



Extraterritorial Obligations of the State to Uphold Economic, Social and Cultural Rights

4T: Veolia and Alstom transport corporations as subcontractors of illegal infrastructure project in occupied territory

Source:

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Signature: type of ETO issue

2. TNCs, private actors and their regulation

Description:

Since 2004, two French corporations, Veolia/Connex and Alstom, have engaged in the *Citypass* consortium to construct a light rail systems contracted with the Government of Israel. The current project involves installing rail infrastructure between Jerusalem (occupied since 1948) through occupied East Jerusalem and to several outlying illegal settler colonies in Palestinian territory occupied since 1967. Alstom is providing cars and laying the track, while Veolia is due to operate the system for 30 years. Opponents and human rights organisations have argued that the venture is illegal and that the two French companies are violating international law by their involvement in the 13.4 km rail line project, in particular the International Court of Justice's explicit injunction for States—in this case, France—to recognize the illegal situation arising from the wall and its settlement regime, not to render aid or assistance that would maintain that situation, and to cooperate toward end to the consequent violations.¹

Amnesty International in France invited Veolia to discuss the tramway in December 2005. The company refused the invitation and informed Amnesty it had appointed an independent legal expert to study the file. Amnesty International France's next step was to publish a statement on the illegality of the tramway on 1 March 2006.

In France, Association France Palestine Solidarité (AFPS) and the PLO representation in France petitioned the Nanterre Tribunal de Grande Instance, in February 2007, to cancel the 30-year contract of those French companies with their Israeli government clients to construct and run the tramway. The rail transport system constitutes an integral part of Israel's illegal expansion and implantation of settlers and settler colonies in East Jerusalem and the West Bank, violating a bundle of general principles of international law, including aggression, the unacceptability of the acquisition of territory by force, and other specific prohibitions (mentioned below).

Consequences:

The manifest and currently mounting consequences for the indigenous population in the path of this public-private partnership spreads the responsibility over several State and non-State actors responsible for the following violations:

1. Confiscation of private and public land and other property,
2. Destruction of private and public property,
3. Implantation of alien settlers in occupied territory,
4. Expansion of settler colonies,
5. Demographic manipulation,
6. Impediments to self-determination of a people/nation.

Territorial HR analysis

France:

The Constitution of France provides for the integration of human rights criteria in its international relations, cooperation and agreements, as does the EU Association Agreement.² Article 55 of the 1958 Constitution states that duly ratified or approved treaties and agreements have an authority superior to that of parliamentary statute. The French Civil Code states in its articles 6, 1131 and 1133 that any agreement can be discharged of its powers when its aim is in contradiction with the public order or good morals. The AFPS legal action rests on this rule and is seeking to prohibit the companies from executing the contracts and to cancel the contracts.

Moreover, companies with bases in France bear the obligation to implement human right principles, and numerous EU, UN and ILO treaties binding France to domestic and extraterritorial norms, including nondiscrimination and conditions for the prevention and punishment of the crime of *apartheid*. However, neither France nor Israel has signed the relevant anti*apartheid* convention.³

The Vienna Convention on the Law of Treaties and corresponding principles of international law require it to apply locally and to harmonize domestic legislation with those public-law treaty provisions. In illegally exploiting the resources of occupied territory, particularly without the consent of the indigenous population, Veolia and Alstom are engaged with their Israeli client in a breach of France's obligations under ICESCR (Article 1.2) and ICCPR (Article 1.1, 1.2), as they continue to obstruct the Palestinian people's right to self-determination. France is also in violation of its obligations to uphold fundamental human rights in economic partnerships as established in its Association Agreement (Article 2) with the EU,⁴ as well as the Charter of Economic Rights and Duties of States (1974), in particular, Articles 1, 2.⁵ The State's failure to regulate and effectively monitor third parties⁶

French obligations in the EU context:

This is not a simple case of a commercial contract between private actors. The Israeli party is the Government of Israel. French economic cooperation with Israel takes place within the context of European arrangements subject to the EU-Israel Association Agreement (21 June 2000), which, in Article 2, provides that: "Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their

internal and international policy and constitutes an essential element of this Agreement.”

