



5 Assessing the risk that companies are contributing to norm violations in areas of conflict

The Council on Ethics has devoted considerable resources in recent years to investigating whether companies in which the Government Pension Fund Global (GPF) is invested are contributing to the violation of ethical norms in the growing number of countries embroiled in serious conflict situations. However, the mere presence of a company in an area of conflict will not, in and of itself, constitute grounds for recommending its exclusion. There must be a link between the company's operations and the norm violations.



Companies operating in areas of war or conflict must be expected act with particular prudence and care. They must, for example, perform thorough investigations into the potential consequences of their operations and act with due diligence also in their choice of business partners.

Several of the provisions in the Guidelines for Observation and Exclusion of Companies from the Government Pension Fund Global have been designed to address such situations. Section 4(b) of the guidelines applies to companies that risk contributing to serious violation of the rights of individuals in situations of war or conflict. The wording of the criterion is open and provides no clear guidance on how it is to be applied. The Council has issued recommendations under this criterion in consequence of breaches of the international law of occupation in the West Bank, the risk of serious human rights abuses in connection with forced relocation in the Democratic Republic of Congo (DRC), the risk of enhancing the military junta's capacity in Myanmar, and the risk of violence relating to oil installations in South Sudan.

Section 4(c) of the guidelines applies to companies which sell weapons to states engaged in armed conflicts that use those weapons in ways that constitute serious and systematic violations of the international rules on the conduct of hostilities. This criterion was added to the guidelines in connection with the parliamentary proceedings on the Ethics Commission's report in 2020 (NOU 2020:7). Here, the Council was instructed to base its judgements on a broad pool of information and reports from authoritative institutions which show that the weapons are consistently being used in ways that do not accord with the rules of international law. The violations of humanitarian law must be serious and reflect a systematic failure over time, such as in the choice of targets, precautions or proportionality assessments. When a war breaks out or hostilities escalate, the Council will monitor developments with regard to norm violations and links to companies in the fund. Under this criterion, the Council has so far recommended the exclusion of companies that sell weapons to Myanmar.

Section 4(d) of the guidelines concerns the sale of weapons or military materiel to states that are subject to investment restrictions on government bonds as described in Section 2-1(2)(c) of the Management Mandate for the Government Pension Fund Global. This provision precludes the fund from investing in bonds issued by states that are subject to extensive sanctions that Norway endorses, and in companies that supply weapons or military materiel to these

states. The Norwegian Ministry of Finance decides to which states these restrictions apply at any given time. When Myanmar was previously covered by this provision, the Council recommended that one company be excluded on the grounds of its sales of military materiel to the country. The government bond exemption currently applies to Russia, Belarus, North Korea and Syria.

5.1 The Council's work with companies associated with the conflict in Myanmar

The civilian population in Myanmar has been subjected to extremely serious abuses by the country's armed forces for many years. These abuses were intensified after the military coup on 1 February 2021, when civil resistance was met with extreme violence.

The use of violence in Myanmar has subsequently escalated. Investigations carried out by the UN Independent Investigative Mechanism for Myanmar reveal, for example, that even children have been tortured, conscripted for military service and arbitrarily detained. Members of the country's military leadership are currently facing charges in the International Court of Justice for violation of the Genocide Convention and in the International Criminal Court for crimes against humanity, on the basis of the atrocities perpetrated against the Rohingya ethnic minority in 2017 and 2018.

The UN High Commissioner for Human Rights has repeatedly appealed for businesses operating in Myanmar not to collaborate with companies controlled by the armed forces and to avoid their business activities contributing to any further reinforcement of the armed forces' financial strength. Both the EU and Norway have imposed sanctions on several companies controlled by the armed forces, on the grounds that the revenues from these companies increase the armed forces' capacity to commit abuses.

