**PAX’ Submission to the UN Working Group on Business and Human Rights – Investors, ESG and Human Rights**

**Introduction**

PAX is a Dutch peace organization with longstanding thematic interventions related to responsible business conduct in conflict-affected areas, corporate accountability and access to remedy for human rights violations. Our research has amongst others focused on the role of oil and coalmining companies in large-scale human rights violations in Sudan and Colombia respectively, defense companies' involvement in nuclear weapon production or high-risk arms trade, and corporate involvement in illegal settlements in occupied territories.

Our research into and engagement with the financial sector, as an essential player in the global economic system and an important lever to influence corporate behavior, plays a cross-cutting role in our advocacy.[[1]](#footnote-2) In this submission to the UN Working Group we address those questions for which we were able to provide relevant input as per our expertise and focus of work (investments in conflict-affected areas and the arms sector), and from our experience of working with the banks, asset owners and managers in the RBC-agreements over the last seven years. The input per question should therefore not be read as a comprehensive or exhaustive answer to the question as a whole, but rather as highlighting specific issues of relevance based on our experience and expertise.

**General**

**(1) What do you understand Environmental, Social, and Governance (ESG) in finance to mean? How are human rights standards and frameworks considered by investors, if at all, in ESG?**

Financial institutions, like any other company, need to conduct human rights and environmental due diligence in accordance with the UNGPs and the OECD Guidelines. ESG is predominantly used as a label in the rating of and reporting on sustainability levels of companies which can point to, but should not be conflated with, companies doing human rights due diligence. In practice, the frameworks or methodologies on which ESG ratings are based do not capture all human rights risks; companies could have high ESG ratings and still cause or contribute to human rights abuses.[[2]](#footnote-3) Likewise, ESG-labelled funds are often found to be holding investments in companies associated with serious human rights abuses.[[3]](#footnote-4) Especially lacking in these rating methodologies are the specific risks at play in conflict-affected areas, where companies run a high risk of contributing to conflict in addition to severe human rights and IHL violations (see also Q4 below). Still overlooked in some ESG investing strategies are also the human rights risks connected to companies involved in the production of controversial weapons[[4]](#footnote-5) or the supply of conventional weapons to high-risk countries.[[5]](#footnote-6)

**(4) What responsibilities and capacity do ESG index and data providers have regarding the assessment of adverse human rights and environmental impacts, and how can ESG indexes and research products be improved to align with the UNGPs approach?**

First and foremost, investors have an individual responsibility to ensure they conduct adequate human rights due diligence (HRDD) in accordance with the UNGP's and OECD guidelines. They cannot outsource this responsibility to external service or index providers or account for a lacking HRDD by pointing to insufficient data received from ESG data providers. In practice, however, ESG data providers do play a key role in the HRDD processes of many investors worldwide who rely on their data to screen the often thousands of companies that they have in their portfolios. Similarly, as passive investment increases, index providers may exert significant influence on the asset management of investors worldwide. We identify a few specific (non-exhaustive) shortcomings in the role played by both data and index providers encountered in our work.

*On ESG data providers and conflict-affected and high-risk areas*  
A worrying trend that we see in the field of ESG data providers is the politicization of ESG ratings. In 2022, following increased pressure from anti-BDS groups in the US, one of the leading ESG data providers Morningstar-Sustainalytics, decided to -amongst other actions- refrain from using the term “Occupied Palestinian Territories” and from applying the term “occupied territory” to the West Bank, Gaza and East Jerusalem.[[6]](#footnote-7) They also chose to terminate the use of well-established sources in their ratings of companies active in Israel/Palestine, including the UN Human Rights Council. This has not only created grave methodological deficiencies vis-à-vis other conflict-affected areas, undermining Morningstar’s own credibility, but has also laid bare (and actually increased) ESG-service providers’ vulnerability to public/political pressure. Investors should be aware and alert to these trends as they remain responsible for their own HRDD in accordance with international law and human rights standards. Investors need to seek information from a broad range of sources (i.e. international organizations, academia, NGOs, independent experts etc.). This is even more important in conflict-affected and high-risk areas, where much more in-depth and detailed information on conflict and human rights risks and impacts is needed as part of a heightened HRDD process.

