

CHAPTER 10

INVESTMENT POLICIES AND ARMS PRODUCTION— EXPERIENCES FROM THE NORWEGIAN PENSION FUND—GLOBAL

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SUMMARY

In the late 1990s, a public debate concerning ethical guidelines for the Norwegian Government Petroleum Fund (now the Pension Fund–Global) led to the development of Ethical Guidelines for the Fund. In 2006, 15 large companies producing arms were excluded from investment by the Fund. This chapter will explain how the Ethical Guidelines came about and how they function. It also looks at the consequences of the Guidelines for investment in arms production more generally, and their implications for on-going advocacy work related to cluster munitions.

BACKGROUND

Norway receives substantial revenue from its petroleum industry. In 1990 the Norwegian government established the *Government Petroleum Fund*. Since January 2006 the official name of the fund is the *Norwegian Government Pension Fund–Global*. It amounts to approximately €200 billion at present, making it one of the world's largest public funds.

As the Fund increased, a public debate arose about whether it ought to be subject to ethical standards. One incident that in particular generated much debate on the investment policies of the Fund was a 1999 news story pointing out that the Fund was invested in a Singaporean company producing anti-personnel mines. This information captured the public's attention particularly because of Norway's high international profile in the Ottawa process, which resulted in the Mine Ban Convention, banning the

use, development, stockpiling, production and transfer of anti-personnel mines. It was pointed out that although Norway was a party to this Convention, public money was nevertheless being invested in anti-personnel mine production.

In response, the Norwegian government established an Advisory Commission on International Law in 2001. Its mandate was to determine whether investments through the Petroleum Fund could constitute a breach of Norway's international legal obligations. The Commission recommended to the Ministry of Finance that the Singaporean company (Singapore Technologies) be excluded from the Fund's investment universe,¹ because any investment in such a company could constitute a violation of the complicity provision in the Mine Ban Convention (Article 1.c).²

Very few international treaties, however, have provisions that ban *investments* in prohibited activities. The mandate of the Advisory Commission on International Law was thus relatively narrow, and soon politicians, non-governmental organizations (NGOs) and other civil society actors in Norway began to demand guidelines for the Fund that would cover more than just breaches of international law through investments. In 2002, a governmental commission (the Graver Commission) was established, with a mandate to propose a set of ethical guidelines for the Fund. Based on the Graver Commission's report and the discussions in Norway's Parliament that ensued, the Ethical Guidelines for the Fund were adopted by the Government in November 2004.³

This chapter will first provide an overview of the mechanisms in place to ensure the *Government Pension Fund–Global's* ethical investment policies. It will then look more closely at the role of the Council of Ethics with regard to investments in production of cluster weapons, nuclear weapons and anti-personnel landmines. The chapter will also look at the effects of these ethical guidelines on investments in arms production more generally, and possible implications for on-going multilateral efforts on the issue of cluster weapons.

THE ETHICAL GUIDELINES

Two sets of ethical considerations constituted the foundation for the Guidelines; first, the Fund should benefit future generations and thus secure

long-term returns; and second, while securing the returns, the Fund should not be complicit in serious unethical conduct. Many politicians and members of the public had previously viewed the aims of making profit yet working to ensure that ethical considerations are taken into account in investing as mutually irreconcilable. Now, the Guidelines were designed to bridge that gap. Point 1 of the Guidelines thus reads as follows:

- The Government Pension Fund–Global is an instrument for ensuring that a reasonable portion of the country’s petroleum wealth benefits future generations. The financial wealth must be managed with focus on generating a sound return in the long term, which is contingent on sustainable development in the economic, environmental and social sense. The financial interests of the Fund shall be consolidated by using the Fund’s ownership interests to promote such sustainable development.
- The Government Pension Fund–Global should not make investments which constitute an unacceptable risk that the Fund may contribute to unethical acts or omissions, such as violations of fundamental humanitarian principles, serious violations of human rights, gross corruption or severe environmental damages.⁴

The Ethical Guidelines contain three different mechanisms:⁵

- exercise of ownership rights;
- negative screening; and
- ad hoc exclusions.