The close ties that some companies had to the military in Myanmar was revealed by the UN's Independent International Fact Finding Mission on Myanmar which, in 2019, published several reports on the economic activities of two military-owned conglomerates, Myanmar Economic Corporation (MEC) and Myanmar Economic Holdings Limited (MEHL). MEC is owned and controlled by Myanmar's Ministry of Defence, while MEHL is owned and operated by former generals and military units, with the country's Commander-in-Chief playing a highly influential role.



Prior to the military coup, the Council focused on those GPFG-invested companies that had long-term partnerships with these military conglomerates. The Council issued recommendations to place under observation two companies which were engaged in such partnerships but had announced their intention to terminate the business relationship. One of these companies was subsequently removed from the list of companies under observation because the company divested the business concerned.

After the military coup, it was no longer appropriate to distinguish between companies that were owned by the military and those under state control. In 2022, the Council issued recommendations to exclude three oil companies which had entered into joint ventures with the state-owned oil company MOGE. Of material importance for the Council's decision was the fact that the UN High Commissioner for Human Rights had advised against economic cooperation with military units and that sanctions had been imposed on MOGE precisely because revenues from these companies boost the armed forces' capacity to commit gross violations of ethical norms. The oil and gas industry is the biggest source of revenue for the armed forces. The Council had never previously recommended that companies be excluded primarily on the grounds that they generate revenue for an oppressive regime. This must be seen in light of the fact that the abuses, as it is assumed by authoritative sources and institutions, that the armed forces subject the country's own population to are extremely serious, that extensive international sanctions have been imposed on the country and that revenues from resource extraction provide a significant inflow of foreign currency that is important for the purchase of arms and armaments. In 2023, two companies were placed under observation due to their partnerships with a state-owned telecommunications company in Myanmar, since there is a risk that these companies are contributing to serious human rights violations made possible by surveillance of the telecom network.

Section 4(b) of the ethical guidelines, the war and conflict criterion, is not the only provision that may be used with respect to companies that contribute to the junta's unlawful attacks on the civilian population. In 2023, two companies were excluded under section 4(c), which concerns the sale of weapons to states that use them in violation of the rules on the conduct of hostilities. Several UN bodies have concluded that the regime in Myanmar conducts targeted attacks on its own civilian population.

5.2 The Council's work with companies operating in the West Bank/Gaza

Because international law is violated on a permanent basis in the Occupied Palestinian Territories (OPT), the Council has always focused attention on companies' operations there. Any increase in the level of conflict in the OPT gives grounds to intensify that focus. In many areas, the Israeli settlements in the OPT are fully integrated with Israel. There will therefore be a large number of GPFG-invested companies with operations in Israel that also have some form of presence in the settlements or operations relating to them.

The Council's assessments do not depend on where a company is domiciled. The key factor is always the connection with and seriousness of the norm violation in question. The Council therefore considers the role that both Israeli and non-Israeli companies play in this complex situation. With respect to operations in the OPT, it is nevertheless natural to pay additional attention to Israeli companies, since the likelihood of them having operations that fall within the scope of the ethical guidelines must generally be presumed to be higher than for non-Israeli companies.

At the Council's recommendation, nine companies have been excluded from investment by the GPFG on the grounds of their links to Israeli settlements in the OPT, pursuant to section 4(b) of the guidelines. In these cases, the Council has referred to Article 49 of the Fourth Geneva Convention: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." The objective of the Fourth Geneva Convention is to protect enemy civilians in wartime, and to prevent military occupying powers from appropriating land in a manner contrary to international law through the use of their own civilians. Israel's construction of settlements in the OPT constitutes a clear violation of the Convention's provisions. Companies that are complicit in this can therefore be said to contribute to serious violations of the rights of individuals in situations of war or conflict, and are thus encompassed by section 4(b) of the GPFG's ethical guidelines.

The first recommendations to exclude companies with links to the OPT related to construction companies engaged in the physical building of settlements. Since the building of settlements accounts for the very core of the norm violation, the Council rested its conclusion on the existence of a direct link between the companies' construction activities and the state's violation of international law.



