

COUNCIL ON ETHICS
THE GOVERNMENT PENSION FUND GLOBAL

To Norges Bank

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UNOFFICIAL ENGLISH TRANSLATION

Recommendation to exclude Elco Ltd and Electra Ltd from investment by the Norwegian Government Pension Fund Global (GPF)

Summary

The Council on Ethics recommends that the companies Elco Ltd (Elco) and its subsidiary Electra Ltd (Electra) be excluded from the Norwegian Government Pension Fund Global (GPF) due to an unacceptable risk that the companies are contributing to serious infringements of the rights of the individual in situations of war or conflict in connection with the construction of roads linked to Israeli settlements in the West Bank.

At the close of 2020, the GPF owned 0.38 per cent of the shares in Electra, worth NOK 67 million. At the same time, the Fund's owned 0.10 per cent of the shares in Elco, worth 12 million. The companies are listed on the Tel Aviv Stock Exchange.

The companies have not replied to the Council's queries but provide information about their operations in stock exchange notifications, half-year reports and on their own websites.

In principle, the construction of roads by an occupying power in the area it occupies does not necessarily violate international law if it can be justified as a military necessity or is done for the benefit of the occupied population. At the same time, international humanitarian law places severe constraints on, for example, the occupying power's right to expropriate private property for such purposes. The Council takes the view that the construction of the roads in question falls outside the occupying powers right of use and has a negative impact on social and economic conditions for the population in the occupied area.

Without any further specification from the companies, it is difficult for the Council to obtain a full overview of their activities in the West Bank. The Council notes that Electra has recently won a tender for the construction of a major road project whose primary purpose is to serve Israeli settlements in the West Bank, and that the company has also previously built such roads. The Council therefore considers that there is an unacceptable risk that Electra will, through its construction activities linked to Israeli settlements in the West Bank, contribute to serious violation of the rights of the individual in situations of war or conflict. Elco contributes to the same through its ownership of Electra. In the Council's view, this risk will persist until the companies makes it clear that it is no longer engaged in such activities.

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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 Electra Ltd¹ (Electra) and Elco Ltd² against the Guidelines for Observation and Exclusion from the GPF (ethical guidelines).³

At the close of 2020, the GPF owned 0.38 per cent of the shares in Electra, worth NOK 67 million. At the same time, the Fund's owned 0.10 per cent of the shares in Elco, worth 12 million. The companies are listed on Tel Aviv Stock Exchange. Elco is a conglomerate whose business activities encompass engineering and construction, real estate and consumer goods, among others. Electra engages in the construction of infrastructure, homes, industrial facilities, etc.

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 Elco and Electra are contributing to or are themselves responsible for serious infringements of the rights of the individual in situations of war or conflict in connection with its construction of roads linked to Israeli settlements in the West Bank.

1.2 The relationship between Elco Ltd and Electra Ltd

According to information on its webpages, Elco holds a 49 per cent stake in Electra⁴ and refers to the company as its subsidiary: "*Our subsidiary Electra Ltd. completed the acquisition of two contracting companies ...*".⁵ The same person is Co-CEO of Elco⁶ and chairs Electra's board of directors.⁷

1.3 Sources

With respect to Electra's operations, the Council has based its assessment on information published on the company's own website, the company's half-year interim report as at 30 June 2020 and a stock exchange notice published by the company in August 2020. With respect 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.

¹ Issuer ID: 182511

² Issuer ID: 135656

³ 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>

⁴ Elco Ltd – The Group: <https://www.elco.co.il/#overview>. According to Tel Aviv Stock Exchange the stake is 48, 52 per cent: https://www.tase.co.il/en/market_data/company/739/about

⁵ Elco Ltd – Co-CEO's Letter to Elco's Shareholders: <https://www.elco.co.il/investors#letter>

⁶ Elco Ltd – Leadership: <https://www.elco.co.il/#leadership>

⁷ Tel Aviv Stock Exchange, Company Profile – Electra Ltd: https://www.tase.co.il/en/market_data/company/739/about

2 Background

2.1 Israeli settlements 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. 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.”*⁸

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.”*⁹

2.2 Roads for Israeli settlements in the West Bank

According to OCHA:

“The settlements are linked to each other and to Israel by an extensive road network. Palestinians for the most part are either prevented from using these roads or have only restricted access onto them. [...] The West Bank has been dissected into dozens of enclaves by the settlements and related infrastructure. This fragmentation has negatively affected social and economic life for the vast proportion of Palestinians.”

