



Beneath troubled waters

Noble Energy's exploitation of natural gas in the Eastern Mediterranean Sea

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Natural gas discoveries in the Eastern Mediterranean¹ have brought conflicting maritime territorial claims by Israel and Lebanon to the fore, exacerbating tensions between the two countries, which are officially still at war. These discoveries have also raised concerns regarding Israel's naval blockade imposed off the coast of the Gaza Strip, the denial through military force of Palestinians' access to their natural gas reserves and fishing waters, and raised questions regarding the (il)legality of extractive operations in the vicinity of Palestinian gas reserves. Within this context, Noble Energy, an oil and gas exploration and production company based in Houston, Texas, is extensively involved in the development and exploration of Israeli-licensed offshore gas fields in the Eastern Mediterranean sea. This briefing paper examines the impact of Noble Energy's activities on existing (armed) conflicts in the region, and analyses the company's compliance with applicable international frameworks, notably the OECD Guidelines for Multinational Enterprises (hereinafter 'OECD Guidelines') and the UN Guiding Principles on Business and Human Rights (hereinafter 'UNGPs'). Where applicable, this paper also looks at potential individual criminal liability for involvement in violations of international criminal law.

The structure of this paper is as follows. After identifying the paper's purpose and target groups and describing the research questions and methods, the paper provides an overview of Noble Energy's investments and activities in the region. Subsequently, the link between Noble's activities and the maritime border dispute between Israel and Lebanon is discussed. The paper then elaborates on the links between Noble's operations and (actual and potential) adverse human rights impacts in the occupied Palestinian territory, especially in the context of the on-going naval blockade imposed by Israel on the Gaza Strip, and the settlement infrastructure in the West Bank. For each issue and potential adverse human rights impact identified, Noble Energy's actions (or omissions) are analysed in light of the expectations of companies laid out in the OECD Guidelines and UNGPs. Finally, the paper highlights an important connection between Eastern Mediterranean gas exploitation and the Netherlands. The paper concludes by providing recommendations to both Noble Energy and the Dutch government to improve implementation of and compliance with international standards. ◻

Aim and target group

This paper aims to raise awareness among corporate managers and policy-makers about the human rights impacts related to natural gas exploration in the Eastern Mediterranean, including impacts on the right to self-determination, freedom of movement, and access to livelihood. The findings and recommendations also serve to support civil society groups in their work of promoting corporate accountability and respect for human rights, particularly those involved in promoting accountability in the development of Eastern Mediterranean gas fields. The scope of this paper is limited to the operations of one multinational corporation – Noble Energy – in the context of two specific conflicts, those between Israel and Lebanon and between Israel and the occupied Palestinian territories. The paper therefore only draws specific conclusions in relation to those situations. However, the analysis of the risks, impacts, and due diligence requirements related to Noble Energy's operations in a conflict-affected environment should also be useful for other extractive companies operating in conflict-affected areas. The ultimate beneficiaries of this publication are the individuals and communities around the world that are potentially adversely affected by gas exploitation activities.

Research questions and methods

This briefing paper is one in a series of case studies conducted by SOMO's Natural Resources programme, which aims to shed light on the impact of multinational corporations' operations in conflict-affected areas. This case study focuses on Noble Energy's offshore gas exploration, extraction, and sales activities in the Eastern Mediterranean, and seeks to answer two questions: 1) What is the relationship – if any – between Noble Energy's activities in the Eastern Mediterranean and actual and potential adverse human rights impacts? 2) Has Noble Energy abided by applicable international laws and standards in this regard, particularly in relation to human rights due diligence? In the OECD Guidelines and UNGPs, companies are required to conduct human rights due diligence, which means that they avoid causing or contributing to any adverse human rights impacts of its own activities, and that they identify, prevent and mitigate any (potential) adverse human rights impacts directly linked to their operations, products, and services through business relationships. Human rights due diligence also includes a company's responsibility to address impacts of its activities, and to engage with business partners to use its leverage to prevent, mitigate and remediate adverse impacts caused or contributed to by these partners.

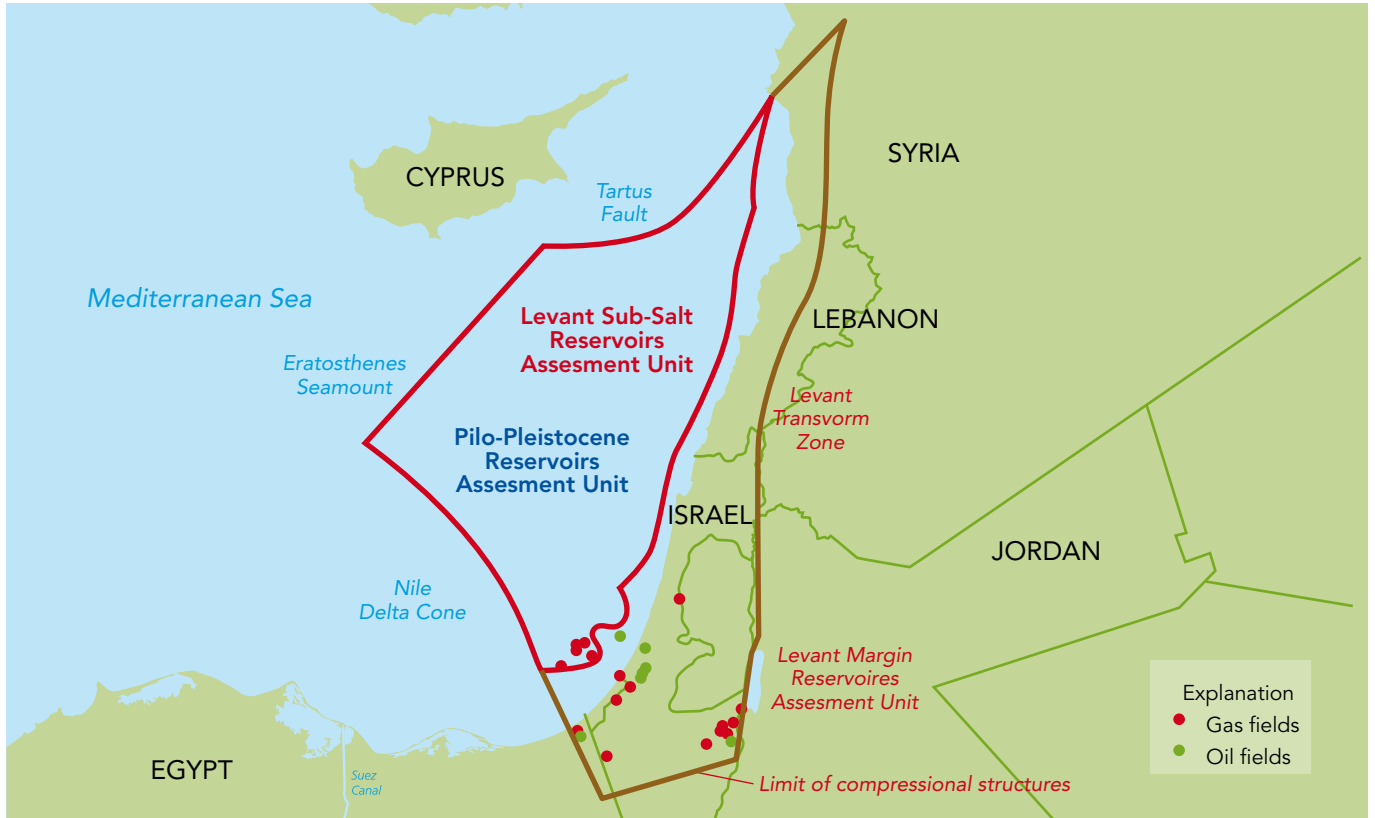
The information contained in this report was collected through desk research, sourcing corporate publications (including annual reports), news databases, reports by non-governmental organisations (NGOs), and articles from various media outlets. Noble Energy and the Dutch firm Kiwa Technology were given the opportunity to review and provide comments on a draft version of the paper, following which SOMO received their comments in writing and engaged in a conversation to further exchange and clarify information. The feedback of both companies has been incorporated into the present version.

Noble Energy's investment in Eastern Mediterranean gas

In recent years, the magnitude of potential natural gas reserves in the Eastern Mediterranean has become increasingly clear. In 2010, the U.S. Geological Survey estimated that the Levant Basin Province contains "a mean of 1.7 billion barrels of recoverable oil and a mean of 122 trillion cubic feet of recoverable gas".² These estimates would place the Eastern Mediterranean among the world's most prominent producers of natural gas in the decades to come.³ The northern end of the Levant Basin lies near the Syrian port of Tartus, runs down the coastlines of Lebanon, Israel, and the Gaza Strip (part of the occupied Palestinian territory), and west towards Cyprus (see Map 1).