Subsequently, companies that construct road systems linked to the settlements have also been excluded at the Council's recommendation. These road systems are largely reserved for Israelis and create considerable obstacles to Palestinians' movement in the OPT. In addition, companies that own and rent out commercial premises in Israeli industrial estates linked to settlements in the West Bank have also been excluded. In these cases, too, the Council has rested its conclusion on the Fourth Geneva Convention and assessed companies' contribution to the state's violation thereof.

In the OPT-related cases, the Council has taken the view that exclusion requires a close connection between the companies' operations and the underlying norm violation. Thus, a company's mere presence in the OPT does not constitute sufficient grounds for recommending its exclusion. Unlike some other conflict areas where the Council has assessed companies' business operations, such as South Sudan and Congo, a large number of GPFG-invested companies may be directly or indirectly linked to operations in the OPT. Where to draw the line with respect to companies' contribution to norm violations in the OPT therefore raises far more questions than in many other conflict areas.

If GPFG-invested companies have operations in the OPT that are of a type previously deemed to be grounds for exclusion, the Council will recommend their exclusion. However, it must be asked whether the limits that the Council has set for companies' unacceptable contribution to violation of international law are too narrow drawn. Establishing precisely where this threshold should lie is largely a matter of discretionary judgement, and may also be altered if the seriousness of the norm violations increases. When the Council assessed the first companies and lay the foundation for its practice when assessing OPT-related cases, around 2005–2006, the normative framework was less developed than it is today, and the companies' own responsibility less clearly delineated. The Council follows developments in the OPT closely and will constantly consider whether there are grounds to recommend that further companies be excluded from investment by the GPFG.

The war in Gaza, which broke out after Hamas attacked Israeli territory on 7 October 2023, has raised new issues relating to the Occupied Palestinian Territory (OPT). This applies in particular to the actual prosecution of the war in Gaza, in connection with which several of the guidelines' provisions are relevant. Examples include section 4(b) concerning companies that risk contributing to the serious violation of the rights of individuals in situations of war or conflict, and section 4(c) concerning companies that sell 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. In addition, section 4(h) concerning other serious abuses of fundamental ethical norms will also be relevant. The rules governing the conduct of hostilities set out in international law are being broken by both sides in the war, and the scale, intensity and humanitarian consequences of the way the war is being waged have led the International Court of Justice (ICJ) in the Hague to consider allegations that elements of Israel's campaign could constitute genocide under the Genocide Convention. The Council has followed these developments closely in 2023.

5.3 The Council's work with companies associated with the war in Ukraine

Shortly after Russia invaded Ukraine in February 2022, the Norwegian Ministry of Finance decided that the GPFG should divest its shareholdings in Russian companies. However, this decision did not encompass companies listed on stock exchanges in other countries but with a presence in or activities targeting Russia. This covers, for example, subsidiaries located in Russia or trading partnerships with Russian interests. Such a presence and activities may nevertheless be encompassed by the ethical guidelines.

Companies which sell weapons or military materiel to Russia or Belarus may be excluded from investment by the GPFG. This follows from the Ministry of Finance's decision of 25 March 2022, stating that the GPFG may no longer own government bonds issued by Russia or Belarus. As a result, the sale of weapons and military materiel to these countries may lead to exclusion under section 4(d) of the guidelines.

Furthermore, the exclusion of companies which help to buttress Russia's illegal occupation of Ukrainian territory may be considered pursuant to the guidelines' section 4(b), the war and conflict criterion. This may, for example, cover involvement in the construction of homes for the exclusive use of Russian immigrants to occupied areas.

The Council may also recommend that companies be excluded if they, materially and directly, help enable the Russian authorities to maintain the ongoing war of aggression against Ukraine in violation of international law. This may be covered by the guidelines' section 4(h), which opens for exclusion/observation of companies that contribute to, or are themselves responsible for, "other particularly serious violations of fundamental ethical norms".

The Council assessed six companies in 2023 for various forms of contribution based on this approach, and has recommended the exclusion of one company.