Moreover, commercial relations between EU States and Israel are subject to the European Neighborhood Policy (ENP), which applied to Israel in the form of an Action Plan for 1 November 2006 through 31 December 2007. The review of that plan’s implementation revealed “lack of progress on a certain number of commitments undertaken in the framework of the Action Plan (for example “facilitating the Palestinian trade”) has had a negative impact on the Palestinian economy, through the restriction on access and movement of goods and persons.”⁷ Indeed, the Israeli occupation of Palestinian territory demonstrates by their denial how vitally important are of rights to freedom of movement, among others, to the very survival and well-being of individuals, communities and peoples.

In proceeding with the Partnership, both France and the EU may be in violation of their individual and collective State obligations under international law, the primacy of which is reaffirmed in the Association Agreement. Moreover, the EU has failed to regulate the activities of Israel as a treaty partner under ICCPR and ICESCR (which France ratified, 4 February 1981), as well as ICERD (since 27 August 1971). In particular, France, and, more generally, European States parties to ICESCR are obliged to respect, protect and fulfill ESC rights through “international cooperation,” which they have effectively failed to do individually and collectively in this case.

For France and other States parties to ICESCR, the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights are instructive, particularly under Articles 14 (a)–(e), concerning violations by commission, and Article 15 (a)–(j)) for assessing Israel’s compliance with the conditionality that the Association Agreement and ENP ensure that the Palestinian population consents to, and benefits from the exploitation of the resources of their territory.

Extraterritorial HR analysis

Common Article 1, Articles 49 and 53 of the Fourth Geneva Convention relative to Civilian Persons in Time of War assigning individual High Contracting Party obligations to “ensure respect” for the Convention, and prohibiting the implantation of civilian population and the destruction or confiscation of property not absolutely required for military purposes.

Moreover, as a party to the London Charter of the International Military Tribunals (8 April 1945), which led to the Nuremberg and Tokyo Tribunals, and as a ratifying party of the Rome Statute (9 June 2000), France is obliged to uphold international prohibitions against population transfer, including prosecution of the crime, of which the Israeli settler colony regime is a part.

Security Council resolutions 242 (1973) and 338 (1978), calling on the occupying Power (Israel) immediately to withdraw from the West Bank, East Jerusalem, the Gaza Strip and the Golan Heights, have theoretically coercing force. Security Council resolution 476 establishes that “all such measures which have altered the geographic, demographic and historical character and status of the Holy City of Jerusalem are null and void and must be rescinded in compliance with the relevant resolutions of the Security Council.”

Further, the ICJ ruling of 9 July 2004 affirms that “all States are under an obligation not to recognize the illegal situation arising from the construction of the wall, not to render aid or assistance in maintaining that situation and to cooperate with a view to putting an end to the alleged violations and to ensuring...reparation.”⁸ *Ad minimum*, the Republic of France bears the obligation at least to respect and fulfil the cited norms, in the light of the ICJ Advisory Opinion.

Lessons learnt

After AFPS/PLO petitioned the Nanterre court, the defendants submitted a plea of lack of competence, which was heard on 29 October 2007, and the Court reached its verdict on 11 January 2008. The Court decided to pursue the case in order to that Alstom and Veolia Transport explain and defend the legal basis on which they take part in the project, and to release the contract.

Alstom and Veolia presented various incomplete documents in English, and Veolia reportedly refused to release a French translation. The plaintiffs requested the court to enforce the fairness of proceedings, the adversarial principle and the need to avoid distortion of released acts. Thus, they requested that the court order Alstom and Veolia Transport to release a sworn French translation of all documents already released in English, so as to unveil the French companies' actual participation in the construction of the light train.

On 6 June 2008, the Nanterre court has ruled in favour of the plaintiffs and ordered Alstom and Veolia Transport to release within three months all documents constituting the concession agreement signed on 22 September 2004, as well as the sworn translation of all documents. Veolia Transport and Alstom released the concession agreement and its specifications in July, then all required document translations on 12 September. The released documents showed that Alstom and Veolia Transport are directly involved in the execution of this contract, even if they are not signatories of the concession contract between City Pass, an Israeli company, and the State of Israel.

That applied also for Alstom Transport, which holds a related engineering, supplying and construction contract. Therefore, the PLO and AFPS brought suit against Alstom Transport to the First Instance Court of Nanterre on 18 November 2008, seeking to establish that its contract is illegal and to prevent the company from executing its works in the oPt.

