

COUNCIL ON ETHICS

THE GOVERNMENT PENSION FUND GLOBAL

UNOFFICIAL ENGLISH TRANSLATION

To Norges Bank

17.12.2020

**Recommendation to exclude Mivne Real Estate KD Ltd from the
Government Pension Fund Global**

Summary

The Council on Ethics recommends that Mivne Real Estate Kd Ltd (Mivne) be excluded from investment by the Government Pension Fund Global (GPF) due to an unacceptable risk that the company is contributing to serious violations of the rights of individuals in situations of war or conflict.

Mivne is an Israeli real estate company that owns and lets commercial property. The company is listed in Tel Aviv. At close of 2019, GPF owned 0.53 of the company's shares to the value of NOK 103.6 million.

The Council on Ethics' recommendation rests on the fact that the company engages in letting of industrial real estate linked to Israel settlements in the West Bank. The company has not replied to the Council's enquiries but provides details of its operations on its website.

The Council considers that the company's letting of buildings constructed in violation of international law contributes to the continuation of an illegal state that their construction once initiated. This form of contribution to international law violations constitutes, in the Council's view, grounds for exclusion from the GPF.

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1 Introduction

The Council on Ethics for the Norwegian Government Pension Fund Global (GPF) has assessed the Fund's investments in Mivne Real Estate KD Ltd¹ (Mivne) against the Guidelines for Observation and Exclusion from the GPF.²

At the close of 2019, the GPF owned 0.53 per cent of the shares in Industrial Building Corp Ltd, worth NOK 103.6 million. The company has since changed its name to Mivne Real Estate KD Ltd. Mivne is an Israeli real estate company that owns and lets commercial property.

1.1 Matters considered by the Council

The Council on Ethics has assessed whether, pursuant to section 3(b) of the GPF's ethical guidelines, there is an unacceptable risk that Mivne is contributing to or is itself responsible for serious infringements of the rights of individuals in situations of war or conflict in connection with its letting of commercial and industrial premises in Israeli settlements in the West Bank.

1.2 Sources

Regarding information about the Mivne's operations, the Council on Ethics has based its assessment on information published on the company's website. With regard to the area's status under international law, the Council relies on statements issued by various UN bodies, the International Court of Justice in the Hague, and the International Committee of the Red Cross.

2 Background

2.1 Israeli settlements and industrial zones in the West Bank

The West Bank is the term used for the area of land that lies east of the 1948 demarcation line and west of the River Jordan. The territory was occupied by Israel during the Six-Day War in 1967. Before that, the area was occupied by Kingdom of Jordan. Following the signing of the Oslo Accords, authority for parts of the West Bank, the so-called A and B areas, was transferred to a Palestinian self-governing authority. A large part of the West Bank is designated as Area C and remains under Israeli civilian and military authority. All Israeli settlements in the West Bank are located in Area C. Over 400,000 Israelis currently live in settlements in the West Bank.

According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the settlements and their associated infrastructure cause substantial harm to the Palestinian population. The separation barrier and a large number of roadblocks and checkpoints prevent freedom of movement between Palestinian areas and access to farmland.

¹ Issuer ID: 135653

² Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPF): <https://nettsteder.regjeringen.no/etikkradet3/files/2019/12/guidelines-for-observation-and-exclusion-from-the-gpf-01.09.2019.pdf>

This is having a negative impact on economic development in the West Bank. Other factors, such as the settlements' use of limited natural resources, are also highly disadvantageous to the Palestinian population:

“Since 1967, about 250 Israeli settlements and settlement outposts have been established across the West Bank, including East Jerusalem, in contravention of international law. Settlements are a key driver of humanitarian vulnerability. The establishment and constant expansion of settlements has had a negative impact on the living conditions of Palestinians, resulting in the loss of property and sources of livelihood, restrictions on access to services, and a range of threats to physical security, which in turn have generated need for assistance and protection measures by the humanitarian community.”³

Further:

“Palestinians in the West Bank are subject to a complex system of control, including physical (the Barrier, checkpoints, roadblocks) and bureaucratic barriers (permits, closure of areas) which restrict their right to freedom of movement. The expansion of Settlements, restrictions on access to land and natural resources and ongoing displacement due to demolitions in particular, are ongoing.”⁴

2.2 Mishor Adumim Industrial Park and Jerusalem-Atarot Industrial Area

Industrial zones have been established in connection with some of the settlements, where Israeli enterprises can operate. Mishor Adumim Industrial Park is a large industrial area linked to the Israeli settlement Ma'ale Adumim in the West Bank, some 5 km northeast of Jerusalem. According to the Israeli authorities, some 300 factories and other business enterprises are located inside the industrial park.⁵ Adjacent to the Atarot settlement, just north of Jerusalem, is the Jerusalem-Atarot Industrial Area. According to the Israeli authorities, the area also contains a large number of different businesses.⁶

2.3 Legality of Israeli settlements in the West Bank

2.3.1 Fourth Geneva Convention

The point of departure for assessing the legality of the settlements is the Fourth Geneva Convention (Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War). The Convention establishes, *inter alia*, the rights and duties an occupying state has in an occupied territory. The Convention came into effect in 1950, and Israel became a signatory to it, without reservations, in 1951. The legality of the settlements may be assessed against the

³ United Nations Office for the Coordination of Humanitarian Affairs (OCHA): Humanitarian Impact of Settlements: <https://www.ochaopt.org/theme/humanitarian-impact-of-settlements>.