Whereas the Central Bank is responsible for the exercise of ownership rights, an independent *Council on Ethics* was established to implement the two latter mechanisms.⁶ While the Central Bank is responsible for investments, the Council on Ethics is responsible only for disinvestments (exclusions) of companies. The Council thus limits the Bank’s investment universe.

The Council consists of five members and has a working secretariat (presently of four persons).⁷ When a case has been researched and the Council deems it appropriate to invoke the exclusion criteria, it makes a formal recommendation to the Ministry of Finance. The latter then decides whether to follow the Council’s recommendation or not. In either case, the Council’s recommendation is made public. The Central Bank, however, is given due notice to sell the relevant instruments before publication of the

recommendation takes place. As of May 2006, six Council recommendations have been made public, four of which relate to arms production.⁸

EXERCISE OF OWNERSHIP RIGHTS

The first mechanism, the *exercise of ownership rights*, is based, among other things, on the principles of the UN Global Compact and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.⁹ The Central Bank, which administers the Fund on a daily basis for the Ministry of Finance, is responsible for this mechanism.

In general terms, the purpose of exercising ownership rights is to protect and develop the capital that the shareholder has invested in a company.¹⁰ A shareholder can influence the company through dialogue, voting rights and board representation and in some cases by buying and selling ownership interests.

As a financial investor, the Fund is not usually represented on corporate boards. This is because the possibility of acquiring “insider information” limits the scope for buying or selling equities when the Fund so desires. The Fund has instead developed a corporate governance and sustainable development policy as a key instrument in exercising ownership rights. This is to ensure that the board and management of the company concerned act in a way that serves the shareholders’ long-term interests. The Pension Fund can use its influence through voting at general meetings, communicating with other investors or stakeholders, and communicating directly with corporate management.

There is no direct linkage between the Central Bank’s exercise of ownership rights and the functions of the Council on Ethics, which implements the two other mechanisms under the Guidelines. It is, however, understood that exclusions of companies from the Fund’s portfolio will take place only when it is probable that exercise of ownership rights is not sufficient to reduce the risk of complicity in unethical activities.

NEGATIVE SCREENING AND AD HOC EXCLUSIONS

The second and third mechanisms, *negative screening* and *ad hoc exclusions* of companies from the Fund's portfolio, both constitute *exclusion of companies* from the Fund. The Council on Ethics are mandated to recommend exclusion of companies based on a set of specific criteria contained in the Guidelines.¹¹

- Negative screening entails screening with a view to identifying companies in the Fund's portfolio involved in the production of weapons regarded as ethically unacceptable. Such companies will be excluded from the Fund. Negative screening is thus focused primarily on the *production of certain products*. The term *screening* indicates that the aim is to exclude *all* companies involved in the production.
- Ad hoc exclusion is when a company is excluded from the Fund's portfolio because of unethical activities relating to serious human rights violations and violations of individuals' rights in war or conflict, severe environmental damage, gross corruption and other particularly serious violations of fundamental ethical norms. Ad hoc exclusion is thus focused primarily on *company conduct*. Such decisions are made on an ad hoc basis.

While negative screening aims for the exclusion of *all* companies within the Fund involved in producing products of relevant concern, the exclusion mechanism because of company conduct only targets companies on an ad hoc basis. It is not considered realistic to actually screen the whole portfolio for every company that may be complicit in human rights violations, environmental damage etc. Company conduct may change relatively quickly, while it is less likely that a company changes what it actually produces.

There was substantial political debate on which products ought to be subject to negative screening. Many politicians and members of the public were in favour of including, for example, tobacco on the list of such products. In the end, however, the list of screened products was limited to specific weapons.

We now turn to examining more closely how the negative screening mechanism works.