On 2 February 2009, the court heard the Alstom and Veolia no-jurisdiction and of irreceivability arguments. The Nanterre Tribunal rejected the two companies' claim that the court had no jurisdiction to hear the case against them. The court also reaffirmed that Israel is the occupying power in East Jerusalem, not the sovereign, and confirmed the illegality of Israeli settler colonies built on occupied Palestinian land, including in East Jerusalem.

While the AFPS/PLO case is based on the French Civil Code, the commercial code may provide further guidance. The French Parliament replaced the *Code de commerce* (1807) with a new Code de commerce in 2000.⁹

Wider implications

While the Nanterre case was before the court, Veolia lost public and client confidence in several instances as a result of its project in the occupied Palestinian territory and the organised opposition to it. The challenge to Veolia and Alstom has implications for both investments and commercial contracts.

It is known among banking and commercial circles that the Nanterre ruling could affect several investors and, perhaps, the investment culture more broadly. The prospect exists for mount other cases for Veolia and Alstom accountability in other jurisdictions. The same principal may apply to other private-sector accomplices profiting from international wrongful acts.

The Netherlands-based ABN Bank reconsidered its investment in Veolia, coincident with its ethical code and a civil society advocacy campaign. The Bank divested from Veolia because of the company's involvement in commercial activities in the oPt and in violation of legal norms cited.

In Switzerland, Sarasin Bank, is 69% owned by Rabobank (Netherlands), has at least three sustainable investment funds with shares in Veolia: Sarasin Sustainable Equity Global (2.29%, including four in its top ten), Sarasin Sustainable Equity Europe (2.85%, including two in its top ten) and Sarasin Oekosar Equity Global (2.48%, including five in its top ten). Like the Dutch SNS Bank, Bank Sarasin has entered into "a critical dialogue with Veolia" about its role in the illegal Israeli tramway. However, Bank Sarasin has explained that it did not want to divest before it has concluded the dialogue.¹⁰

Another financial institution, the Swiss Alternative Bank (ABS), with offices across Switzerland, refers clients to Bank Sarasin's sustainable investment funds. Established in 1990 at the initiative of people active in the area of development cooperation and environment, ABS is a member of the European Federation of Ethical and Alternative Banks. When a client, inspired by the initiative of Palästina-Solidarität, informed ABS about Bank Sarasin's refusal to divest from Veolia, ABS responded by acknowledging that these investments are controversial and explained to Sarasin that Veolia does not meet its newly developed strict criteria for investment. As a result, ABS has expected Bank Sarasin to influence Veolia to withdraw from the tramway project, or to sell its shares in Veolia.¹¹

The Swedish national pension fund AP7 also followed the socially responsible investment example of Dutch ASN Bank by excluding the French transportation giant Alstom from its portfolio. Alstom was excluded because of the company's involvement in Israel's occupation of Palestinian land.¹²

On 15 November 2008, the Swedish Cooperative Centre (SCC) launched a day of action day against Veolia in Stockholm. Activists distributed red cards and asked passengers of the Stockholm underground to stick them to their clothes to protest against Veolia's involvement in the Jerusalem Light Railway built on stolen Palestinian land.¹³

Veolia had operated the Subway system in Stockholm and was bidding for a second 8-year contract with the Stockholm County Council. Veolia is currently under severe pressure following several protests by NGOs, media attention and political opposition

from the Stockholm County Council, which has demanded that Veolia be excluded from the procurement process due to their disrespect for international law in Palestine. On 20 January 2009, the Council announced that Veolia, after operating the subway for the past ten years, had lost the €3.5 billion contract to Hong Kong-based rail operator MTR.¹⁴

Following the example of Stockholm Community Council, which decided not to renew the contract with Veolia to operate the City's underground system, the Galway (Ireland) City Council adopted a motion with an overwhelming (12 to 2) majority refusing to renew the Veolia contract for the management of Galway Water Services.¹⁵

