

To the Ministry of Finance

Recommendation

May 15th, 2009

(UNOFFICIAL ENGLISH TRANSLATION)

1 Introduction

The Council on Ethics recommends that the Israeli company Elbit Systems Ltd (“Elbit”) be excluded from the Government Pension Fund – Global.

Elbit supplies a surveillance system that is part of the separation barrier being built by the Israeli government in the West Bank. The construction of parts of the barrier may be considered to constitute violations of international law, and Elbit, through its supply contract, is thus helping to sustain these violations. The Council on Ethics considers the Fund’s investment in Elbit to constitute an unacceptable risk of complicity in serious violations of fundamental ethical norms.

As of 31.12.08 the Fund’s equity investments in Elbit Systems Ltd had a market value equivalent to NOK 35.8 million.

2 Background

2.1 About the separation barrier in the West Bank

Declared purpose of the barrier

Since 2002, Israel has been building a barrier fencing off the West Bank. Israel’s express purpose with the barrier is to put an end to terror attacks against Israel by preventing the infiltration of terrorists from the West Bank.¹

From the Israeli side it has been pointed out that the barrier does not define any national border, nor will it have any bearing on border negotiations, and that the barrier will be dismantled when it is no longer needed.²

¹ On its website, the Israeli Ministry of Defence states that the sole purpose of the separation barrier is to provide security against terror attacks: *“The sole purpose of the Security Fence, as stated in the Israeli Government decision of July 23rd 2001, is to provide security. The Security Fence is a central component in Israel’s response to the horrific wave of terrorism emanating from the West Bank, resulting in suicide bombers who enter into Israel with the sole intention of killing innocent people.”*

<http://www.securityfence.mod.gov.il/Pages/ENG/purpose.htm>

² The Israeli Ministry of Defence: *“The Security Fence that is being built is intended to counter terrorism of the most brutal kind, not to dictate a border that is and remains the subject of permanent negotiations. It is our hope that by building this fence its very function will become irrelevant and that one day it will be dismantled.”* <http://www.securityfence.mod.gov.il/Pages/ENG/questions.htm>

Barrier construction

Some 95% of the barrier consists of a system of fences, razor wire, patrol paths, and electronic surveillance systems. This part of the barrier is 50-100 m wide.

Approximately 5% of the barrier is made of prefabricated concrete slabs forming an eight-metre high wall.

There is a system of gates and checkpoints for traffic that is to pass the barrier. An electronic surveillance and control system is used to detect persons who attempt to cross the barrier.

Barrier route

Once it is completed, the barrier will be more than 700 km long. The construction of the barrier has taken place in stages and has not yet been concluded.

As of July 2008, the UN Office for Coordination of Humanitarian Affairs reported the following:

- The projected barrier route is 726 km, which is more than twice the length of the armistice line from 1949 (the so-called “*Green Line*”).
- Once it has been completed, some 13% of the barrier will follow the Green Line, and the remaining 87% of the barrier will be inside the West Bank.
- The total area located between the barrier and the Green Line makes up nearly 10% of the West Bank area.
- Some 35 000 West Bank Palestinians reside between the barrier and the Green Line. There are also around 250 000 Palestinians in East Jerusalem living between the barrier and the Green Line, thus being separated from the rest of the West Bank.
- Approximately 125 000 Palestinian residents in the West Bank are surrounded by the barrier on three sides. Moreover, some 26 000 Palestinians who live in enclaves are completely surrounded by the barrier and only have access to the West Bank through regulated gates.

See annex 1, which is a sketch map of the West Bank indicating the separation barrier’s projected route as of July 2008. The map has been prepared by the UN agency OCHA.³

2.2 The role of the company Elbit Systems Ltd

The Government Pension Fund – Global is invested in the Israeli company Elbit Systems Ltd, which produces electronic systems primarily for the defence industry.

The company supplies an electronic surveillance system called “*Torch*” for the separation barrier. *Torch* is designed to detect persons attempting to cross the barrier and to provide this information to the staff that guards it.