HUMANITARIAN PRINCIPLES AND NEGATIVE SCREENING OF CERTAIN WEAPONS PRODUCERS

The first paragraph of Point 4.4 of the Ethical Guidelines states that the Council on Ethics shall recommend exclusion of companies producing *weapons that through normal use may violate fundamental humanitarian principles*. These humanitarian principles are as follows:

- the **principle of proportionality**, which refers to weapons that through normal use lead to unnecessary suffering or superfluous injury;
- the **principle of distinction**, which refers to weapons that do not distinguish between military objectives and civilians.

Different types of weapons, ammunition and means of warfare are prohibited under existing international law with reference to these principles. Both the Advisory Commission on International Law and the Graver Commission assumed that it would be in violation of Norway's obligations under international treaty law to invest in companies that produce or sell chemical weapons, biological weapons or anti-personnel mines. Moreover, the Graver Commission assumed that it would be gravely unethical to invest in the production of weapons and ammunition mentioned in the UN Convention on Certain Conventional Weapons (CCW) (weapons the primary effect of which is to injure by fragments which in the human body are not detectable by X-rays, as well as booby-traps and certain mines, incendiary weapons and blinding laser weapons).

All of the above mentioned weapons are prohibited under international law. However, certain weapons *not* clearly prohibited under international law still might be considered to violate fundamental humanitarian principles. This was, both by the Graver Commission and the Parliament, considered to be the case for nuclear weapons and cluster weapons. The preparatory work of the Guidelines thus lays down an exhaustive list of weapons, including both prohibited *and* non-prohibited weapons that were considered to violate humanitarian principles. These are: chemical and biological weapons, blinding laser weapons, munitions with fragments not detectable by X-ray, incendiary weapons as referred to in the CCW, anti-personnel mines, cluster weapons and nuclear weapons.

CLUSTER WEAPONS

Soon after its establishment, the Council on Ethics examined the Fund's portfolio with a view to identifying companies involved in production of cluster weapons. The Council first set out to define the term "cluster weapons", and then to identify companies involved in production of key components of such weapons.

On 16 June 2006, the Council submitted a recommendation to the Ministry of Finance to exclude seven companies. These companies were General Dynamics Corp., L3 Communications Holdings Inc., Raytheon Co., Lockheed Martin Corp., Alliant Techsystems Inc., EADS Co. (European Aeronautic Defence and Space Company) and Thales SA.

The Council, referring to the terms "fundamental humanitarian principles", based its recommendation on the principle of *distinction*¹²—the Council recognized that cluster weapons generally are indiscriminate, as they affect an area rather than being aimed at specific targets. It is for this reason that they are often labelled "area weapons". Also, many cluster weapons remain unexploded after the end of hostilities and thus continue to pose a danger to the civilian population.

The Council on Ethics discussed in detail why the use of cluster weapons could potentially contradict the principle of distinction:

Estimates concerning the dud rates for cluster munitions vary. Producers often refer to a failure percentage between 2 and 5. Military forces have, under some circumstances, accepted a failure rate of up to 10–12 percent. Mine clearers often report that the portion of cluster munitions duds is between 10 to 30 percent. ... The failure rate depends on various factors such as what type of ammunition is used, the delivery method and the circumstances pertaining to where the ammunition lands. In recent years, cluster munitions have increasingly been used as rocket- or artillery-fired ammunition, while at the same time the use of air-dropped cluster munitions has diminished. The most common firing system of late is the so-called Multi Launch Rocket Systems Humanitarian organizations have alleged that cluster munitions fired by this method caused over 4,000 deaths after the Gulf War in 1991. Under this ("Desert Storm") operation in Iraq, artillery-delivered cluster munitions (with a capacity for 7,728 explosive devices dispersed by 12 rockets) had

a failure rate of approximately 16 percent (the Pentagon's estimate in a report from 2000).¹³ This implies that there would be approximately 1236 un-detonated explosive devices in an area of 12 to 24 square kilometers.¹⁴