The Sandwell Metropolitan Borough Council, in West Midlands, England, eliminated Veolia from the list of bidders competing for a 20-year waste and recycling contract estimated to be worth £1 billion.¹⁶ Veolia's bid was strongly opposed by campaigners calling attention to Veolia's poor human rights record in Palestine owing to its involvement in the Jerusalem Light Rail project, other transport contracts serving settler colonies, as well as illegal waste dumping in the Tovlan landfill in the occupied Jordan Valley.¹⁷

Both Veolia and Alstom also are active companies operating in Iran. Alstom maintains a headquarters in Tehran and has received a number of large public contracts, including a €192 million contract with Iran's state railways, in 1999, and a larger €375 million contract to supply 50 turbo compressors to Iran, in 2002. The Tehran Municipality and Veolia had agreed to collaborate on the implementation of some projects in environmental management and the development of the urban transport system. Following pressure from activists of the Boycott National Committee (BNC), Mayor of Tehran Mohammad Bagher Ghalibaf announced that Veolia would no longer have a key role in city's urban transport system.¹⁸

Veolia Transport also lost a contract worth €750 millions, in Bordeaux, to manage the biggest urban network in France. The contract instead went to Keolis, a subsidiary of SNCF. While the Greater Bordeaux local government publicly stated that its decision was based on commercial factors, the implication of Veolia in the controversial tramway project in Jerusalem provoked intense debates in the period leading up to the decision.¹⁹

In June 2009, Veolia announced that it would withdraw from the Jerusalem Light Rail contract and project. Veolia reportedly not only wants out of its contract for running the future train, but the company also is trying to sell its 5% stake in *Citypass*, the light rail consortium.²⁰

Resisting Israel's occupation of Palestine and its ethnic cleansing of the indigenous Palestinians in Jerusalem and elsewhere may not be done any more effectively than this. By making companies that profit from the Israeli occupation, colonization and apartheid lose money and reputation as a consequence. Stronger legal precedents may also soon be set, making profiteering from occupation and colonization much more difficult for all companies implicated in such illegal enterprises. As of the present, the boycott, divestment and sanctions movement shows growing promise as a deterrent of such practices, if not yet a means of redress.

