughout the West Bank.⁶⁴

CATERPILLAR

Caterpillar is an American company that manufactures and provides bulldozers and civil engineering tools. The Israeli army uses Caterpillar's D9 bulldozers to destroy Palestinian homes, agricultural land and other infrastructure in the occupied territories to facilitate the construction of the Wall and Israeli settlements. Using these bulldozers, the Israeli army has demolished over 11,795 Palestinian homes over the last ten years.⁶⁵

The company's tools have been used in military incursions and as weapons. For example, in December 2008 the Israeli army used unmanned D9 bulldozers (Dawn Thunder) in attacks in Gaza, and has been using an unmanned version of the company's smaller vehicles, the Front Runner, specially designed for urban warfare.

The company's sole representative in Israel, ITE of Zoko Enterprises, is responsible for retro-fitting the tools, as well as for on-going maintenance and operations, including during military operations.

⁶³ Same division in groups is used as in the report 'Dangerous Liaisons'. See note 2, page 19

⁶⁴ Who Profits (2014a). *Africa Israel*. See: <http://www.whoprofits.org/company/africa-israel>

⁶⁵ Israeli Committee Against House Demolitions ICAHD: 'Statistics on House Demolitions (1967-2010)', www.icahd.org

DEXIA GROUP

The Dexia Group, active in banking and investor services, is 94% owned by Belgium and France.⁶⁶ In 2001 the bank established Dexia Israel, holding 65.3% of its shares. Dexia Israel has provided loans and other financial services to municipalities and regional councils of Israeli settlements. Besides that, Dexia Israel manages the bank account of the Katzerin settlement in the Golan Heights, which receives state funds through the Dexia Bank, as does the Gush Etzion settlements' regional council. Furthermore, all Mifal HaPais (Israeli national lottery) grants given to settlements for construction are transferred through the Dexia Israel bank. Dexia Israel gives credit to the Beit Hagay settlement, which operates a quarry in the occupied Palestinian territories, exploiting non-renewable natural resources. Dexia Israel's activities have also included managing personal bank accounts and mortgage loans for home-buyers in settlements.⁶⁷

ELBIT

Elbit Systems Ltd. is an international defence electronics company. The company is one of the two main suppliers of electronic surveillance systems for the Wall and electric fences within the "Seam Zone": the land between the Green Line and the Wall. Subsidiaries Elbit Electropics (El-Op) and Elbit Security Systems (Ortek) also supplied and incorporated LORROS surveillance cameras in the settlement Ariel and for the Wall in A-ram. The company supplies drones to the Israeli army, which are in operational use during combat in the West Bank and Gaza. Elbit also developed an armed Unmanned Ground Vehicle for patrolling the Seamzone.⁶⁸

G4S

G4S is a British-Danish security conglomerate that operates in 125 countries and employs 620 000 people.⁶⁹ G4S owns 91% of G4S Israel. G4S is involved in Israel's occupation through:

- Supplying luggage, scanning equipment and full body scanners to military checkpoints on the West Bank as part of the Separation Wall and supplying equipment to Erez checkpoint (Gaza).⁷⁰
- Supplying security services to businesses in the Israeli settlements in the West Bank (incl. East Jerusalem).⁷¹
- Providing a perimeter defence system for Ofer Prison, specifically dedicated for Palestinian political prisoners, and installation of a central command room in the facility. Access to this area ("Seam Zone") is restricted for Palestinians who need a special access permit from G4S.⁷²
- Providing the security system for the Ketziot Prison and a central command room in the Megido Prison. These facilities in Israel hold Palestinian political prisoners from the occupied Palestinian territories.⁷³
- Providing equipment to the West Bank Israeli Police headquarters in the Ma'ale Adumim settlement and equipment for installations of the Israeli police in settlements.⁷⁴

⁶⁶ Dexia Group (2013). Press release: *Successful launch of Dexia Crédit Local EUR 1.5 billion inaugural government guaranteed transaction*. 3 July 2013. See: http://www.dexia.com/EN/journalist/press_releases/Pages/20130703_CP_emission_dettes.aspx

⁶⁷ Who Profits (2013a). *Financing the Israeli Occupation: The Current Involvement of Israeli Banks in Israeli Settlement Activity*. Flash Report. See: http://www.whoprofits.org/sites/default/files/banks_update_nov_2013.pdf

⁶⁸ Who Profits (2014b). *Elbit Systems*. See: <http://www.whoprofits.org/company/elbit-systems>

⁶⁹ G4S (2014). *Over G4S*. See: <http://www.g4s.nl/nl-NL/over%20G4S/>

⁷⁰ Russell Tribunal on Palestine (2010a). *Findings of the London Session: Corporate Complicity in Israel's violations of International Humanitarian & International Human Rights Law*. See: <http://www.russelltribunalonpalestine.com/en/wp-content/uploads/2011/01/RTOP-London-Session-Findings.pdf>

⁷¹ See note 70

⁷² See note 70

⁷³ See note 70

⁷⁴ Who Profits (2014c). *Group4Securicor (G4S)*. See: <http://www.whoprofits.org/company/group4securicor-g4s>

- Providing security systems for the Kishon ("Al-Jalameh") and Jerusalem ("Russian Compound") detention and interrogation facilities.⁷⁵

A panel of legal experts stated that G4S may be criminally liable for its activities in support of Israel's illegal Wall and other violations of international law.⁷⁶

HEIDELBERG CEMENT

The German company Heidelberg Cement is one of the world's largest cement producers and leader in aggregates production. In 2007 the company bought Hanson (UK). Hanson produces cement, gravel and asphalt. Through Hanson, Heidelberg is the owner of production facilities in Israeli settlements such as cement factories at Modi'in Illit and Atarot, an asphalt factory south of Elqana and a gravel quarry in Nahal Ruba.⁷⁷ Heidelberg states that it works according to Israeli law and that its workers are treated equally. Further information can be found in a statement on their website.⁷⁸

HEWLETT PACKARD (HP)

HP is a global technology, computing and IT services provider. The company owns EDS Israel, which merged into HP as "HP Enterprise Services". HP provides services to:

- *The Israeli army and prisons*

EDS Israel provided the Israeli Ministry of Defense with an automated biometric access control system which includes a permit system to control Palestinian workers. Moreover, HP provides services and technologies to the Israeli army, among which the administration of the Israeli navy's IT infrastructure. The Israeli navy has enforced the naval blockade on the Gaza Strip since 2007. In addition HP supplies implements and maintains the servers of the Israeli army and Israeli security forces. HP also provides technological services to the Israeli prisons authority.

- *Settlements*

HP operates a development centre in the Beithar Illit settlement. HP provides services and technologies to the settlements of Modi'in Illit and Ariel. Matrix and its subsidiary Tact Testware provide technological services to HP and are located in the settlement Modi'in Illit. Matrix distributes HP computers, servers and virtualization solutions. Matrix's personnel were trained by HP to provide software and services. Tact Testware provides HP with licenses and services in the field of testing and automation. HP also takes part in the "Smart City" project in the settlement Ariel, providing a storage system for the settlement's municipality.^{79 80}

ISRAELI BANKS

Israeli banks are involved in financing Israeli settlements through providing services to settlements and financially supporting construction projects on occupied land. The Israeli banks do this through:

- Providing mortgages for homebuyers in settlements.
- Providing financial services to Israeli local authorities in the West Bank and the Golan Heights.
- Providing loans for construction projects in settlements.
- Operating branches in settlements.