The Council therefore recommended that the Fund stop investment in companies involved in the production of key components of cluster weapons. These components include the explosives themselves, the surrounding canister, and the mechanism or fuse which makes the explosive charge detonate. Guidance mechanisms, which steer the cluster weapon toward its target and make them strike at the correct angle, were also considered as key components.¹⁵

Due to the variety of types and product specifications within the term "cluster weapons", the Council did not attempt to establish an exhaustive list of what key components in such weapons might be. The recommendation only cited examples of what *could* be considered key components.

The Council found that not all cluster weapons fall within the exclusion criteria. Certain weapons called "advanced munitions", generally containing no more than 10 bomblets per munition, were explicitly exempted from the Council's recommendation. As the bomblets are target seeking and made to detonate only when they hit armoured vehicles, they were deemed to be of limited risk to civilians during hostilities. The weapon was therefore not classified as an "area weapon" designed to hit randomly over a large area. Moreover this weapon type contains better fuse mechanisms resulting in lower failure rates, thereby posing less danger to civilians after hostilities. For these reasons, advanced munitions were not considered to be in violation of fundamental humanitarian principles.

Having decided what would fall within the criteria on cluster weapons, the Council recommended that seven companies be excluded from the Fund. The recommendation was based on information from a number of different sources. In addition to the Council's own research, information was gathered from databases of Jane's Information Group, the Norwegian People's Aid landmine division, the Human Rights Watch's Arms Division, the International Campaign to Ban Landmines, the Norwegian Defence Research Establishment and the Ethical Investment Research Service. It was emphasized by the Council that its recommendation did not necessarily

contain an exhaustive list of possible producers of cluster weapons, and that new recommendations concerning the further exclusion of companies may be given at a later date.

Before making its final recommendation, the Council requested that the Central Bank ask companies to verify their possible involvement in cluster weapons production. The question posed by the Bank to the companies is cited in the Recommendation. Each was asked if their company, or subsidiaries of their company, were producing, assembling or planning to produce or assemble:

key components of air delivered or surface delivered cluster dispensers such as aerial bomb dispensers, rockets or other containers, and/or sub-munitions for such dispensers, such as ICM (Improved Conventional Munitions) or DPICM (Dual Purpose Improved Conventional Munitions)/CEM (Combined Effects Munitions).

Some of the companies responded that they were not involved in cluster weapons production. Others did not answer at all. Based on the responses from companies and on the other information gathered over several months, the Council gave a detailed explanation for why each of the seven companies was subject to the exclusion criterion.

The Ministry of Finance subsequently decided to follow the recommendation and instructed the Central Bank to sell its shares in the relevant companies. On 2 September 2005, the recommendation was made public.¹⁶

NUCLEAR WEAPONS

As mentioned above, nuclear weapons are among the weapons that were included in the criterion on negative screening. This had, however, been a controversial political issue, partly because Norway is a member of NATO, and benefits from a defence strategy involving nuclear arms. But at the same time, Norway has a clear and unequivocal nuclear weapons policy which entails that nuclear weapons are prohibited on Norwegian territory in peacetime.

The Graver Commission concluded that the Fund should not invest in companies that “develop and produce key components to nuclear

weapons”.¹⁷ This was seconded by the Parliament in subsequent discussions. The Council assumed that “development and production” encompasses more than just the actual production of nuclear warheads. The term includes, for example, the missile carrying the warhead. Certain forms of testing of new weapons and maintenance of existing weapons also fall within the scope of the exclusion criterion. The Graver Commission specifically pointed to the possible future production of “mini-nukes” stating that:

The idea is to use such weapons in warfare and not only as a deterrent. Such a strategy will necessarily lead to the collapse of the non-proliferation regime, and rapid global use of nuclear weapons. If the proposal receives political and financial support, the production of such weapons could start in a few years. The Petroleum Fund could therefore provide a signal effect by limiting its investment possibilities with regard to the development and production of such small nuclear weapons.