*Tracking other human rights issues in the arms industry*

In our research we highlight arms transfers to countries where there is a high risk weapons will be used to commit or facilitate human rights or IHL violations.[[7]](#footnote-8) In response, investors often indicate it is difficult to source data on this risk. ESG data providers offer data on controversial weapons producers, but not on high-risk arms transfers. Many investors indicate this hampers their ability to screen for human rights issues arising from arms transfers. While NGOs report sufficiently on the issue, ESG providers should also organize data and provide regular updates.

*On the need for index providers to exclude controversial weapons from mainstream indices*

Many investors state they run into challenges in ensuring that index-based funds (in particular third-party index funds) are fully aligned with their responsible investment strategies. As a result, index-based products frequently fall outside of the scope of their exclusion policies.[[8]](#footnote-9) While controversial weapons are banned under international conventions[[9]](#footnote-10), mainstream indices continue to include companies linked to their production. As financial institutions are increasingly looking to exclude such companies from their investments, there is a need for initiatives to make controversial weapon free indices more easily available. The existence of alternative ESG indices is not sufficient to meet this growing demand. This was illustrated by an open letter in 2019, in which more than 140 financial institutions called on major index providers to exclude controversial weapons from their mainstream index products.[[10]](#footnote-11) Index providers, however, responded by referring to dedicated ESG products as an option for investors who seek to avoid controversial weapons producers.[[11]](#footnote-12) The response thereby ignored the request of the co-signatories to exclude controversial weapons as a default position, rather than merely offering separate controversial weapons free indices. Nevertheless, difficulties in ensuring a full application of their exclusion policies to index-based products cannot be used by investors as a justification for continued investment in companies linked to controversial weapons.

**State duty to protect human rights**

**(1) What State, regional, and international mechanisms and regulations exist to promote or restrict investment/financing using an ESG approach that takes human rights into account and how do they align with the UNGPs? How do these mechanisms and regulations promote or inhibit business respect for human rights consistent with the UNGPs?**

One of the key issues frequently highlighted in PAX's thematic interventions is the growing norm among states that the financing of companies involved in controversial weapons is prohibited under international disarmament treaties, and that states should adopt national legislation[[12]](#footnote-13) to that end. While there are currently no known explicit prohibitions of financing under international laws prohibiting controversial weapons, it is common to include a prohibition on assistance with prohibited acts. There is a growing understanding that financing falls within this scope.[[13]](#footnote-14) This belief is not merely shared among states: a growing number of financial institutions cite disarmament treaties in their exclusion policies as part of the justification for excluding controversial weapons producers. At the time of writing, 108 investors or investor alliances have signed a statement in which they explicitly support the understanding that financing nuclear weapons producers amounts to prohibited conduct under the Treaty on the Prohibition of Nuclear Weapons (TPNW).[[14]](#footnote-15)

It is also useful in this context to point to the advice by the Platform on Sustainable Finance, an EU advisory, platform established under the Taxonomy regulation of the EU which, in its 2022 proposed structure for a ‘social taxonomy', recommends including disarmament treaties such as the CCM and the TPNW, meaning that the producers of weapons banned by these treaties should be excluded.[[15]](#footnote-16)

**(5) How can States better advance human rights-compatible regulation and policies concerning investors and financial institutions generally in a manner that fulfils their international legal obligation to protect human rights?**

States should adopt mandatory human rights and environmental due diligence legislation that is in line with the UNGPs and the OECD Guidelines and includes effective measures to hold companies to account and provide better access to justice and remedy for victims. It is essential that this legislation fully covers the financial sector; not only in terms of the institutions and financial products and services covered but also in terms of the due diligence expected from the financial sector. This should be fully in line with what the UNGPs and OECD Guidelines expect from these institutions.

The responsibility to conduct adequate HRDD also falls on states themselves, when selecting a bank or other financial service provider for services provided to the state. The selection of a state's principal bank should be based in part on whether the bank has a good track record in respecting human rights, including in its value chain.

**Corporate responsibility to respect human rights**

**(7) What provisions can be included in contracts or investment agreements to**

**encourage respect for human rights? Can technological devices like Blockchain assist in this regard?**

Investors should include clauses in contracts or investor agreements that go beyond compliance with applicable laws and regulations to also cover respect for human rights and IHL, including the obligation to conduct heightened HRDD on operations, subsidiaries and/or business relationships in conflict-affected and high-risk areas. This can increase the leverage the investor has on a client or investee company.

