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Norway

Your ref:

Our ref:

Date:

24/4-17

30 August 2024

## **The Council on Ethics' work in relation to companies linked to the West Bank/Gaza**

### **1 Introduction**

The Council on Ethics refers to the Ministry of Finance's letter of 27 June 2024 asking the Council to explain the background to the disclosures in its annual report concerning its work in relation to companies with commercial operations linked to the Occupied Palestinian Territory (OPT), and how the Council is following up the matters set out in the annual report.

In its annual report for 2023, the Council presented an account of its work in relation to companies with links to areas of war or conflict. This was prompted by the emergence in recent years of a growing number of serious conflicts in countries with which several of the companies that the Norwegian Government Pension Fund Global (GPF) has invested in may be associated. The Council has therefore devoted considerable resources to investigating whether these companies are contributing to norm violations in such situations. In the annual report, the Council described its work in relation to companies linked to the conflicts in Myanmar, Ukraine and the West Bank/Gaza (referred to collectively as the Occupied Palestinian Territory or OPT). The Ministry of Finance's question relates to the following paragraph:

*"If GPF-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*

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*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.”<sup>1</sup>*

In this letter, the Council will elaborate on the contents of the section cited and will also describe the process leading up to a recommendation either to exclude a company or place it under observation, as well as on the ethical norms, etc, in question. Finally, we will summarise the Council's work concerning cases relating to the West Bank and the war in Gaza.

When the Council referred to the development of the normative framework in the section cited, it was drawing attention to the fact that there are clearer expectations nowadays with respect to what companies must do to avoid contributing to serious norm violations. Furthermore, the Council perceives that there is now a greater consensus that companies have a responsibility for their entire supply chains and how their products are used in some situations. It is now also well established that companies' duty of due diligence is heightened when they risk contributing to extremely serious norm violations, as is often the case in situations of war and conflict.

In addition, the level of conflict in the West Bank has escalated. This applies in particular to the period since Hamas launched its attack on Israel on 7 October 2023, although the trend was clearly apparent even prior to that. It is therefore natural that the Council should give a higher priority to work in relation to companies with commercial links to the West Bank. At the same time, a long-awaited clarification of several issues relating to the West Bank's status under international law was published in July this year. This also has implications for how the Council assesses companies' contribution to norm violations in that area.

The Council refers to the fact that the International Court of Justice (ICJ) in the Hague was, on 30 December 2022, by resolution of the UN General Assembly, asked to assess the legal implications of the Israeli occupation in the Occupied Palestinian Territory (OPT). Following a lengthy hearing involving States Parties in February 2024, the ICJ

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<sup>1</sup> The discussion of the Council on Ethics' work in relation to companies operating in the West Bank/Gaza may be found in section 5.2 of the 2023 Annual Report: [https://files.nettsteder.regjeringen.no/wpuploads01/sites/275/2024/03/Etikkradet\\_Annual-Report\\_2023\\_uu-26008.pdf](https://files.nettsteder.regjeringen.no/wpuploads01/sites/275/2024/03/Etikkradet_Annual-Report_2023_uu-26008.pdf).

published its findings in an advisory opinion on 19 July this year. In this advisory opinion, the ICJ takes a position on several new factual and legal issues relating to Israel's policies and practices in the OPT, including East Jerusalem. Among other things, the ICJ finds that the occupation itself, Israel's settlement policy and the way Israel exploits natural resources in the OPT contravene international law.<sup>2</sup>

The serious situation that has arisen in the Gaza Strip since 7 October 2023 led to a request that the ICJ open legal proceedings to determine whether Israel's actions and statements constitute a breach of the Genocide Convention. The ICJ has acquiesced to this request. It will probably take several years before any decision is made in this case. The fact that the ICJ is considering this matter entitles it to issue orders for provisional measures that are binding on Israel under international law and that also have consequences for other States Parties to the Genocide Convention. These latter have a duty not to contribute to violations of the Convention, as well as a more general duty to prevent such violations. So far, the ICJ has on three occasions issued specific orders on what Israel must do to limit the risk of the Convention being violated. This includes abiding by the rules governing the conduct of hostilities set out in humanitarian law, as well as ensuring that humanitarian aid is allowed into Gaza to assist the population there.<sup>3</sup>

As an extension of the case against Israel in the matter of genocide, the ICJ has also been asked to consider whether Germany is violating international law by exporting

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<sup>2</sup> The International Court of Justice's advisory opinion of 19 July 2024:

<https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>.

