

To Norges Bank

23.08.2022

Recommendation to exclude Bharat Electronics Ltd from investment by the Norwegian Government Pension Fund Global (GPFG)

UNOFFICIAL ENGLISH TRANSLATION

Summary

The Council on Ethics recommends that Bharat Electronics Ltd (BEL) be excluded from investment by the Norwegian Government Pension Fund Global (GPFG) due to an unacceptable risk that the company sells weapons to a state that uses the weapons in ways that constitute serious and systematic violations of international law. The background for this recommendation is the sale of military equipment to the armed forces in Myanmar.

BEL is an Indian producer of aviation and defence electronics. At the close of 2021, the GPFG owned 0.32 per cent of the company's shares, worth NOK 195 million. The company is listed on the National Stock Exchange of India (NSE).

In July 2021, BEL delivered a remote-controlled weapons station (RCWS) to Myanmar. This weapons station has been developed to remotely control a machine gun from inside an armoured vehicle. It is reported that such vehicles are used in attacks on civilians in Myanmar.

In February 2021, the armed forces in Myanmar staged a coup d'état. Both before and after the coup, the armed forces have committed extremely serious abuses against Myanmar's civilian population, relating in part to ongoing armed conflicts in the country. Several UN bodies have reported that the Myanmar armed forces, also known as the *Tatmadaw*, have deliberately attacked civilian targets. The attacks have been numerous and, in the Council's view, constitute serious and systematic violations of international law. This information has long been in the public domain, and the Council takes the position that anyone selling weapons to Myanmar since 2018 should have understood that they could be used in violation of international law.

When assessing the risk of the company's potential contribution to new abuses forward in time, the Council has attached importance to the fact that it delivered military equipment to Myanmar despite the military coup and the information concerning the *Tatmadaw's* abuses. The company has also previously sold military equipment to the armed forces in Myanmar, and has a sales office in the country. Even though the specific delivery is limited in scope, the Council has given weight to the fact that there seems to be a more extensive relationship between BEL and the armed forces in Myanmar. Although the Council has contacted the company on several occasions, BEL has not responded to its queries.

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1 Introduction

The Council on Ethics has assessed the Norwegian Government Pension Fund Global's investment in Bharat Electronics Ltd¹ (BEL) against the Guidelines for Observation and Exclusion from the Government Pension Fund Global (the ethical guidelines).² This recommendation relates to the sale of military equipment to the regime in Myanmar.

BEL is an Indian producer of aviation and defence electronics. The company supplies advanced products and systems to military, civilian and government customers. BEL's products and services include communications and weapons systems. The company's largest shareholder is the Indian state, which holds a 51 per cent stake.

At the close of 2021, the Government Pension Fund Global (GPFG) owned 0.32 per cent of the company's shares, worth NOK 195 million. The company is listed on the National Stock Exchange of India (NSE).

1.1 Matters considered by the Council

The Council on Ethics has assessed the GPFG's investment in BEL against section 4(c) of the ethical guidelines: *“Companies may be excluded or placed under observation if there is an unacceptable risk that the company contributes to or is responsible for: [...] c) the sale of weapons to states engaged in armed conflict that use the weapons in ways that constitute serious and systematic violations of the international rules on the conduct of hostilities.”*

This criterion was included in the ethical guidelines in 2021 in accordance with a proposal from the Ethics Commission, which evaluated the GPFG's ethical framework in 2019–2020.³ The government's white paper to the Norwegian parliament (the Storting) on the Norwegian government pension funds for 2021 explains that the new criterion is a supplement to and further development of the conduct-based criterion concerning the violation of the rights of individuals in situations of war or conflict.⁴ The new criterion makes it clear that companies which sell weapons to states engaged in armed conflicts may be excluded from the GPFG, not merely those which operate in such conflict zones.