⁴ OCHA: <https://www.ochaopt.org/location/west-bank>

⁵ Ministry of Economy and Industry:

<http://www.economy.gov.il/English/Industry/DevelopmentZoneIndustryPromotion/ZoneIndustryInfo/Pages/MishorAdumim.aspx>

⁶ Ministry of Economy and Industry:

<http://www.economy.gov.il/English/Industry/DevelopmentZoneIndustryPromotion/ZoneIndustryInfo/Pages/Atarot.aspx>

Convention's ban on an occupying state relocating parts of its population to an area that it occupies.

The Convention's area of scope is set out in Article 2, which states, *inter alia*: “[...] Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”

Article 4 sets out who the Convention is intended to protect: “Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals. [...]”

Article 49(6) of the Convention states that: “[...] The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”⁷ The purpose of this provision is to prevent an occupying power from absorbing occupied areas and to protect local populations from any worsening of their economic situation.⁸ Any such action is deemed to be a war crime under the Rome Statute of the International Criminal Court.⁹

After the Six-Day War, Israel disclaimed its legal obligation to abide by all the Convention's provisions on the grounds that the West Bank was already occupied by Jordan before it was occupied by Israel. Although this reservation was rejected by other states and by the UN, it resulted, *inter alia*, in Israel permitting the construction of settlements in the occupied areas. In 2004, Israel's Supreme Court found that the Fourth Geneva Convention applied in full to the occupied areas and that construction of settlements therein was illegal. However, it further specified that the ban applied only to the establishment of new settlements, not the expansion of existing settlements.

2.3.2 International bodies' views on the legality of the settlements

There is broad international consensus that the Israeli settlements in the West Bank violate international law.

The UN Security Council has passed a number of resolutions on the settlements. Security Council Resolution 465, which was passed unanimously on 1 March 1980, states, *inter alia*, that Israel's policy and practice with respect to building settlements in occupied areas are without legal validity and constitute “a flagrant violation” of the Fourth Geneva Convention.¹⁰ Most recently, this was repeated in Resolution 2334 from 2016.¹¹

In 2004, the International Court of Justice (ICJ) in the Hague issued a legal opinion on the legality of Israel's separation barrier in the West Bank. Here, the ICJ also considered the legality of the Israeli settlements. The ICJ took the position that the Fourth Geneva Convention applies in full to Israel's occupation of the West Bank, and that the establishment of settlements in the occupied area is illegal: “The Court concludes that the Israeli settlements

⁷ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380>

⁸ International Committee of the Red Cross, Commentary on the Fourth Geneva Convention (1958), Article 49, p. 283.

⁹ Rome Statute of the International Criminal Court of 1998, Article 8(2)(b)viii.

¹⁰ Security Council Resolution 465: <https://unispal.un.org/UNISPAL.NSF/0/5AA254A1C8F8B1CB852560E50075D7D5>

¹¹ Security Council Resolution 2334: <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.”¹²

On several occasions, the International Committee of the Red Cross (ICRC), which has a treaty-based mandate under the Geneva Conventions, has issued statements on the legality of the Israeli settlements in the West Bank. A statement from 2001 says: “*The participating High Contracting Parties call upon the Occupying Power to fully and effectively respect the Fourth Geneva Convention in the Occupied Palestinian Territory, including East Jerusalem, and to refrain from perpetrating any violation of the Convention. They reaffirm the illegality of the settlements in the said territories and of the extension thereof.*”¹³

2.3.3 Norway’s position on the legality of the settlements

Norway’s official position with respect to the settlements has always been that they violate international law. This is rooted in the resolutions passed by the UN Security Council and the opinions published by the ICJ.¹⁴

2.3.4 Israel’s view of the settlements’ legality

The Israeli view is that the settlements are not illegal and that claims to this effect are politically motivated. Israel refers, *inter alia*, to the fact that the relocation of Israelis to the settlements is voluntary and that the settlements do not displace other population groups in the area. Moreover, Israel points out that several of the settlements have been established in areas where Jewish communities were located in ancient times.¹⁵

2.3.5 The Council on Ethics’ previous practice

The Council on Ethics has previously taken the position that the Israeli settlements in the West Bank have been built in violation of international law, and that their existence and constant expansion cause significant harm and disadvantage to the Palestinian population in the area. The Council considers that a company that engages in the physical construction of settlements in the West Bank is closely associated with the violation of international law and contributes directly to it, and that this constitutes grounds for recommending that the company be excluded from investment by the GPF. ¹⁶