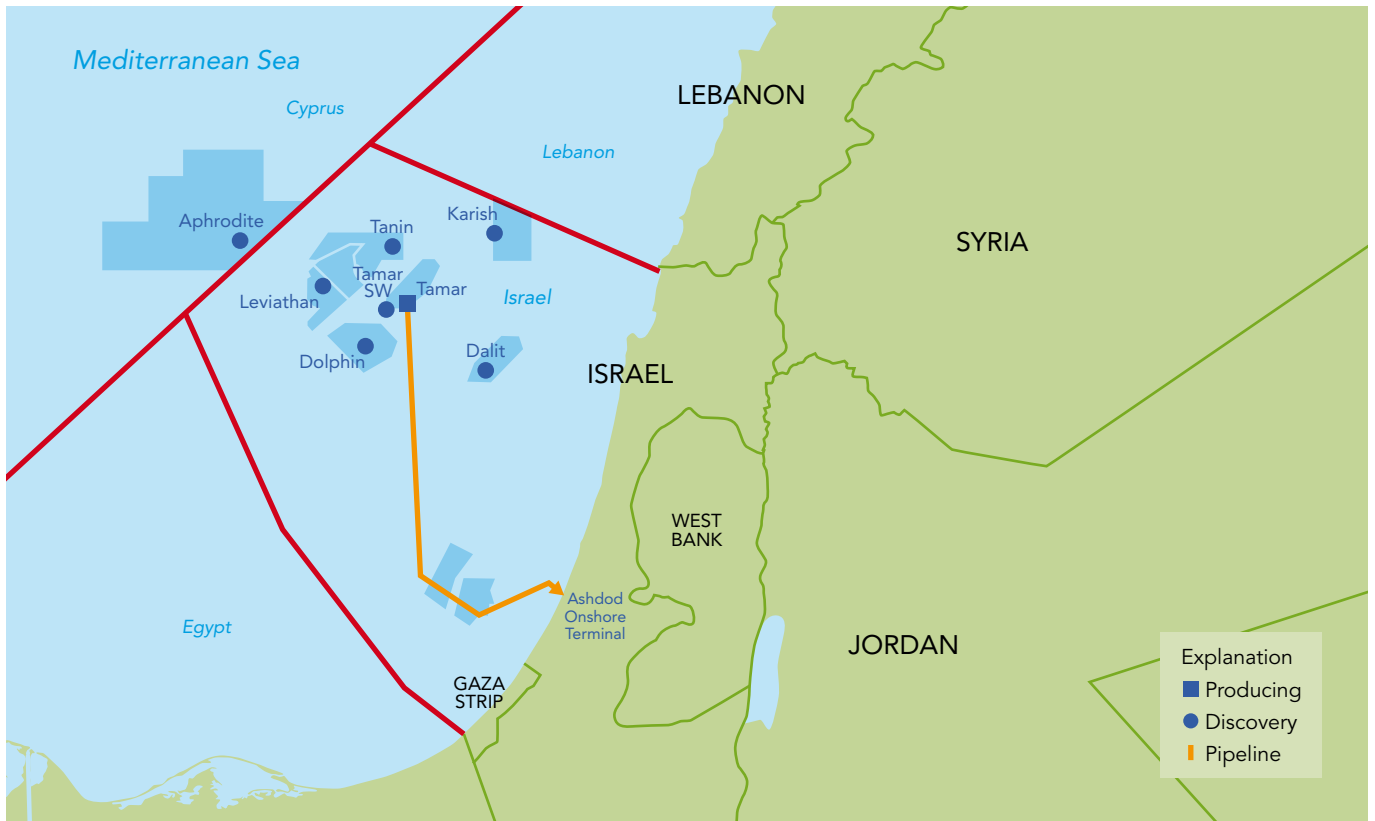
Tapping into these reserves, Noble Energy began its operations in Israel in 1998, where it has since invested more than US\$6 billion in the exploration and development of natural gas.⁴ Investments are made through two wholly-owned subsidiaries – Noble Energy International Ltd, registered in Cyprus; and Noble Energy Mediterranean Limited (NEML), incorporated in the Cayman Islands. Noble Energy indicates it has discovered over 40 trillion cubic feet of gas in the Levant Basin over the years,⁵ transforming Israel from an energy-dependent⁶ country to a potential supplier in the region. An overview of Noble's operations in the Eastern Mediterranean can be seen in Map 2. Among its first discoveries were the relatively small Noa field and the Mari-B field, discovered in 1999 and 2000 respectively, which border Palestinian territorial waters. Later, larger discoveries were made further north. The Tamar field was discovered in 2009, followed by Leviathan in 2010,⁷ after which there were smaller gas finds in the north, near Lebanese waters, notably the Tanin and Karish fields. Leviathan constituted the largest discovery ever for Noble Energy, and it is the largest natural gas find in the last decade globally.⁸ Inside Israel, the discovery of Leviathan has been subject to controversy and objections by the antitrust authority, warning of a monopoly position for Noble Energy and its partner Delek Group.⁹

Map 1 Assessment of undiscovered oil and gas reserves, Levant Basin Province



Source: U.S. Geological Survey¹⁰

Map 2 Overview of Noble Energy's operations in the Eastern Mediterranean, as of 31 December 2015



Source: Noble Energy, 2015 Annual Report¹¹

Delek Group is an Israel-based oil and gas exploration and production company that has (part) ownership over a wide variety of subsidiary companies, including gas stations, roadside retail stores, and insurance companies that operate in Israeli settlements in the West Bank.¹² One of Delek's wholly-owned subsidiaries, Delek Israel Fuel, has also been a supplier of fuel and fueling services to the Israeli army and Ministry of Defense¹³, and a supplier of petroleum-based products to the Israeli army.¹⁴

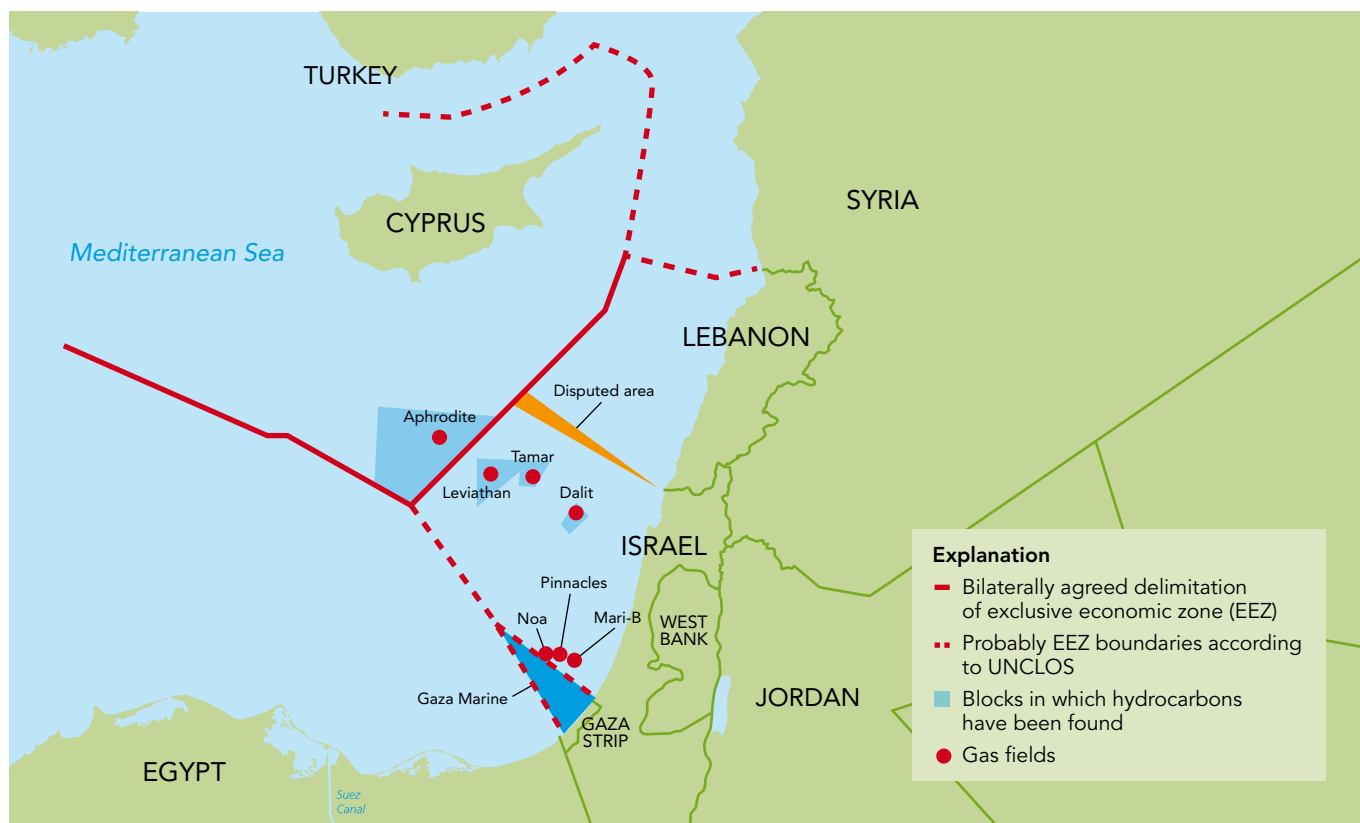
Noble Energy sees exploitation of gas reserves in the Eastern Mediterranean as a great opportunity, bringing together low-cost, abundant supply and a large regional demand.¹⁵ In 2015, Israeli-licensed gas accounted for 12% of Noble Energy's total sales volume and 27% of its proven reserves.¹⁶ Among the company's Israeli-licensed offshore operations, several have been linked to controversies in the context of cross-border conflict with Lebanon and the Palestinian Authority (PA), including allegations of pillaging and concerns around State territorial integrity. Despite these controversies, Noble Energy has pushed operations in the region forward, risking the exacerbation of existing conflict and potentially contributing or directly linking itself to adverse human rights impacts in the region. These operations and their potential impact on the conflicts and (risk of) adverse human rights impacts are discussed below.