The preparatory work thus indicates that development and production of small nuclear weapons, including “bunker busters”, would fall within the criterion.

In the work regarding nuclear weapons, the main challenge for the Council was to interpret the term “development and production of key components” to nuclear weapons. It was assumed that production of material that can be used in warheads and the production of the warheads themselves only take place at government-owned facilities, and would thus not be within the Fund’s portfolio. Private companies, however, may be directly involved in the development and testing of nuclear warheads. The Council considered any form of testing of nuclear weapons to be crucial to the development of nuclear weapons, and found therefore that such activity falls within the Fund’s exclusion criteria. Companies that provide services related to operation and maintenance of buildings and general infrastructure at facilities that may produce nuclear warheads, but take no other part in the actual production, were not considered for exclusion.

The Council found that development or production of products or materials or other activities that may be categorized as “dual use” was, as a point of departure, not covered by the Guidelines. This would for example be production or enrichment of uranium for other purposes than nuclear weapons. It would also be production and maintenance of delivery

platforms (aircraft, surface ships, submarines, missiles) that can also be used to deliver conventional weapons. Moreover, nuclear-powered submarines were considered to fall outside the criterion. Although they are propelled by means of nuclear energy, such submarines can carry both conventional and nuclear weapons. The same applied to naval vessels, as they can carry both nuclear and other weapons.

However, missiles that serve no purpose other than to deliver nuclear warheads were not considered "dual use". Such missiles would be intercontinental ballistic missiles launched from land or sea, and were regarded as key components to nuclear weapons. The Council also regarded programmes of upgrade and renewal as a continuous production process and equalled this to initial production of key components to nuclear weapons.

When the Council had arrived at a delimitation of what would be covered by the criterion on nuclear weapons, it started to collect information on which companies that would be candidates for exclusion. The Council collected information from different sources such as the companies' web sites, Jane's Information Group databases, and the Norwegian Defence Research Establishment. Companies that had already been excluded from investment by the Fund due to their production of cluster munitions, such as Lockheed Martin and EADS, were not considered on the basis of the nuclear weapons criterion.

The same procedures with regard to contacting companies, as described in the above section on cluster weapons, was undertaken. The relevant companies were asked whether they, or any subsidiaries, were involved in the development, testing, production, assembly or maintenance of components made for nuclear weapons. Some of the companies that received this request responded that they were not involved in nuclear weapons production. Several companies did not reply to the letter, and some responded in a manner that confirmed the company's involvement in production or development of nuclear weapons. Based on the responses from companies and on the other material that had been gathered, the Council gave detailed reasons explaining why each company was deemed to fall within the exclusion criterion on nuclear weapons.

In a recommendation dated 19 September 2005 and published by the Ministry on 5 January 2006, the Council proposed exclusion of seven

companies on the basis of the criterion relating to nuclear arms. These were BAE Systems Plc., Boeing Co., Finmeccanica Sp.A., Honeywell International Inc., Northrop Grumman Corp., United Technologies Corp. and Safran SA. As in the cluster weapons recommendation, it was emphasized that the recommendation did not necessarily contain a complete list of companies that might fall within the exclusion criterion and that further recommended exclusions on this basis may follow later.¹⁸

ANTI-PERSONNEL MINES

As mentioned above, the former Advisory Commission on International Law recommended the exclusion from the Fund of companies involved in the production of anti-personnel mines. As a result, the Fund's portfolio had already been screened with regard to producers of anti-personnel mines when the Council on Ethics was established.

Following a news report on possible future production of a new weapons system classified as an "anti-personnel mine alternative" (APL-A), the Council on Ethics was asked by the Ministry of Finance to assess whether the two weapons systems—*Spider* and *Intelligent Munition System (IMS)*—would be considered illegal under the Mine Ban Convention.¹⁹ The question was, more specifically, whether these weapons systems could be considered to fall within the definition of an anti-personnel mine.

