

April 22, 2014

**The “Responsible Investment” Façade:  
BDS NGOs coerce Dutch companies to end ties with Israel**

*Summary*

- In February 2014, Dutch church NGOs ICCO, Cordaid, and Pax (formerly IKV Pax Christi), in conjunction with VBDO (Dutch Association for Responsible Investment), published “[Dutch Institutional Investors and Investments related to the Occupation of the Palestinian Territories.](#)”
- The report claims to “provide insight for investors to deal with investments in the occupied Palestinian territories” and attempts to aid investors on questions such as: “how to understand the political issues involved,” “how to determine what a correct position should be,” and “Should investors avoid the occupied Palestinian territories or rather engage.”
- In answering these questions, the report relies on advocates of economic warfare against Israel as sources, blatantly distorts international law, and fuels the Arab-Israeli conflict. The aim of the report is to intimidate corporations into divesting from a select list of companies and/or to discourage business with Israel.
- As part of the Durban strategy, ICCO, Cordaid, and Pax have engaged in an intensive campaign to expand BDS (boycott, divestment, and sanctions) campaigns against Israel. The main goal of BDS campaigns is to eliminate Israel as the nation-state of the Jewish people. Part of this effort involves singling out corporations that have any business ties– no matter how marginal, legitimate or legal – in the West Bank, and harassing them with discriminatory legal, ethical, economic, and other sanctions.
- BDS proponents falsely claim that the corporations are operating in defiance of international law. In fact, these activists have failed in every such court case brought in Europe and North America. Therefore, activists have sought to infiltrate corporate boards and corporate social responsibility frameworks (CSR) in order to exploit the expanding interest in socially responsible investment for anti-Israel objectives.
- Lilianne Ploumen, the Dutch Minister for Foreign Trade and Development Cooperation, a former official at Cordaid, [stated](#): “The cabinet endorses this vision and supports VBDO's call to institutional investors (pension-funds, banks, insurance companies) to perform due diligence when putting together investment portfolios.” In response, on March 12, 2014, the Dutch parliament passed, by a wide margin, a resolution that calls on the government to clarify its support for economic relations and cooperation between Dutch and Israeli companies.
- This report further demonstrates how the Dutch government enables anti-Israel NGOs to intimidate corporations through distorted and false claims, harassment, and scare-tactics.

*Dutch Policy*

- These policies are reinforced by propaganda efforts from powerful anti-Israel NGOs and are responsible for the rise in BDS activities originating in the Netherlands.
- The Dutch government [officially opposes](#) BDS activities targeting Israel, claiming that it does not advance peace objectives.
- However, a Dutch “[discouragement policy](#)” on economic activities in and economic relations with settlements, advocated for by some in the government, has allowed lobby organizations to exploit false, distorted factual and legal claims and intimidate Dutch companies regarding their business in Israel.
- Many representatives in the Dutch Parliament oppose this policy. On March 12, 2014, Parliament passed [legislation](#) calling on the government to clarify its support for Dutch-Israeli economic relations. Specifically, the legislation calls upon the government to make clear, in a visible and convincing manner, that it encourages economic relations and cooperation between Dutch and Israeli companies.

#### *NGO Lobbying*

- NGO Monitor research demonstrates that the powerful church-based NGOs involved in the VBDO report – [ICCO](#), [Cordaid](#) and [Pax](#) – have a history of promoting BDS and fuels the Arab-Israeli conflict.
- The NGO report presents cases of Dutch investment funds that divested from Israel and corporations that stopped partnering with Israeli companies [i.e. [PGGM](#), [Vitens](#), [Royal Haskoning](#)]. However, the report does not note that Cordaid, Pax, and ICCO were centrally responsible for lobbying and threatening the firms, using distorted legal language and invented claims. In other words, the evidence purporting to show a corporate concern about criminal or civil liability was artificially manufactured by the organizations behind the report.
- VBDO claims the “report does not focus on the investments within the state of Israel itself.” Yet, the criteria presented in the report are so broad as to prohibit investment in almost any Israeli company. Moreover, the BDS agenda, upon which the VBDO report primarily relies, openly states that BDS against settlements is merely a pretext to achieve the larger goal of a full boycott of Israel and ultimately, the dismantling of Israel as the nation-state of the Jewish people.

#### *Faulty Methodology*

- The report says the analysis is based on “a review of relevant literature, a questionnaire, qualitative interviews and the provision of clarification on international law from a legal expert.”
- The VBDO report’s legal expert, Phon van den Biesen, has a record of intense anti-Israel advocacy, including representing highly political organizations that exploit legal rhetoric to attack Israel and justify BDS activities:
  - In [2012](#), Phon van den Biesen provided a “legal opinion,” as part of a “fact file” that was crafted by ICCO, Cordaid, Oxfam Novib, Ikv Pax Christi (“Pax”), and EAJG (A different Jewish Voice), opposing the participation of Veolia Group in a public transport tender in The Hague.