Investors should also include safeguards in contracts or investment agreements that allow for their termination when the company at stake, whether through a merger or acquisition or through a mere widening of its scope of activities, becomes involved in activities inherently associated with severe human rights or IHL risks.

A specific tendency we have encountered when encouraging financial institutions to end their financial relations with nuclear weapons producers, is that some financial institutions justify the (corporate) financing of these companies by pointing at the existence of contractual agreements that ensure their financing cannot be directed towards any nuclear weapon related activities. However, even ‘earmarked’ funds tend to free other capital flows that companies can use at their discretion. Funds provided could therefore still indirectly facilitate nuclear weapons production.

(**9) How can investors best provide transparency in their disclosures about their practices which are, or are not, in alignment with the UNGPs?**

Investors should be transparent on (1) what companies they invest in[[16]](#footnote-17) (some Dutch pension funds are setting a good example by publishing all their investments on company-level) and (2) the measures they have taken to prevent, end or mitigate adverse impacts in their investment portfolio. We find that many investors fail to provide any information on such action, or only on an anecdotal or generalized level. As such, it is often impossible for stakeholders to establish whether an investor is taking action towards a specific actor in its value chain, which goals or timeframe the investor has set, or what specific violation is being discussed. PAX recommends investors to be transparent about their investments (loans, underwriting, bond- and shareholdings) to the largest extent possible and publish information about any action taken to mitigate or remediate human rights violations, through engagement or divestment, by:

* Publishing an exclusion list
* Publishing its human rights policy
* Publishing a list of actors in the value chain with which the investor engages, including specific and timebound goals for the engagement, (intermediate) results, and (intermediate) decisions by the investor.
* Requiring other actors in the value chain to do the same.

**(12) How should investors take gender-responsive, disability-responsive, and intersectional-responsive approaches? How should investors take a heightened human rights due diligence approach in conflict-affected areas?**

Financial institutions, like other companies, should conduct heightened human rights due diligence (hHRDD) on activities and business relationships in conflict-affected areas, as these areas are characterized by heightened risks.[[17]](#footnote-18) For financial institutions, this includes the following steps:

* Integrating hHRDD in investment policies and communicate expectations of hHRDD to its clients and investee companies, i.e. in contractual clauses. Also, ensuring in-house expertise on conflict-risks and dynamics and IHL, in addition to human rights.[[18]](#footnote-19)
* Integrating conflict-sensitivity in screening and prioritization procedures. This means screening specifically for clients or investee companies that have activities and/or business relationships with (potential) conflict areas. It is important to screen for a combination of conflict risk indicators or ‘red flags’ related to geography, sector, product, business model and/or specific business relationships. Companies that are identified through this screening should be prioritized for further assessment. Investors should make sure that these companies have proper hHRDD processes in place.
* If the company is found to run a risk of becoming involved with conflict and/or HR or IHL violations in a (potential) conflict-affected area, the investor needs to engage with the company and review the latter’s own conflict analysis, as well as its assessment of the human rights risks and mitigating measures, including with regards to stakeholder engagement and a potential responsible exit. The investor needs to complement the information provided by the company with its own research, for instance, based on reports from international organizations, NGOs, independent experts, academia, and media.

**Access to remedy**

**State-based judicial and non-judicial mechanisms**

**(2) Please provide examples of cases submitted to State-based judicial and/or non-judicial mechanisms regarding investors in the context of business-related human rights and environmental abuses. How effective are these in providing remedies to the victims and how can they be improved?**

Together with 7 other civil society organizations based in Europe and South Sudan, PAX filed an [**NCP-complaint**](https://files.nettsteder.regjeringen.no/wpuploads01/sites/263/2023/02/Aker-ASA-NCP-complaint.pdf)with the Norwegian National Contact Point for the OECD Guidelines, against the Norwegian private investment company Aker ASA, main shareholder of the oil company Aker BP. In February 2023 the Norwegian NCP issued its [initial assessment](https://files.nettsteder.regjeringen.no/wpuploads01/sites/263/2023/02/InitialAssessment_PAXothers_AkerBP_AkerASA_EN_nett.pdf) of the complaint, accepting its submission. A mediation process was set up, but the parties did not reach a joint agreement. The NCP will now publish its own final assessment of the complaint. In this phase, it is not yet possible to assess the effectiveness of this NCP process in providing access to remedy for the victims.