- ¹ International Court of Justice, “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for advisory opinion), 2004/02, para. 146 reads: “As regards the legal consequences for States other than Israel, it was contended before the Court that all States are under an obligation not to recognize the illegal situation arising from the construction of the wall, not to render aid or assistance in maintaining that situation and to co-operate with a view to putting an end to the alleged violations and to ensuring that reparation will be made therefor.”
- ² Which reads: “Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement.”
- ³ United Nations, *International Convention on the Suppression and Punishment of the Crime of Apartheid*, adopted 30 November 1973, entered into force 18 July 1976, in accordance with article XV (1), Registration: 18 July 1976, No. 14861, Status: 31 Signatories, 101 Parties; *Treaty Series*, vol. 1015, p. 243.
- ⁴ Which reads: “Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement.”
- ⁵ Charter of Economic Rights and Duties of States, GA Res. 3281(xxix), UN GAOR, 29th Sess., Supp. No. 31 (1974) 50. Article 16 reads: “1. It is the right and duty of all States, individually and collectively, to eliminate colonialism, *apartheid*, racial discrimination, neocolonialism and all forms of foreign aggression, occupation and domination, and the economic and social consequences thereof, as a prerequisite for development. States which practise such coercive policies are economically responsible to the countries, territories and peoples affected for the restitution and full compensation for the exploitation and depletion of, and damages to, the natural and all other resources of those countries, territories and peoples. It is the duty of all States to extend assistance to them.”
2. No State has the right to promote or encourage investments that may constitute an obstacle to the liberation of a territory occupied by force.
- ⁶ Defined in Article 23 of General Comment No. 15 “right to water” provides: “The obligation to *protect* requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, *inter alia*, adopting the necessary and effective legislative and other measures to restrain...”
- ⁷ Commission of the European Communities, “Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament “Implementation of the European Neighborhood Policy in 20027,” (Brussels: 3 April 2008), SEC(2008) 394, p. 2.
- ⁸ ICJ Advisory Opinion, 9 July 2004, para. 146: “As regards the legal consequences for States other than Israel, it was contended before the Court that all States are under an obligation not to recognize the illegal situation arising from the construction of the wall, not to render aid or assistance in maintaining that situation and to co-operate with a view to putting an end to the alleged violations and to ensuring that reparation will be made therefor.”
- ⁹ Sources covering commercial law, but also corporation law, competition law, banking and stock exchange, as well as bankruptcy, include: Alfred Jauffret and Jaques Mestre, *Manuel de droit commercial* (Paris: Librairie générale de droit et de jurisprudence [L.G.D.J.], 1995); Michel De Juglart and Benjamin Ippolito, *Traité de droit commercial* (Paris: Montchrestien), Germain M. Ripert et René Roblot, *Traité de Droit : Les sociétés commerciales. Commercial* (Paris : Université de Paris, 2002); René Roblot, *Traité élémentaire de droit commercial* (Paris: L.G.D.J., 1948) ; Michel Pédamon, *Droit commercial* (Paris : Dalloz, 1994) ; & Merle (1994) ; Philippe Merle et Anne Fauchon, eds., *Droit commercial : Sociétés commerciales* (Paris: Dalloz Précis series, 17e éd., 2014), and Françoise Dekeuwer-Defossez, *Droit commercial : Activités commerciales, commerçants, fonds de commerce, concurrence, consommation* (Paris: Domat Précis, 1995); Francis Lefèbvre’s “amémentos pratiques”; e.g., *Droit des affaires* (1995), *Sociétés commerciales*, (1996) ; *Encyclopédie des affaires* (Paris : Delmas, series).
- ¹⁰ Adri Nieuwhof, “Swiss bank excludes company involved with illegal tramway,” *The Electronic Intifada*, 19 August 2008, at: <http://electronicintifada.net/v2/article9775.shtml>.
- ¹¹ Ibid.
- ¹² Adri Nieuwhof, “Divestment campaign gains momentum in Europe,” *The Electronic Intifada*, 24 March 2009, at: <http://electronicintifada.net/v2/article10418.shtml>.
- ¹³ “Rött kort för Veolia, Fria Tidningen (15 November 2008), at: <http://www.fria.nu/artikel/75948>.
- ¹⁴ Diakonia, “Veolia Dealt Major Blow in BDS campaign,” Press Statement, Stockholm, 20 January 2009; also Adri Nieuwhof and Daniel Machover, “Time to hold Veolia to account,” *The Electronic Intifada*, 10 February 2009, at: <http://electronicintifada.net/v2/article10295.shtml>.
- ¹⁵ The resolution read, in part: “Recognising: (1) That Veolia is a leading partner in the consortium contracted to build a light railway system linking Israel to illegal settlements in occupied East Jerusalem. (2) That the Irish Government and the U.N. does not recognise Israel's annexation and occupation of East Jerusalem and have repeatedly stated their views that the Israeli settlements in East Jerusalem and the West Bank contravene international law. (3) That Veolia's involvement in the project is in contravention of the UN's stated demand that Israeli settlement activities and occupation should not be supported; This Council calls on the City Manager not to sign or renew any contracts with Veolia.” Reproduced at: <http://cosmos.ucc.ie/cs1064/jabowen/IPSC/ipsc/displayRelease.php?releaseID=114>.

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- ¹⁶ “WRG and Veolia both lose out in Sandwell,” *Campaign Updates* (18 March 2009); and “West Midlands PSC ‘Bin Veolia’ Campaign,” 19 March 2009, at: <http://ukwin.org.uk/2009/03/18/wrg-and-veolia-both-lost-out-in-sandwell/>.
- ¹⁷ Adri Nieuwhof and Daniel Machover, “French company runs Israeli bus services to settlements,” *The Electronic Intifada* (11 March 2009), at: <http://electronicintifada.net/v2/article10385.shtml>.
- ¹⁸ “Tehran drops Veolia from city transport network,” *Palestinian Grassroots Anti-Apartheid Wall Campaign*, 17 June 2009, at: <http://stopthewall.org/worldwideactivism/print1981.shtml>.
- ¹⁹ BDS Group – Bordeaux, “Veolia, One Less Contract, Now the Next One !!” Press Release, 15 April 2009.
- ²⁰ “Jerusalem rail operator jumps ship, Tel Aviv group isn’t even responding,” *Ha’aretz* (8 June 2009), at: <http://www.haaretz.com/hasen/spages/1091186.html>.