In this case, the Council has first assessed whether the products sold by the company fall within the scope of the criterion. The Ethics Commission understood the term 'weapon' to encompass military equipment that may be used in combat and directly impact civilians.⁵ The Commission considered that the criterion could come to be applied to powerful, high-tech weapons. At the same time, the Commission took the view that the problem lay not with the

¹ Issuer ID: 169612

² <https://files.nettsteder.regjeringen.no/wpuploads01/sites/275/2021/11/Guidelines-for-Observation-and-Exclusion-GPFG-29-November-2021.pdf>

³ NOU 2020: 7 Verdier og ansvar — Det etiske rammeverket for Statens pensjonsfond utland, <https://www.regjeringen.no/contentassets/86dac65c22384dda9584dc2b1a052a91/no/pdfs/nou202020200007000dddpdfs.pdf> (Values and Responsibility – The Ethical Framework for the Norwegian Government Pension Fund Global, English summary available at: <https://www.regjeringen.no/en/dokumenter/nou-2020-7/id2706536/>).

⁴ Meld. St. 24, Statens pensjonsfond 2021 p. 119, <https://www.regjeringen.no/contentassets/524ad2307e424c3b9a9ff52b06569e24/no/pdfs/stm202020210024000dddpdfs.pdf> (The Government Pension Funds 2021 – Executive Summary in English available at: <https://www.regjeringen.no/en/dokumenter/meld.-st.-24-20202021/id2843255/>).

⁵ NOU 2020: 7, p. 190.

weapons' inherent properties but their use in violation of international law. In its report to the Storting, the Ministry of Finance also underlined that "*the key issue is the [weapons'] use and its consequences for civilians*".⁶ Both the white paper to the Storting on the Ethics Commission's report,⁷ and the parliamentary Finance Committee's deliberations thereon,⁸ make it clear that the criterion will encompass military equipment in addition to weapons such as ammunition. The Ethics Commission's report also indicates that there should be no restrictions on the criterion's application with respect to "*the size of companies or deliveries, or the size of specific deliveries as a percentage of the company's total sales revenues*."⁹

The Council has, furthermore, assessed whether the purchaser is a "*state engaged in armed conflict*". From the Ethics Commission's report, it follows that the criterion encompasses conflicts defined in the Geneva Conventions and their supplementary protocols.¹⁰ In relation to this criterion, as for the criterion concerning violation of the rights of individuals in situations of war or conflict (section 4(b) of the ethical guidelines), the Council attaches importance to whether the parties to the conflict or relevant international organisations recognise that an armed conflict is taking place.¹¹ The criterion covers both international and non-international conflicts. With respect to the latter, the Council attaches importance to the existence of a violent situation where organised groups participate in hostilities which go beyond internal turbulence and tense situations. As in previous cases, the Council considers that companies must act with due diligence to avoid contributing to serious norm violations in situations of war or conflict.¹²

The Council has also assessed whether, pursuant to section 4(c) of the ethical guidelines, "*serious and systematic violations of the international rules on the conduct of hostilities*" are taking place in the conflict in Myanmar. According to the Ethics Commission's report, this form of words is meant to encompass the following:

*(...) repeated use of weapons in contravention of humanitarian law, particularly the rules intended to protect civilians. (...) Violations of humanitarian law must be serious and systematic (long-lasting) and reflect systemic failures, for example in the selection of targets, the taking of precautions or the assessment of proportionality. The difficulty attaching to the identification of military targets will vary according to the nature of the conflict and must be taken into account in the assessment. The extent to which the reason for serious and systematic violations of humanitarian law lies in a lack of willingness or in an inability to comply is less important.*¹³

Section 4(c) of the ethical guidelines presumes that companies contribute to such serious norm violations through the sale of products and services. Pursuant to the criterion, companies may be considered for exclusion if the purchaser uses the weapons in violation of humanitarian law. On this point, the Council understands the criterion such that there must be a clear link between the type of weapons/military equipment sold and the violation of

⁶ Meld. St. 24, Statens pensjonsfond 2021 p. 120.

⁷ Meld. St. 24, Statens pensjonsfond 2021 p. 119 and Innst. 556 S – 2020–2021 (Recommendation from the Storting's Finance Committee concerning the government pension funds 2021) p. 13, <https://www.stortinget.no/globalassets/pdf/innstillinger/stortinget/2020-2021/inns-202021-556s.pdf>.

