

COUNCIL ON ETHICS
THE GOVERNMENT PENSION FUND – GLOBAL

To the Ministry of Finance

Recommendation

November 16th, 2009

UNOFFICIAL ENGLISH TRANSLATION

1 Introduction

The Norwegian Government Pension Fund Global (GPF) holds equities issued by the Israeli company Africa Israel Investments Ltd. As of December 31st, 2008, the market value of this investment was NOK 5.5 million. The company is listed on the Tel Aviv stock exchange.

Africa Israel Investments' subsidiary, Dania Cebus Ltd., is involved in the building of settlements in the West Bank. Both the International Court of Justice and the UN Security Council consider that the construction of such settlements is illegal. The Council on Ethics finds that the Fund's investments in Africa Israel Investments Ltd. constitutes an unacceptable risk of the Fund contributing to serious violations of individuals' rights in situations of war or conflict, and that the investment is in breach of the Fund's Ethical Guidelines.

The Council recommends that the companies Africa Israel Investments Ltd. and Danya Cebus Ltd. be excluded from the investment universe of the Government Pension Fund Global.

2 Background

2.1 Africa Israel Investments Ltd. and Danya Cebus Ltd.

Africa Israel Investments Ltd. is listed on the Tel Aviv stock exchange. Africa Israel Investments Ltd. owns 73% of its subsidiary Danya Cebus Ltd.¹ Danya Cebus Ltd. is also listed on the Tel Aviv stock exchange. However, the Fund's ownership of Danya Cebus Ltd. is only through its ownership of Africa Israel Investments Ltd.

2.2 The Fund's investments in Africa Israel Properties Ltd.

Africa Israel Investments Ltd. owns 68% of the shares of its subsidiary company Africa Israel Properties Ltd.²

The Fund is directly invested in equities issued by Africa Israel Properties Ltd. As of December 31st 2008, the value of this investment was NOK 1,2 million.

Africa Israel Properties Ltd. is a real estate company which owns and leases office buildings and other commercial properties in Israel and Europe.³ There is no indication that the company has properties or other activities in the occupied territories.

2.3 Israeli settlements in the West Bank

Israeli settlements in the West Bank⁴ range from a few temporary houses (so-called outposts), to larger communities with several thousand inhabitants, commercial businesses, schools, etc.

¹ Danya Cebus Annual Report 2007: <http://www.danya-cebus.co.il/Eng/downloads/AnnualReport2007.pdf>

² Africa Israel Properties Ltd: Corporation's Business Description, section 1, p 5. http://www.afigroup-global.com/nechasim/PDF/5_5_report_corp_Eng.pdf

³ See the company's homepage: <http://www.afigroup-global.com/nechasim/>

Some of the settlements function as suburbs for Israelis who work in Tel Aviv or Jerusalem.

Common to all settlements is that they are geographically located east of the demarcation line of 1948, on the territory which was occupied by Israel during the Six-Day War in 1967. Some settlements are located close to the demarcation line, others are far into the West Bank. There are also settlements on the Golan Heights, which were also occupied in 1967. There have previously been settlements in the Sinai and Gaza, but these have been abandoned.

The settlement population has increased significantly since the 1970s. The reasons for this are partly due to the influx of new settlers, and partly due to the natural growth of the settlement population. From 1972 to 2007, the population in the West Bank settlements increased from 1 500 to 270 000. During the period from 1995 to 2006, the number of settlers there doubled, from 133 000 to 265 000.⁵ In addition to this there are approximately 200 000 settlers in East Jerusalem, which was formally annexed by Israel in 1980.⁶

An example of natural population growth in settlements is found in Modi'in Illit, where annual growth in 2007 and 2008 were 10,3% and 9,5%, respectively. This is mainly due to high birth rates; 48% of the population in this settlement is under nine years of age.⁷

The Israeli government accommodates for the building of settlements by developing infrastructure which connects the settlements to Israel. Israel's military presence in the West Bank is to a large extent there to protect the settlements, and the same purpose is to some extent served by the separation barrier which Israel is building on the West Bank.