⁸ United Nations Office for the Coordination of Humanitarian Affairs (OCHA): Humanitarian Impact of Settlements: <https://www.ochaopt.org/theme/humanitarian-impact-of-settlements>,

⁹ OCHA: <https://www.ochaopt.org/location/west-bank>

Further:

“The road network functions to provide corridors for travel from Israel and between settlements in the West Bank, and barriers for Palestinian movement. Palestinian communities on one side of a road can no longer travel by vehicle across the road to a neighbouring community on the other side because they cannot cross the Israeli road network. Instead, they are forced into longer, more circuitous roads to go distances that once took a few minutes.”¹⁰

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 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.”¹¹ 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.¹² Any such action is deemed to be a war crime under the Rome Statute of the International Criminal Court.¹³

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.

¹⁰ The Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank, OCHA (2007): https://www.ochaopt.org/sites/default/files/ocharpt_update30july2007.pdf

¹¹ 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>

¹² International Committee of the Red Cross, Commentary on the Fourth Geneva Convention (1958), Article 49, p. 283.

¹³ Rome Statute of the International Criminal Court of 1998, Article 8(2)(b)viii.

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.¹⁴ Most recently, this was repeated in Resolution 2334 from 2016.¹⁵

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 in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.*"¹⁶

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.*"¹⁷

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 legal the opinions stated by the ICJ.¹⁸

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.¹⁹

¹⁴ Security Council Resolution 465:

<https://unispal.un.org/UNISPAL.NSF/0/5AA254A1C8F8B1CB852560E50075D7D5>

¹⁵ Security Council Resolution 2334: <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

¹⁶ ICJ, 2004: <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

¹⁷ 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>

¹⁸ 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/

¹⁹ 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>

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 which 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. ²⁰

2.4 Construction of roads in occupied territory

An occupying power has a duty under international law to administer the territory it occupies. ²¹ This may also entail the construction and maintenance of infrastructure, such as roads. However, the occupying power's right to use land and real property in the occupied territory is limited. ²² The construction of roads on occupied land may take place only to the extent necessary for the administration of the occupied area. The decisive factor is whether the infrastructure is necessary for military purposes or is being built to meet the basic needs of the occupied population. ²³ The construction of infrastructure in occupied areas whose purpose is to serve the commercial interests of the occupying power or to cement illegal civilian settlement in the occupied area at no benefit to the occupied population falls outside the occupying power's right of use.

2.5 Electra's operations

2.5.1 French Hill Junction

In a stock exchange notification dated 10 August 2020, Electra reported that it had won a contract to carry out infrastructure, tunnel and asphalt work on the *French Hill Junction* road construction project outside of Jerusalem. ²⁴ According to the Israeli authorities:

*“The grade separation will be implemented through four tunnels reaching a total length of 3.5 kilometers, with two two-lane tunnels running east-to-west and back towards Ma’aleh Adumim and two additional one-lane tunnels running from Ramot to Pisgat Ze’ev and Neve Ya’akov and back. [...] The French Hill project will increase transportation accessibility in the area and reduce traffic congestion in the Naomi Shemer tunnel, allowing continuous travel from Jerusalem to Ma’aleh Adumim and areas near northern Jerusalem without traffic lights in either direction and a quick connection to Highway 9.”*²⁵

²⁰ 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/>

²¹ Articles 42–56 of the Hague Convention IV of 1907. These rules are deemed to constitute customary law and are therefore binding on all states.

²² Article 55 of the Hague Convention IV of 1907.

²³ International Committee of the Red Cross, Commentary on the Fourth Geneva Convention, Article 49, (1958) p. 283.

²⁴ The contract is also mentioned in the company's interim report for the first half of 2020, under “*Significant events in the reporting period and thereafter*”, p.38, point M: <https://www.electra.co.il/filestock/file/1599033931216-0.pdf>.

²⁵ Municipality of Jerusalem: Central Transportation Project in North Jerusalem Gets Underway. <https://www.jerusalem.muni.il/en/newsandarticles/parking/french-hill/>

Ma'aleh Adumim, Ramot, Pisgat Ze'ev and Neve Ya'akov are Israeli settlements in the West Bank.

