

Analysis Criterion

International Law

Storebrand Sustainability Team



Storebrand aims to invest in corporations that contribute actively to sustainable development. We believe such practices – when integrated into core business – will be financially rewarded. Furthermore, we have implemented a standard across the Group – the Storebrand Standard – that leads to certain corporations being excluded from investment, including those involved in serious violations of international law.

Definition

International law encompasses rules and principles of general application dealing with the conduct of nations and international organisations, as well as some of their relations with people, whether natural or juridical. Storebrand has a separate criterion for human rights which are therefore not included in this description. This criterion focuses mainly on international criminal law and humanitarian law.

Background

Whereas warfare historically used to involve one state against another, modern conflicts have changed significantly. Since the Second World War, an increasing number of non-state actors have become involved in armed conflicts, such as private military forces. In addition, traditional corporations may also be involved indirectly while carrying out economic activities, for example by exploiting natural resources. These activities may lead to the financing of campaigns of violence, or even cause conflicts to begin or continue.

Several studies and reports by the International Committee of the Red Cross describe how business activities during an armed conflict might fall under the scope of international humanitarian law and could constitute war crimes. The International Commission of Jurist has also issued several reports analysing corporate responsibility in armed conflict situations, specifically corporate complicity or contribution to international crimes.

Despite the lack of a forum where corporations can be prosecuted as legal entities under international law, company officials have been tried under international criminal law, for example following the Second World War by the Nuremberg Tribunal for being involved in crimes of the Nazi regime¹. Furthermore, as national legal systems incorporate international criminal law into their domestic legislation, they often include legal entities, including corporations, in the list of potential perpetrators. This has been the case in Norway since March 2008 and the Norwegian Penal Code allows for the prosecution of corporations registered in Norway for war crimes committed on behalf of the corporation. In this context, Storebrand evaluates cases where corporations might contribute to breaches of international humanitarian law, international criminal law and other fundamental ethical norms or international laws in general, including human rights. This

¹ For example for supplying Zyklon B gas to concentration camps.

usually occurs when corporations have operations in conflict areas or under repressive regimes, occupied territories or Non-Self-Governing Territories. For example, Storebrand will assess situations where security companies:

- Assist an occupying state to "maintain the peace" in a conflict area;
- Help an occupying state power to extract the natural resources of an occupied territory;
- Help the occupying power by selling goods and services that further the occupation or the settlement of the occupying power's civilians in occupied territories; or
- May contribute to genocide by funding campaigns of violence.

Regarding the arms industry, Storebrand's controversial weapons standard applies. However, companies that are involved in the arms trade with a country under embargo by the EU, UN, or US and/or deliver arms to countries where there is a high likelihood that they may be used against civilians are also assessed under this standard.

In addition, Storebrand will require companies to examine their supply chains to ensure that their buying of raw materials, for example, is not contributing to conflict, such as in the case of conflict minerals.

As an investor, it is in Storebrand's interest that corporations act responsibly and not in a way that causes damage to operations or reputation, results in legal action, or diminishes future business opportunities.

International law and conventions

The UN Charter, The Hague and Geneva Conventions together with UN Resolutions, decisions from the International Court of Justice and decisions from the International Criminal Court form the basis for Storebrand's international law violations criterion.

Conventions and UN Resolutions fundamental to the International Law Criterion

The UN Charter	Geneva Protocol to the Hague Convention
The Geneva Conventions	UN Security Council Resolutions
Protocols additional to the Geneva Conventions	UN General Assembly Resolutions
The Hague Conventions	International Court of Justice Decisions
The Arms Trade Treaty	International Criminal Court Decisions

The work of the International Committee of the Red Cross and its essential rules on international humanitarian law, although not legally binding, also serve as guidance for Storebrand's international law criterion in addition to, in some cases, references to EU and Norwegian/Swedish official recommendations regarding international law matters.

Furthermore, a long series of voluntary guidelines also inform this criterion, such as the UN Guiding Principles, the OECD Guidelines for multinationals in "weak governance" zones, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the UNGP & PRI Guidance on Responsible Business in conflict-affected and high-risk areas, and the Voluntary Principles on Security and Human Rights. In addition, with regard to private military and security companies, Storebrand will assess company behaviour based on the Montreux Document and the International Code of Conduct for Private Security Services Providers.

Scope

Storebrand will not invest in companies involved in serious violations of international law. In the event that subsidiaries of a company are involved in serious violations of

international law, but are not publicly listed, the closest listed company above the subsidiary in the corporate structure with a controlling interest is excluded. In the event that the subsidiary involved is listed, the parent company is also excluded if it has a controlling interest in the subsidiary. If a parent company is involved in serious violations of international law, listed subsidiaries are only excluded if they are involved in the same unacceptable activities. Storebrand will also consider exclusion in cases where suppliers or other business partners (such as joint ventures), systematically violate the criterion. Storebrand will not exclude companies based on operations in specific countries, but will assess the manner in which they run their business in the countries where they operate.

References

UN – International Law

<http://www2.ohchr.org/english/law/>

American Law Institute, Restatement 3rd, Section 10, International Law

New York University, GlobaLex, Introduction to Public International law research,

http://www.nyulawglobal.org/globalex/Public_International_Law_Research.htm

International Court of Justice

<http://www.icj-cij.org/homepage/index.php>

International Court of Justice, Charter of the UN,

<http://www.icj-cij.org/documents/index.php?p1=4&p2=1&p3=0>

University of Bologna, Research Guide to International Law on the Internet, International Criminal Law

<http://www2.spfo.unibo.it/spolfo/CRIMLAW>

International Criminal Court, <http://www.icc-cpi.int/Menus/ICC>

The International Committee of the Red Cross (ICRC), What is humanitarian law?

<http://www.icrc.org/web/eng/siteeng0.nsf/html/humanitarian-law-factsheet>

The International Committee of the Red Cross (ICRC), "The International Committee of the Red Cross as

guardian of international humanitarian law" <http://www.icrc.org/web/eng/siteeng0.nsf/html/about-the-icrc-311298>

Cassese, A. (2005) International Law, Oxford: Oxford University Press

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