According to the UN body OCHA, the settlements and their infrastructure inflict great harm upon the Palestinian population. A control regime with several hundred road blocks and check points obstructs movements between Palestinian areas and is a great hindrance towards economic development in the West Bank. The separation barrier, which is partly constructed to protect the settlements, restricts movement in Palestinian areas and access to agricultural land. The same goes for a system of restricted roads which have been built to serve the settlements. Also other issues, such as the settlements' use of the limited water resources, cause negative effects on the Palestinian population and on the economic situation in the West Bank.⁸

⁴ Israeli authorities refer to the West Bank as the areas Judea and Samaria.

⁵ Israeli Central Bureau of Statistics, *Statistical Abstract of Israel*,
http://www1.cbs.gov.il/shnaton59/st02_06x.pdf

⁶ "Basic Law – Jerusalem": http://www.mfa.gov.il/MFA/MFAArchive/1980_1989/Basic%20Law-%20Jerusalem-%20Capital%20of%20Israel

⁷ Israeli Central Bureau of Statistics: http://www.cbs.gov.il/publications/local_authorities2007/pdf/552_3797.pdf

⁸ OCHA: "The Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank" (2007):

http://www.ochaopt.org/documents/TheHumanitarianImpactOfIsraeliInfrastructureTheWestBank_full.pdf and

OCHA: "Five Years after the International Court of Justice Advisory Opinion: A Summary of the Humanitarian Impact of the Barrier" (2009):

http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2009_august_english.pdf

2.4 Danya Cebus' role in construction of settlements

Danya Cebus is involved in the construction of several settlements in the West Bank. Documents obtained by the Council link the company to construction activities in the settlements Modi'in Elit and Ma'aleh Adumim:

- A press release from Danya Cebus, dated 16.08.04, states that the company is to build the "Green Park" complex in Modi'in Elit. According to the press release, the project has a cost frame of 230 million USD and comprises 3000 housing units. It further states that this real estate project, marketed by Africa Israel, will consist of five-story buildings with 26 apartments each.
- A sales contract for a housing unit in Green Park in Mod'in Elit, between the real estate company Green Park International INC and a private buyer, dated 08.05.05., states Danya Cebus as the responsible contractor for the property.
- An injunction from the Jerusalem District Court, dated 07.07.08, by which Danya Cebus is committed to complete construction projects in the settlements Har Homa and Malleh Ha'adumim following the collapse of the real estate company Hefsiba.

2.5 The Council's communication with the company

Norges Bank has written to Africa Israel Investments Ltd. on behalf of the Council and asked the company to clarify whether the company or its subsidiaries are involved in the construction of settlements in the West Banks and if so, what the nature of this involvement is and whether there are plans for future activities in this area. The company has not responded to the initial letter, nor to subsequent enquiries.

3 International bodies' view on the settlements

Internationally, there is broad consensus that the Israeli settlements in the West Bank are illegal.

The discussion below refers to a statement from the International Committee of the Red Cross (ICRC),⁹ which states that the construction of settlements is in violation of the IV Geneva Convention. Resolutions by the UN Security Council and an advisory opinion from the ICJ, both of which state that the settlements are illegal, are also referred to.

3.1 The IV Geneva Convention

The main purpose of the IV Geneva Convention is to protect civilians during war and occupation. The convention's provisions lay down, *inter alia*, the obligations and rights of an occupying power in an occupied territory.

The Convention entered into effect in 1950. Israel became party to the convention without reservations in 1951.

The scope of the Convention is provided in Article 2, which states, *inter alia*:

⁹ ICRC (International Committee of the Red Cross)

”[...] 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.”

Protected persons are defined by the Convention’s Article 4:

”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 of the Convention states, *inter alia*:

”[...] The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”¹⁰

3.2 Statement from the International Committee of the Red Cross (ICRC)

The ICRC has expressed opinions regarding the legality of the Israeli settlements in the West Bank on several occasions.