⁷⁵ Public Committee against torture in Israel (2014). See: <http://www.stoccupiedpalestinianterritoriesorture.org.il/en>

⁷⁶ Russell Tribunal on Palestine (2010b). *Concluding statement RToP London*.

See: <http://www.russelltribunalonpalestine.com/en/wp-content/uploads/2010/11/Concluding-Statement-RToP-London-22-November-2010.pdf>

⁷⁷ Who Profits (2014d). *Heidelberg Cement*. See: <http://www.whoprofits.org/company/heidelberg-cement>

⁷⁹ Who Profits (2011). *Technologies of Control: The case of Hewlett Packard*.

See: http://www.whoprofits.org/sites/default/files/hp_report_final_for_web.pdf

⁸⁰ Who Profits (2014e). *Hewlett Packard*. See: <http://www.whoprofits.org/company/hewlett-packard-hp>

- Providing financial services to businesses in settlements.
- Benefiting from access to the Palestinian monetary market as a captured market.⁸¹

MOTOROLA

Motorola Solutions is the mother company of Motorola Solutions Israel. In 2005, Motorola Solutions Israel won a tender from the Israeli Ministry of Defense, to provide virtual fences to Israeli settlements. Motorola radar detector systems have been installed in more than 20 settlements. The system is also used for the Wall on the West Bank, for the Wall surrounding the Gaza Strip and at military bases. The company has on-going service agreements on the existing systems and continues to offer them for use at Israeli installations in the occupied territories.

Motorola Solutions Israel has also developed and procured the Mountain Rose communication system for the Israeli army. This mobile system is specially designed for use during special field operations and has been used by IDF soldiers both on the occupied West Bank and the Gaza Strip. Additionally, the company provided Israel Police with the Astro25 communication system. The Israel Police Special Patrol Unit uses this system during its operations in the occupied Palestinian territories.

In January 2014, the Israeli Ministry of Defence signed a 15-year contract with Motorola Solutions to supply the Israeli army and other security forces with an encrypted smart phone. The device will offer encrypted calls, emails, the ability to send and receive digital media and navigation capabilities. It will replace the 'Mountain Rose' mobile system, which will continue to serve the army until 2018. The smart phone system's encryption will be developed jointly by Lotam - the Israeli army's telecom unit - and Motorola Israel.⁸²

SODASTREAM

SodaStream International manufactures and distributes home carbonating devices and flavourings for soft drinks. The company is also the Israeli distributor of Brita (water filtering jugs). The main plant of the company is located in the industrial zone of Mishor Edomim, which is an Israeli settlement on the West Bank.⁸³ The director of SodaStream stated in the BBC program Newsnight that the factory provides employment to Palestinians.⁸⁴

VEOLIA

Veolia is a French multinational operating in the fields of water, waste management, energy and transport services. The company holds full control of Veolia Environnement Israel that also provides services to the Israeli ministry of Defence. Veolia is involved in Israel's occupation of Palestine in three ways:

- *The Jerusalem Light Rail*

Through its subsidiary - Veolia Transdev, the company has a 5% share in the CityPass consortium, which was contracted to establish, maintain and operate the light rail project in Jerusalem, designed to connect the Israeli city of West Jerusalem with the Israeli settlements in and around occupied Palestinian East Jerusalem. Additionally, Veolia Transdev owns approximately 80% of Connex Jerusalem, the company that operates the

⁸¹ Who Profits (2013b). Financing the Israeli occupation: *The current involvement of Israeli banks in Israeli settlement activity*. See: <http://www.whoprofits.org/content/financing-israeli-occupation-current-involvement-israeli-banks-israeli-settlement-activity>

⁸² Who Profits (2014f). *Motorola Solutions*. See: <http://www.whoprofits.org/company/motorola-solutions-israel>

⁸³ Who Profits (2013c). *SodaStream Update*. May 2013. See: <http://www.whoprofits.org/content/sodastream-update-may-201384>

⁸⁴ BBC (2014), Newsnight. February 2014. See: <http://www.youtube.com/watch?v=cd9ioQrTqoY>

trains.⁸⁵ Veolia was granted the contract to operate the light rail for 27 years, starting in 2011. It is stated that Palestinian land is being confiscated for the construction of the light rail and that the light rail enforces the permanent character of the settlements and contributes to their expansion and to the process of annexation of the settlements.⁸⁶ Veolia has reacted on some of the claims regarding the Jerusalem Light Rail on its website.⁸⁷

- *Tovlan Landfill*

Veolia Environnement owns and operates the Tovlan Landfill in the Jordan Valley through its daughter TTM. TTM holds a licence to dump waste at the landfill.⁸⁸ The waste transferred to the landfill originates from recycling factories from within Israel and serves 5 settlements in the West Bank. The company uses Palestinian land and natural resources for the needs of Israeli settlements on both sides of the green line.⁸⁹

- *Ayalon waste water treatment plant*

Veolia Water Services Israel, a daughter of Veolia Environment, operates Ayalon wastewater treatment plant, which collects and cleans sewage from the Israeli settlement of Modi'in Illit.⁹⁰

VOLVO GROUP

Volvo Group is a manufacturer of trucks, buses and civil engineering equipment. Bulldozers and trucks manufactured by Volvo Construction Equipment and Volvo Trucks have been used in house demolitions of Palestinian homes in East Jerusalem, and in the construction of military checkpoints and settlements. The exclusive Israeli representative of the Volvo Group is Mayer's Cars and Trucks, which operates two Volvo licensed garages in settlements: the Mayer Davidov Garages in the industrial zone of Mishor Edomim and the Diesel Atarot Jerusalem Garage in Atarot Industrial Zone.⁹¹

Volvo Buses holds 27% of the shares of the Israeli company Merkavim. Merkavim manufactures buses to transport Palestinian prisoners for the Israeli Prison Service inside Israel, which is in breach of international humanitarian law. Merkavim manufactures armoured buses for Egged (the Egged Israel Transport Cooperative Society) that are used as public transport facilitating the settlements.

EXEMPLARY CASES: *behaviour of companies and investors in the occupied Palestinian territories*

Royal HaskoningDHV

In September 2013, Engineering firm Royal HaskoningDHV decided to terminate its contract for a water treatment plant in East Jerusalem. In a press release Royal HaskoningDHV states that 'Royal HaskoningDHV carries out its work with the highest regard for integrity and in compliance with international laws and regulations. In the course of the project, and after due consultation with various stakeholders, the company came to understand that future involvement in the project could be in violation of international law. This has led to the decision of Royal HaskoningDHV to terminate its involvement in the project.'⁹²

⁸⁵ Who Profits (2014g). *Veolia Environment*. See: <http://www.whoprofits.org/company/veolia-environnement>

⁸⁶ Een ander Joods geluid/ UCP (2012). Urban District Haaglanden: *Veolia-transport undesirable and unacceptable in city of peace and justice*.

