In the BDS fight, 'D' is the letter Israel should really worry about - Israel News - Haaretz.com

Clip source: In the BDS fight, &apos

In the BDS fight, 'D' is the letter Israel should really worry about

David Rosenberg
Oct. 31, 2021 5:11 PM
Oct. 31, 2021 5:11 PM
Israel faces a quietly growing divestment threat, and it has nothing to do with the global BDS movement.

Across the developed world, big businesses are facing pressure from institutional investors and a growing body of European legislation to meet a host of standards ranging from human rights to the environment.

While the standards don't target Israel and the occupation per se, Israel is vulnerable to failing the human rights test because of its policies toward the Palestinians. Experts say the recent announcement by Defense Minister Benny Gantz to declare six Palestinian nongovernmental groups "terror organizations" might end up compounding Israel's vulnerability to human rights-based divestment.

The decision by Ben & Jerry's last July to stop selling its iconic ice cream in the "Occupied Palestinian Territory" from the end of next year stirred up headlines, lawsuits and counter-boycott threats. But other, arguably more serious, divestment activity has been underway without garnering nearly the same attention: Institutional investors unloading stock in companies deemed to have harmed human rights by doing business with the settlements or the Israel Defense Forces.

Just before the Ben & Jerry's controversy exploded, the giant Norwegian pension fund KLP, with more than $100 billion under management, divested from 16 Israeli companies – including the five biggest banks and telecommunications firms.

KLP declined to discuss its policies with Haaretz. But in a statement issued by the fund at the time, Kiran Aziz, who has since been named head of responsible investments, stated: "There is unacceptable risk that the excluded companies contribute to violations of human rights in war and conflict situations through their affiliation with the Israeli settlements in the occupied West Bank."

Palestinian laborers working on a settlement in the West Bank. NZ Super Fund sold its holdings in five Israeli banks over concerns that they were helping to fund settlement construction.Credit: Ariel Schalit/AP

In May, Norges Bank, which manages Norway's sovereign wealth fund, dropped two Israeli building companies from its investment portfolio (as well as a third company due to links with Myanmar). In March, New Zealand's sovereign wealth fund, the NZ Super Fund, said it had sold its $6.5 million in holdings in five Israeli banks, citing "credible evidence that the excluded companies provide project finance for the construction of unlawful Israeli settlements."

The Financial Times, in an August report, said other investment funds have divested holdings in Israeli companies or foreign companies accused of being complicit in Israeli abuses without linking it to Israeli behavior. But the FT said it was probable that this was the actual reason.

Under pressure

The pressure on big investors, such as pension funds and university endowments, and on the companies they invest in is coming from two places.

The first is from EU governments, which are gradually rolling out laws requiring companies to undertake ethical due diligence assessments not only of their own operations but up and down their supply chain –

meaning suppliers, subcontractors and customers.

“If you’re a business and you’re aiding and contributing to human rights violations, you must stop doing whatever is causing that harm,” says Tara Van Ho, an expert on business and human rights at Britain’s University of Essex, explaining the essence of these laws.

“Within the context of Israel and Palestine, that creates an impetus for businesses to divest from the settlements because of complexity on the ground,” she says. “The settlements themselves are illegal, but they also cause myriad other human right violations – impeding Palestinian access to water, freedom of movement, and so on.”

A BDS protest against the German government's investments in IsraelCredit: AFP

France has had a Duty of Vigilance Law on the books since 2017, and Germany’s government has presented a draft version of a similar law. Britain doesn’t have specific legislation, but tort laws effectively create the same standards for business. Meanwhile, the EU itself is moving forward with a mandatory due diligence law that would apply to all 27 member states.

As a rule, the legislation requires companies to not only monitor problems but make them public and remedy them. They could be subject to fines or other penalties. Businesses are also exposed to lawsuits by people whose rights have been harmed and/or the NGOs. Van Ho says there have been some suits filed in France, but none yet regarding Israel.

The human rights and other standards they mandate companies adhere to are based on guidelines by the United Nations and Organization for Economic Cooperation and Development. But Israeli settlements

United Nations and Organization for Economic Cooperation and Development. But Israeli settlements inevitably run afoul of these standards and, depending on how the laws are interpreted, threaten to ensnare businesses that don’t do business with the settlements but with Israel generally, Van Ho says.