According to the Mine Ban Convention, an anti-personnel mine is "a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons". The Council found that weapons that are designed to explode because of a person's inadvertent contact, and thus are victim activated, fall within the definition of an anti-personnel mine, irrespective of whether they are classified as such. The weapons in question, *Spider* and *IMS*, contain explosives meant to be detonated manually, by a so-called "man in the loop", which means that a person operates the weapon from a distance. If an explosive is detonated manually by an operator it is not prohibited under the Mine Ban Convention. There have, however, been reports that this detonation system could be made inactive through a so-called "battlefield override" function, meaning that detonation would again be victim activated.

The Council found that if the weapons systems in question were going to be equipped with battlefield override function, or in other ways designed to

circumvent the “man-in-the-loop” feature, they would fall within the scope of the prohibition in the Convention because the weapon would be victim activated. The Council therefore announced that it would, if a decision is made to equip these weapons systems with a battlefield override feature, recommend exclusion of the relevant producing companies.²⁰ The Council on Ethics is therefore following the development concerning these weapons systems closely.

POSSIBLE CONSEQUENCES OF EXCLUSION OF WEAPONS PRODUCERS

In the preparatory work for the Ethical Guidelines it was made clear that the only reason for exclusion of companies on ethical grounds was the desire to avoid complicity in unethical acts:

In the view of the Committee, striving to achieve justice by using the Fund to penalise or reward is beyond the obligations that should be imposed on the Fund. In practical terms, this means that the Committee will not propose an approach whereby the Fund withdraws its investment from a company that has acted unethically in response to the unethical action. It is the opinion of the Committee that if the Fund withdraws its investment, it must do so because withdrawal is considered necessary to avoid complicity in unethical actions in the future.

There was therefore no explicit intention on the part of the Fund to influence either weapons producers or governments through the criteria in the Ethical Guidelines. However, it seems that the exclusions may have had an influence beyond avoidance of complicity.

First, it seems that other investors are following the Pension Fund’s actions to a certain extent. Second, it seems that some of the companies are less likely to advertise about these weapons than they were a few years previously. Third, the exclusions may be an inspiration and encouragement to organizations and other parts of civil society engaged in disarmament and humanitarian issues. These points will be discussed in the following section.

EFFECTS WITH REGARD TO OTHER INVESTORS

Because each recommendation is made public, along with detailed reasons for why the relevant company is excluded under the Ethical Guidelines, it is possible for other investors to use the recommendations for their own purposes, for example to follow the Council's recommendations. Because the recommendations are publicized, the reasons for excluding companies must be based on solid facts. Considerable time and resources are spent to get the facts as accurate as possible. When a draft recommendation has been made, it is sent to the relevant company for comments. This is an important part in improving the quality of each recommendation. There have been a number of cases, particularly within the Nordic countries, where both private and public funds have followed the Fund's exclusions on weapons. Also, there have been examples of investors in other European countries excluding companies on the basis of the weapons criteria, particularly the exclusions made on the basis of production of cluster weapons.²¹

EFFECTS WITH REGARD TO COMPANIES

It appears to be less controversial to exclude companies on the basis of involvement in the production of cluster weapons than of nuclear weapons. Disquiet has grown about the use of cluster weapons in recent decades, as proof has emerged that they pose particular humanitarian risks to civilians in the conflicts in which they have been used. In contrast, nuclear weapons have not been used in warfare for more than six decades and memory of their humanitarian effects on Japanese civilians has faded. Moreover, the possession of nuclear weapons by the Permanent Five on the United Nations Security Council (China, France, Russia, the United Kingdom and the United States) has largely become part of the international legal landscape under the Nuclear Non-Proliferation Treaty, at least until its nuclear disarmament obligations are fulfilled. The international "coalition" of humanitarian organizations and others that fronted the total ban on anti-personnel mines may also have influenced public opinion with regard to cluster weapons. For example in Norway, organizations such as the Norwegian Red Cross and Norwegian Peoples' Aid have campaigned in the press and tried to influence the Government to ban cluster weapons. It is increasingly difficult to find information about these weapons on the web sites of the producers. Many governments have signalled an interest in regulations on use, or even a ban on cluster munitions.²²