See: http://www.eajg.nl/system/files/Veolia%20fact%20file%20The%20Hague%2010052012%20-%20DEF-english_0.pdf

⁸⁷ Veolia (2014). *The Jerusalem Light Rail Transit (JLRT)*. See: <http://www.veolia.com/en/medias/focus-on/jlrt.htm>

⁸⁸ See note 85

⁸⁹ The Electronic Intifada (2010). Human Rights: *Veolia whitewashes illegal light rail project*.

See: <http://electronicintifada.net/content/veolia-whitewashes-illegal-light-rail-project/9001>

⁹⁰ See note 89

⁹¹ Who Profits (2014h). *Volvo Group*. See: <http://www.whoprofits.org/company/volvo-group>

⁹² Royal HaskoningDHV (2013). Royal HaskoningDHV terminates its involvement in the wastewater treatment plant in East Jerusalem.

See: <http://www.royalhaskoningdhv.com/en-gb/news/royal-haskoningdhv-terminates-its-involvement-in-the-wastewater-treatment-plant-in-east-jerusalem/727>

Vitens

Dutch drinking water company Vitens ended its partnership with the Israeli water company Mekorot. In its statement, Vitens attaches great importance to integrity and adheres to (inter) national laws and regulations.⁹³

Mekorot is the national water company of Israel and has a monopoly over the water resources in the occupied Palestinian territories. 80% of the water it sources from Palestinian aquifers is for Israeli use, including the settlements. Mekorot asks a higher price for the water that is provided to Palestinians than it does to Israelis. Mekorot pumps large quantities of water from the water table with the result that wells used by Palestinians run dry. Dutch newspaper NRC states that Palestinians are not allowed to drill deep wells and thus many Palestinians face water shortages.⁹⁴

GPFG and Danske Bank

In January 2014, the Norwegian Government Pension Fund Global (GPFG) announced to withdraw from two Israeli companies, Africa Israel Investments and its construction subsidiary, Danya Cebus. The re-exclusion was made due to “an unacceptable risk of the companies, through their construction activity in East Jerusalem, contributing to serious violations of the rights of individuals in situations of war or conflict”, as stated by the recommendation report made by the Norwegian Council on Ethics in September.⁹⁵ One day later, Danske Bank, announced it was pulling out of the two companies as well as of the Israeli bank Hapoalim, also for reason of construction activities in conflict with international humanitarian law.⁹⁶

⁹³ Vitens (2014). *Statement Vitens*.

See: <http://www.vitens.nl/overvitens/organisatie/nieuws/Paginas/Vitens-be%C3%ABindigt-samenwerking-Mekorot.aspx>

⁹⁴ NRC (2014). *Vitens strandt op de Jordaan oever*. See: <http://www.nrc.nl/handelsblad/van/2014/januari/07/vitens-strandt-op-jordaanoever-1333306>

⁹⁵ GPFG Council on Ethics (2014). *Recommendation to exclude the companies Africa Israel Investments Ltd. and Danya Cebus Ltd. from the investment universe of the Government Pension Fund Global*. See: http://www.regjeringen.no/pages/1930865/Africa_Israel_nov_2013.pdf

⁹⁶ Danske Bank (2014). *Excluded companies*. See: <http://www.danskebank.com/en-uk/CSR/business/SRI/Pages/exclusionlist.aspx>

4 Results

4.1 Present involvement and position of Dutch institutional investors

It is important to determine whether Dutch institutional investors are indeed (in)directly involved in activities in the occupied Palestinian territories through their investments. A selection of twelve companies has been presented in the previous paragraph as an example of companies that currently might, in different ways and to a greater or lesser extent, contribute to breaches of international law and violations of human rights in relation to the occupied Palestinian territories. As described earlier, their involvement varies, from providing security equipment, having branches or production plants in the settlements to extracting natural resources. Figure 3 shows a significant percentage of institutional investors who have filled in the questionnaire having investments (shares or corporate bonds) in these companies. Recommendations on how to deal with these investments are therefore deemed very useful.

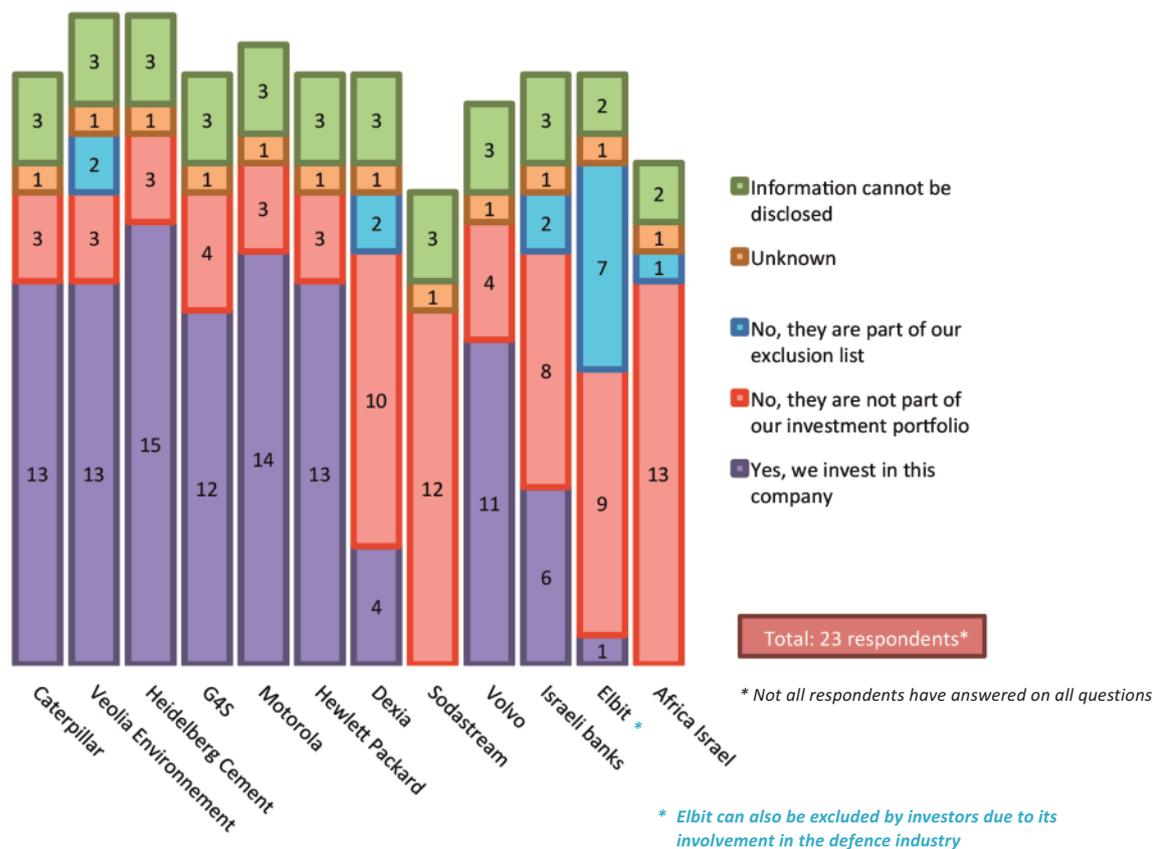


Figure 6 Investments of Dutch institutional investors in companies related to the occupation of the Palestinian territories

In answer to questions about their position on whether to invest or not to invest in companies related to the occupation of the Palestinian territories most respondents in the interviews stated that institutional investors often find it difficult to define their position. It is often perceived by their stakeholders that a position or decision on investment that is derived from non-financial criteria is seen as taking a political position. One of the respondents noted that institutional investors will not be able to resolve this conflict and it is difficult to take a stand due to their role. Institutional investors, however, underscore the importance of staying close to their responsible investment policy and international legal frameworks regarding this sensitive issue.