<sup>3</sup> In its Order on the Request for the Indication of Provisional Measures submitted by South Africa in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, issued on 26 January 2024, the ICJ ordered Israel to ensure that its military forces did not commit genocide and to prevent and prosecute public statements that may be deemed as encouraging genocide in Gaza. The ICJ also demanded steps be taken to ensure that basic services and humanitarian aid be allowed into Gaza: <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>.

The ICJ made its orders even more explicit in two subsequent rulings, on 28 March 2024:

<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-00-en.pdf>; and 24

May 2024: <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf>.

weapons to Israel which *may* be used to commit certain breaches of international obligations during the war in Gaza.<sup>4</sup>

A number of UN rapporteurs and affiliated bodies have presented their views throughout the brutal war in Gaza. On 19 June 2024, the UN-mandated Independent Commission of Inquiry on the 2024 Gaza Conflict presented its report on the Israel-Hamas war to the UN Human Rights Council. The Commission concluded that the Israeli authorities are responsible for war crimes and crimes against humanity committed during military operations and assaults in Gaza since 7 October 2023. The Commission also found that armed Palestinian groups are responsible for war crimes committed against Israel.

In the course of its work, the Council treats GPFG-invested companies with links to Gaza separately from companies with links to occupied territory in the West Bank. In Gaza, the norm violations relate primarily to the way Israel has been prosecuting the war since 7 October 2023. Companies with links to the war in Gaza will, in the current situation, primarily be encompassed by section 4(c) of the Guidelines for Observation and Exclusion of Companies from the Government Pension Fund Global (the ethical guidelines), which relates to the *“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”*, although section 4(b) will also be relevant for companies which, in various ways, may contribute to war crimes, crimes against humanity or the risk of genocide.

In the West Bank, the norm violations are linked to Israel’s long-term occupation and the methods used to buttress or expand civilian control over occupied territories (occupation and discrimination). Here, the norm violations have become visibly more serious in recent years. Companies with links to the West Bank are assessed under section 4(b) of the ethical guidelines, which relates to *“serious violations of the rights of individuals in situations of war or conflict”*, or section 4(h) *“other particularly serious violations of fundamental ethical norms”*.

## 2 The Council’s working methods

The Council rests its assessment primarily on publicly available information, such as various overviews and reports from international organisations and well-respected non-government organisations. In situations where there is considerable uncertainty or

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<sup>4</sup> Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany): <https://www.icj-cij.org/case/193>.

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disagreement relating to the facts, the Council relies on factual descriptions published by authoritative bodies which have access to first-hand sources, apply robust verification methods or have a mandate to present composite descriptions.

A common denominator for the Council's work is that *no weight* is attached to the size of a company or the GPFG's shareholding in its assessments. The Council starts with a superficial assessment of whether the type of business a GPFG-invested company engages in or is associated with may qualify for exclusion from the GPFG under the ethical guidelines. The Council then attempts to verify specific facts concerning the norm violations and the company. In this process, some companies will be excluded from assessment because their activities are not relevant for the norm violations in question, or because the link between the norm violations and the company is too tenuous. If, after this initial investigation, the Council still considers that a company may qualify for exclusion, a draft recommendation to this effect is sent to the company for comment. Companies respond in a variety of ways. Some fail to reply to the Council's queries; others initiate a process of dialogue. In many cases, information indicating that the facts of the matter are different to those initially presumed emerges during this process. If, after this exercise, the Council still considers that the company should be excluded from investment by the GPFG or be placed under observation, it issues a recommendation to Norges Bank, which makes a final decision.

Once Norges Bank has made its decision and, if relevant, divested its shares in the company concerned, the bank publishes its decision at the same time as the Council publishes its recommendation. If Norges Bank's decision prompts the divestment of shares, publication will take place only after the sale has been completed. The amount of time this takes varies and is outside the Council's control.

As can be seen, the process applied by the Council is thorough and intended to reduce the risk of decisions being made on false premises. Exclusion from investment by the GPFG is noted by players in the market, by other states and by non-government organisations, and may have consequences for both the companies concerned and the GPFG's reputation. The publicity surrounding an exclusion requires a level of probity and thoroughness that not all other investors are capable of. The GPFG's position also means that organisations both in Norway and abroad strive to influence the Council's conclusions, particularly in high-profile cases or cases that may be exploited for political purposes. The Council considers that thoroughness and consistency in its work are the best ways of reducing the risk associated with the ethical management of the GPFG.