Unclear lines: the Israel-Lebanon maritime border dispute

Part of Noble Energy's operations in the Eastern Mediterranean are located in a maritime area that is subject to a border dispute between Israel and Lebanon, whose decades-long conflict has alternated between periods of intense hostilities and fragile ceasefires.

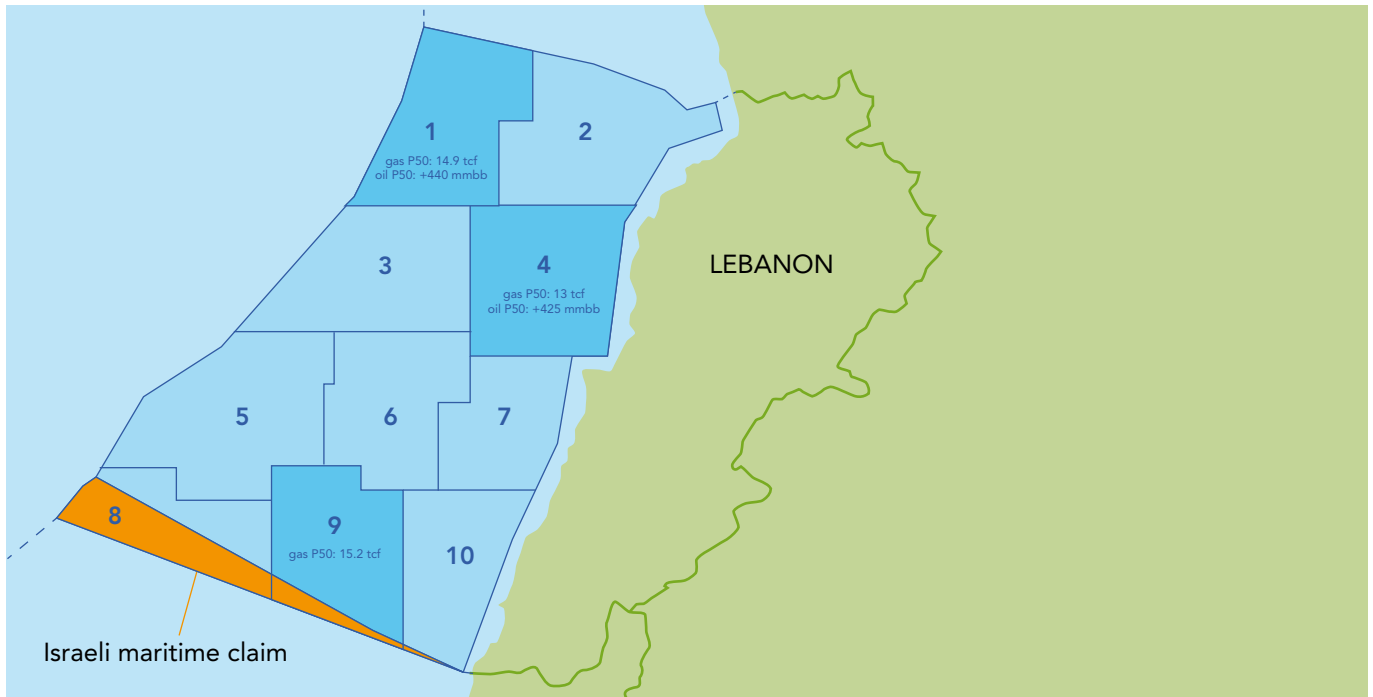
There is no mutually agreed maritime border between Israel and Lebanon. The 1994 United Nations Convention on the Law of the Sea (UNCLOS) provides for the delimiting of exclusive economic zones (EEZs)¹⁷ between States, and the exercising of continental shelf jurisdiction.¹⁸ Under UNCLOS and customary international law, States have the right to claim up to 200 nautical miles (equivalent of 370 kilometres) as their EEZ.¹⁹ Following Noble Energy's discovery of the Leviathan field in 2010, Israel unilaterally declared its EEZ in July 2011. As can be seen in Map 3, Israel's unilaterally declared EEZ overlaps with Lebanon's requested EEZ coordinates (as sent to the UN the year before²⁰) by 850 square kilometres, or approximately 248 square miles.²¹ The disputed area is potentially rich in natural gas resources.

Map 3 Disputed maritime area (including exclusive economic zones) between Lebanon and Israel



Source: Institute for Strategic Studies²²

Map 4 Overview of license areas for gas reserves offshore Lebanon



Source: Executive Magazine²³

In 2013, Lebanon’s Energy and Water Minister Gebran Bassil pointed to concerns for extraction of Lebanese gas by Israel, and said Lebanon should move to demarcate its offshore natural gas blocks and finalize exploration and production agreements.²⁴ However, the country’s internal political instability²⁵ has delayed the finalisation of such agreements²⁶ as well as its EEZ delimitation, thereby stalling the development of the gas fields.²⁷ The formation of a new Lebanese government in December 2016 seems to have ended the internal political deadlock. In January 2017, Lebanon opened five offshore gas blocks up for bidding. As can be seen in Map 4, three of these blocks are partially located within the disputed maritime zone, notably blocks 8, 9, and 10,²⁸ overlapping with licenses which Israel awarded to Noble Energy. According to media reports, Israel has requested that the United Nations and United States pressure Lebanon to change its exploration tenders for the three blocks located in the disputed maritime zone.²⁹