For respondents, the issues concerning the occupied Palestinian territories are not black or white but are perceived as highly complex. This makes being well and up to date informed even more necessary for an institutional investor.

Only a few institutional investors have a specific policy on this issue. Many respondents fear naming and shaming from NGOs, participants or customers if they go public on this matter.

4.2 Policies and guidelines used

Having a responsible investment policy is an important starting point for coping with this issue. It is positive to note that most institutional investors (90%) have a responsible investment policy and 75% of them also publicly report on its implementation. This is important because it increases the transparency of their investments. Based on the results from the Benchmark studies from the VBDO, 70% of the pension funds and insurance companies indicate that they have a specified responsible investment policy for human rights (figure 7, 8, 9).^{97,98}

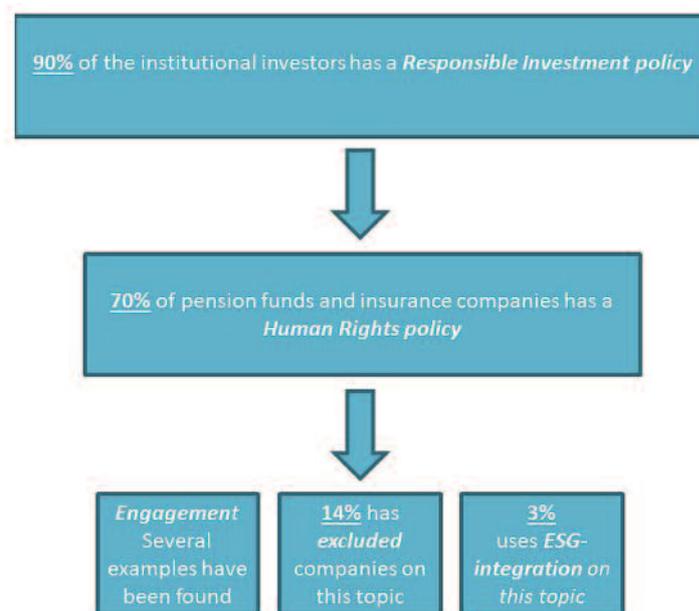


Figure 7 Overview of percentages of responsible investment policies, specification for human rights and implementation regarding the occupied Palestinian territories, based on the questionnaire

⁹⁷ VBDO (2013a) *Benchmark Responsible Investment by pension funds in the Netherlands*,
See: <http://www.vbdo.nl/files/download/1294/Benchmark%20Responsible%20Investment%20by%20Pension%20Funds%202013.pdf>

⁹⁸ VBDO (2013b) *Benchmark Responsible Investment by insurance companies in the Netherlands*,
See: http://gallery.mailchimp.com/db62a3a794830dbe96fb393bc/files/Bench_Verzekeraars2_2013.pdf

Do you publicly report on the implementation of your responsible investment policy?

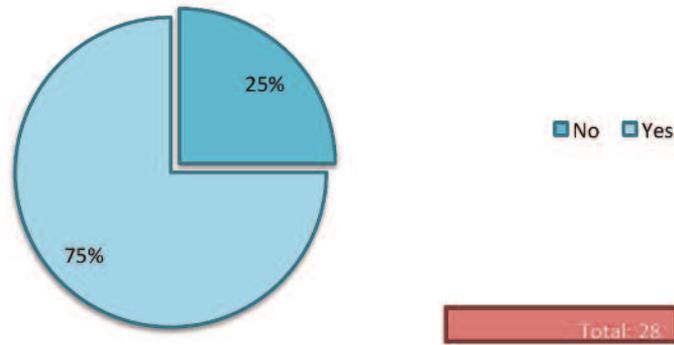


Figure 8 Reporting on implementation of responsible investment

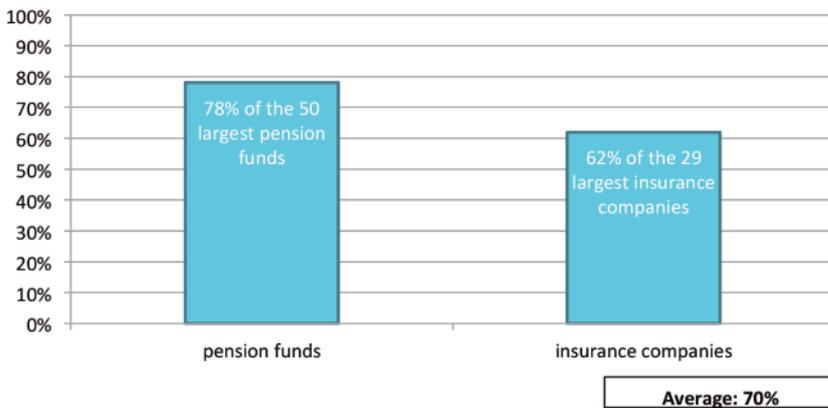


Figure 9 Human Rights policy

Institutional investors follow international guidelines and integrate these within their responsible investment policy. The UN Global Compact and the PRI are the most commonly identified by the institutional investors that filled in the questionnaire. Other codes mentioned are the Universal declaration of Human Rights⁹⁹ and the “Code duurzaam beleggen van verbond van Verzekeraars” (Sustainable investment code of association of insurers).¹⁰⁰

The elements of the Sustainable Investment Code of the association of insurers are taken from the UN Global Compact and PRI. Members of the association of insurers are obliged to respect this code, unless they explicitly make clear the reason why they want to deviate from the code (comply or explain).¹⁰¹

⁹⁹ UN (2014). *The Universal Declaration of Human Rights*. See: <http://www.un.org/en/documents/udhr/>

¹⁰⁰ Verbond van Verzekeraars (2012a). *Sustainable Investing Code*.

See: <https://www.verzekeraars.nl/overhetverbond/zelfregulering/Documents/Gedragscodes/Sustainable%20Investing%20Code.pdf>

¹⁰¹ Verbond van Verzekeraars (2012b). *Verzekeraars introduceren Code Duurzaam Beleggen*. See: <https://www.verzekeraars.nl/verzekeringsbranche/dossiers/verzekeraarsvernieuwen/Paginas/initiatieven/Verzekeraars-introduceren-Code-Duurzaam-Beleggen.aspx>

Do you have specific guidelines you follow/apply in the field of international humanitarian law or human rights?