### **3 The norms underpinning recommendations to exclude companies from investment by the GPFG or place them under observation**

#### **3.1 The ethical guidelines and their interpretation**

The Council's work is underpinned by the Guidelines for Observation or Exclusion of Companies from the Government Pension Fund Global (the ethical guidelines), which have been adopted by the Norwegian Ministry of Finance and endorsed by the Norwegian parliament (the Storting). When interpreting these guidelines, the Council relies on the guidance given via previous deliberations in the Storting, including the reports which underlie the proposals approved thereby.

The latest major review of the ethical guidelines was performed by the Mestad Commission, whose official report NOU 2020:7: "Values and Responsibility – the ethical framework for the Government Pension Fund Global" was laid before the Storting in 2021, see Report to the Storting Meld. St. 24 (2020–2021) and Proposition to the Storting Innst. 556 S (2020–2021). In this connection, a number of general directions were issued for how the ethical guidelines should be interpreted, which are of significance for the Council's assessment of companies with links to the West Bank:

- The purpose of excluding companies from investment by the GPFG is to avoid the Fund being invested in companies that cause or contribute to serious violations of ethical norms.
- The threshold for exclusion must be high, although the term "contribution" in the guidelines does not have the same high threshold as that required to incur criminal liability.
- Exclusion from investment by the GPFG is not intended to be a mechanism through which to punish companies for actions previously taken, but rather to sever the Fund's association with unacceptable conditions that are currently ongoing or may occur in the future.
- A company that has a direct responsibility for a norm violation may be excluded on the grounds of less serious infractions than a company that contributes to a norm violation for which another party is responsible.
- The criteria reflect fundamental international and Norwegian values. Their incorporation into international conventions, standards and guidelines provide a sound basis for such consensus, although this is not appropriate for all the criteria.
- Foreign policy considerations lie outside the purpose of the GPFG's management.

- The United Nations Guiding Principles on Business and Human Rights and the OECD's Guidelines for Multinational Enterprises will assist the Council's work, not least by clarifying which expectations companies should fulfil. However, the criteria and threshold for the exclusion of companies are determined by the ethical guidelines and cannot be deduced from these instruments.
- All companies are to be assessed against the same ethical standards, including those companies domiciled in countries whose legal provisions and ethical norms deviate from the ethical norms on which the GPFG is built.

### **3.1.1 The criterion relating to war and conflict (section 4(b) of the ethical guidelines)**

With respect to the criterion relating to war and conflict, the Report to the Storting Meld. St. 24 (2020–2021) states:

*"The criterion relating to war and conflict concerns the violation of the rights of individuals in situations of war or conflict. This includes international crimes such as genocide, crimes against humanity and war crimes. In addition, the criterion encompasses incidents that involve an unacceptable risk of other serious violations of humanitarian law or human rights in conflict situations. The criterion is therefore broad in scope. Since operating in areas of war or conflict involve a considerable ethical risk, it is expected that companies perform particularly thorough due diligence assessments in order to avoid contributing to the civilian population being subjected to abuse.*

*The Ministry notes the issues raised by several of the consultation bodies. A key premise for the Ministry's assessments is that the GPFG is a financial investor and not a political instrument. Several of the considerations that certain consultation bodies point to could touch on foreign policy considerations that lie outside the purpose of the GPFG's management."<sup>5</sup>*

### **3.1.2 The criterion relating to the sale of weapons (section 4(c) of the ethical guidelines)**

The criterion relating to the sale of weapons was introduced at the suggestion of the Mestad Commission and addresses companies which sell weapons to parties whose practices in war are generally characterised by flawed target selection, precautionary measures or assessments of proportionality, such that civilians are largely impacted.

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<sup>5</sup> Report to the Storting Meld. St. 24 (2020–2021), section 7.5.3. The consultation submissions referred to concern companies with operations linked to the OPT.

The Report to the Storting cites the following from the Commission's report:

*"The Commission finds it reasonable that companies which are excluded under this criterion remain excluded until it is clear that they have ceased making deliveries to the state concerned or the conflict has come to an end. A company may, over time, make deliveries of multiple types of weapons and military equipment to the same state. Only new deliveries of weapons that would, in and of themselves, constitute grounds for exclusion under this criterion should, in the Commission's view, be grounds to maintain the exclusion of a company."*<sup>6</sup>

The Ministry establishes that the term "weapon" in this context may also include ammunition and military equipment, and that the key factor is their use and impact on civilians.