In 2001, the ICRC repeated previous statements that the Israeli settlements are in violation of international humanitarian law. According to the ICRC, Israel has introduced practices which contravene the IV Geneva Convention. These practices have been incorporated into laws and administrative guidelines and have been sanctioned by the highest Israeli judicial authorities. The ICRC also highlights the humanitarian consequences for the Palestinian population arising from the settlements, and especially from the measures taken to extend the settlements and to protect the settlers, entailing the destruction of houses, land requisitions, the sealing-off of areas, roadblocks and the imposition of long curfews.¹¹

¹⁰ IV Geneva Convention, : <http://www.icrc.org/IHL.NSF/FULL/380?OpenDocument>

¹¹ Section 5, Statement by the International Committee of the Red Cross, Geneva, 5 December 2001: “ [...] *In the course of its activities in the territories occupied by Israel, the ICRC has repeatedly noted breaches of various provisions of international humanitarian law, such as the transfer by Israel of parts of its population into the occupied territories, the destruction of houses, failure to respect medical activities, and detention of protected persons outside the occupied territories. Certain practices which contravene the Fourth Geneva Convention have been incorporated into laws and administrative guidelines and have been sanctioned by the highest judicial authorities. While acknowledging the facilities it has been granted for the conduct of its humanitarian tasks, the ICRC has regularly drawn the attention of the Israeli authorities to the suffering and the heavy burden borne by the Palestinian population owing to the occupation policy and, in line with its standard practice, has increasingly expressed its concern through bilateral and multilateral representations and in public appeals. In particular, the ICRC has expressed growing concern about the consequences in humanitarian terms of the establishment of Israeli settlements in the occupied territories, in violation of the Fourth Geneva Convention. The settlement policy has often meant the destruction of Palestinian homes, the confiscation of land and water resources and the parcelling out of the territories. Measures taken to extend the settlements and to protect the settlers, entailing the destruction of houses, land requisitions, the sealing-off of areas, roadblocks and the imposition of long curfews, have also seriously hindered the daily life of the Palestinian population. [...]* Find the full statement here:

http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/57JRGW?OpenDocument&View=defaultBody&style=custo_print

3.3 Advisory opinion of the International Court of Justice

In its 2004 advisory opinion on the legality of Israel's separation barrier on the West Bank, the ICJ also considered the legality of the settlements.¹²

The ICJ finds that the IV Geneva Convention is applicable for Israel's occupation of the West Bank¹³ and, furthermore, that the establishment of settlements in the West Bank is in violation of the Convention:

*"The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law."*¹⁴

3.4 Security Council resolutions

The UN Security Council has adopted several resolutions stating the illegality of the settlements, including resolutions 446 (1979), 452 (1979), 465 (1980), 471 (1980), and 476 (1980).

Security Council resolution 465, which was approved unanimously on March 1st, 1980, states that Israel's policy and practice of constructing settlements on occupied territory constitutes a flagrant violation of the IV Geneva Convention.¹⁵

3.5 Israel's view

Israel contests that the settlements are illegal, and views statements to this effect to be politically motivated.

Among other things, the Israeli Ministry of Foreign Affairs points to the fact that movement to the settlements is voluntary, and that this is not the form of deportation or transfer that the

¹² ICJ - Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, July 4th, 2004, <http://www.icj-cij.org/docket/files/131/1671.pdf>

¹³ Ibid, section 95

"The object of the second paragraph of Article 2 is not to restrict the scope of application of the Convention, as defined by the first paragraph, by excluding therefrom territories not falling under the sovereignty of one of the contracting parties. It is directed simply to making it clear that, even if occupation effected during the conflict met no armed resistance, the Convention is still applicable.

This interpretation reflects the intention of the drafters of the Fourth Geneva Convention to protect civilians who find themselves, in whatever way, in the hands of the occupying Power. Whilst the drafters of the Hague Regulations of 1907 were as much concerned with protecting the rights of a State whose territory is occupied, as with protecting the inhabitants of that territory, the drafters of the Fourth Geneva Convention sought to guarantee the protection of civilians in time of war, regardless of the status of the occupied territories, as is shown by Article 47 of the Convention." [...] The drafters of the second paragraph of Article 2 thus had no intention, when they inserted that paragraph into the Convention, of restricting the latter's scope of application. They were merely seeking to provide for cases of occupation without combat, such as the occupation of Bohemia and Moravia by Germany in 1939."

