Companies' sales of weapons to parties in armed conflict

The GPFG's ethical guidelines place a variety of restrictions on the fund's investments in companies that produce weapons and military materiel. In 2018, attention has been paid to the GPFG's investments in companies that sell weapons and military materiel to the parties in the Yemen conflict. Questions have been raised about whether such sales could constitute grounds for the companies' exclusion from the fund. The background to this is the disastrous humanitarian situation in Yemen, and that the use of military force results in serious violation of individuals' rights in the armed conflict.

In principle, the GPFG's ethical guidelines distinguish between exclusion based on what a company produces (product-based criteria) and exclusion based on a company's behaviour (conduct-based criteria) – irrespective of what they produce.

The exclusion of companies that produce weapons or sell weapons and military materiel is dealt with primarily in section 2(1) of the ethical guidelines, product-based criteria:

"The Fund shall not be invested in companies which themselves or through entities they control:

a. produce weapons that violate fundamental humanitarian principles through their normal use […]

c. sell weapons or military materiel to states that are subject to investment restrictions on government bonds as described in the management mandate for the Government Pension Fund Global, section 3-1(2)(c).

In subsection (a), the term "normal use" is central. This refers to the weapon's intended use, which implies that any weapon can, in principle, be used in ways that violate fundamental humanitarian principles for armed conflict, but that for some types of weapon practically any use would do so. An exhaustive list of weapon types covered (the weapons list) has been provided by the Ministry of Finance and includes i.a. cluster munitions and nuclear weapons. Twenty companies have been excluded from the GPFG on the grounds that they produce weapons included in the weapons list.

Pursuant to subsection (c), the GPFG must not be invested in companies that sell weapons or military materiel to certain, specified states. This provision is in turn linked to the government bond exemption rule in section 3-1 of the mandate for the management of the GPFG:

"The Bank may not invest the investment portfolio in […] Fixed-income instruments issued by governments or government-linked entities in the exceptional cases where the Ministry has barred such investments based on particularly large-scale UN sanctions or other international initiatives of a particularly large scale that are aimed at a specific country and where Norway supports the initiatives."

The Norwegian Ministry of Finance decides which states this applies to (country list). The states on the country list are states subject to extensive international sanctions that Norway has endorsed. This currently applies to North Korea and Syria. Previously, both Iran and Myanmar were included in the list. One company was for a period excluded from the GPFG at the recommendation of the Council because it supplied military vehicles to the government of Myanmar.

Consequently, if a company produces weapons which are not included in the weapons list, or sells weapons to states that are not on the country list, they will not be subject to the product-based criteria in the GPFG's ethical guidelines. There will therefore be no grounds to recommend their exclusion from the fund under the product-based criteria.

The question will then be whether such sales can nevertheless be considered grounds for exclusion under the conduct-based criteria in the ethical guidelines' section 3:

"Companies may be put under observation or be excluded if there is an unacceptable risk that the company contributes to or is responsible for: […]

b. serious violations of the rights of individuals in situations of war or conflict

f. other particularly serious violations of fundamental ethical norms"

Under the conduct-based criteria, it is the company's actions that must be assessed, and companies may be excluded only if it is reasonable to censure the company for acts or omissions that result in serious norm violations. The Council has previously taken the position that a company's sale of a product or object may be deemed to constitute an act that is grounds for exclusion. In principle, therefore, it might also be possible to assess companies' weapons sales under the conduct-related criteria. So far, the Council has published assessments in three cases which relate to companies' contribution to norm violations through sales.

In 2005, the GPFG was criticised for its investment in the US company Caterpillar. This was because Caterpillar supplied bulldozers to the Israel Defence Force (IDF). These are fundamentally civilian machines that were modified in Israel with the addition of armour plating and equipped for military use. Such armoured bulldozers have been used by the IDF against the Palestinian civilian population, for example to demolish Palestinian homes and destroy Palestinian farmland. The Council assessed the company's responsibility thus:

"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. 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."

In 2009, the Council recommended the exclusion of the Israeli company Elbit. This was because the company supplied surveillance equipment to the Israeli Separation Barrier (the wall) on the West Bank. Parts of the barrier's course are deemed to be illegal. In its assessment, the Council attached importance to the fact that the equipment Elbit supplied was specially developed for the barrier and had no other areas of application. It would therefore be known to Elbit that (part of) the purpose of the delivery was illegal.

In 2017, the Council recommended the exclusion of ship-owning companies that disposed of vessels by sending them to be broken up by a process called "beaching". This process creates unacceptable environmental and working conditions. Ship-owning companies sell their decommissioned vessels to cash buyers for the sole purpose of beaching. These companies are fully aware of the circumstances of the beaching process, but choose nevertheless to dispose of obsolete vessels in this way to maximise their profit.

The three cases detailed above deal, each in their own way, with companies' contribution to norm violations through the sale of items. A common theme in the assessments has been what knowledge of future norm violations resulting from the sale companies must be expected to have had when the sale was made. Any such expected knowledge would be linked, in part, to the proximity in time between the company's action (the sale) and the underlying norm violation.

If the Council is to recommend exclusion of companies under the conduct-based criteria on the basis of their sales of weapons to parties in an armed conflict, in which widespread violations of international humanitarian law or human rights takes place, there must be a clear element of contribution to these violations on the part of the company, through the sale and later use of these weapons. The Council is continuously assessing whether this can be said to apply to any of the companies in the GPFG's portfolio.