### **3.2 International norms**

With respect to both the war and conflict criterion and the human rights criterion, the fundamental norms are laid down in international conventions, and the bodies established to monitor these conventions have often issued statements relating to their interpretation.

Of particular relevance to the OPT are the Geneva Conventions, which comprise four treaties that seek to protect the victims of war and conflict. According to Article 49(6) of the Fourth Geneva Convention, an occupying power is prohibited from relocating part of its population to an area that it occupies. Furthermore, Article 53 prohibits an occupying power from destroying chattels or real property that individually or collectively belong to private individuals, the state or public institutions, social organisations or cooperatives, except in those instances where military operations make such destruction absolutely necessary.<sup>7</sup>

There is broad international consensus that the Israeli settlements in the West Bank violate international law. Both the UN Security Council and the UN General Assembly have objected to the establishment of additional settlements. The International Court of Justice (ICJ) in the Hague has confirmed that the Fourth Geneva Convention applies to

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<sup>6</sup> Report to the Storting, Meld. St. 24 (2020–2021), section 7.5.4.

<sup>7</sup> Lovdata: <https://lovdata.no/pro/#document/TRAKTAT/traktat/1998-07-17-2>. See also the International Committee of the Red Cross, Commentary on the Fourth Geneva Convention, Article 49, (1958), p. 283.

the territory occupied by Israel and has ruled that the settlements violate the Convention.<sup>8, 9, 10</sup>

### **3.2.1 Cases brought before the International Court of Justice (ICJ) in recent years**

As mentioned previously, in July this year, the ICJ issued its advisory opinion regarding Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem. The opinion was based on information obtained from over 50 states and international organisations. Although some of the questions raised in the ICJ's advisory opinion have been considered before, no international body has previously performed such a clear and thorough assessment of the legal implications of the conflict.

Notwithstanding that an advisory opinion from the ICJ is not in itself legally binding, in such cases the Court makes numerous assessments, each of which varies in importance and relevance with respect to international law. In this case, the ICJ clarifies a number of questions and sets clear expectations for both international institutions and States Parties.

A clear majority of the ICJ's panel of judges concludes that the ongoing occupation of Palestinian areas contravenes the international legal provisions concerning the use of force and the Palestinians' right to self-determination, and that the occupation itself is illegal (para. 261). The Court underlines the proviso concerning the temporary nature of occupation, and that exercising sovereignty over occupied territory is illegal, irrespective of the occupation's duration. Furthermore, the Court repeats its conclusion from 2004

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<sup>8</sup> United Nations Security Council Resolution 446 (22 March 1979), passed with 12 votes in favour, none against and 3 abstentions (Norway, UK and USA), reconfirmed that the Fourth Geneva Convention applied and objected to the establishment of Israeli settlements in the occupied territories: <http://unscr.com/en/resolutions/446>.

<sup>9</sup> In its advisory ruling of 9 July 2004, concerning the legal consequences of constructing a wall in the OPT, the ICJ found that Israel had violated several of its obligations under international law by building a wall in the West Bank. The ICJ rejected Israel's assertion that the Fourth Geneva Convention does not apply to the West Bank and that Article 49 does not apply to the settlements in the occupied territories: <https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>.

<sup>10</sup> United Nations Security Council Resolution 2334: <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>.

that Israel's settlement policy, including the transfer of Israeli settlers to the West Bank and East Jerusalem, as well as the perpetuation of the settlements' existence, violate Article 49 of the Fourth Geneva Convention. The ICJ also concludes that Israel's confiscation of land and the way it exploits the area's natural resources violate several of its obligations under the Hague Conventions. The Court takes the position that the Oslo Accords do not entitle Israel to annex parts of the Palestinian areas in order to meet its security needs, nor do the Oslo Accords entitle Israel to maintain its presence in the areas. Moreover, the Court concludes that the restrictions that Israel imposes on the Palestinian population in the OPT constitute systematic discrimination on the grounds of race, religion or ethnicity, in contravention of Article 2 and Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), in addition to violating Article 2(1) and (26) of the International Covenant on Civil and Political Rights (ICCPR), and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Court also finds that Israel has a duty to indemnify its illegal actions in full. This includes providing restitution and compensation to the Palestinian population. Restitution involves, among other things, the restoration of land and real property to its previous owners. Israel also has a duty to evacuate settlers, demolish parts of the security barrier and allow Palestinians who have been displaced during the occupation to return to their original homes.<sup>11</sup>

