

[Unofficial English translation]

Letter to the Ministry of Finance

Oslo, 15 May 2006

Regarding investments connected with the Middle East

Background

On 6 January 2006 the Ministry of Finance received a letter from the Church of Norway Council on Ecumenical and International Relations concerning "*investments in the West Bank*". It urged the Government Pension Fund – Global to "*review its investments and possibly withdraw from companies that are active in the construction of the wall and Israeli settlements in the occupied West Bank. This also applies to infrastructure linked to the settlements, such as water and roads.*" The Council on Ecumenical and International Relations also requested a meeting with representatives from the Council on Ethics to discuss the issue in further detail.

The letter was submitted to the Council on Ethics for the Government Pension Fund – Global on 10 February 2006.

At a meeting held on 7 March 2006 the Council on Ethics discussed the Fund's possible contribution to violations of human rights or other ethical norms through investments in Israeli companies. The debate also covered investments in non-Israeli companies that have operations in or supply products to Israel, and whether these may constitute such contribution.

On 21 March 2006 the Council on Ethics' Chair and Secretariat had a meeting with representatives from the Council on Ecumenical and International Relations. After this the Council on Ethics has also engaged in further discussions on the issue.

This letter intends to give an account of the Council on Ethics' considerations regarding the aforementioned investments and the outcome of the meeting with representatives from the Council on Ecumenical and International Relations.

The Fund's investments in Israeli companies and institutions

On 10 February 2006 the Council on Ethics' Secretariat contacted Norges Bank to enquire about Israeli companies included in the portfolio and benchmark index of the Government Pension Fund - Global. Norges Bank replied to the inquiry on the same date, informing that the Fund's benchmark portfolio established by the Ministry of Finance does not include Israel, but that Israel is a country where investments can be made outside benchmark.

As of 10 February 2006 the Fund had investments in five Israeli companies / institutions, of which three were allocated to equities and two to bonds:

Equities

- **Bank Hapoalim BM:** International bank for corporate and private clients.¹
- **Emblaze Ltd:** IT company (software), makes products such as digital video and mobile phone systems.²

- **Teva Pharmaceutical Industries Ltd:** Pharmaceutical company, produces mainly generic drugs. 90% of sales stem from markets in North America and Europe.³

Bonds

- **Israel Electric Corp:** Energy company which is responsible for all electricity supply in Israel. The company is 99.8% state-owned.⁴
- **Israel AID:** Securities issued by the Israeli government, but guaranteed by the US government through US AID.

The Council on Ethics' assessment of the operations run by the Israeli companies and institutions included in the Fund

The Council on Ethics has no information to indicate that the companies selected for equity investments can be said in any way to contribute to Israeli authorities' possible violations of human rights or other ethical norms. Moreover, the Council on Ethics has no reason to believe that these companies contribute to the construction of the controversial wall which is being erected by the Israeli government or the maintenance of Israeli settlements in occupied territories. Such contribution hardly seems plausible in light of the companies' business areas. The Council on Ethics has therefore not found reason to proceed with any detailed assessment of these companies' possible complicity in violations.

Additionally, the Council on Ethics has analysed whether the investment in Israel Electric Corporation may constitute a contribution to violations provided that the company supplies electric power to illegal Israeli settlements. Even though the Council Ethics does not know exactly how the electricity supply to Israeli settlements in the West Bank is handled or what role Israel Electric Corporation plays, the Council does not consider the Fund's Ethical Guidelines to target such activities. In the Council's view, the supply of electric power to civilians can hardly be considered illegal or unethical. Besides, the maintenance of such infrastructure will be beneficial to all parties in the area.

The letter from the Council on Ecumenical and International Relations also refers to the exclusion of the company Kerr McGee Corp. from the Fund because of its offshore activities in Western Sahara⁵: *"The Council on Ecumenical and International Relations would like to point out that Norwegian authorities in a case related to Western Sahara have emphasized that investments in business activities in occupied areas are contrary to international law and Norwegian policy."*

The Council on Ethics is of the opinion that the comparison with the recommendation to exclude Kerr McGee Corp. should not be stretched too far. The background for Kerr McGee's exclusion was the company's contribution to the exploitation of natural resources in occupied territory. International law, including the UN Charter and the UN Convention on the Law of the Sea, says that activities which include the exploitation of natural resources in occupied, non-autonomous or other dependent areas shall be carried out in accordance with the wishes of the affected population. This is related to the fact that access to natural resources often is at the root of occupations and violent conflicts. International law seeks to delegitimize financial gains acquired by the exploitation of natural resources through occupation. Even if it may be unclear whether the offshore exploration activity in Western Sahara constitutes a direct violation of international law, the Council on Ethics' assessment has been that the

contribution to such activity must, at any rate, be regarded as a serious violation of basic ethical norms and therefore be covered by the Fund's Ethical Guidelines. However, the exclusion of Kerr McGee does not imply that the Fund's Ethical Guidelines apply to every kind of investment in occupied areas.