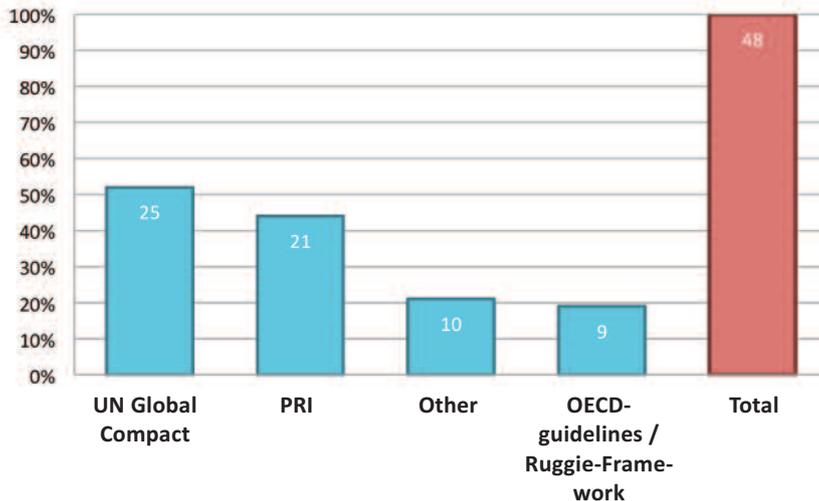


Figure 10 International guidelines applied by Dutch institutional investors

According to institutional investors the formal guidelines are the most objective way to deal with the occupied Palestinian territories. According to respondents, violations of human rights and breaches of international humanitarian law should be looked at purely from a judicial point of view. Assessments made on the basis of political criteria should be avoided. The interviewees stated that guidelines such as the UN Global Compact, PRI and the Ruggie Framework should be used to assess whether a situation or activity should be considered a human rights violation. Particular emphasis was given to the Ruggie Framework.

Even though institutional investors have a responsible investment policy and are following different responsible investment guidelines, they often feel hampered by several dilemmas. The word cloud in figure 11 identifies the levels of frequency with which these obstacles were identified in the responses to the questionnaire and the interviews. These are ordered from large (frequent) to small (less frequent).



Figure 11 Word cloud of the obstacles brought forward by institutional investors to implement a responsible investment policy concerning the occupied Palestinian territories

Figure 11 shows that the issue of investing in the occupied Palestinian territories is sensitive. Institutional investors feel it is hard to take positions, not least because the involvement of companies changes over time. The fact that institutional investors are indirectly involved through their investments, mainly as a minority shareholder, is seen as an obstacle to developing clear insight in their investment decisions and to determine their own responsibilities.

4.3 Implementation of responsible investment regarding the occupation of the Palestinian territories

Having a responsible investment policy and following guidelines is an important first step. Implementation however, is the necessary and crucial next step. There are several methods that institutional investors can use to implement their responsible investment policy. These are:

- ESG integration
- Engagement
- Voting policies
- Exclusion

These methods will briefly be discussed in the following paragraphs.

ESG-INTEGRATION

By practicing ESG integration asset managers gather and integrate information on the environmental, social and governance performance of companies into traditional financial analysis and investment decisions, based on a systematic process and appropriate research sources.

ESG-integration: Human rights related to the occupied Palestinian territories taken into account?

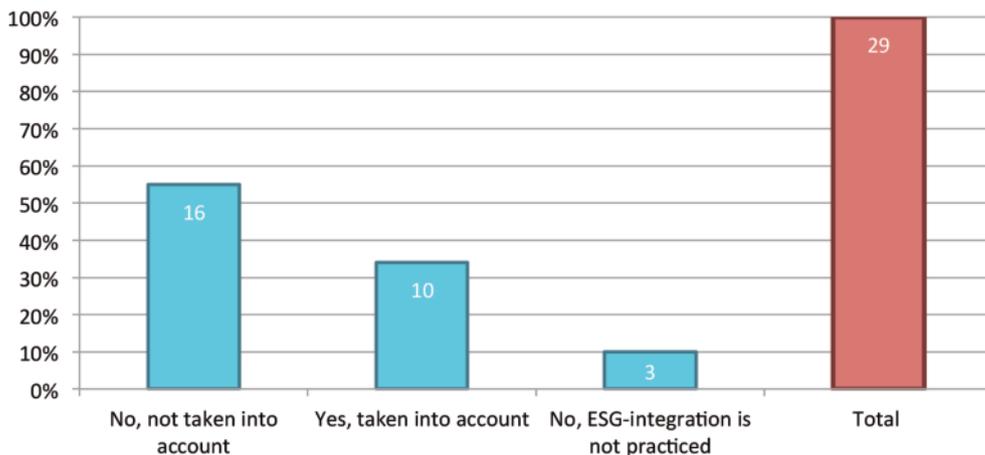


Figure 12 Human rights and ESG-Integration

The survey shows that only 34% of the institutional investors take the issue of the occupation of the Palestinian territories into account in their ESG integration. Important questions that arise are why the issue is not taken into account in the ESG integration by 55% of the investors? How can this be done in an optimal way and for which companies (reputation) risks can be material on this topic?

ENGAGEMENT

Institutional investors can engage in dialogue and in other ways with companies who might face the risk of violating human rights. Although not specifically asked for in the questionnaire, some examples are known of institutional investors who practiced engagement related to the occupation of the Palestinian territories. An example of how engagement can be implemented for this topic is given by Nordea Asset Management, as discussed in the textbox below.

Nordea Asset Management started to engage with companies that are violating international law through involvement and operations in the occupied Palestinian territories.

This concerns:

Companies directly engaged in settlement activity.

“Companies directly and knowingly supporting the maintenance or expansions of settlements violating UN Security Council resolutions and Fourth Geneva Conventions. These are in example companies constructing settlements and infrastructure, companies delivering utilities and services as water, electricity, sanitation or telecommunication or settlement loans.”

Companies extracting non-renewable resources from the territories

“Companies with activities incompatible with the Hague and Geneva conventions and the right to self-determination determined in international conventions (ICCPR and ICESCR). These are in example companies extracting resources for construction materials.”

Companies providing products and services to the settlement security infrastructure.

“Companies providing products and services such as surveillance systems and identification systems violating the Palestinians freedom of movement as set out in the international ICCPR-convention, the right to self-determination as enshrined in the ICESR-convention and breaching of the Fourth Geneva convention and decisions by the International Court of Justice (ICJ).”

Until now, this policy has resulted in engagement with five companies, monitoring for two companies and exclusion of investments in one company (CEMEX) as of November 2013.¹⁰²

VOTING POLICIES

No evidence has been found of Dutch institutional investors having filed proposals at annual shareholder meetings regarding questions of adherence with humanitarian law and human rights law, nor about investments related to the occupied Palestinian territories. Internationally, shareholder meetings have been used by NGOs to address human rights violations.^{103 104}

EXCLUSION

About 1 out of 7 Dutch institutional investors who filled in the questionnaire excluded companies because of their involvement in the occupied Palestinian territories. This is an indication that it is not uncommon among institutional investors. Many of these institutional investors did not seek publicity on this decision. An overview is given in Figure 9.

