



Divestment as humanitarian disarmament

Stop investments in controversial weapons producers to stop production

Financing controversial weapons producers enables the continued production of inhumane and indiscriminate weapons. When a weapon is prohibited, it is an expression of societal rejection of the weapon, therefore it also makes sense to ensure the broadest possible impact of the norm including by banning funding going to production. Prohibiting financing is an effective way to reinforce the prohibition, strengthen the norm, and have concrete impacts even beyond States party to the prohibition instrument.

Divestment

States cannot eliminate weapons they do not possess themselves, but they can establish norms and practices that make continued possession unsustainable. Stopping the financial flow to weapons producing companies has proven to have real impact on those companies. For example, citing pressure from financial institutions, several producers of cluster munitions have stopped their production, including Textron, Lockheed Martin, Orbital ATK and Singapore Technologies Engineering – despite the fact that they are all from states not party to the Convention on Cluster Munitions (CCM).

This is a mechanism to spread the stigma against the weapons to states that remain outside the prohibition. In addition, investments are made with the intention of making a profit. Investing in a producer of controversial weapons is therefore not only a form of

assistance with the production of these weapons, it also means profiting from the production of weapons with indiscriminate and inhumane consequences.

Divestment delivers real results, preventing humanitarian harm caused by illegal weapons by creating the conditions for the companies producing the weapons to cease this area of business.

Treaty language and State practice

In the context of weapons prohibition treaties, there is a growing understanding among states that the prohibition of production in conjunction with the prohibition on assistance should be understood to also mean that financing companies that produce the outlawed weapon is prohibited under the relevant treaty.

For example, in the Oxford Public International Law commentary on the Chemical Weapons Convention, assistance is understood to include the provision of “*through financial resources.... to anyone who is resolved to engage in such prohibited activity*” and anyone that could be “*not only be a State, irrespective of whether or not it is a Party to the Convention, but also an organization, an enterprise, a person, or a group of persons, regardless of Citizenship.*”ⁱⁱ

Both the Treaty on the Prohibition of Nuclear Weapons (TPNW) and the CCM include identical language on the prohibition of “assistance” to the Chemical Weapons Convention.

Former US cluster munitions producer Orbital ATK¹:

"[...] a number of governments have taken formal action aimed at slowing down and eradicating investments in companies profiting from the sale and use of cluster munitions. The list is composed primarily of European states but includes nations from other regions of the world, a display of the Convention's reach and an illustration of the direct threat being issued by governments with the ability to exercise control over the financial mechanisms underpinning CM production."



In various international forums, a growing group of states have also explicitly expressed the opinion that assistance includes financing or investing. For example, Peru stated during the 2017 Meeting of States Parties to the CCM that it “(...) *understands the interpretation of Article [1]1.c of the Convention (...) includes a prohibition in the investments in cluster munitions, that is to say, provide financial assistance to producers of such weapons.*”ⁱⁱⁱ

There are also positive examples of states introducing national legislation to stop any financial institution under their jurisdiction from investing in companies producing controversial weapons.

More and more financial institutions are adopting policies to prevent investments in prohibited weapons producers and actively divesting from current investments. Research by PAX shows that since 2009 the number of financial institutions from States Parties to the CCM that invest in producers of cluster munitions has been reduced by two-thirds.

In countries that have made public statements linking financing of cluster munitions to assistance, or that have adopted national legislation prohibiting such financing, PAX found that the number of investors has dropped by 63% since 2012. However, some

financial institutions continue to provide producers of controversial weapons with the funds they need to continue producing this weapons, showing additional efforts are needed.

Conclusion

To end the unacceptable human suffering caused by controversial weapons, the production of these weapons should stop – and stopping the investment in the companies producing them is an effective way of making that happen.

PAX encourages states to clearly and repeatedly express the view that financing of controversial weapons is a form as assistance and to call on other states to do the same. Such statements can be included in various forums including the UNGA First Committee, and can explicitly cite prohibited weapons including Chemical Weapons, Biological Weapons, anti-personnel landmines, cluster munitions and nuclear weapons.

Norms matter, and by extending the understanding that controversial weapons norms are relevant to the financial sector, States can and do stop the production of inhumane and illegal weapons and save lives

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ⁱ Modernizing the U.S. Munitions Arsenal, Government Business Council Sponsored by Orbital ATK, March 2018, https://www.govexec.com/media/orbital_ib_modernizingmunitions_v5_032318.pdf.

ⁱⁱ The Chemical Weapons Convention: A Commentary, Edited By: Walter Krutzsch, Eric Myjer, Ralf Trapp, August 2014, Oxford Commentaries on International Law.

ⁱⁱⁱ Please refer to www.stopexplosiveinvestments.org for more examples.