With regard to the Fund's investments in securities issued by Israel AID, the Council on Ethics has not made any assessment. It is beyond the mandate of the Council on Ethics to evaluate investments in government bonds.

The Council on Ethics' assessment of non-Israeli companies that do business in Israel

Concerning contribution to Israeli authorities' violations of human rights or other ethical norms, non-Israeli companies can also be assessed and thus fall within the scope of the Fund's Ethical Guidelines. This may be the case with companies that supply military equipment or civilian equipment with military applications to Israeli authorities.

The Council on Ethics is aware that a large number of companies provide Israel with military equipment. As a basis, the Council on Ethics accepts that the Israeli state has a legitimate right to keep military forces, and that the sale of military equipment to Israel will not, in itself, be targeted by the Fund's Ethical Guidelines, as long as this does not include weapons subject to the Fund's specific exclusion criteria for inhumane weapon types. An assessment of possible complicity in breaches of ethical norms must therefore be limited to companies that sell equipment while knowing it will be used exclusively for illegal or unethical acts.

In this context, the Council on Ethics has assessed the Fund's investment in the US company Caterpillar Inc.⁶ The background for the Council's assessment is as follows:

Caterpillar Inc. supplies the Israeli Army with bulldozers and spare parts. In principle these are civilian machines, which in Israel are armoured and equipped for military use. Such armoured bulldozers have been used by the Israeli Army against Palestinian civilians, for instance to tear down Palestinian settlements and destroy Palestinian farmland. The Council on Ethics is also aware that lawsuits have been lodged against the company on the grounds of alleged complicity in human rights violations through the sale of military equipment to Israeli authorities.

The Council on Ethics deems it clear that Israeli authorities have used equipment supplied by Caterpillar to commit acts which probably can be considered as amounting to human rights violations. However, since the equipment Caterpillar delivers to Israeli authorities also is destined for legitimate use, it is problematic to hold the company accountable for all uses of its products. The Council on Ethics takes as a basis that, similarly to other military equipment, including different types of legal weapons, the applications may be both legitimate and legal, but the equipment may also be used for acts which must be considered unethical or even illegal. In the same way as for the components of inhumane weapons, which have several areas of use (see discussion of "dual use" in the recommendation on exclusion of companies that manufacture components for nuclear weapons), the main rule will be that such products do not fall within the scope of the Fund's Ethical Guidelines.⁷ Consequently, there must be a strong element of complicity by Caterpillar in any possible violations if the company is to be excluded in spite of this. The Council on Ethics assumes that it will be difficult to find facts which will provide grounds for exclusion of the company based on its supply of materials to the Israeli authorities.

Meeting with representatives of the Council on Ecumenical and International Relations

The Council on Ethics' Chair and Secretariat had a meeting on 21 March 2006 with the General Secretary, Olav Fykse Tveit, and two other representatives of the Council on Ecumenical and International Relations.

During the meeting a briefing was given on the Fund's Ethical Guidelines in general and the Council on Ethics' assessment of investments in Israeli companies included in the Fund. On its own initiative, the Council on Ecumenical and International Relations raised the issue of Caterpillar, and the Council on Ethics' view of the company's possible contribution to violations was presented orally. Subsequently, the comparison with the exclusion of Kerr McGee was discussed, and the Council on Ethics pointed out that this case has little relevance to the conflict between Israel and the Palestinians.

Conclusion

The Council on Ethics has not found grounds for recommending the exclusion of companies because of their activities in Israel or in areas under Israeli occupation. This applies to both the Israeli companies in the Fund and the foreign companies with operations in the area. A meeting has been held with representatives from the Council on Ecumenical and International Relations during which this assessment was presented. However, the possibility is not ruled out that information may be revealed in the future leading to closer examination and possible recommendations.

Yours faithfully,

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¹ See <http://www.bankhapoalim.com/>

² See <http://www.emblaze.com/contact.asp>

³ See <http://www.tevapharm.com/>

⁴ See <http://investor.i-ecnet.co.il/>

⁵ See recommendation on the exclusion of Kerr McGee Corp., 12 April 2005:
<http://odin.dep.no/etikkradet/norsk/dokumenter/099001-990062/dok-bn.html>

⁶ See <http://www.cat.com/>

⁷ See the Council on Ethics' recommendation on the exclusion of companies that develop and produce nuclear weapons, 19 Sep 2005: <http://odin.dep.no/etikkradet/norsk/dokumenter/099001-990072/dok-bn.html>