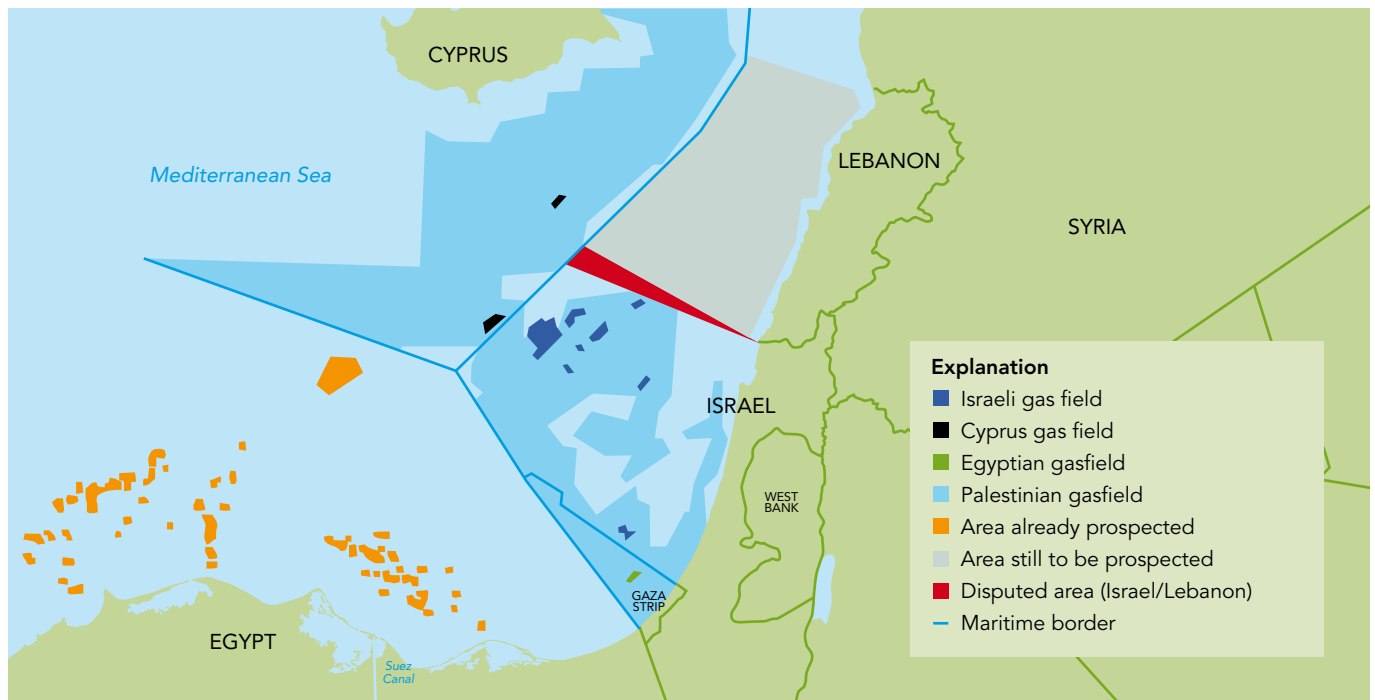
The conflicting geographical claims, combined with Noble Energy’s license purchasing, gas finds, and exploration drilling near and at the Lebanese border have led to mutual threats of violence and use of force between Israel and Lebanon (primarily Hezbollah).³⁰

Noble Energy – together with Delek Group - has held the Israeli-issued license for block Alon D, which stretches into the disputed maritime zone.³¹ The location of block Alon D can be seen in Map 5. According to information made available by Israel’s Ministry of Energy and Water Resources,

the license expired on 1 March 2016,³² and Delek has appealed that decision,³³ a process which was still pending at the time of publishing this report.³⁴ Several reports have indicated that the same ministry has prevented drilling in license area Alon D.³⁵ Noble Energy has indicated that the license was taken back by the Israeli Government.” This inserted sentences needs to have the following endnote: “Based on Noble Energy’s email communication to SOMO, dated 27 February 2017. The company did not respond to questions about its human rights due diligence in the process of obtaining the license located in a disputed area. Since the Alon D license stretches into Lebanese-claimed, and disputed territory, this raises concerns about the legality and potential adverse impacts of this license, as it can be argued that this license constitutes a violation of Lebanon’s territorial integrity, and the Lebanese people’s right to self-determination. By accepting the Israeli-issued license for Alon D, which stretches into disputed maritime territory, without identifying the risk of and seeking to prevent a potential violation of Lebanon’s territorial integrity, Noble Energy appears to have failed to conduct human rights diligence as it was expected to do under the OECD Guidelines and UNGPs.³⁶ By previously possessing a license which overlaps with a disputed maritime zone, Noble Energy was directly linked to a possible infringement of Lebanon’s territorial integrity, and of the Lebanese people’s right to self-determination.

The proximity of Tamar and Leviathan to the disputed maritime area led to a rise in tensions and an exchange of

Map 5 Overview of gas fields and license areas for gas reserves offshore Israel



Source: Aljazeera³⁷

hostile rhetoric between Israel and Hezbollah (part of the Lebanese government) in 2010 and 2011³⁸ in relation to the discovery and development of the fields.³⁹ Noble Energy, operator for both Tamar and Leviathan, pushed ahead development of the fields. The company initiated gas extraction from Tamar in 2013,⁴⁰ has started drilling for Tamar's expansion,⁴¹ and has so far appraised and flow-tested Leviathan⁴², which is expected to start producing gas by 2019.⁴³

Further controversy arose following the discovery of the Tanin and Karish gas fields by Noble Energy in 2012 and 2013. These fields are located in Israeli-licensed areas Alon A and Alon C respectively.⁴⁴ Alon C lies only four kilometres away from Lebanese natural gas Block 8, and is nine kilometres removed from Lebanese Block 9. Seismic surveys have identified Block 9 as potentially rich in natural gas.⁴⁵ Existing tensions and distrust between Israel and Lebanon have been exacerbated by Noble Energy's exploratory drilling in the Karish field,⁴⁶ - which, according to Noble Energy, is 10.6 kilometres⁴⁷, and according to Lebanese sources is 4 kilometres⁴⁸ removed from Lebanon's Block 9.⁴⁹ This has triggered concern within the Lebanese government that Noble Energy's operations in the Karish field might affect the Lebanese gas reserves, either by drilling in a contiguous gas resource, or through horizontal drilling.⁵⁰ Attempts by the US to resolve the dispute over the Karish field were unsuccessful.⁵¹ Eventually, following a ruling by the Israeli Antitrust Committee on Noble Energy's monopoly position in the Israeli gas market, the company

had to divest from its Karish and Tanin leases in January 2016⁵² and sell its stake to Delek Group,⁵³ who then agreed to sell the Karish and Tanin fields to Energean Oil & Gas.⁵⁴ Until then Noble had held 47.06% operating working interest in both Karish and Tanin.⁵⁵

Noble Energy has communicated openly about political developments that may adversely affect its operations, including "disruptions caused by territorial or boundary disputes in certain international regions, including the Eastern Mediterranean, where Lebanon recently made claims related to our projects in Israeli waters".⁵⁶ When responding to the findings of this report, Noble Energy stated it has carried out its activities in the region with the utmost care and respect for international boundaries, including disputed areas.⁵⁷

The maritime border dispute could be addressed bilaterally or through arbitration, but neither have been an option between the two parties until now, as they have no diplomatic relations. Furthermore, Lebanon has ratified UNCLOS, but Israel has not, precluding the possibility to invoke the related dispute settlement mechanism for resolving such conflicting claims.

While disputes over the maritime border – and thus potential gas exploration – remain, Noble Energy has capitalised on Israel's economic and military dominance to push forward the development and exploration of gas fields near the border. Pierre Terzian, editor of the energy weekly Petro-

strategies says: “In practical terms [...] nobody is going to invest with Lebanon in disputed waters. There are no Lebanese companies there capable of carrying out the drilling, and there is no military force that could protect them. But on the other side, things are different. You have Israeli companies that have the ability to operate in offshore areas, and they could take the risk under the protection of the Israeli military.”⁵⁸

When considering Israel as a potential gas supplier, the EU has expressed concern for tensions and conflict, noting “Israeli gas discoveries in 2009 and 2010 have transformed the Eastern Mediterranean into a natural gas producing region and a potential energy exporter for European and Asian markets. However, [...] the tensions between Israel and Gaza, [...] and the maritime border disputes cast a shadow on this economic opportunity. Moreover, the gas industry in the Eastern Mediterranean is at an infant stage, and the countries concerned seem unable to coordinate their plans for future exports.”⁵⁹ Nevertheless, the Israeli government and Noble Energy continue to push for Israeli gas exports to Europe.⁶⁰

As part of its human rights due diligence as laid out in the OECD Guidelines and UNGPs, Noble Energy is expected to avoid causing or contributing to any adverse human rights impacts of its own activities, and is expected to seek to prevent any potential adverse impacts that are directly linked to its operations or products through a business relationship. In the context of the Israel-Lebanon maritime border dispute, Noble Energy’s acceptance of the Alon D license (located in the disputed area) and its engaging in exploration activities near the disputed area directly link it to risks of adverse human rights impacts resulting from a potential violation of Lebanon’s territorial integrity, the Lebanese people’s right to self-determination, and the exacerbation of tensions between Israel and Lebanon over the gas resources located in the disputed maritime zone.