**Non-State based mechanisms**

**(1) What remediation responsibilities should investors have? Should these responsibilities vary depending on the nature of the responsibility e.g. cause, contribute to, or be directly linked to the adverse human rights impact? Should it vary depending on the sector invested or the type of investment activity?**

If an investor causes or contributes to an adverse impact, it should, just like any other enterprise, provide for or contribute to remedy. In case of a ‘direct link’ to an adverse impact caused or contributed to by a client or portfolio company, the investor should use its leverage to influence that company to provide for or contribute to remedy. To determine the remediation responsibility, one therefore first has to determine the degree of involvement with the impact. In 2017, the OHCHR, the UN Working Group and Prof. Ruggie confirmed that banks can also be found contributing to adverse impacts when their own actions or inactions facilitate or incentivize a client to cause or contribute to an adverse impact.[[19]](#footnote-20)

These interpretations have been of great importance in clarifying the way banks can be involved with adverse impacts (and what their remediation responsibilities are) and have been guiding discussions with banks ever since, notably in the development of the [2019 discussion paper issued by the Working Group ‘Enabling Remediation’ within the Dutch Banking sector Agreement](https://www.imvoconvenanten.nl/-/media/imvo/files/banking/paper-enabling-remediation.pdf), to which PAX was also a party. This paper provides relevant input on how banks can fill in their remediation responsibilities.

However, the interpretations were issued as responses to requests for clarification on the responsibilities of banks and directed at bank-client relationships. An ‘interpretation gap’ exists, at least in practice, when it comes to determining the degree of involvement (and thus the responsibility for remediation) of shareholders in relation to investee companies in which they hold (in the vast majority of cases) minority shares.

In 2013, the OHCHR clarified that minority shareholdings constitute a business relationship and that impacts arising from the activities of the entities in which an investor has a minority shareholding can be considered as being directly linked to the investors’ operations, products or services.[[20]](#footnote-21) The letter explicitly states however, that it “does not discuss situations where institutional investors themselves contribute to an adverse impact.”

The OECD Guidance for Institutional Investors writes the following on degrees of involvement to adverse impacts via minority shareholding relationships:

*(p 35) “****Generally****, a minority shareholder relationship, particularly in listed equities, is* ***unlikely*** *to lead to a substantial contribution to an adverse impact under the OECD Guidelines. Thus,* ***in the vast majority of cases****, institutional investors holding a minority shareholding will not be in a position to “contribute” to an adverse impact at an investee company. Such a case* ***might arise****, however, if investors take a larger share in a company and become actively involved in trying to direct or influence management in a manner that results in adverse impacts.” (emphasis added)*

*(p 20) “In some instances investors may be contributing to impacts caused by their investee companies and may be responsible for remediation. These situations* ***could arise*** *where investors wield significant managerial control over a company, for example, in certain General Partnerships. However, in the context of adverse impacts arising from investee companies, investors will* ***in most instances*** *not cause or contribute to, but only be directly linked to the adverse impact. As a result investors would not be expected to provide remedy, but they should seek to encourage the investee company to do so as a component of their responsibility to seek to prevent and mitigate, based on prioritization.” (emphasis added)*

Shareholders can thus shift from being directly linked to contributing when they increase their share in the company and following from that their degree of control over the company. However, these passages do not clarify that there can also be a shift, over time, from being directly linked to contributing by not taking (sufficient) action. This can happen when a shareholder (even with little control or leverage over the company) knows or should know about human rights risks or impacts associated with a company, but remains invested in it without taking any action to require, encourage or support the company to prevent, mitigate or remediate impacts. In practice we see that this creates a facilitating environment for an investee company to take actions (or inactions) that result in abuses.[[21]](#footnote-22)

From our intensive engagement and collaboration with Dutch pension funds and insurers over the past five years, we have learned that there is a lot of unclarity and misunderstanding about when and how they -in their role of minority shareholders in investee companies - can be contributing to an adverse impact via an investee company, which has given rise to the belief (now even incorporated in legislative proposals for mandatory due diligence in the EU) that they can only ever be directly linked to an adverse impact. Clarification by the UN Working Group of the fact that minority shareholders can also ultimately and over time shift from being directly linked to becoming a contributor to an impact as a result of a continuous failure to act in the face of severe abuses caused or contributed to by an investee company, would be extremely helpful in clarifying the remediation responsibilities of investors in their role of minority shareholders.