An example of how companies themselves find it undesirable to be associated with cluster weapons was illustrated by recent events concerning the European company EADS. This company was excluded from the Pension Fund because of its ownership of the company TDA, in a joint venture with Thales SA. According to EADS, TDA produced mortar ammunition called PR Cargo, which the Council considered to be cluster ammunition that would fall within the criteria of the Fund's Ethical Guidelines.²³

EADS had been mentioned briefly in the recommendation on nuclear weapons because of its ownership in the company MBDA and its involvement in the development of the nuclear missile M51. Because the company had already been excluded for its involvement in production of cluster munitions, it was, however, not recommended for exclusion on the basis of its involvement in the production of nuclear weapons.

In a letter to the Central Bank, dated 21 March 2006, EADS stated that the company was no longer an owner of TDA and that consequently there was no longer a basis for exclusion of the company from investments due to involvement in production of cluster munitions. In its letter, EADS confirmed its involvement in the development of the M51, but went on to say: "Unjustified association of EADS with cluster bomb business could impact EADS' reputation in Norway." The Council on Ethics thus made a new recommendation concerning EADS, which upheld the recommendation about its exclusion from the Fund, but on the basis of the nuclear weapons criterion and not because of cluster weapons.²⁴

It is interesting to note that the *reasons* for exclusion matter to a company to this extent. It seems fair to assume that the background for this is that cluster weapons are increasingly seen as a humanitarian problem.

CONCLUDING REMARKS

In its recommendation on cluster weapons, the Council on Ethics distinguished between cluster weapons that may "violate fundamental humanitarian principles" and cluster weapons that were seen to fall outside of the criterion. This subject is clearly controversial. There is no agreed definition of what a cluster weapon is. It could, for instance, simply be all weapons consisting of more than one submunition. The mandate of the

Council on Ethics is to exclude the weapons indicated in the Graver Report, but the guidelines themselves clearly specify that they have to be weapons which through normal use violate fundamental humanitarian principles. As mentioned above, the Council concluded that it was the cluster weapons that had an *area effect* and thus were *indiscriminate during an attack*, or which left *duds posing a threat after the attack*, that were to fall within the exclusion criterion. The Council deliberately did not embark on discussions on “tolerable” failure rates. Even as little as 1% could constitute a humanitarian problem if there were hundreds or thousands of submunitions.

The Council’s working definition applied in the recommendation on exclusion of weapons companies may provide a contribution to a more general discussion on how to define cluster weapons in terms of what should be covered under a potential international ban. To the author’s knowledge, not many other investors have debated exclusion of companies on the basis of weapons in such detail at the technical as well as legal level. In that respect, it could provide input or inspiration, not only for other investors who seek to avoid unethical investments, but also for other civil society actors working for the limitation of inhumane means of warfare.

When assessing the potential effects of ethical guidelines for investment policies, it seems important also to acknowledge the limitations of such policies. There is no doubt that Norway contributed much more significantly in banning anti-personnel mines through its foreign policy strategies and diplomatic work as a government than through its disinvestment in the above mentioned anti-personnel mine producing company. Public disinvestment policies and ethical guidelines for public funds can never constitute very effective foreign policy instruments. At the same time, it seems clear that the publicity generated by disinvestment on ethical grounds does have an impact. For example, in Norway, journalists have started to ask why the Norwegian armed forces can keep the same kind of cluster weapons that have been excluded by the Council on Ethics. Although the Ethical Guidelines cannot take much of the credit for the stigmatization of, for example, cluster weapons by international public opinion, its criteria and concrete exclusions hopefully contribute to an increased awareness concerning these issues among investors, both private and public.