⁸ Innstilling fra finanskomiteen om Statens pensjonsfond 2021 (Recommendation from the Storting's Finance Committee concerning the government pension funds 2021), <https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Innstillinger/Stortinget/2020-2021/inns-202021-556s/>.

⁹ NOU 2020: 7, p. 190.

¹⁰ NOU 2020: 7, p. 191.

¹¹ For example, see the recommendation relating to Kirin Holdings Co Ltd.

¹² For example, see the recommendation relating to Kirin Holdings Co Ltd.

¹³ NOU 2020: 7, p. 191.

international humanitarian law. It may, for example, be known that the type of weapon sold has been used in attacks on civilians. The Council does not require documentation linking specific weapons to specific violations. With respect to the company's knowledge of the weapons' use, the Ethics Commission's report states that it must be possible "*with a reasonable degree of certainty to substantiate that the company had knowledge of or should have been able to foresee use that constitutes a violation of international humanitarian law*".¹⁴

In keeping with the ethical guidelines as a whole, exclusion under this criterion is not intended to punish companies for their actions, but to sever the GPFG's association with unacceptable incidents that are ongoing or may occur in the future. In other words, the decisive factor is the risk of norm violations forward in time.

According to the 2021 report to the Storting on the government pension funds, importance may be attached to risk factors at the country and sectoral level when assessing individual cases where access to information is limited.¹⁵ The report to the Storting also established that importance may be attached to companies' failure to reply to the Council on Ethics' queries.

1.2 Sources

In this recommendation, the Council has made use of publicly available sources from international courts, UN organisations, the media, civil society and official public bodies.

2 Background

Following decades of military rule, Myanmar adopted a new constitution in 2008, which established a hybrid form of government combining civilian and military elements. After 13 years of such semi-civilian government, the armed forces staged a coup d'état in February 2021 and declared that Commander-in-Chief Min Aung Hlaing and the State Administrative Council had taken power. The armed forces (*Tatmadaw*) had carried out extremely serious abuses of the country's civilian population both before and after the coup.¹⁶ Many of the abuses took place in connection with ongoing armed conflicts in which the security forces are fighting armed ethnic groups, for example in the states of Kachin, Rakhine and Shan. In a report to the UN Human Rights Council, the UN High Commissioner for Human Rights stated that, since the coup, new armed groups have been established to fight the security forces, at the same time as existing conflicts have intensified.¹⁷ The High Commissioner wrote:

"Myanmar is caught in a downward spiral of violence characterized by the increasingly brutal repression of individuals actually or seemingly opposed to military rule, by violent resistance to the coup and by several active non-international armed conflicts. Tatmadaw forces target civilians and continue to use explosive weapons with

¹⁴ NOU 2020: 7, p. 191.

¹⁵ Meld. St. 24, Statens pensjonsfond 2021 p. 139.

¹⁶ For example, see Human Rights Council, Report of the Independent International Fact-Finding Mission on Myanmar, 12 September 2018, <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/reportofthe-myanmar-ffm> and Situation of Human Rights in Myanmar since 1 February 2021 – Report of the UN High Commissioner for Human Rights, 15 March 2022, <https://reliefweb.int/report/myanmar/situation-human-rights-myanmar-1-february-2021-report-un-high-commissioner-human>.

¹⁷ Human Rights Council, 15 March 2022.

*wide-ranging effects in populated areas. They are also increasingly reliant on air power, including helicopter gunships and air strikes. Over 440,000 persons have been displaced by armed clashes since 1 February and as many as 14.4 million people are now urgently in need of humanitarian assistance.”*¹⁸

The High Commissioner concluded by saying that “*in the conduct of hostilities, deliberate attacks against civilians and civilian objects, the use of human shields and forced displacement, which have occurred in Myanmar, constitute serious violations of international humanitarian law possibly amounting to war crimes*”.¹⁹

In the report “*Enabling Atrocities: UN Member States’ Arms Transfers to the Myanmar Military*”, published in February 2022, the UN’s Special Rapporteur on the Situation of Human Rights in Myanmar described how states enable abuses in the country by permitting weapons exports.²⁰ The Special Rapporteur wrote:

“To carry out its attacks, the junta has utilized internationally acquired jet aircraft, combat helicopters, armored personnel vehicles, and missiles to target civilians in violation of humanitarian law and international criminal law. Attacks against civilians, and the indiscriminate bombing of homes and villages, are escalating.”