In two other ongoing cases concerning the situation in Gaza, brought before the ICJ after 7 October 2023, the Court has been asked to determine whether Israel is violating the Genocide Convention in Gaza Strip,<sup>12</sup> as well as whether Germany's sales of weapons to Israel and support for Israel's actions constitute "facilitation" of genocide or war crimes in violation of international law. As previously mentioned, it is expected to take several years before a final ruling in these cases is issued.

### **3.2.2 UN Commission of Inquiry**

On 19 June this year, the UN's Independent Commission of Inquiry on the 2024 Gaza Conflict presented a report on the Israel-Hamas war to the UN Human Rights Council.

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<sup>11</sup> The International Court of Justice's advisory opinion of 19 July 2024:

<https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>.

<sup>12</sup> The ICJ press releases relating to the ongoing legal proceedings: <https://icj-cij.orci/case/192>.

The report was the first thorough investigation of the conflict by a UN-mandated body, and principally covered the period from 7 October to 31 December 2023.<sup>13</sup> The Report concluded that Israeli authorities are responsible for war crimes and crimes against humanity committed during military operations and assaults in Gaza since 7 October 2023. The Commission also found that armed Palestinian groups are responsible for war crimes committed in Israel.

## **4 The Council's work**

### **4.1 Cases relating to the West Bank**

The Council's starting point has always been that the Israeli settlements in the West Bank are illegal. A total of nine companies have so far been excluded from investment by the GPFG at the Council's recommendation. The first companies to be excluded on this basis, in 2009, were a construction company that built Israeli settlements and a company that supplied surveillance equipment for the separation barrier. At that time, the Council considered that it was these types of business operations which to the largest extent supported the illegal transfer of Israeli citizens to the OPT and therefore qualified for exclusion from the GPFG.

When norm violations are particularly serious, companies are expected to exercise a higher level of due diligence. Particularly serious norm violations also result in companies more distantly connected to the norm violations coming to the Council's attention and potentially being deemed to contribute thereto if they do not take action to reduce the ethical risk. In light of the escalation of the conflict in recent years, the Council has raised its expectations with respect to companies' due diligence, and has recommended the exclusion of companies which let industrial premises and construct roads that serve the Israeli settlements. Should the Council become aware of additional

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<sup>13</sup> The Commission's report to the Human Rights Council (A/HRC/56/26):

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2Fhrbodies%2Fhrcouncil%2Fsessions-regular%2Fsession56%2Fa-hrc-56-26-auv.docx&wdOrigin=BROWSELINK>.

The Commission's detailed background report:

<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session56/a-hrc-56-crp-4.pdf>.

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GPFG-invested companies that engage in activities of this nature, it will recommend their exclusion as well.

As previously mentioned, the Council has assessed cases relating to the West Bank for a long time. On the basis of this year's clarification of the status of Israel's occupation of the West Bank, the Council has now embarked on a broader review of companies in the GPFG's portfolio with links to the occupation itself and to the settlements. In light of the guidance that may be deduced from the ICJ's advisory opinion, the Council considers that a lower threshold than previously should be applied with respect to recommending the exclusion of companies less directly linked to the norm violations taking place in the OPT.

The Council must constantly bear in mind that GPFG-invested companies may be linked to serious norm violations in several locations worldwide. Nevertheless, a number of companies in the GPFG's portfolio may, in different ways and to different degrees, be linked to Israel's occupation of the West Bank, for example through the products and services they supply to public authorities or offer for sale in the Israeli settlements, or through products that are used for purposes that violate international law. It is difficult to estimate the number of companies concerned, since this will depend entirely on the kind of links taken into account.

The Council strives to practise the ethical guidelines in a consistent manner, irrespective of where the norm violations take place. In each case, the Council first assesses whether the underlying norm violations are so serious or systematic as to qualify for exclusion. The systematic element is particularly important where the companies being assessed are not directly responsible for the norm violations but contribute to violations for which other parties bear responsibility. In this, there is a presumption that companies should be aware that the norm violations are ongoing or will take place. Following the ICJ's advisory opinion of July this year, the risk of contributing to serious and systematic norm violations in the West Bank is undeniable. In other areas, the situation may be less clear.