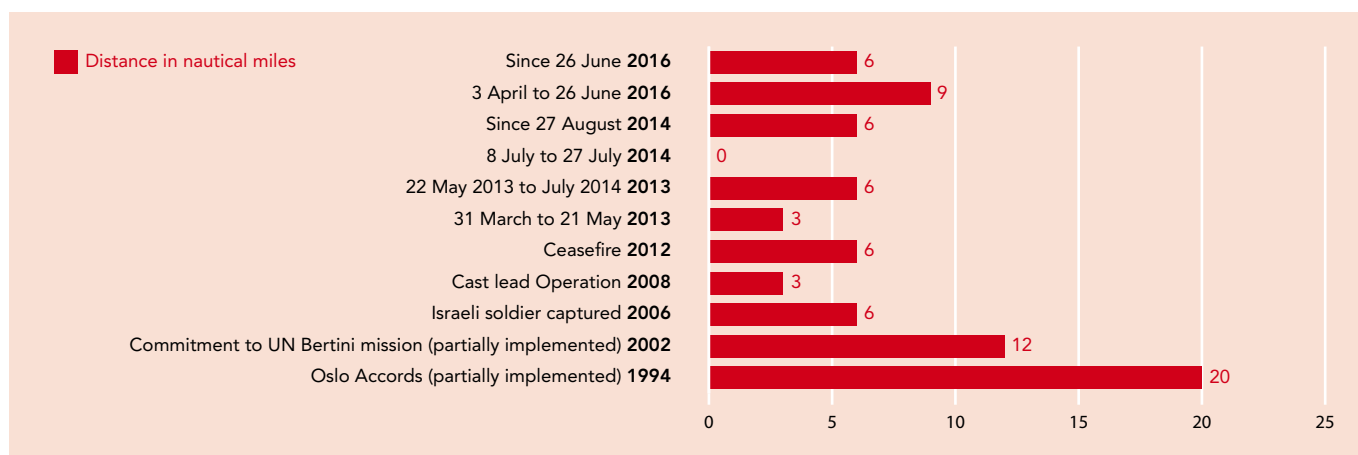
Noble Energy should have identified these potential adverse human rights impacts and sought to convince its business partner – in this case the government of Israel – to prevent them. If Noble Energy possessed insufficient leverage over its business partner to ensure that its partner would prevent such impacts, Noble Energy should have declined to accept the Alon D license. Given that Noble Energy did not undertake these actions, it can be concluded that Noble Energy did not conduct due diligence as outlined in the OECD Guidelines and UNGPs and thus failed to operate in line with these international standards.

Natural gas: an omnipresent factor in the occupation of Palestine

Context of the Israeli gas sector: illegal naval blockade

Under the “Oslo Accords between Israel and the Palestine Liberation Organization (PLO) Palestinians should have access to an area covering 20 nautical miles (37 kilometres) from the Gaza shore for fishing, recreation and economic activity. This includes the use of natural resources, including gas reserves. Despite having agreed to the 20-nautical mile limit, Israel has increasingly imposed movement restrictions in the maritime area belonging to the Gaza Strip since 2000,⁶¹ physically barring Palestinians from accessing their natural gas and a large part of their fishing waters. Since 3 January 2009, the Israeli navy has officially enforced a naval blockade on the Gaza Strip,⁶² under which it has imposed varying parameters of movement restrictions. The blockade is characterised by systematic attacks against Palestinian fishermen by the Israeli navy, including shooting with live bullets, unlawful arrests and the confiscation of fishing boats and equipment. The blockade has been condemned as a form of collective punishment of a civilian population by the UN,⁶³ International Committee of the Red Cross⁶⁴ and other international institutions.

Figure 1 Varying movement restrictions imposed on Palestinians in the area offshore the Gaza Strip, 1994-2016⁶⁵



Despite the officially announced maritime movement restrictions, Israeli navy attacks on Palestinian fishermen continue to be documented, even inside the announced parameters, closer towards the Gaza shore.⁶⁶ As one fisherman put it in testimony given to human rights organizations: "The permissible fishing area depends on the mood of the Israeli soldiers who systematically open fire against us and our fishing boats, leading to holes that are hard to fix."⁶⁷

Noble Energy's Mari-B rig and the Tamar platform are both located 13.5 nautical miles (25 kilometres) off Israel's coast.⁶⁸ As they are located more than 12 nautical miles (22 kilometres) off the coast (Israel's territorial waters), international law⁶⁹ requires Israel to facilitate international maritime traffic, and stipulates that the safety zone imposed around the platforms cannot exceed a 500-metre radius.⁷⁰ Nevertheless, Israel's Ministry of Defense has established a five-nautical-mile (9.3 kilometre) "safety zone" around Noble Energy's facilities, prohibiting fishing and other Palestinian vessels to move beyond 8.5 nautical miles (15.7 kilometres) off of the Gaza coast. As has been well-documented by local and international human rights organizations, the enforcement of the naval blockade and the so-called safety zone by the Israeli navy around Noble Energy's Mari-B rig is associated with severe human rights impacts, including naval attacks on fishermen (incl. with live

bullets), unlawful arrest and arbitrary detention, and the denial of right to livelihood, as the vast majority of Palestinian fishing water have been made inaccessible.

A journalist accompanying an Israel navy patrol boat has described the daily interaction between the Israeli navy and Palestinian fishermen in the proximity of the gas platforms in this way: "Vessels that approach within seven miles of the [gas] platforms will be intercepted by one of the navy's patrol boats. The intruder will be ordered to leave, and if it refuses, warning shots will be fired. This happens on a daily basis, because Gazan fishermen like to insist on their right to fish wherever they feel like it."⁷¹ Confirming this, a Lieutenant-Colonel in the Israeli navy has noted, "If we were not in the sector, the Palestinian fishermen would sail directly to the platforms to fish beneath them."⁷²

These movement restrictions have had a detrimental impact on the livelihood of Palestinian fishermen, who do not have access to their fishing areas and whose boats and equipment are regularly confiscated by the Israeli navy. The naval blockade has led to the total collapse of Gaza's fishing industry.⁷³ In a joint communication to the Prosecutor of the International Criminal Court, Palestinian human rights organisations illustrate the devastating impact on people's livelihoods: "Once a centrepiece of Gaza's economy and society, today more than 6,000 of the

Image 1 Palestinian fishermen are approached by Israeli navy off the Gaza coast, 15 January 2016



Source: Maannews⁷⁴

approximately 10,000 people who worked in various aspects of the fishing sector are now unemployed. Today there are still around 4,000 fishermen in Gaza operating approximately 1,000 boats. However, the impact of the closure and the restrictions imposed on access to the sea has been disastrous for the fishing industry. From a time-honoured tradition and respected profession, the prolonged closure has transformed fishermen in the Gaza Strip into one of the most marginalised and poorest working classes in Gaza.”⁷⁵

In recent years, several scholars⁷⁶ and journalists⁷⁷ have pointed to the development of Israel’s gas as an important underlying motivation for the naval blockade, seeing a coincidence of gas discoveries and the increased restrictions on movement imposed at sea. Not only the gas platforms, but also the gas pipeline between Ashkelon (Israel) and Al Arish (Egypt) – of which the exact location remains unclear – is likely to be located inside Palestinian waters, in the area made inaccessible to Palestinians.⁷⁸

Although the underlying motivations remain difficult to verify, the imposition of extensive no-go areas around Noble Energy’s assets raises questions about the connection between the development of Israel’s gas reserves and the overall naval blockade, and how the company might be benefiting from unlawful movement restrictions imposed by the Israeli navy. A 2015 environmental and social impact assessment of the Tamar expansion project – in which Noble Energy’s subsidiary NEML is a joint venture partner – acknowledges the extensive maritime movement restrictions put in place by the Israeli navy while failing to put them in an international legal framework and absolving the company of any responsibility: “Israel has a unique situation in that NEML’s gas producing facilities are considered as strategic assets that require strict security measures for protection. In this light, the Ministry of Defense establishes safety zones around the Noble Energy platforms that prevent fishing and other vessels from approaching within five miles of the facilities. From this sense, NEML has little to no influence on most maritime activities surrounding NEML’s platforms.”⁷⁹ Similarly, when providing feedback on a draft of this report, Noble Energy representatives expressed the view that the company has no influence on Israeli maritime policy, and that it is the task of Israeli government to protect offshore natural gas assets as well as the people on those assets against harm.⁸⁰

While this assertion may be true, it ignores the company’s responsibility under the OECD Guidelines and UNGPs to conduct due diligence to identify potential adverse impacts linked to its operations and seek to use what little leverage it did have to convince its business partner, the Israeli government, to prevent adverse human rights impacts such as those resulting from the naval blockade and

collective punishment of Gaza’s civilian population. If Noble Energy indeed had no leverage over the Israeli government, it should have considered terminating its business relationship with the government. Currently, Noble Energy is directly linked to the severe human rights impacts outlined above, through its relationship to the Israeli navy which enforces a naval blockade in the area surrounding Noble Energy’s platforms. SOMO did not encounter any information that would suggest Noble Energy has sought to prevent these impacts, or that it has tried to exert leverage of the Israeli authorities to effect change in the naval blockade policy. By failing to carry out its human rights due diligence, and by simply moving ahead with operations in areas made inaccessible to Palestinians, Noble Energy has failed to comply with the OECD Guidelines and UNGPs.