¹⁴ Ibid section 120

¹⁵ *"The Security Council [...] Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East",* <http://unispal.un.org/UNISPAL.NSF/0/5AA254A1C8F8B1CB852560E50075D7D5>

provisions of the IV Geneva Convention are meant to prohibit. Furthermore it contends that the settlements do not displace the population of the West Bank.¹⁶

Israel maintains that it in any case has valid rights to the title to the territory, and that agreement on territorial claims, including the final status of the settlements, must be achieved through negotiations.

4 What the Council will consider

The Fund's Ethical Guidelines' section 4.4. entails that the Council shall issue recommendations on the exclusion of companies from the investment universe because of acts or omissions that constitute an unacceptable risk of the Fund contributing to serious violations of individuals' rights in situations of war or conflict.¹⁷

In the Government White Paper (NOU 2003:22), the groundwork for the Fund's Ethical Guidelines is discussed in appendix 7:

*“International conventions specify the limits of international consensus as concerns the minimum standards which should be guaranteed in matters of fundamental global rights, as well as the standards which should be applicable for the protection of the environment, human life and health .”*¹⁸

It also states that:

¹⁶ Israel Ministry of Foreign Affairs, Israeli Settlements and International Law, May 2001: “[...] The provisions of the Geneva Convention regarding forced population transfer to occupied sovereign territory cannot be viewed as prohibiting the voluntary return of individuals to the towns and villages from which they, or their ancestors, had been ousted. Nor does it prohibit the movement of individuals to land which was not under the legitimate sovereignty of any state and which is not subject to private ownership. In this regard, Israeli settlements have been established only after an exhaustive investigation process, under the supervision of the Supreme Court of Israel, designed to ensure that no communities are established on private Arab land.

It should be emphasised that the movement of individuals to the territory is entirely voluntary, while the settlements themselves are not intended to displace Arab inhabitants, nor do they do so in practice.

Repeated charges regarding the illegality of Israeli settlements must therefore be regarded as politically motivated, without foundation in international law. Similarly, as Israeli settlements cannot be considered illegal, they cannot constitute a "grave violation" of the Geneva Convention, and hence any claim that they constitute a "war crime" is without any legal basis. Such political charges cannot justify in any way Palestinian acts of terrorism and violence against innocent Israelis.

Politically, the West Bank and Gaza Strip is best regarded as territory over which there are competing claims which should be resolved in peace process negotiations. Israel has valid claims to title in this territory based not only on its historic and religious connection to the land, and its recognized security needs, but also on the fact that the territory was not under the sovereignty of any state and came under Israeli control in a war of self-defense, imposed upon Israel. At the same time, Israel recognizes that the Palestinians also entertain legitimate claims to the area. Indeed, the very fact that the parties have agreed to conduct negotiations on settlements indicated that they envisage a compromise on this issue.”

<http://www.mfa.gov.il/mfa/peace%20process/guide%20to%20the%20peace%20process/israeli%20settlements%20and%20international%20law>

¹⁷ Ethical Guidelines for the Government Pension Fund Global: http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/ethical-guidelines.html?id=425277

¹⁸ NOU 2003: 22, section 7.3.2: <http://www.regjeringen.no/nb/dep/fin/dok/nouer/2003/nou-2003-22/15.html?id=371861> (This links to the original Norwegian language text. The English translation provided in this document is unofficial.)

“International conventions prohibiting the use of certain types of weapons and regulating the conduct of hostilities in war and conflict may provide a relevant foundation for ethical guidelines. The basis of legal constraints in the use of arms, munitions and the means through which warfare is conducted is primarily formed by humanitarian considerations. This is why this part of international law is referred to as international humanitarian law; protecting civilians and soldiers from unnecessary suffering is the reason why these rules have been developed. One can therefore view ethical considerations and legal norms as overlapping on this matter.