¹⁰² Nordea (2014). *Responsible Investment policy regarding Israeli occupied territories*. See: <http://esg.nordea.com/engagement>

¹⁰³ The Guardian (2013). *Israeli prison contracts take centre stage at G4S shareholder meeting*. 6 June 2013. See: <http://www.theguardian.com/business/2013/jun/06/israel-prison-contracts-g4s-agm>

¹⁰⁴ Reuters (2010). *3 stockholder proposals fail at CAT annual meeting*. 9 June, 2010. See: <http://www.reuters.com/article/2010/06/09/caterpillar-idUSN0917419920100609>

Exclusion of a company in the last five years due to its involvement in the occupied Palestinian territories

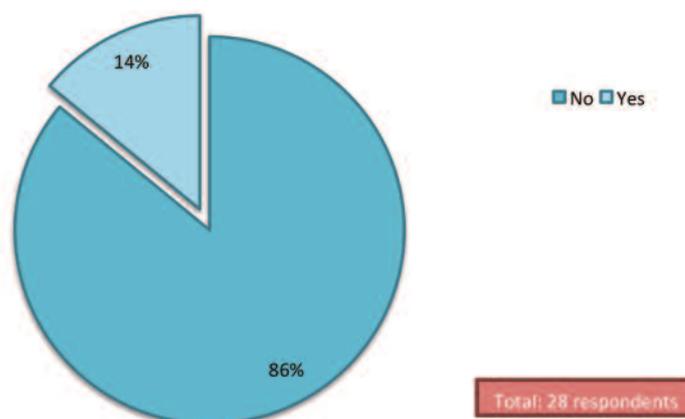


Figure 13 Exclusion in relation to the occupied Palestinian territories.

PGGM excludes Israeli banks

On 8 January 2014 the Volkskrant, Trouw and many other newspapers headlined "PGGM withdraws from investing in Israeli banks." According to their statement, PGGM has been in dialogue with the banks for a long time over their involvement in financing the Israeli settlements, and withdraws its investments from these banks because of their continuation of doing so. PGGM based its decision on an analysis of international humanitarian law, UN resolutions and the International Court of Justice ruling on the Wall, which all confirm that settlements are (being) built in breach of international humanitarian law and are, as PGGM states, an obstacle to peace.¹⁰⁵

PGGM invested around nine million euros in Bank Hapoalim, Bank Leumi, First International Bank of Israel, Israel Discount Bank and Mizrahi Tefahot Bank. The Israeli banks as well as the Israeli authorities fear that this decision might have an impact on future decisions of institutional investors, which would lead to additional reputational damage and potential financial loss. PGGM, with assets under management of around 150 billion euros, is one of the largest asset managers in the Netherlands.^{106 107 108}

4.4 What is needed to formulate and implement policies on this topic?

One of the questions in the questionnaire was focused on what would help institutional investors to successfully formulate and develop policies on investments related to companies active in the occupied Palestinian territories?

An overview of the answers is given in Figure 14. In general institutional investors state that they would be helped

¹⁰⁵ PGGM (2014). PGGM - Statement regarding exclusion of Israeli banks.

See: <https://www.pggm.nl/english/what-we-do/Documents/Statement%20PGGM%20exclusion%20Israeli%20banks.pdf>

¹⁰⁶ NOS (2014). PGGM stopt met Israëlische banken.

See: <http://nos.nl/artikel/594827-pggm-stopt-met-israelische-banken.html>

¹⁰⁷ Trouw (2014). PGGM stopt met beleggen in Israëlische banken uit protest tegen nederzettingen.

See: <http://www.trouw.nl/tr/nl/4324/Nieuws/article/detail/3573690/2014/01/08/PGGM-stopt-met-beleggen-in-israelische-banken-uit-protest-tegen-nederzettingen.dhtml>

¹⁰⁸ Volkskrant (2014). PGGM stopt met beleggen in Israëlische banken uit protest tegen nederzettingen.

See: <http://www.volkskrant.nl/vk/nl/2664/Nieuws/article/detail/3573690/2014/01/08/PGGM-stopt-met-beleggen-in-israelische-banken-uit-protest-tegen-nederzettingen.dhtml>

most with a clear overview and description of guidelines and international law, and a list of companies who are possibly involved in violations of international humanitarian law or human rights in the occupied Palestinian territories.

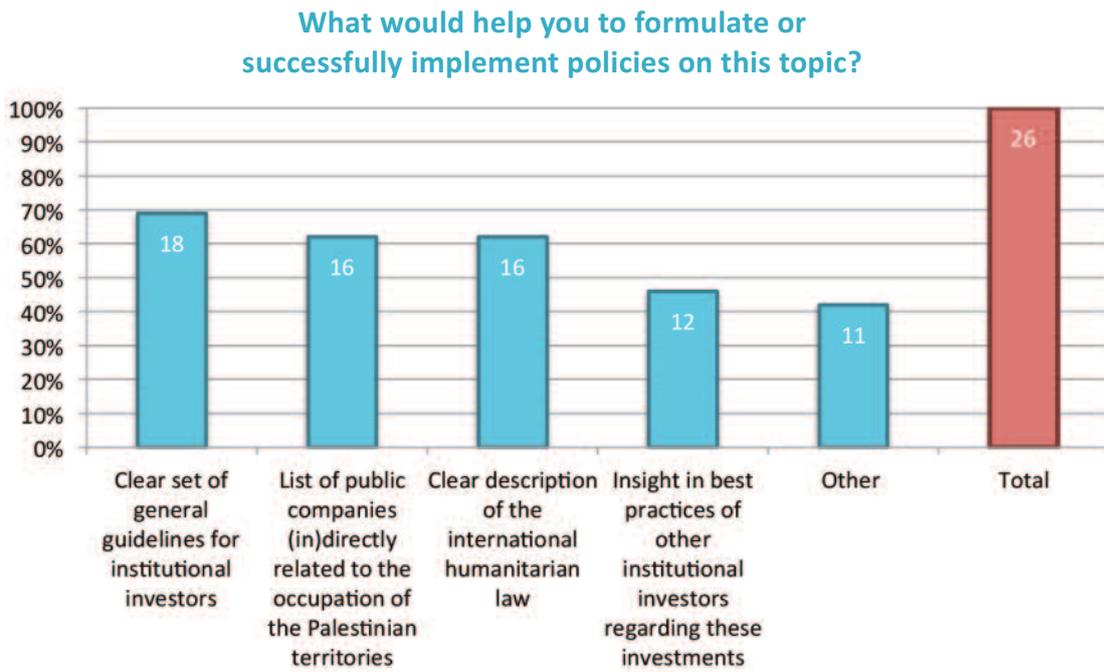


Figure 14 What is needed to successfully implement policies on this topic?

5. Conclusions & Recommendations

5.1 Conclusions

Over the past few years major developments in the field of sustainable investment have positively changed the debate on the relationship between business and human rights. The UN Global Compact, the Principles for Responsible Investment PRI and OECD-guidelines are often used as standards for ESG integration, engagement, voting and screening. Especially on topics on which the public has a clear opinion, such as controversial weapons, large improvements have been made over the years. For example all Dutch pension funds have excluded investments in controversial weapons.

At the moment, investment related to the occupation of the Palestinian territories is high on the agenda and is regarded as politically sensitive. However, while the debate is continuing, many institutional investors are still unfamiliar with the legal and moral aspects of these investments. At the same time, the Dutch and European business community has many ties with Israel or with the Israeli business community, making it a relevant subject.

The legal framework applicable to the occupied Palestinian Territories is based on international humanitarian law (Geneva Conventions) and human rights law. Israeli settlements are built in breach of international humanitarian law and under the occupation human rights are violated. Companies related to the occupation of the Palestinian territories might be contributing to these breaches of international humanitarian law and violation of human rights. These companies have a responsibility to act to ensure compliance, as do the investors in these companies.