The Israeli Ministry of Defence provides the following information on its website:

³ See map on OCHA’s website: http://www.ochaopt.org/documents/BarrierRouteProjections_July_2008.pdf

*“Three Israeli companies are approved by the IDF to provide intrusion detection fence, having passed its technical requirements through an extensive two year on site experiment. Of these three companies, Magal Security Systems won the contract for the central section (Salem towards Elkana) and **Elbit Systems** together with the American company, Detektion, won the contract for the northern and southern sections of Jerusalem.”*⁴

On its website, the Israeli Ministry of Defence also publishes a video showing the *Torch* system in use. The following is a quote from this video:

*“The IDF put Elbit System’s Torch system into operational use six months ago, after just two years of development [...]”*⁵

As appears from the above, Elbit is one of three companies that have delivered surveillance systems to the separation barrier. Among these three, only Elbit features in the portfolio of the Government Pension Fund – Global.

2.3 The separation barrier’s legitimacy

Various authorities have pointed out that the construction of the separation barrier along its chosen route must be deemed illegal.

Advisory opinion from the International Court of Justice in the Hague (ICJ)

At the request of the UN General Assembly, the International Court of Justice (ICJ) in the Hague issued an advisory opinion in 2004 regarding the legitimacy of the construction of the separation barrier in occupied territory.

The foundation for the advisory opinion is the following question:

*“What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?”*⁶

In its statement, the ICJ takes as a point of departure that only the parts of the barrier located in occupied territory are to be assessed. The sections of the barrier located inside Israeli territory are thus not included in the ICJ’s assessment nor are they part of the foundation for the Court’s conclusion.⁷

⁴ The Israeli Ministry of Defence: <http://www.securityfence.mod.gov.il/Pages/ENG/execution.htm#2>

⁵ “IDF” is the acronym for the Israel Defence Forces, i.e. the Israeli armed forces. See http://www.securityfence.mod.gov.il/Pages/ENG/masoa_eng.avi

⁶ The UN General Assembly, 12 December 2003, resolution ES 10/14: <http://domino.un.org/unispal.nsf/d9d90d845776b7af85256d08006f3ae9/f953b744269b9b7485256e1500776dc!OpenDocument>

⁷ ICJ - Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 4 July 2004, para. 67: “The Court notes furthermore that the request of the General Assembly concerns the legal consequences of the wall being built “in the Occupied Palestinian Territory, including in and around East Jerusalem”. As also explained below [...] some parts of the complex are being built, or are planned to be built, on the territory of Israel itself; the Court does not consider that it is called upon to examine the legal consequences arising from the construction of those parts of the wall.” <http://www.icj-cij.org/docket/files/131/1671.pdf>

The ICJ finds that the construction of the separation barrier along the chosen route is in contravention of international law:

“In sum, the Court finds that, from the material available to it, it is not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives. The wall, along the route chosen, and its associated régime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of security or public order.

The construction of such a wall accordingly constitutes breaches by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments.”⁸

As appears from the above, the ICJ’s assessment takes as a point of departure that the barrier and its associated control regime violate the rights of a large number of Palestinians in the West Bank. The ICJ attaches particular importance to the fact that the choice of route for the barrier, “[...] *the specific course Israel has chosen for the wall [...]*” cannot be justified by military necessity or Israeli security requirements. Moreover, the ICJ points out that the barrier itself, the choice of route, and the control regime that the barrier is part of, jointly constitute Israel’s violation: “*The wall, along the route chosen, and its associated régime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel[...]*”

At the same time, the ICJ stresses Israel’s right, and indeed duty, to protect its citizens against terror attacks.⁹ The measures that Israel implements, however, must be legal and the right of self-defence or considerations of military necessity cannot justify the construction of the separation barrier along the chosen route.¹⁰

Israel’s reply to the ICJ

Israel submitted a comprehensive written statement to the ICJ before the hearing of the case.¹¹

Primarily, Israel argued that the matter at hand did not pertain to the ICJ’s jurisdiction and that the ICJ, even if it had the jurisdiction, should not, on various grounds, issue any opinion:

“Israel considers that the Court does not have jurisdiction to entertain the request and that, even were it to have jurisdiction, it should not respond to the requested opinion.”¹²

Secondarily, Israel argued that the ICJ, in light of the material that had been presented to the Court, would not be able to weigh Israeli security needs against the disadvantages that the separation barrier implies.¹³