*This legal framework – enshrined in the four Geneva Conventions of 1949, their two additional protocols of 1977 and a number of specific conventions regulating various types of weapons and munitions – is mainly directed towards states but also, to a certain degree, towards non-state actors in a conflict. As with other examples of international law, it is not directed towards companies. To the extent that these rules aim to protect individuals from harm, it is nevertheless possible to claim that companies should endeavor to act in such a way that they are not co-responsible for violating international humanitarian law.”*¹⁹

In its preparatory work, the Geneva Conventions are specifically mentioned as part of the basis for the Fund’s Ethical Guidelines. The Council therefore assumes that companies’ contributions to States’ violations of the Geneva Convention may form the basis for a recommendation to exclude companies from the Fund. The degree of contribution by the company to the violation of the conventions must be considered for each separate case. If there is a close link between a company’s action and a State’s violation of the IV Geneva Convention, the investment in the company could be seen as constituting an unacceptable risk of the Fund contributing to serious violations of individuals’ rights in situations of war or conflict.

As discussed in previous recommendations, it is the role of the Council to assess whether investments in companies constitute a risk of contributing to breach of the Fund’s Ethical Guidelines. The Council is to consider subjective matters related to companies, not the possible breaches of norms by states or other actors.

5 The Council’s assessment

The Council has established that the ICRC, the ICJ, and the UN Security Council all find that the settlements in the West Bank have been built in violation of the IV Geneva Convention and must therefore be considered illegal.

The purpose of Article 49 of the IV Geneva Convention is to provide protection to the civilian population of an occupied territory by preventing the occupying power from carrying out large demographic changes in the territory. Whether such changes occur by displacement of the original population or by settling in unpopulated areas is not decisive.

Israel maintains, *inter alia*, that the settlements are not in violation of the IV Geneva Convention because movement to the settlements is voluntary. However, the civilian population of the occupying power are not protected persons under the IV Geneva Convention (article 4), so the purpose of the convention’s article 49 is not to protect the population of the occupying

¹⁹ *Supra*, section 7.3.2.2

power from being moved to the occupied territory. Nor is it out of consideration for the rights of the settlements' population that numerous claims of Israel's violation of the IV Geneva Convention have been put forward.

Several companies in the Fund's portfolio can probably be said to support the settlements in different ways and to various degree. In addition to the actual construction of the settlements and their infrastructure, companies may be involved in e.g. the supply of electricity and telecommunications, the sale of goods and fuel, industrial activity or the sale of real estate in settlements. In addition there may be companies in the Fund which supply construction materials and other resources used for building the settlements and their associated infrastructure. However, the Council does not consider that all forms of economic activity associated with the settlements necessarily constitute unacceptable contributions to breaches of the Fund's Ethical Guidelines, and that an assessment of the degree to which each company contributes must form the basis for the Council's decisions. Construction activities related to the building of real estate in the settlements, i.e. the physical building of houses in the settlements, is, in the view of the Council, the most significant contribution to the further expansion of West Bank settlements.

The mechanism of excluding companies from the Fund is not intended as a penalty for previous breaches of norms, but as a means of preventing the Fund's contribution to present and future breaches of norms. However, a company's previous pattern of behaviour can give some indications of its future course of action. As Africa Israel Investments Ltd. has not responded to the Council's enquiries nor clarified any plans for continued building of settlements in the West Bank, the Council concludes the following:

Generally, the Council assumes that a construction company's activities related to building projects will vary over time. Normally, large scale projects will be planned, initiated and executed over the course of some years. Construction companies will often be involved simultaneously in several projects at different stages of their completion. The company Danya Cebus is currently executing several construction projects related to the building of settlements in the West Bank. As long as Israeli authorities do not ban all forms of construction of settlements or expansion of existing settlements, there is reason to assume that Danya Cebus will be involved in such activity also in the future, but that the degree of involvement may vary over time. The Council therefore finds that the Fund's investment in the company constitutes an unacceptable risk of future contribution to serious violations of individuals' rights in situations of war and conflict and, consequently, that the investment violates the Fund's Ethical Guidelines.

6 Recommendation

Based on the above, and according to section 4.4. of the Fund's Ethical Guidelines, the Council on Ethics recommends that the companies Africa Israel Investments Ltd. and Danya Cebus Ltd. be excluded from the investment universe of the Government Pension Fund Global.

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