Institutional investors underscore the importance of staying close to their responsible investment policies and the applicable international legal frameworks to obtain and maintain an objective, neutral base for assessment. International humanitarian law has been brought within the scope of the UN Guiding Principles ('Ruggie Framework') and OECD guidelines, where the Ruggie Framework stipulates that '*(...) (...) in situations of armed conflict enterprises should respect the standards of international humanitarian law.*'

The research shows that the international guidelines on responsible investment are not fully applied in practice to investments related to the occupation of the Palestinian territories.

It is necessary that institutional investors work pro-actively to implement a responsible investment policy. Institutional investors state that information and guidance is welcome on this topic. The recommendations set out below should be seen as a first step in that direction.

5.2 Recommendations

A large number of companies with activities related to the occupied Palestinian territories may run the risk of being associated with breaches of international humanitarian law and human rights law. As an institutional investor it is therefore important to know how to implement a responsible investment policy, to act in ways to stop breaches of international humanitarian law, and to prevent potential financial loss, reputational damage or other risks.

To successfully implement a responsible investment policy in this context it is important to follow the following steps:

STEP 1: MAKE SURE THERE IS SUFFICIENT UP TO DATE INFORMATION AVAILABLE

To establish a responsible investment policy applicable to investments that have links to the occupation of the Palestinian territories, requires access and the collection of sufficient, relevant, and up to date background information.

There are several useful sources available, which can be used regarding this topic:

1. OHCHR (2014). Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem.
<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/FFM/FFMSettlements.pdf>
2. Norwegian People's Aid & the Norwegian Union of Municipal and General Employees (2013). Dangerous Liaisons: Norwegian ties to the Israeli Occupation.
<http://www.npaid.org/News/2013/Dangerous-Liaisons-Norwegian-ties-to-the-Israeli-Occupation>
3. Nordea (2014). Responsible Investment policy regarding Israeli occupied territories.
<http://esg.nordea.com/engagement>
4. SOMO (2012). How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy: A guide for civil society organisations.
http://issuu.com/somoamsterdam/docs/somo_unguide_web?e=4709614/2829637
5. Gelder, J.W. van; Kuepper, B.; Nijhof, E. (2013). Dutch economic links with the occupation. A research paper prepared for Cordaid, ICCO and IKV Pax Christi.
http://www.cordaid.org/media/publications/Report_Dutch_economic_links_with_the_occupation_1.pdf
6. Russell Tribunal on Palestine (2010a). Findings of the London Session: Corporate Complicity in Israel's violations of International Humanitarian & International Human Rights Law. See:
<http://www.russelltribunalonpalestine.com/en/wp-content/uploads/2011/01/RTOP-London-Session-Findings.pdf>
7. Who Profits from the Occupation (2010). Financing the Israeli Occupation: The Direct Involvement of Israeli Banks in Illegal Israeli Settlement Activity and Control over the Palestinian Banking Market.
<http://www.whoprofits.org/sites/default/files/WhoProfits-IsraeliBanks2010.pdf>
8. Al Haq reports (<http://www.alhaq.org/publications/publications-index>)
9. Diakonia's International Humanitarian Law Resource Centre reports:
<http://www.diakonia.se/en/IHL/Publications/Reports/> and Fact Sheets: <http://www.diakonia.se/en/IHL/Publications/IHL-Fact-Sheets/>
10. United Nation's Office for the Coordination of Humanitarian Affairs (UN OCHA) occupied Palestinian territories:
<http://www.ochaopt.org/>

Besides the available literature there are several other ways to obtain relevant information:

- **Information of ESG service providers**

ESG service providers provide background information which help to establish a position on this topic, but this background information cannot in itself define a useable position.

- **Non-Governmental organisations (NGO's) and other Civil Society Organisations**

Several NGOs have specific geographical, contextual, legal and other knowledge that might be helpful, and have well-established networks through which they are able check or provide specific information at short notice. This can help institutional investors to update and gain information where necessary.

- **Other investors**

The information, position and experience of other institutional investors can be a useful source of information. For smaller institutional investors this can be particularly useful through established co-operation with other institutional investors so as to share limited resources and capacity.

- **Media, websites**

Specialised websites (like www.whoprofits.org), digital newsletters, relevant articles in the media can be collected to add to the information position. An important source which will become available in the coming months is the website <http://www.investmentsscreen.org> which is a new online tool for responsible investors, designed to inform money managers and institutional investors of potential human rights risks in their investment. The tool will scan lists of holdings and highlight companies involved in violations in various fields of concern. It will offer free access to up-to-date corporate research and primary sources.

- **Visit to the region**

Visits to the region and to the companies involved can be helpful for obtaining and/or verifying information. Such visits need good preparation in advance.

STEP 2: DEFINE A POLICY

It is advisable to use existing responsible investment guidelines that the institutional investor already adheres to as a starting point, and adapting and applying this in a logical and consistent way to specific issues. Examples of commonly used responsible investment guidelines and specific content relevant for this topic are:

UN Global Compact

Within the UN global Compact there are two principles on which the policy and implementation of institutional investors can be built and justified:

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

PRI

The PRI states that ESG criteria (including human rights) should play a role in investment decisions. Both the Global Compact and the PRI principles are too abstract to provide sufficient guidance. A useful or necessary additional step would be to design an international humanitarian law and/or human rights law framework that serves as a basis for assessments of possible complicity by companies in human rights violations. This would provide an objective, practical and defensible contribution for institutional investors.

OECD-guidelines

The OECD-guidelines for Multinational Enterprises are annexed to the OECD Declaration on International Investment

and Multinational Enterprises. The OECD-guidelines now include the UN Guiding Principles on business and human rights (the so-called 'Ruggie Framework') which forms a comprehensive, authoritative, detailed, and practical framework. They provide principles and standards for responsible business conduct for multinational corporations and serve as a tool to establish, improve and/or strengthen an ESG policy regarding human rights violations and breaches of international humanitarian law.

The Guidelines are not legally binding, but states do have an obligation to protect from human rights violation.¹⁰⁹ The Netherlands is a signatory to the OECD-guidelines.¹¹⁰ A company might be liable and has a responsibility. Responsibility is not only limited to the company itself, but to shareholders as well whether they hold a majority or a minority interest. They have a responsibility to act when breaches of human rights occur.

Another important feature of the OECD-guidelines is the right of victims to have access to effective remedy.

STEP 3: IMPLEMENT THE POLICY

Once a policy is in place and a specific case needs to be addressed, it is important to know how and when certain instruments can be used to implement this policy. We propose a certain (escalating) order in the use of the instruments:

ESG information and integration

First make sure sufficient, relevant and up to date information on the matter has been collected to establish the facts. This can be done through ways as described under step 1.

Secondly it is important that this information is integrated into the management of the portfolio.

Engagement

When it is clear that a company is involved in activities that contribute to Israel's violations of international law or human rights, an engagement process can be initiated. Three aspects are important in the engagement process:

- *Picking the company and topic*

The resources for engagement are limited and only a limited number of engagement processes can be held. It is therefore important to consider a set of relevant aspects to determine and justify the choice for a certain case, such as:

1. Is a company directly or indirectly involved? For how long? What is the scale of involvement?
2. Have other actors (other investors, media, civil society organisations, local population) addressed or highlighted the issue already?
3. Is it possible that the involvement of a company in certain violations has (financial) consequences? For example as a result of risks on reputational damage towards customers or suppliers, legal action or public campaigns.
4. Are there risks for the institutional investor itself for reputational damage as a result of having shares in the company?
5. How big and relevant is this activity for the company, compared to the total performance of the company? If the activity is a small element of total global operations, the company may potentially be more eager to quit the activity.
6. Is the company directly related to the action that is deemed to violate international laws, such as the building of the Wall and/or settlements, or involved in security operations or the plundering of natural resources?