Violent conflict between the Tatmadaw and armed groups had existed in Myanmar for many years before the coup. The majority of the conflicts have taken place in the north and east of the country. Since 2012, there has also been conflict in the west of the country, which has had a particular impact on the Rohingya minority. The Rohingya are a stateless, largely Muslim, group of people. Due to allegations of serious abuses against the civilian population in Myanmar, the UN Human Rights Council established an independent fact-finding mission in April 2017 to investigate human rights violations in the country. Shortly afterwards, in August 2017, the situation escalated. The armed forces launched so-called ‘clearance operations’ targeting the Rohingya, which led to thousands being killed, while at least 700,000 Rohingya were driven from their homes.

The Independent International Fact-Finding Mission on Myanmar (IIFMM) submitted its first report to the Human Rights Council in September 2018. The IIFMM stated that the armed forces’ operations “*are based on policies, tactics and conduct that consistently fail to respect international law, including by deliberately targeting civilians*”.²¹ The report concluded that norm violations could constitute crimes against humanity and war crimes, and that there were indications of genocide. Referring to the IIFMM’s investigations, the Special Rapporteur stated in 2021 that:

“The Myanmar military’s systemic violation of the Geneva Conventions and perpetration of atrocity crimes have been reported by a variety of organizations for over three decades. Despite the longstanding evidence, the Special Rapporteur submits that at a minimum by 2018 all Member States knew, or would have expected, that arms

¹⁸ Human Rights Council, 15 March 2022, p. 13.

¹⁹ Human Rights Council, 15 March 2022, p. 12.

²⁰ Human Rights Council, *Enabling Atrocities: UN Member States’ Arms Transfers to the Myanmar Military*, conference room paper of the Special Rapporteur on the Situation of Human Rights in Myanmar, 22 February 2022, <https://reliefweb.int/sites/reliefweb.int/files/resources/Enabling%20Atrocities%20UN%20Member%20States%20Arms%20Transfers%20to%20the%20Myanmar%20Military.pdf>.

²¹ Human Rights Council, 12 September 2018, Summary.

transferred to Myanmar would be used in attacks against civilians in violation of international law.”²²

The atrocities, particularly those targeting the Rohingya, have led to the initiation of legal proceedings in the International Court of Justice (ICJ) for violation of the Genocide Convention²³ and in the International Criminal Court (ICC) for crimes against humanity.²⁴ Myanmar has argued in the ICJ that there is no evidence of any intent to commit genocide, although it cannot be ruled out that the military may have used disproportionate force and has not distinguished clearly between armed combatants and the civilian population. Myanmar acknowledges that some violation of international humanitarian law may have taken place.²⁵

3 Sale of weapons to Myanmar

In its February 2022 report, the UN’s Special Rapporteur on the Situation of Human Rights in Myanmar wrote that, in July 2021, BEL supplied a remote-controlled weapons station (RCWS) to Myanmar.²⁶ This RCWS has been developed to remotely control a machine gun from inside an armoured vehicle. The weapons station was described in further detail in a press release by BEL:

The system allows the operator to control the gun and sight from the operating console and joy stick from inside the turret. The optical sensors include a day camera, Thermal Imager and a Laser Range Finder integrated on a single housing. The system allows automatic target tracking for air and ground targets and performs necessary ballistic computations to feed the ballistic offsets to the gun/sight. The system has a provision for the operator to do automatic loading and firing of the gun.²⁷

The July 2021 delivery, worth USD 600,000, was organised via a private military contractor. Its size indicates that this was a one-off delivery for testing purposes.²⁸

According to its annual report, BEL has previously sold a coastal surveillance system to Myanmar’s navy.²⁹ One of BEL’s six international sales offices is located in Myanmar. In August 2019 a Tatmadaw delegation, led by Commander-in-Chief Min Aung Hlaing, visited the company in Ghaziabad, India.³⁰

²² Human Rights Council, 22 February 2022.