Palestinian gas and self-determination

Under the closure policy imposed by Israel, the economy of the Gaza Strip has all but collapsed, forcing 75% of Palestinians living there to rely on humanitarian aid. However, Palestinian aid and energy dependency⁸¹ issues could be ameliorated at least to some degree if the PA were allowed to access their (relatively small) gas reserves.

Natural gas reserves were discovered off the coast of the Gaza Strip in 1999. The PA awarded a 25-year exploration license to British Gas Group (hereinafter BG), covering the marine area offshore of the Gaza Strip. The following year, BG drilled two wells (Gaza Marine-1 and Gaza Marine-2) in the newly discovered natural gas reserve referred to as ‘Gaza Marine’ and estimated to hold 1 trillion cubic feet of natural gas.⁸² Located 19.4 nautical miles (36 kilometres) offshore at a depth of 603 meters, the reserve could be considered economically viable.⁸³ Following a technical review in 2001, recommending sub-sea development connected to an onshore processing terminal, the PA started exploring possibilities for development of the reserve, and in 2002 initiated negotiations for exporting the gas to Israel.⁸⁴ Despite BG’s efforts and diplomatic interventions,⁸⁵ the Israeli government and the Israeli Electric Company (IEC) remained reluctant to buy the Palestinian gas, while obstructing Palestinians’ physical access to the reserve, making development of the Gaza Marine impossible.

In 2001, Noble Energy legally challenged BG’s (PA-issued) license to explore the Gaza Marine. The Gaza maritime zone stretches to 20 nautical miles (37 kilometres) out of the coast, and is a space in which Palestinians have a legal right to conduct fishing, recreational, and economic activities – including the development of natural gas. The court gave no definite verdict, stating that the Gaza Marine would be “no-man’s water” until a final peace deal was reached.⁸⁶ Within the context of the resulting vacuum,

Noble Energy moved ahead with its exploration of Israeli gas reserves (e.g. the Noa field) contiguous to Palestinian reserves (e.g. the Border field) located in waters made inaccessible to Palestinians, while risking potentially extracting Palestinian gas illegally (this will be further elaborated on in the next section). Consistent with this approach, Map 2 seems to reflect the company view that the area offshore of the Gaza Strip is included in Israeli territorial waters. Notably, the image omits an indication of the (separate) status of Palestinian territorial waters offshore of the Gaza Strip (adjacent to the Egyptian coast) nor does it label the Gaza Strip itself. On 15 February 2016, BG Group – including its license for the Gaza Marine - was taken over by Shell.

The continued denial of access to their natural gas reserves – through Israel’s imposition of a naval blockade on the Gaza Strip – is a denial of Palestinian sovereignty over natural resources in the oPt, which constitutes a violation of Palestinian people’s right to self-determination, as recognized by the UN General Assembly and under the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.

It is important to highlight that the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has expressed his deep concerns about the situation in the occupied Palestinian territory (oPt), and the denial of Palestine’s right to development under the Israeli occupation.⁸⁷ In his 2016 report, the Special Rapporteur stated: “Israel, the Occupying Power, effectively controls the economic and social development of the Palestinian territory [...]. Measures that amount to violations of the right to development include the blockade of Gaza and the ensuing collapse of its economy, [...] exploitation and appropriation of Palestinian natural resources, the regime of formal economic dependency, unilateral control over Palestine’s external borders, the encumbering of personal and business mobility, restrictions on the use of agricultural lands, limitations on Palestinian fishery [...].”

Noble Energy’s operations and assets of the Noa field and Mari-B rig are directly linked to the violation of the right to self-determination caused by the naval blockade, through its relationship to the Israeli navy which enforces the naval blockade in the area surrounding Noble Energy’s assets. SOMO did not encounter any information that would suggest Noble Energy has sought to prevent these impacts, or that it has tried to exert leverage on the Israeli authorities to effect change in the naval blockade policy. By failing to carry out its human rights due diligence, and by simply moving ahead with operations in areas made inaccessible to Palestinians, Noble Energy has failed to comply with the OECD Guidelines and UNGPs.

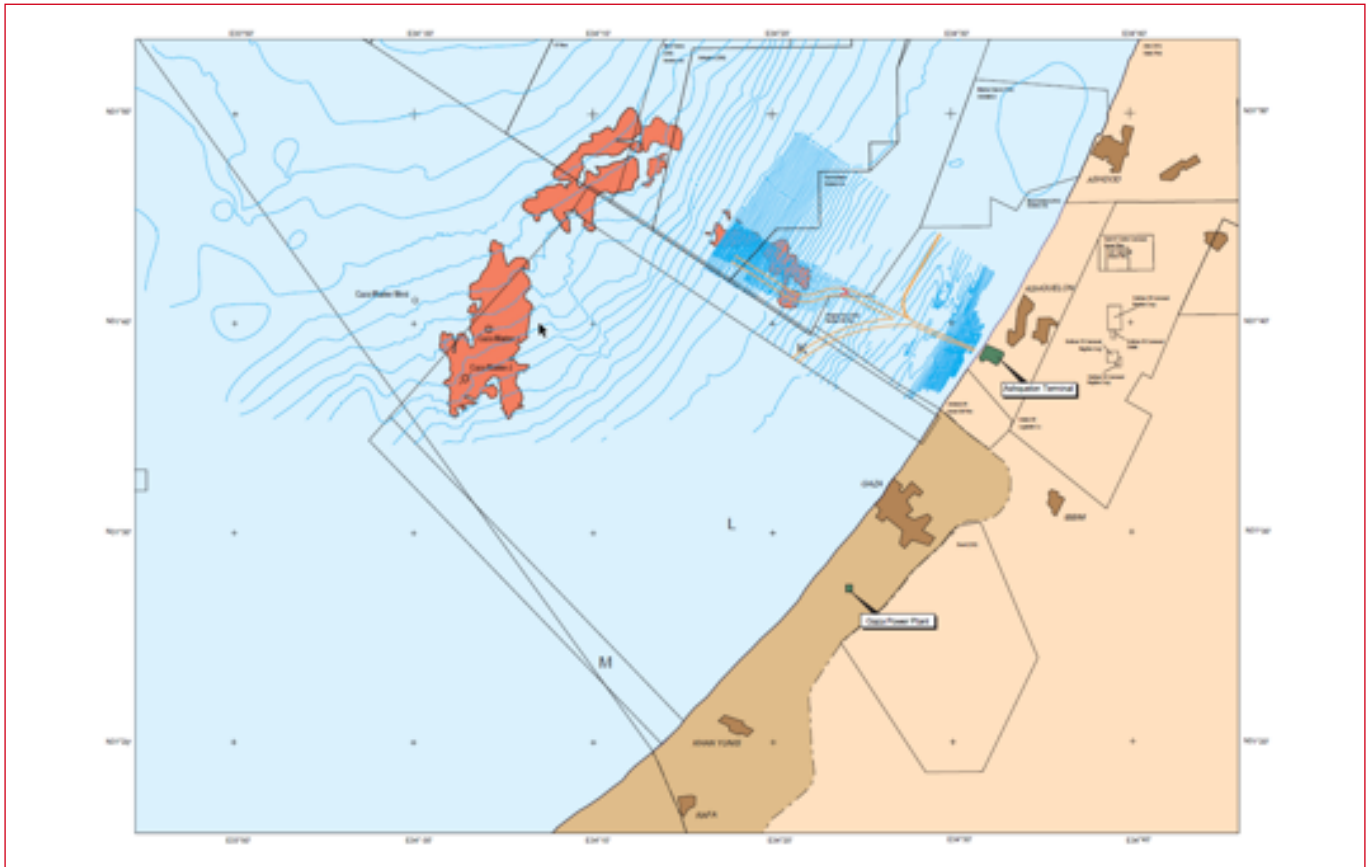
Pillaging of Palestinian gas?