1. PAX was an active member of the Dutch Responsible Business Conduct Agreements between the Dutch Government, banks, insurers and pension funds and civil society (2016-2023). The RBC-agreements are multi-stakeholder initiatives initiated by the Dutch government, in which business actors (in this case financial institutions) commit to the implementation of the UNGPs and the OECD Guidelines and work together with the government and with civil society and trade unions on identifying and addressing adverse impacts in their investment portfolios. (See: [Dutch Banking Sector Agreement | IRBC Agreements (imvoconvenanten.nl)](https://www.imvoconvenanten.nl/en/banking); [Pension Funds Agreement | IRBC Agreements (imvoconvenanten.nl)](https://www.imvoconvenanten.nl/en/pension-funds); [Agreement for international responsible investment in the insurance sector | IRBC Agreements (imvoconvenanten.nl)](https://www.imvoconvenanten.nl/en/insurance).) Currently we are a member of the Fair Finance International coalition and of the Don't Buy into Occupation coalition, which investigates investments by European financial institutions in corporate activities linked to illegal settlements in the Occupied Palestinian Territories (see: [Home | Eerlijke Geldwijzer](https://eerlijkegeldwijzer.nl/); [DBIO - Don't Buy into Occupation Coalition (dontbuyintooccupation.org)).](https://dontbuyintooccupation.org/) We have also been one of the leading organizations of the Stop Explosive Investments Campaign, which aims to stop investment in cluster munitions producers (see: https://stopexplosiveinvestments.org/). Furthermore, together with the International Campaign to Abolish Nuclear Weapons (ICAN), PAX conducts research into investments in nuclear weapon producing companies (see: <https://www.dontbankonthebomb.com/>). [↑](#footnote-ref-2)
2. One example is the ESG rating of the Swedish oil company Lundin Energy. Despite overwhelming evidence pointing to contributions by the company to severe human rights violations and war crimes in Sudan (for which its former CEO and Chair of the Board are currently standing trial in Sweden) and the refusal of the company to do human rights due diligence and take up its responsibility to contribute to remedy for the victims, the company is highly rated by several ESG rating agencies. [↑](#footnote-ref-3)
3. [How a Laos dam collapse exposes flaws in ESG investments (trust.org)](https://news.trust.org/item/20211216162549-rz27f/); [Why ESG investing is bad for human rights - & what we can do about it - Business & Human Rights Resource Centre (business-humanrights.org)](https://www.business-humanrights.org/en/blog/why-esg-investing-is-bad-for-human-rights-what-we-can-do-about-it/) [↑](#footnote-ref-4)
4. Any weapon that is indiscriminate, inhumane or disproportionate is generally considered controversial. Weapons falling under this category include cluster munition, chemical, biological and nuclear weapons, anti-personnel mines, depleted uranium and white phosphorus munitions. , [↑](#footnote-ref-5)
5. Research by PAX shows, for example, that between January 2020 and July 2022, at least 306 financial institutions worldwide financed companies involved in the production of nuclear weapons or their key components, with a total value of USD 746,677 millions. *See* 'Risky Returns: Nuclear weapon producers and their financiers', *PAX & ICAN (2022)*, p. 4. Available at: [PAX\_Rapport\_DBotB\_Risky Returns.pdf (paxforpeace.nl).](https://paxforpeace.nl/wp-content/uploads/sites/2/import/2022-12/PAX_Rapport_DBotB_Risky%20Returns.pdf)  Research by PAX has also shown that all of the 15 largest banks in Europe provide financial services to arms producers that supply weapons to states where there is a high risk they will be used for or to facilitate violations of IHL and international human rights. *See* 'High-risk arms trade and the financial sector', *PAX (2022)*, p. 7. Available at: [PAX\_REPORT\_HIGHRISK\_ARMS\_TRADE.pdf (paxvoorvrede.nl).](https://paxvoorvrede.nl/wp-content/uploads/import/2022-07/PAX_REPORT_HIGHRISK_ARMS_TRADE.pdf)  [↑](#footnote-ref-6)
6. [How a Giant of Responsible Investing Agreed to an Israel Exception (jewishcurrents.org)](https://jewishcurrents.org/how-a-giant-of-responsible-investing-agreed-to-an-israel-exception) [↑](#footnote-ref-7)
7. “High-risk arms trade and the financial sector”, *PAX (2022)*. Available at: [PAX\_REPORT\_HIGHRISK\_ARMS\_TRADE.pdf (paxvoorvrede.nl)](https://paxvoorvrede.nl/wp-content/uploads/import/2022-07/PAX_REPORT_HIGHRISK_ARMS_TRADE.pdf). [↑](#footnote-ref-8)