2.5.2 Nili

Electra Infrastructure is a wholly owned subsidiary of Electra Ltd. On its website, Electra Infrastructure discloses that it has built a road and associated tunnels to Nili: "*Nili Tunnels: Construction of two NATM transport tunnels with a total length of 1,500 meters along the route of Highway 6.*"²⁶ Nili is an Israeli settlement in the West Bank.

2.5.3 Other operations

There is also information that Electra's subsidiary Electra Construction has previously built homes in the Israeli settlements *Har Homa* and *Ma'ale Adumim*. In addition, other Electra subsidiaries are said to have constructed industrial buildings in industrial areas linked to Israeli settlements in the West Bank. Because this work was undertaken some time ago, the Council has not looked into it in further detail.

3 Information from the companies

Electra has not replied to the Council's requests for an account of its current and planned activities in the West Bank. Elco and Electra have been sent a draft version of this recommendation and have been invited to submit any comments they may have on it. No response from either company has been forthcoming.²⁷

4 The Council's assessment

Based on the information available, the Council has considered if there is an unacceptable risk that Elco and Electra contribute to serious violations of the rights of the individual in situations of war or conflict.

The point of departure for the Council's assessment is that Elco owns just short of 50 per cent of Electra's shares and is that company's largest shareholder. In addition, Elco recognises Electra as an integral part of its operations. Furthermore, the same person holds the position of Co-CEO of Elco and chairs Electra's board of directors. It seems clear to the Council that Elco has a determining influence on Electra's activities. It is therefore the Council's view that Elco may be said to contribute to norm violations perpetrated by Electra.

Electra has recently won a public tender for a major infrastructure project in the West Bank, whose primary purpose is to secure and improve movement between Israeli settlements and between the settlements and Israel. The Council notes that the company has also previously engaged in similar activities in the West Bank. The Council considers, moreover, that the Israeli settlements in the West Bank have been established in violation of international law.

In principle, the construction of roads by an occupying power in the area it occupies does not necessarily violate international law if it can be justified as a military necessity or is done for the benefit of the occupied population. At the same time, international humanitarian law

²⁶ Electra Infrastructure: New Austrian Tunnelling Method (NATM).

https://www.electra-infrastructures.co.il/en/projects/additional_projects.

²⁷ Letters from the Council on Ethics to Electra Ltd, dated 2 July, 26 August and 17 November 2020.

places severe constraints on, for example, the occupying power's right to expropriate private property for such purposes.

The road system that Electra is going to build at French Hill is not intended to benefit the occupied population or to mitigate the impact of the occupation. Nor is it being built out of military necessity. According to the Israeli authorities, the roads' primary purpose is to serve the Israeli settlements in the West Bank. The Council has already pointed out the negative humanitarian consequences that the Israeli road network serving the settlements have on the Palestinian population. Although it is not possible for the Council to assess the specific impact that the roads Electra is to build at French Hill will have, there is no reason to assume that the negative consequences which similar road projects have had elsewhere in the West Bank will not also occur here.

Without any further specification from Elco or Electra, it is difficult for the Council to obtain a full overview of the companies' activities in the West Bank. The Council notes that Electra has recently won a tender for the construction of a road project whose primary purpose is to serve Israeli settlements in the West Bank, and that the company has also previously built such roads. The Council therefore considers that there is an unacceptable risk that Electra will, through its business operations, contribute to serious violation of the rights of the individual in situations of war or conflict, pursuant to section 3(b) of the GPFG's ethical guidelines. Elco contributes to the same through its ownership of Electra. In the Council's view, this risk will persist until the companies makes it clear that they are no longer engaged in such activities.

5 Recommendation

The Council on Ethics recommends that Elco Ltd and Electra Ltd be excluded from investment by the Norwegian Government Pension Fund Global (GPFG) due to an unacceptable risk that the companies are contributing to serious violations of the rights of the individual in situations of war or conflict.

Johan H. Andresen
Chair

(Sign.)

Hans Chr. Bugge

(Sign.)

Cecilie Hellestveit

(Sign.)

Trude Myklebust

(Sign.)

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(Sign.)