After Israel’s Mari-B field, which started producing gas in 2004,⁸⁸ became depleted in 2012 and the gas pipeline between Al Arish (Egypt) and Ashkelon (Israel) became the target of sabotage following the 2011 Egyptian uprising, Israel’s gas supply became less stable. The Israeli government therefore saw the need to swiftly develop the Noa gas field, located 10.8 nautical miles (20 kilometres) west of Mari-B. Extraction of gas from Noa needed to “bridge the gap in the gas supply between the depletion of the Mari-B and the commissioning of the Tamar field”,⁸⁹ which was expected to start in April 2013.⁹⁰ However, the Noa gas field forms a contiguous geological resource with the Border Field,⁹¹ a 1.4 trillion cubic feet gas reserve located in Palestinian waters, as can be seen in Map 6. Noa and the Border Field are the most northerly orange fields in the image. It has been argued that extraction of gas from the Noa field could lead to draining gas from the Palestinian Border Field. Unilateral extraction would violate the Palestinian population’s sovereignty over its natural resources, and raise concerns regarding the gas companies’ involvement in the act of pillaging, and constitute a violation of Israel’s duty as an Occupying Power to protect immovable property of the occupied State.⁹² Palestinian civil society groups have previously raised concerns about the risks of unlawful extraction of Palestinian natural gas from the Border Field by drilling into the Noa field.⁹³

In this context, it is important to note that Noble Energy, in its communication to SOMO, has expressed the view that there are competing narratives regarding the occupied status of the Gaza Strip, and that it is not up to the company to determine which narrative is correct.⁹⁴ This view is in stark contrast with international consensus on this issue, including among the United Nations Security Council, International Committee of the Red Cross, and the Prosecutor of the International Criminal Court. Whether or not Noble Energy acknowledges the occupied status of the Gaza Strip (and oPt at large) is relevant to the contextual assessment it would make as part of its human rights due diligence; the oPt being under military occupation requires taking into account additional safeguards formulated in international humanitarian and criminal law, which protect the rights of the people living under occupation.

Customary international law⁹⁵ requires that Israel, as the Occupying Power, safeguard the immovable property (e.g. gas) of the territory it occupies. International criminal law⁹⁶ explicitly prohibits activities of pillage, either carried out by individuals or by States. Furthermore, gas extraction from a contiguous field would require a cooperation agreement with the Palestinian Authority under the Oslo Accords.⁹⁸ Despite the absence of such an agreement with the PA, Noble Energy and the Delek Group drilled wells into the

Map 6 Overview of gas fields offshore the Gaza Strip and Israel, and the pipeline connecting to Ashkelon



Source: BG Group, 2013, unpublished⁹⁷

Noa field and connected them to Mari-B, which served as a storage facility for the gas extracted from Noa at an expedited pace. This happened after Israel's Petroleum Commissioner accepted Noble Energy's assessment that there would be a "low probability" of natural gas exit from the southern and south-western part of the reservoir (Palestinian natural gas) when extracting gas from "Noa North".⁹⁹ However, Noble Energy's 2012 annual report refers to "Noa/Noa South" as the gas field that has been developed.¹⁰⁰

Noble Energy claims that they have extracted 33.7 billion cubic feet (bcf) of gas from the Noa field between 10 July 2012 and 23 November 2013.¹⁰¹ The company states that, although the lobe from which it extracted gas was located approximately two kilometres from the border with the Gaza Strip, it did not extract gas from the neighbouring Palestinian resource.¹⁰² Despite requests by SOMO, Noble Energy did not substantiate this statement with data, such as production maps, to verify the actual extraction that took place.

By failing to make efforts to assure Palestinian consent to gas extraction from the Noa field – which is contiguous to the Palestinian Border Field – Noble Energy has failed to comply with the OECD Guidelines and UNGPs and conduct appropriate human rights due diligence to identify

and prevent potential adverse human rights impacts. The company has also potentially contributed to a violation of the collective right of self-determination. Furthermore, if Palestinian natural gas was indeed drained from the Border Field (due to gas extraction from the Noa field), it could be argued that Noble Energy participated in an act of pillage, in violation of international humanitarian and criminal law which could also incur individual criminal liability.

Exploiting a captive market

Noble Energy supplies natural gas to IEC, which then converts it to electricity. Currently, more than 50% of IEC's power generation is done with gas supplied by Noble Energy. Part of the electricity generated by IEC is supplied to the occupied Palestinian territory (the Gaza Strip and West Bank).¹⁰³

In 1967, when Israel occupied the Palestinian territory, it replaced existing energy supply agreements for the territory with a single concession to IEC. This concession gave state-owned IEC full control over the Palestinian electricity grid, effectively treating the Palestinian people in the occupied territory as a captive market for the

company; 92% of electrical energy in the Gaza Strip and West Bank is purchased from IEC.¹⁰⁴ IEC's practice fits within a larger pattern, also identified by the United Nations, of using the occupied Palestinian territory as a captive market for exports from Israel.¹⁰⁵

Over the years, the Palestinian Authority has built up a considerable amount of debt to IEC (almost US\$530 million¹⁰⁶), at least partially because of Israeli-imposed limitations on fuel imports to the Gaza Strip (used for power generation), repeated Israeli airstrikes targeting Gaza's power plant, and being barred from developing new energy supplies. The World Bank has expressed concerns about those debts and criticized the IEC's lack of institutionalised and transparent invoicing, as well as the high interest rates it unilaterally imposes for delay in payment by the PA.¹⁰⁷

The IEC systematically imposes punitive power cuts on the PA,¹⁰⁸ which leaves Palestinians with long blackouts. During its negotiations with Israel, BG tried to get the Israeli commitment to abstain from punitive power cuts if there would be a contract for the Gaza Marine. Israel's refusal to commit was cited by BG as one of the reasons the negotiations fell through. According to BG Policy and Corporate Affairs Manager Michael Barron, one of the major stumbling blocks in the negotiations was Israel's refusal to "promise the Palestinian Authority not to disrupt the gas supply to Gaza".¹⁰⁹ Noble Energy, on the other hand, has had no such qualms, and has proceeded to sell natural gas to IEC, accounting for more than half of the power generation by IEC. It can be argued that, through these gas sales to IEC, Noble Energy is financially benefiting from IEC's effective use of the occupied Palestinian population as a captive market to which IEC's sells the electricity it generates.

Energy supply to illegal settlements

Noble Energy sells gas to electricity company IEC which converts the gas into electricity. In Israel, 92% of all natural gas produced is used by IEC to generate electricity.¹¹⁰ Part of this electricity is supplied to Israeli settlements in the West Bank. The acts underlying the establishment and maintaining of settlements constitute a number of war crimes under international humanitarian and criminal law, including: the forcible transfer of the Palestinian population; transfer of Israel's own population into the occupied territory; destruction and appropriation of property (extensive, unlawfully, and wantonly); persecution, and; the crime of apartheid.¹¹¹ Despite requests by SOMO, Noble Energy did not provide information about their efforts to prevent and/or mitigate these adverse impacts, to which the company, according to the UNGPs and OECD Guidelines, is directly linked through its natural gas sales

to the IEC. According to the OECD Guidelines and the UNGPs, Noble Energy should have engaged with IEC and sought to use its leverage to convince IEC not to use its gas to supply Israeli settlements with electricity. If that effort was unsuccessful, Noble Energy should have considered terminating its business relationship with IEC.¹¹²

Dutch gas connection

In the past, parliamentary questions have been put to the then Dutch Minister of Foreign Affairs and Minister of Economic Affairs, Agriculture, and Innovation about Noble Energy's development of gas reserves near the Gaza coast. Related concerns have also been expressed by a Palestinian official regarding potential pillaging of Palestinian natural gas.¹¹³ In response, the ministers stated that, "According to Israel, exploration-research has shown that the so-called Noa gas field is not shared and that Israel can unilaterally decide to develop the field."¹¹⁴ In the same response, the ministers express the view that the Palestinian Authority should first raise their concerns in bilateral contacts with Israel. This position disregards evidence of the contiguity of the Noa field, as well as the context of a military occupation in which the development of Palestinian natural resources is effectively barred.