2.4 Rules governing the occupying power’s right of use

There are severe constraints on an occupying power’s right of use in respect of land.¹⁷

The use of occupied land for commercial purposes on behalf of the occupying power may occur only to the extent necessary for the administration of the occupied territory and to meet

¹² ICJ, 2004: <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

¹³ Conference of High Contracting Parties to the Fourth Geneva Convention Declaration, Geneva, 5 December 2001: <https://www.icrc.org/en/doc/resources/documents/article/other/5fldpj.htm>

¹⁴ Norwegian Ministry of Foreign Affairs: Answers to questions about the Israeli settlements in occupied territory (in Norwegian only), 27 November 2019: https://www.regjeringen.no/no/aktuelt/dep/ud/dialog_stortinget/stortinget_svar/2019/svar_bosettinger3/id2680080/

¹⁵ Israel Ministry of Foreign Affairs: Israeli Settlements and International Law: <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx>

¹⁶ The Council on Ethics’ recommendations to exclude the companies Africa Israel Ltd and Danya Cebus (2009), and Shikun and Binui Ltd (2011): <https://etikkradet.no/tilradninger/alvorlige-krenkelser-av-individers-rettigheter-i-krig-og-konflikt/>

¹⁷ Article 55 of the Hague Convention IV of 1907.

the basic needs of the occupied population.¹⁸ This restriction on the right of use applies to all land and all real property.¹⁹

2.5 The company's activities

On its website, Mivne states that the company engages in the letting of industrial and warehousing premises. A search of the company's website in November 2020 shows that the company has five industrial premises to let in the Mishdor Adumim Industrial Park and one in the Jerusalem-Atarot Industrial Area.²⁰

3 Information from the company

The Council on Ethics has written to the company, requesting an account of its activities in the West Bank.²¹ The company has also been presented with a draft of this recommendation and invited to submit its remarks. The company has not replied to the Council's queries.

4 The Council's assessment

On the basis of the information available, the Council on Ethics has considered whether there is an unacceptable risk that Mivne is contributing to serious infringement of the rights of the individual in situations of war or conflict.

The Council's assessment rests on the fact that Mivne owns and lets industrial premises in industrial zones linked to settlements in the West Bank. The Council's starting point is the broad consensus that the Israeli settlements in the West Bank violate international law. The Council has also previously taken this position.

The purpose of the Israeli industrial zones in the West Bank is primarily to support the Israeli settlements and the business community in Israel, not the upkeep of the occupied population or the provision of employment therefor. Nor is it a matter of maintaining or advancing industrial activity that was ongoing before the occupation.

The Council considers that the Mishdor Adumim Industrial Park and the Jerusalem-Atarot Industrial Area must be deemed integral parts of the settlements Ma'ale Adumim and Atarot, and that, for the Council's purposes, there is no reason to view the industrial areas' legality otherwise than that portion of the settlements used for dwellings.

The Council has previously recommended the exclusion of companies engaged in the *construction* of Israeli settlements in the West Bank, *i.e.* construction companies involved in the physical building of the settlements. This case is not about a company's construction activities, but its letting of already existing buildings. In the Council's assessment, there is no

¹⁸ Institut de Droit International, Bruges Declaration on the Use of Force, 2 September 2003. London International Law Conference of 1943: "*The rights of the occupant do not include any right to dispose of property, rights or interests for purposes other than the maintenance of public order and safety in the occupied territory*".

¹⁹ Eyal Benvenisti, *The international law of occupation*, Oxford University Press, 2012, p. 82.

²⁰ Company website::

<https://www.mivnegroup.co.il/properties/%D7%A7%D7%A6%D7%A8%D7%99%D7%9F/?type=5637144577&building=051003-01>

²¹ Letters from the Council on Ethics to Mivne Real Estate Ltd, 9 September, 7 October, and 12 November 2020.

reason in this case to differentiate between the two forms of operation. The company's letting of buildings constructed in violation of international law contributes to the continuation of an illegal state that their construction once initiated. This form of contribution to international law violations constitutes, in the Council's view, grounds for exclusion of companies from the GPFG.

On the basis of the information available, the Council on Ethics considers that there is an unacceptable risk that Mivne will, also in future, engage in the letting of industrial premises linked to Israeli settlements in the West Bank, thereby contributing to serious infringements of the rights of the individual in situations of war or conflict. In the Council's view, this risk will persist until the company announces that it no longer engages in this type of business activity.

5 Recommendation

The Council on Ethics recommends the exclusion of Mivne Real Estate KD Ltd from the Government Pension Fund Global due to an unacceptable risk that the company is contributing to serious violations of the rights of individuals in situations of war or conflict.

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