The Council takes the view that the purpose of the ethical guidelines is not to cause the exclusion from the GPFG of companies with any links whatsoever to violations of international law, either in the West Bank or in other areas of conflict. Based on the directions it has received, the Council has developed some criteria that play a role when assessing a company's contribution to norm violations. An important criterion is whether a company's activity is of significance for the actual perpetration of the norm violation. Furthermore, it must be probable that the company's activity or link to the disqualifying norm violation will persist. The Council also attaches importance to whether the company's contribution is sporadic or whether it has a permanent presence in the occupied area, as well as whether the company produces or sells products of a

purely generic nature or whether their products or services are specifically tailored for use in the area.

The Council's work in relation to companies with links to the West Bank primarily involves clarifying the individual company's link to norm violations and assessing whether their role is such that it qualifies for exclusion. On this basis, the Council contacts companies that are crucial for the perpetuation of Israeli settlements or other norm violations. So far this year, the Council has recommended the exclusion of one company on this basis, in addition to the nine that have previously been excluded. The guidance which may be deduced from the ICJ's advisory opinion of July this year indicates that the number of companies excluded on the grounds of their links to the West Bank may be expected to increase somewhat going forward.

Each year, a large number of companies enter and leave the index of shares against which the GPFG is measured. During the course of a year, this leads to a substantial turnover of companies in the GPFG's portfolio, even though the number of companies in which the GPFG invests does not necessarily change that much. Over time, companies also alter their business operations. The Council therefore works without pause on cases relating to this issue, as it does in a number of different areas.

## **4.2 Cases relating to the war in Gaza**

Shortly after Israel launched its offensive in Gaza in October last year, the Council reviewed the GPFG's portfolio to identify companies whose exclusion could come up for assessment. The majority of the companies that the Council has assessed with respect to their links to the war in Gaza are arms manufacturers. Based on the wording of section 4(c) of the ethical guidelines and the Mestad Commission's report, the Council has taken the position that companies may be excluded if they sell weapons to Israel which are of a type that may especially impact civilians in Gaza. For such a manufacturer to qualify for exclusion, its deliveries of such weaponry must be of recent date or ongoing. Moreover, the criterion applies only to companies' sales of weapons to *warring* states. Manufacturers that sell weapons to a state which is not itself the warring party are not deemed to meet the ethical guidelines' threshold for exclusion if the purchasing state subsequently transfers those same weapons to another state. However, this last restriction has had little practical significance because the relevant arms manufacturers have been excluded for other reasons.

Arms manufacturers require an export licence from their own country's authorities in order to export weapons. Since the Arms Trade Treaty (ATT) prohibits the sale of weapons if there is a danger that they may be used for the purpose of genocide or war

crimes,<sup>14</sup> States Parties to the treaty are unlikely to grant licences for the export of weapons to Israel at this time. The legal proceedings brought before the ICJ and courts in other countries after January 2024 have provided an insight into how such processes are conducted in certain Western nations. There are companies in these countries which have recently sold weapons to Israel. However, it is the Council's understanding that they cannot export those weapons to Israel on the basis of previously granted licences.

For this reason, the Council's inquiries are now aimed primarily at arms manufacturers which have production facilities in countries that are not signatories to the ATT. On the whole, these are US companies. Since the majority of the US arms manufacturers in which the GPFG has previously invested also fall within the scope of the weapons-related product criteria (nuclear weapons or cluster munitions), there are very few relevant companies left in the GPFG's portfolio. The number of exclusions under section 4(c) of the ethical guidelines looks set to be limited, and any recommendations issued by the Council will relate to few, if any, companies.

## 5 Conclusion

In line with established practice, the Council presumes that companies operating in areas of conflict must exercise particular due diligence. The requirement for due diligence is heightened when the norm violations are serious. In light of the developments in both the fundamental norms and the situation in the Occupied Palestinian Territory, the Council considers that the ethical guidelines provide a basis for excluding slightly more companies from investment by the GPFG than the number already excluded. Here, as elsewhere, the Council will perform specific assessments of each company's links to the ongoing norm violations and the risk of them contributing to future norm violations.

Yours sincerely,

Svein Richard Brantzæg

Chair of the Norwegian Government Pension Fund Global (GPFG)

[This document has been signed electronically]

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<sup>14</sup> ATT: <https://thearmstradetreaty.orci/>