The link with the Netherlands is important because IEC has enjoyed increasing collaboration with Dutch partners in recent years. Despite the abovementioned concerns related to adverse human rights impacts associated with the Israeli gas sector, the Dutch government has expressly identified the development of the gas sector as a priority in its economic cooperation with Israel, along with other sectors that have well-documented links to the illegal settlement infrastructure, such as agro-food, investment, and energy.¹¹⁵ A statement advertising a 2014 Dutch-Israeli networking event for the natural gas sector reads, "Dutch firms have been at the cradle of the development of the gas sector in Israel. They were involved in the construction of the Tamar platform and in Israel Electric Cooperation (IEC)'s transformation to natural gas. Furthermore, they participated in the establishment of the IEC Gas Academy, in the founding of NGA and INGL, in the standard setting of the Israeli gas distribution and in the supervision of design and construction of Israel's gas pipelines. Large business delegations of the Dutch natural gas sector came to Israel in 2012 and 2013, resulting in the expansion of Dutch-Israeli business relations in the sector. Israeli Prime Minister, Benjamin Netanyahu, and his Dutch counterpart, Mark Rutte, stated in a 2013 agreement that they hope to see increased cooperation in the field."¹¹⁶

Netherlands-based Kiwa Technology, a service provider in the energy and water sectors, was one of a dozen Dutch

companies included in a 2013 trade mission to Israel that was organized by the Dutch Ministry of Foreign Affairs.¹¹⁷ As part of bilateral collaboration in the gas sector, Kiwa Technology and the IEC jointly established IEC's Gas Academy, which provides vocational training in the Israeli gas industry.¹¹⁸ When contacted during the research for this report, Kiwa Technology explained that they conducted trainings for the gas companies – including for IEC – in 2013 and 2014, and that they ended their cooperation with IEC in 2015, citing business considerations.¹¹⁹ In light of IEC's use of gas to generate electricity and its subsequent supply of that electricity to settlements in the West Bank, Kiwa Technology – through its business relationship with IEC – can be considered to have been directly linked to adverse impacts and violations of international humanitarian and criminal law contributed to by IEC. Kiwa Technology should have conducted due diligence to identify and seek to prevent these adverse impacts, as was expected of them under the OECD Guidelines and the UNGPs. If prevention of the adverse impacts proved impossible (e.g. IEC would not refrain from providing electricity to settlement), Kiwa Technology should have considered not entering into or – once entered into – responsibly disengaging from the cooperation with IEC on the Gas Academy.

In this same context, the Dutch government appears not to be upholding its duty to protect human rights under the UNGPs. Given the context of military occupation and conflict, there is a heightened risk of gross human rights abuses. Principle 7 of the UNGPs establishes that “[...] States should help ensure that business enterprises operating in those contexts are not involved with such abuses” and should provide support to companies – including in risk identification, prevention and mitigation – and ensure that their own policies, legislation, regulations and enforcement measures “are effective in addressing the risk of business in involvement in gross human rights abuses”. In a 2014 resolution, the UN Human Rights Council further elaborated on this duty, in relation to human rights violations under the Israeli occupation of the oPt, urging all States “[...] to implement the UNGPs in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to encourage businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, to refrain from committing or contributing to gross human rights abuses of Palestinians, in accordance with the expected standard of conduct in the UNGPs and relevant international laws and standards.”¹²⁰ The resolution further urges States to “provide information to individuals and businesses on the financial, reputational and legal risks, as well as the possible abuses of the rights of individuals, of getting involved in settlement related activities, including economic and financial activities, the provision of services in settlements and the purchasing of property.”¹²¹ Rather than promoting responsible business

conduct by Dutch companies, the Dutch approach to promoting Dutch-Israeli cooperation in the gas sector has been void of the required caution, guidance and accountability mechanisms in order to prevent and mitigate Dutch corporate involvement in human rights violations under the Israeli occupation.

Summary and conclusions

This research examined Noble Energy's offshore gas exploration and extraction activities in the Eastern Mediterranean with a particular view toward assessing what relationship – if any – exists between Noble Energy's activities in the Eastern Mediterranean and actual and potential adverse human rights impacts? It also sought to answer whether Noble Energy abided by applicable international laws and standards in this regard, particularly in relation to human rights due diligence.

The research results and subsequent analysis indicate that Noble Energy's gas exploration and extraction activities in the Eastern Mediterranean are directly linked to several actual and potential adverse human rights impacts in the occupied Palestinian territory and Lebanon. The specific adverse human rights risks and impacts linked to Noble Energy's operations – along with reference to what is expected of Noble Energy in terms of human rights due diligence and under applicable international law – are summarized below.

In relation to the occupied Palestinian territory

- ❑ The company has extracted gas from the Noa field, which is contiguous to the Palestinian Border Field, off the Gaza coast, risking extraction of Palestinian gas from the Border Field, which would potentially amount to the international crime of pillage¹²², for which individual perpetrators can be held liable. Failing to respect international law, which requires gaining consent of / agreement with the Palestinian Authority, Noble Energy has potentially caused human rights violations, including a violation of the collective right of self-determination.
- ❑ Failing to carry out its human rights due diligence, and simply moving ahead with operations in areas made inaccessible to Palestinians, Noble Energy is directly linked to adverse human rights impacts including the denial of self-determination, the imposition of unlawful movement restrictions, and the collective punishment of a civilian population through the illegal blockade by the Israeli navy. The continued denial of access to their natural gas reserves – through Israel's imposition of a naval blockade on the Gaza Strip - constitutes a violation

of Palestinian people's right to self-determination, as recognized by the UN General Assembly and under the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. The naval blockade and the so-called safety zone imposed by the Israeli navy around Noble Energy's Mari-B rig is also associated with adverse impacts on the right to life, the right to freedom from unlawful arrest and arbitrary detention, and the denial of right to livelihood. These movement restrictions also have detrimental impacts on the livelihood of Palestinian fishermen, who do not have access to their fishing areas and whose boats and equipment are regularly confiscated by the Israeli navy.

- Part of the gas extracted by Noble Energy is sold to Israeli Electric Corporation (IEC), which uses it to supply settlements in the West Bank with electricity. The acts underlying the establishment and maintenance of settlements constitute a number of war crimes under international humanitarian and criminal law including: the forcible transfer of the Palestinian population; transfer of Israel's own population into the occupied territory; destruction and appropriation of property (extensive, unlawfully, and wantonly); persecution, and; the crime of apartheid,¹²³ and infringe upon several human rights of Palestinians living in the West Bank, including the right to freedom of movement, the right to livelihood, the right to adequate housing, the right to property or possessions, and the right to be free from discrimination. Noble Energy has failed to engage with IEC in order to prevent electricity supply to Israeli settlements. By selling gas to IEC, which subsequently converts it into electricity it partly supplies to settlements, Noble Energy is directly linked to adverse human rights impacts and violations of international humanitarian and criminal law.

In relation to Lebanon

- Noble Energy failed to carry out human rights diligence when obtaining licences near and in the disputed maritime zone, in particular regarding the license for Alon D. The Israeli-issued license for Block Alon D overlaps with a disputed maritime zone, thereby directly linking Noble Energy's possession of the license to a potential infringement of Lebanon's territorial integrity, and the Lebanese people's right to self-determination.
- Noble Energy has moved ahead in exploring gas field Karish, which lies in close vicinity of the dispute maritime area with Lebanon, thereby exacerbating existing tensions between Lebanon and Israel, and raising Lebanese concerns regarding the integrity of the Lebanese gas reserves.

Recommendations

To Noble Energy

- Immediately put on hold all operations near the maritime borders with the Gaza Strip and Lebanon until proper human rights due diligence can be conducted to identify actual and potential human rights impacts, prevent those impacts that can be prevented, and mitigate and remediate those impacts that have already occurred.
- Provide stakeholders with material verifiable information about the gas extraction from the Noa field and the (absence of) impacts on the gas contained in and the structure of the Palestinian Border Field.
- Exert leverage on the Israeli authorities to cease the imposition of the naval blockade on the Gaza Strip. If this proves unsuccessful, consider responsibly disengaging from operations directly linked to the abovementioned adverse impacts on the human rights of the Palestinians.
- Exert leverage on business partner IEC to cease providing electricity to Israeli settlements in the West Bank. If this proves unsuccessful, consider responsibly disengaging from the business relationship with IEC, which directly links Noble Energy's products with the abovementioned adverse impacts on the human rights of the Palestinians.
- Remain disengaged from any possession of the Israeli-issued licence of Block Alon D, as long as this license overlaps with a disputed maritime zone.

To the Dutch government

- Provide effective guidance to Dutch companies, based on the OECD Guidelines and UNGPs, on how to identify, prevent, and mitigate human rights impacts in the context of the Israeli occupation of Palestinian territory, and in the context of the maritime border dispute between Israel and Lebanon.
- Conduct a review of the (potential) adverse human rights impact related to Dutch corporate activities in the Israeli gas industry. Until such a review is carried out, refrain from further activities to promote Dutch corporate relationships in the Israeli gas sector.

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Colophon

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