8. 'Moving Away from Mass Destruction: 109 exclusions of nuclear weapon producers', *PAX & ICAN (2023)*, p. 13. [↑](#footnote-ref-9)
9. See the Treaty on the Non-proliferation of Nuclear Weapons (1970), the Convention on the Prohibition of Biological Weapons (1972), the Convention on the Prohibition of Chemical Weapons (1993), the Convention on the Prohibition of Anti- Personnel Mines (1997), and the Treaty on the Prohibition of Nuclear Weapons (2017). [↑](#footnote-ref-10)
10. Open Letter to Global Index Providers, *Swiss Sustainable Finance*, 31 January 2019. Available at: [Controversial\_Weapons\_Letter\_FINAL\_2019\_01\_31.pdf (sustainablefinance.ch).](https://www.sustainablefinance.ch/upload/cms/user/Controversial_Weapons_Letter_FINAL_2019_01_31.pdf)  It should be noted that the letter only considers nuclear weapons controversial "for countries that have not signed the 1970 Treaty on the Non-Proliferation of Nuclear Weapons". PAX (and many signatories to the letter) do not support this position. Nuclear weapons are indiscriminate, cause disproportionate harm and are comprehensively banned under the UN Treaty on the Prohibition of Nuclear Weapons (2017). In addition, all states that signed the Treaty on the Non-Proliferation of Nuclear Weapons are under a legally binding obligation to disarm (see UN Treaty on the Non-Proliferation of Nuclear Weapons (1970), Article 6. [↑](#footnote-ref-11)
11. 'Index providers respond to controversial weapons campaign'. *IPE, 14 February 2019*. Available at: [Index providers respond to controversial weapons campaign | News | IPE.](https://www.ipe.com/index-providers-respond-to-controversial-weapons-campaign-/10029460.article)  [↑](#footnote-ref-12)
12. At a minimum, such legislation should (i) prohibit the financing of companies as a whole, rather than merely the activities related to controversial weapons; (ii) include a definition of controversial weapons producers that is as comprehensive as possible; (iii) extend to controversial weapons producers abroad; (iv) be applicable to all types of financial products and services offered, including passive and active, internally and externally managed assets, across all entities within the group, including subsidiaries; (v) include clear stipulations about how and in which timeframe investors should dispose of ongoing contracts or current existing investments; and (v) establish effective mechanisms to ensure implementation is adequately monitored. See also "Banning Investments in Cluster Munition Producers – National legislation", *PAX (2014)*. Available at: [Banning-investments-in-cluster-munitions-national-legislation-2.pdf (stopexplosiveinvestments.org).](https://stopexplosiveinvestments.org/wp-content/uploads/Banning-investments-in-cluster-munitions-national-legislation-2.pdf) [↑](#footnote-ref-13)
13. In the Oxford Public International Law Commentary on the Chemical Weapons Convention, assistance is understood to include the provision of “through financial resources…. to anyone who is resolved to engage in such prohibited activity” and anyone that could be “not only be a State, irrespective of whether or not it is a Party to the Convention, but also an organization, an enterprise, a person, or a group of persons, regardless of Citizenship.” Another example is the Convention on Cluster Munitions (CCM), of which 37 states parties explicitly acknowledge that the CCM’s prohibition on assistance in the development and production of cluster munitions also prohibits investments in cluster munitions and 11 more states have adopted national legislation to this end (see: 'Banning investments in cluster munitions: States’ best practices', P*AX (2019).* Available at: 201910\_Factsheet states best practices.indd (stopexplosiveinvestments.org)). This understanding was furthermore visible at the negotiation of the Treaty on the Prohibition of Nuclear Weapons (TPNW) (See: Interpretative statements: financing prohibited, *Don't Bank on the Bomb (no date)*. Available at: Interpretive statements: financing prohibited – Don't Bank on the Bomb (dontbankonthebomb.com)). *See also* "Building on the Ban: Increasing impact by decreasing investment. Working paper submitted by ICAN on behalf of member organization PAX", *First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons*, TPNW/MSP/2022/NGO/19, 9 June 2022. Available at: [TPNW.MSP\_.2022.NGO\_.19.pdf (unoda.org).](https://documents.unoda.org/wp-content/uploads/2022/06/TPNW.MSP_.2022.NGO_.19.pdf) [↑](#footnote-ref-14)