The other source of pressure on companies to examine and act on human rights violations is coming from institutional investors themselves. The growing use of environmental, social and corporate governance (ESG) investing takes into account how companies in investor portfolios meet benchmarks for the environment and human well-being.

Once a marginal phenomenon, such governance has become much more mainstream in recent years. The 2021 RBC Global Asset Management Responsible Investment Survey found 96 percent of investors in Europe reported that they adhered to one extent or another to ESG principles. In Asia, it was 76 percent and in the United States 64 percent.

“The rapid rise is being driven by clients and savers’ expectations and wishes – we are increasingly seeing savers wanting their values to be expressed in their investments, and a growing awareness of the power their investments and pensions can have as a force for good,” says Oscar Warwick Thompson, senior policy and communications manager.

“Given the rising demand from clients and savers, there is more pressure on financial services to gain a competitive edge and offer ESG products,” he adds.

A Caterpillar D9 vehicle at work in Israel. Its use in the demolition of Palestinian homes by the IDF has made the company a "subject of concern" at Sustainalytics.Credit: David Bachar

That said, ESG hasn’t had an impact on Israel for a few reasons. One is that different investors have different

That said, ESG hasn't had an impact on Israel for a few reasons. One is that different investors have different standards for what constitutes ESG, and often companies can be exemplars of good and bad ESG practice. This makes it difficult even for the best-intentioned investors to decide which way to go.

"Tesla is an example often cited, sometimes ranked highly by ratings and data providers, but having governance issues with their CEO's behavior and apparent social issues too with the treatment of some of their workforce, which has been widely reported," Thompson says.

The other element is that ESG covers a very wide range of issues, ranging from climate change to employee rights and business ethics. To date, human rights haven't factored large.

Subjects of concern

Morningstar, a Chicago-based company that provides research for asset managers, investigated the Israel angle last March after its Sustainalytics unit came under fire for effectively supporting the boycott, divestment and sanctions movement.

"From these reports, it is clear that when discussing companies operating in Israel and the West Bank, the company simply repeats claims from pro-BDS sources without any evidence of independent verification or analysis," the Israeli group NGO Monitor said in February.

In a response, Sustainalytics – the Morningstar unit that provides research and recommendations to investors on how companies are performing against ESG benchmarks – said it found that of approximately 21,000 of its so-called "controversy assessments" that evaluate a firm's involvement in negative incidents involving ESG, only 103 related to Israel. A spokeswoman told Haaretz that the numbers hadn't changed since then.

Of those 103 companies, only two rose to Sustainalytics Category 4 level, which makes them a subject of concern. Those were the Israel defense company Elbit Systems, due to its role in building the West Bank separation barrier, and U.S.-based Caterpillar, because the Israeli army uses its D9 bulldozers for home demolitions.

Morningstar said Sustainalytics had 354 companies on its watchlist for "severely and systematically" violating standards. Twenty-five of those were in conflict zones, like Sudan and Myanmar, and of those three related to Israel: Elbit, its Ashot Ashkelon subsidiary and Motorola.

Human rights violations, including Israel's, threaten to become a much bigger factor. A poll of investment managers and others published by the Responsible Investor website in July found that 67 percent believed human rights would become as mainstream an investment consideration as climate change is today.

Gantz may have inadvertently weakened Israel's position in declaring the six Palestinian NGOs terror organizations. That is because businesses are expected to make use of outside sources when they perform due diligence, better to avoid suspicions that they are giving themselves a free pass by not doing a proper job of investigating.

“When you foreclose that avenue of data, you really make it difficult for businesses to do due diligence and, if they can’t, they have to assume that they’re involved in more serious violations of human rights than they might believe otherwise. That makes for stronger expectations that they will stop operations,” Van Ho says.

Or not. While Europe is tightening rules of sustainable investing, in the Israeli context, a growing number of U.S. states have passed laws sanctioning businesses from boycotting Israel or engaging in boycotts at all. Unilever, the parent company of Ben & Jerry’s, has already felt the impact of this as multiple states have divested from the company in response. The latest is New York, which said last week it would divest its $111 million in Unilever stock.

The result, warns Van Ho, is that multinational companies may find themselves squeezed between European demands to respect human rights in the occupied territories and U.S. laws barring them from refraining from doing business with the settlements.