²³ International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), <https://www.icj-cij.org/en/case/178>.

²⁴ International Criminal Court, Bangladesh/Myanmar, Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, <https://www.icc-cpi.int/bangladesh-myanmar>.

²⁵ International Court of Justice, p. 16.

²⁶ Human Rights Council, 22 February 2022.

²⁷ https://bel-india.in/contentpage.aspx?q=search&MI=18&CI=3269&LI=1&link=3269&modalid=modalnews_3269

²⁸ <https://www.justiceformyanmar.org/stories/bharat-electronics-ltd-arms-sales-continue-via-myanmar-military-broker-mega-hill-general-trading>.

²⁹ Bharat Electronics, Annual Report 2021.

³⁰ <https://www.seniorgeneralminanunghlaing.com.mm/en/14519/senior-general-min-aung-hlaing-visits-bharat-electronics-limited-bel-ghaziabad-holds-talks-indian-external-affairs-minister/>.

4 Information from the company

The Council on Ethics contacted the company several times in the period January to May 2022. The company has not replied to the Council's queries.

5 The Council's assessment

The Council on Ethics has assessed the GPFG's investment in BEL against the ethical guidelines' criterion on the sale of weapons to states engaged in armed conflicts. The Council rests its assessment on the Norwegian Ministry of Finance's understanding that the new criterion is a supplement to and further development of the conduct-based criterion applying to the violation of the rights of individuals in situations of war and conflict. As in previous cases, the Council also takes the position that companies must act with due diligence to avoid contributing to serious norm violations in areas of war or conflict.

The first question in this case is whether a remote-controlled weapons station (RCWS) is a weapon encompassed by the criterion. The product is not, in and of itself, a weapon. However, it is an item of military equipment that is also encompassed by the criterion. The RCWS may be installed in armoured vehicles, which are known to be used against civilians in Myanmar. The Council notes that this was a one-off delivery. In this instance, however, it attaches greater weight to the report of the Ethics Commission, which states that the size of a delivery is not the deciding factor.

Authoritative sources have recognised that numerous non-international armed conflicts have been underway in Myanmar for many years. Extremely serious abuses of the civilian population have long been reported in connection with these conflicts. Several bodies, including the Independent International Fact-Finding Mission on Myanmar (IIFMM), the UN High Commissioner for Human Rights and the UN's Special Rapporteur on the Situation of Human Rights in Myanmar, have reported that the armed forces have deliberately attacked civilian targets. Based on the extensive documentation of these abuses, the Council finds that serious and systematic violations of international law are taking place in Myanmar. This information has been widely known for a long time. The Council concurs with the UN Special Rapporteur's position that anyone selling weapons to Myanmar since 2018 should have understood that they could be used in violation of international law.

When assessing the risk of the company's potential contribution to new abuses forward in time, the Council has attached importance to the fact that it recently, in July 2021, delivered military equipment to Myanmar despite the military coup and the wealth of information concerning the armed forces' abuses. The company has also previously sold military equipment to the armed forces in Myanmar, and has a sales office in the country. Even though the delivery in this instance is limited in scope, the Council has given weight to the fact that there seems to be a more extensive relationship between BEL and the armed forces in Myanmar. Although the Council has attempted to contact the company on several occasions, BEL has not responded to its queries. On this basis the Council recommends that BEL be excluded from investment by the GPFG.

6 Recommendation

The Council on Ethics recommends that Bharat Electronics Ltd be excluded from investment by the Norwegian Government Pension Fund Global (GPFG).

Johan H.
Andresen
Chair

(Sign.)

Svein Richard
Brandtzæg

(Sign.)

Cecilie
Hellestveit

(Sign.)

Siv Helen Rygh
Torstensen

(Sign.)