14. Investor Statement to the First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons, *ICAN & Etica Funds (2022)*. Available at: [Investor Statement to the First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons - Divestment (icanw.org).](https://divest.icanw.org/open_statement_to_the_first_meeting_of_states_parties_to_the_treaty_on_the_prohibition_of_nuclear_weapons)  [↑](#footnote-ref-15)
15. Platform on Sustainable Finance (2022) *Final Report on Social Taxonomy.* Available at: [Platform on Sustainable Finance’s report on social taxonomy (europa.eu)](https://finance.ec.europa.eu/system/files/2022-08/220228-sustainable-finance-platform-finance-report-social-taxonomy_en.pdf) [↑](#footnote-ref-16)
16. While for banks providing this level of detail may not always be feasible, they could still work towards more transparency. In our research we have found that banks denied to even confirm the existence of financial links we had established via public sources. [↑](#footnote-ref-17)
17. In April 2021, the parties to the Dutch RBC Agreement for pension funds published a framework on [“Investing in conflict and post-conflict areas: risk analysis and mitigation”](https://www.imvoconvenanten.nl/-/media/imvo/files/pensioenfondsen/beleggen-in-post-conflict-gebieden.pdf?la=nl&hash=4269DF493D87DD8232D231B3BEE0FE87), outlining how institutional investors should conduct heightened human rights due diligence in conflict-affected and high-risk areas. PAX was part of the working group authoring this framework. In February 2023, PAX and the European Center for Constitutional and Human Rights published [“Funding Conflict. Heightened human rights due diligence in conflict-affected areas, with a case study on Lafarge and its investors”](https://paxforpeace.nl/publications/funding-conflict/), detailing the steps that investors in the French cement company Lafarge could and should have taken in the different stages of the conflict in Syria. Recently, the Responsible Investment Association Australasia also published an [‘Investor Toolkit on Human Rights & Armed conflict”.](https://www.ausbil.com.au/Ausbil/media/Documents/Research%20and%20Insights/Investor-Toolkit-on-Human-Rights-and-Armed-Conflict.pdf)  [↑](#footnote-ref-18)
18. Within the private sector it is often assumed that IHL only applies to state actors. However, IHL also has implications for companies (and their investors) where these actors’ activities are ‘closely linked’ to an armed conflict or military occupation. Non-compliance with IHL can lead to legal liability for businesses or their individual employees. [↑](#footnote-ref-19)
19. In response to the publication of a discussion paper by the Thun Group of Banks that contained flawed interpretations of what constitutes “contribution” and “direct linkage” of banks to adverse impacts, the OHCHR, the UN Working Group as well as Prof. Ruggie had published clarifying notes on this issue. [↑](#footnote-ref-20)
20. *UN Office of the High Commissioner for Human Rights,* " The application of the Guiding Principles on Business and Human Rights to minority shareholdings of institutional investors", 26 April 2013. Available at: [LetterSOMO.pdf (ohchr.org).](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/LetterSOMO.pdf) [↑](#footnote-ref-21)
21. For example: Since 2015, PAX and the Fair Finance Guide Netherlands have pointed investors (all with a non-controlling share) to violations of human rights and IHL that arms producers are linked to through the sales of weapons to countries involved in these violations. Our latest studies show that while some investors have taken appropriate actions (divestment or engagement), others have not. By not taking action despite clear and public knowledge of the human rights violations, these investors signal to the arms producers in question that they do not consider these violations as requiring action. This lack of response creates a facilitating environment for the arms producers to continue their actions leading to or facilitating human rights and IHL violations. Our study in 2015: <https://eerlijkegeldwijzer.nl/verzekeringswijzer/nieuws/2015/verzekeraars-investeren-6-8-miljard-euro-in-foute-wapenhandel/>, And our study in 2023: <https://paxvoorvrede.nl/publicaties/high-risk-arms-trade-and-the-financial-sector-2/> [↑](#footnote-ref-22)