- In [2011](#), van den Biesen, was “instructed” by Al Haq to “submit a formal objection against the decision of Stadsregio Arnhem Nijmegen, a Dutch local authority, to award a one billion Euro public transport concession to Hermer, the Dutch subsidiary of French multinational company VeoliaTransdev.”
- In [2010](#), van den Biesen presented at the London Session of the Russell Tribunal on Palestine, a pseudo-court comprising radical activists that aimed to put Israel and its allies on “trial.”
- In [2002](#), van den Biesen represented a group of civil society organizations, including ICCO, Ikv Pax Christi, Cordaid, and Oxfam Novib, in their appeal to the Dutch government to “stop approving export licenses for military equipment to Israel...”
- VBDO does not rely on any sources for its factual and legal claims that do not promote the Palestinian narrative in its entirety.
- The overwhelming majority of the NGOs quoted by VBDO are BDS proponents, including ICCO, Cordaid, Pax, Norwegian People’s Aid, Coalition of Women for Peace/Who Profits, Al Haq, ICAHD, Russell Tribunal, and Diakonia.
- The report references Richard Falk, outgoing UN Special Rapporteur on “the situation of human rights in the [Palestinian territories](#) occupied since 1967.” Falk [has been criticized by the U.S. envoy to the UN](#) for having published “bizarre and insulting material,” his “relentless anti-Israel bias,” and for his “noxious and outrageous perpetuation of 9/11 conspiracy theories.” UN Secretary General, Ban Ki Moon, also [remarked](#) that “The Secretary General rejects Mr. Falk’s comments [which] undermine the credibility and the work of the United Nations.”

#### *False Factual Claims*

- The report states that “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 claim is made even though the armistice agreement specifically states that the armistice lines do not constitute a legal boundary, and even though the international community did not recognize Jordanian sovereignty over East Jerusalem or the West Bank.<sup>1</sup>
- The report falsely alleges that Israel “den[ies] the Palestinians access ... to sufficient water for their own needs and development,” as [documented](#) by leading water experts.

#### *Distorted Legal Narrative:*

- Far from “clarifying the international applicable legal framework,” as it purports to do, the report makes legal claims that are either false or a blatant distortion of international law.

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<sup>1</sup> See Article III, para. 2, Art. VI para 8. The Jordanians in particular did not want the Green Line to become an international border in hopes that it would be able to recapture additional territory from Israel in a future war.

- Many of the legal claims and applicable law cited by VBDO are matters of significant controversy, yet VBDO presents them as if they are universally accepted.
- The report's central claim is that "companies active in the settlements in the occupied Palestinian territories might therefore contribute themselves to breaches of international humanitarian law and human rights."
- In reality, there is no international rule whatsoever imposing liability on corporations for allegedly aiding and abetting violations of a state. International human rights law only imposes obligations on states. In fact, the Dutch government filed an [amicus brief](#) at the U.S. Supreme Court in 2012 arguing that "there is no evidence that customary international law has developed to recognize the direct liability of a corporation" and that "sector-specific treaties do not suddenly create some *general direct duty* of corporations to obey the rules of international law imposed on States." The brief further noted that corporations were deliberately excluded from the jurisdiction of the International Criminal Court and that the Geneva Conventions clearly consider liability to be ascribed to individuals and not corporations.
- Courts in [France](#), [Canada](#), and the [UK](#) have explicitly rejected attempts to impose liability on corporations for activities in the West Bank.
- Moreover, the [Stichting Reclame Code](#), the official Dutch body responsible for ensuring accuracy and upholding ethical standards in advertising, found that a Palestinian advocacy NGO had violated such standards by claiming the sale of products emanating from over the Green Line was illegal. In fact, the proof brought by the group, a 2006 report authored by Cordaid, ICCO, and Pax (and very similar in content to the VBDO report), was an insufficient source to prove international legal claims.
- VBDO selectively cites to provisions in humanitarian law, yet ignores those articles that contradict the claims of the report such as Articles 43 and 55 of the 1907 Hague Convention, article 56 of the fourth Geneva Convention, and article 55 of Additional Protocol 1.
- VBDO ignores that the mutually agreed to Oslo Accords are the binding *lex specialis* on the territory.
- The report cites to UN resolutions and guidelines that, as noted by the French court in the *Alstom* case, are not binding legal instruments. The same court also held that companies cannot be held liable for alleged violations of voluntarily adopted ethical codes, such as the UN Guiding Principles and the Global Compact.
- The report claims that corporations involved in building "settlement infrastructure," presence in "settlement industrial zones," settlement construction, extracting natural resources, or supplying security services or military equipment could be held legally liable. No court anywhere has ever found a company liable for any of this type of activity. Every lawsuit brought advancing such claims have been dismissed outright.
- The report heavily relies upon the politicized and discredited 2004 International Court of Justice advisory opinion on Israel's security barrier. The opinion was orchestrated by the Arab League and the Organization of the Islamic Conference

in a politicized process at the UN General Assembly. The decision, which as noted by the ICJ is only of “an advisory character” and “has no binding force,” was criticized by [many legal scholars](#) for being based on a one-sided conclusory mandate, procedural irregularities, completely ignoring the Palestinian suicide bombing campaign, and faulty interpretations of international law. In fact, the Dutch judge in the case, Koojimans, issued a blistering dissent to many aspects of the opinion.

- The report claims that it is illegal under the law of occupation for a company to extract natural resources from an occupied territory. There is no legal prohibition whatsoever on private companies to engage in such activity. Moreover, article 55 of the Hague Convention grants an occupying power the right to benefit from the natural resources of an occupied territory under the principle of usufruct.