¹⁰⁹ See note 55

¹¹⁰ See note 50

7. Is equipment related to the violation specifically designed for the job, or can it have dual use?
8. Is it likely that a company will or can change its behaviour or policies (might sometimes be limited due to the context or legal obligations for example).
9. Has the company subscribed to certain guidelines? Can they be reminded of their responsibility?
10. Is it possible to team up with other institutional investors?

It is advisable to stick as closely as possible to the Geneva Conventions, rulings of the International Court of Justice, and to United Nations General Assembly and Security Council resolutions, as well as to other profound judicial material on international humanitarian law and human rights law to obtain a firm, objective and justifiable basis.

- *Goals*

When practicing engagement it is important to set concrete goals and a timeframe within which the goals should be attained for the engagement process. Agreement should be reached in advance on what action will be taken if the set goals are not being achieved. Several goals can be relevant and chosen. In most of the cases however, the main goal is stopping the activities that are in breach of human rights, international humanitarian law or the guidelines followed by the institutional investors. Institutional investors can however also ask for more transparency, a human rights assessment by the company or to practice solid due diligence on any (new) projects which could be related to the occupation. The goal can be divided into specific sub-goals, as a way to try to achieve the main goal step by step.

- *Co-operation*

It can be effective to co-operate with other institutional investors in the engagement so that knowledge, expenses and capacity can be shared. A lot of companies do not find the time to deal with all the requests they receive. To see real change as an institutional investor, cooperation on certain topics with likeminded investors can increase the effectiveness of engagement.

Voting policies

When engagement is not successful, voting policies can be initiated by tabling questions and resolutions at the annual shareholder meetings or questions that ask for more transparency on the activities in the annual report.

Exclusion

In the event that a company does not respond to an engagement over a reasonable period of time, and no progress is observed a company can be excluded. Excluding a company as the first step is seldom a logical step, except when grave breaches of human rights are reported and there is little likelihood that the company will change its behaviour. When deciding to exclude it is important to inform the company why it is being excluded to ensure the message comes across. Common criteria to exclude are deliberate direct involvements in violations of human rights and/or international humanitarian law in the occupied Palestinian territories and lack of any adequate response to engagement initiatives.

In figure 15 a general overview is provided on how institutional investors can set up and implement a policy on investments related to the occupation of the Palestinian Territories.

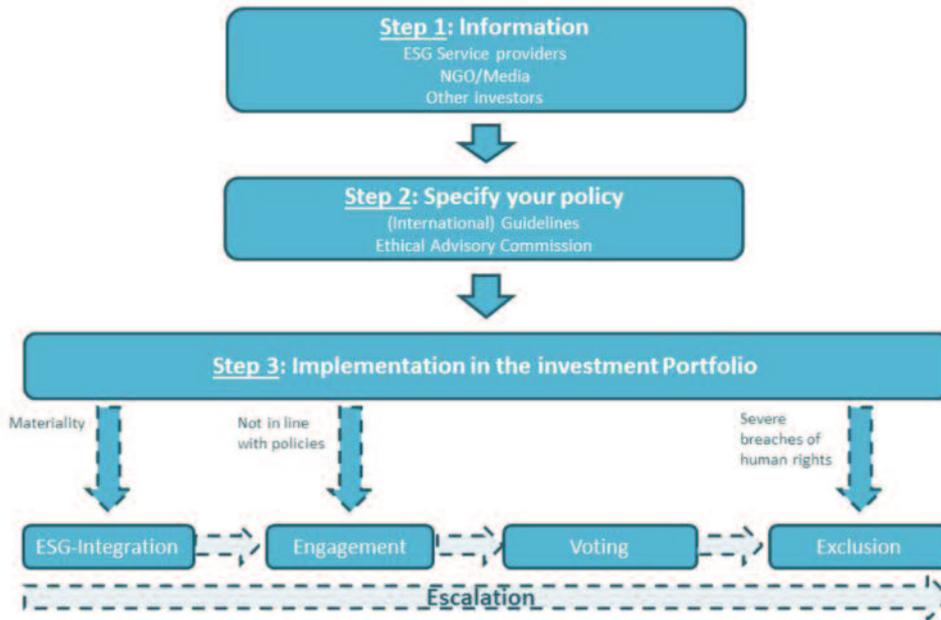


Figure 15 Graphical overview for creating and implementing a policy related to the occupation of the Palestinian territories

This report focuses on investments specifically related to the occupation of the Palestinian Territories. The recommendations and framework can, however, also be applied to other cases that might breach international (humanitarian) law worldwide.

5.3 Recommendations for further research and actions

TRANSPARENCY

Transparency of the ESG policy through its publication on the corporate investors website makes its position clearer and substantive: an action (engagement, voting and exclusion) will be commonly understood as a result of the publicly known policy, and not be discarded as an ad hoc activity. It enhances the track record; the longer it is public, the more solid it becomes.

Besides the policy itself it is recommended that actions resulting from the implementation of the policy (engagement etc.) are also published. The list of companies in which investments are currently made should also be published.

ETHICAL ADVISORY COMMITTEE

An Ethical Advisory Committee can be helpful in designing or strengthening a responsible investment policy. A committee consisting of independent knowledgeable experts provides depth in ESG decisions. As an independent commission, it gives the ESG a more independent position, making it easier to defend.

CO-OPERATION

Co-operation: information exchange

Collaboration between institutional investors can be considered as it can be costly and time consuming to translate and implement responsible investment policies addressing circumstances such as violations related to the occupied Palestinian territories. For smaller institutional investors in particular collaborating on assessing the context and companies could be efficient, through sharing information and the joint solicitation of external expertise to provide advice. Institutional investors can pool resources instead of working separately on issues of mutual interest.

Co-operation: information availability

It is difficult for institutional investors and financial service providers to gather all available objective data that is needed. The activities of companies in Israel and the occupied Palestinian territories is not only politically sensitive but also poses challenges in obtaining reliable information on the involvement of companies as it can be hard to track, due to subsidiaries, and rapid changes. It is therefore recommended that information on engagement and exclusions is also shared. As a practical recommendation it may be useful to organise round tables that bring together institutional investors and other relevant actors so as to discuss, share information and deepen knowledge on a issues of mutual interest, and to design a common framework or engagement process.

Co-operation: engagement

Co-operation can also be possible on engagement with companies. Engagement can be time-consuming and demands serious in-depth research for it to be effective. It is therefore recommended that joint engagement processes to address specifically defined companies and issues are explored, instead of working separately as (Dutch) institutional investors. This would increase the rate of successful engagements and individual investors may feel more comfortable and strengthened by the presence of the others, especially when the issue becomes public.

political
international exclusion
influence UNGC laws
consensus issue data
objective
evidence small
indirect discussion
scope standpoint
sensitive guidelines
implementation
involvement sanctions

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