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Recommendation concerning whether the weapons systems Spider and Intelligent Munition System (IMS) might be contrary to international law

Letter to the Ministry of Finance from the Advisory Council on Ethics

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(Unofficial English Translation)

To the Ministry of Finance

Oslo 20 September 2005

Recommendation concerning whether the weapons systems Spider and Intelligent Munition System (IMS) might be contrary to international law

Introduction

We refer to the letter from the Ministry of Finance, dated 31 August this year, in which the Ministry asks the Advisory Council on Ethics to assess whether the two weapons systems *Spider* and *Intelligent Munition System (IMS)* would be considered illegal under the Convention on the prohibition of use, stockpiling, production and transfer of antipersonnel mines and on their destruction (The Convention). Two of the three companies that are implicated in the plans for these weapons systems have already been excluded from the Fund because of their involvement in the production of cluster weapons; General Dynamics and Alliant Techsystems (ATK). The third company, Textron, remains in the Funds' portfolio.

The basis for the request from the Ministry is 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.*

A given weapons system could be inconsistent with the Ethical Guidelines, even if it does not conflict with international law. The Advisory Council is already in the process of assessing whether the above mentioned weapons systems could be in violation of the Ethical Guidelines. ¹The Council had a meeting with the head of the weapons section in Human Rights Watch about these weapons in June 2005. The Council might therefore issue recommendations on the relationship between these weapons systems and the Ethical Guidelines at a later time, irrespective of this recommendation which pertains to the international law issues.

Can investments constitute a breach of international law?

Investments that might be seen as *undermining* international law standards would normally not constitute violations of international law. Certain treaties, however, contain provisions on complicity that are so far reaching that this might be the case. Article 1 of the Convention ²Convention on the prohibition of use, stockpiling, production and transfer of antipersonnel mines and on their destruction of September 18, 1997 says:

1. Each State Party undertakes never under any circumstances:

a) To use anti-personnel mines;

b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines;

c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.

2. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention.

According to *litra c*, the States Parties may not “*assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention*”. The question is whether investments by the Petroleum Fund will fall within the scope of this provision. The predecessor to the Advisory Council on Ethics, the Advisory Commission on International Law, answered this question in the affirmative. In their memo to the Ministry of Finance dated 11 March 2002, it was noted that: “*Because the Mine Ban Convention goes far in prohibiting any form of assistance, encouragement or inducement to production in violation of the convention, it is presumed that even a modest investment could be regarded as a violation of the article 1 (1) (c) cf. (b).*”

The Ministry of Finance based their later exclusion [3](#)In the spring of 2002. of the company Singapore Technologies on this argument. The Advisory Council therefore assumes that investments in companies that produce antipersonnel mines can constitute a violation of international law.

Definition of an antipersonnel landmine

The question at hand is whether the above mentioned weapons systems will fall within the scope of the international prohibition against antipersonnel landmines. In order to answer this question one must first determine the content of the definition of an antipersonnel mine, and second, whether the weapons systems in question have technical specifications that make them fall within this definition.

The definition of an antipersonnel mine is laid down in the Convention's Article 2 (1):

"Anti-personnel mine' means 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."

This provision makes it clear that mines that are designed to explode by human contact falls within the definition of antipersonnel mines. Mines can be detonated by persons stepping on them, tilting them, breaking a trip-wire, or exposure to different kinds of sensors. The Advisory Council finds that all weapons that are designed to explode because of a person's inadvertent contact, falls within the definition of an antipersonnel mine, irrespective of whether they are classified as antipersonnel landmines.

The point with such weapons is to be able to engage the enemy without being in active combat with them or even being present in the area. The mine is activated by the victim, not by the person that emplaced it.

Are Spider or IMS illegal under the Convention?

The next question is whether these weapons systems would be subject to the international ban on antipersonnel land mines.

The weapons program *Intelligent Munitions Systems* (IMS) does not currently exist, but production by the companies Allient Techsystems, General Dynamics and Textron Systems is being planned.

www.hrw.org/backgrounders/arms/arms0805/3.htm,

www.gobalsecurity.org/military/systems/ground

http://www.defenselink.mil/contracts/2003/c04162003_ct252-03.html This is a weapons program that combines three different weapons systems, including the so-called "Antipersonnel Landmine-Alternative" (APL-A). It is, as a point of departure, designed not to fall within the definition of an antipersonnel landmine in Article 2 (1) of the Convention. The system consists of a number of explosive charges that may be detonated by an operator who has been alerted of the presence of a person (the victim) because of the person's contact with a sensor. This system is called "*man-in-the-loop*", which indicates that it is an operator and not the victim ("target") that activates the explosive charge. Production of this system is not planned until 2009 at the earliest.