Notes

- 1 The Fund's investment universe consists of all the companies worldwide that it could invest in. There are tens of thousands of potential investments. It differs from the Fund's portfolio—the companies it is invested in—which is a much smaller number, in the low thousands.
- 2 See the Advisory Council's recommendation at <http://odin.dep.no/fin/english/topics/pension_fund/p10001682/006051-990424/dok-bn.html>.
- 3 Norway, *Forvaltning for Fremtiden: Forslag til Etske Retningslinjer for Statens Petroleumsfond*, NOU 2003:22, 25 June 2003. Under Article 1.c of the 1997 Anti-Personnel Mine Ban Convention, each state party undertakes never to "assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention".
- 4 See Point 1 of the Ethical Guidelines, <http://odin.dep.no/fin/english/topics/pension_fund/p10002777/guidelines/bn.html>.
- 5 Ibid.
- 6 Ibid.
- 7 Ibid.
- 8 Four of these pertain to the negative screening of weapons producers, and two pertain to the ad hoc exclusion mechanism. Although the recommendations on ad hoc exclusion are not subject to further consideration in this article, they can be found at <<http://odin.dep.no/etikkradet/english>>.
- 9 The UN Global Compact and the OECD Guidelines for Multinational Enterprises are built on the notion of "responsible corporate citizenship". For more information on the UN Global Compact see <www.unglobalcompact.org>. For further information and references related to the OECD Guidelines see *The OECD Guidelines for Multinational Enterprises*, <www.oecd.org/dataoecd/12/21/1903291.pdf>.
- 10 See <www.norges-bank.no/english/petroleum_fund/articels/2004/ownership.html>.
- 11 See Point 2 in the Ethical Guidelines, <http://odin.dep.no/fin/english/topics/pension_fund/p10002777/guidelines/bn.html>.
- 12 See Norway, *Forvaltning for Fremtiden: Forslag til Etske Retningslinjer for Statens Petroleumsfond*, NOU 2003:22, 25 June 2003, pp. 142–

143, which concerns the Graver Committee's understanding of *fundamental humanitarian principles*.

13 Human Rights Watch, *A Global Overview of Explosive Submunitions*, 2002, <www.hrw.org/backgrounder/arms/submunitions.pdf>.

14 <http://odin.dep.no/fin/english/topics/pension_fund/p10002777/screening/recommendations/006071-110251/dok-bn.html>

15 These guidance mechanisms make it possible to drop cluster bombs from greater heights and therefore avoid anti-aircraft fire.

16 The recommendation can be read in full at the web site of the Council on Ethics. The sources relied upon with regard to each company appear both in the text and in the footnotes, <<http://odin.dep.no/etikkradet/english/documents/099001-990075/dok-bn.html>>.

17 <<http://odin.dep.no/fin/english/topics/p10001617/p10001682/006071-220009/dok-bn.html>>

18 This recommendation can be read in full at the web site of the Council on Ethics, <<http://odin.dep.no/etikkradet/english/documents/099001-990075/dok-bn.html>>.

19 The basis for the request was section 4.3 of the Ethical Guidelines, which says that the Ministry of Finance may request the Council's advice on whether an investment can constitute a violation of Norway's obligations under international law.

20 <<http://odin.dep.no/etikkradet/english/documents/099001-990071/dok-bn.html>>

21 Because very few funds publicize which companies they exclude and why, there is not much available information on this matter in the public domain. However, the Council on Ethics has received information regarding a few such exclusions "in confidence".

22 See for example, the Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention on Certain Conventional Weapons), 28 November 2003.

23 <<http://odin.dep.no/etikkradet/english/documents/099001-210003/dok-bn.html>>

24 <<http://odin.dep.no/etikkradet/english/documents/099001-110011/dok-bn.html>>