

PANEL: DIVESTMENT AT FEDERAL, REGIONAL AND CITY LEVELS

LESSONS FROM THE CLUSTER MUNITIONS DIVESTMENT CAMPAIGN

[SLIDE 1]

Introduction

Thank you

My name is Maaïke and I work for humanitarian disarmament division the Dutch peace organization PAX. My own background is in international relations and political science. At PAX, my focus is on nuclear disarmament, cluster munitions and emerging technologies including autonomous weapons. Most of my work is around the private sector involvement with the development and production of those weapons systems, and today I'd like to tell you about our work on divestment from cluster munitions producers.

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PAX is a peace organization with a wide range of programs. They include country programs in conflict areas such as Syria, where we run a peace school project, and Colombia, where we are active in the peace agreement process and in trying to get remedy for the victims of displacement by mining corporations. We also have a number of thematic programs around protection of civilians, natural resources and humanitarian disarmament.

Our humanitarian disarmament work is based on the principle that some weapons are inherently inhumane, unacceptable and incompatible with IHL and should therefore never be used. As a result, we work to prohibit or regulate weapons such as nuclear weapons, explosive weapons in populated areas, autonomous weapons, landmines and cluster munitions.

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Background of the project

PAX is a co-founder of the Cluster Munition Coalition. Since its creation in 2003, the Cluster Munition Coalition had been working to raise awareness about the humanitarian consequences of cluster munitions. Large-scale use of cluster munitions in Afghanistan in 2001–2002 and in Iraq in 2003 deepened the recognition of the humanitarian and legal problems posed by these weapons. In Afghanistan, the United States dropped some 248,000 submunitions causing dozens of avoidable civilian casualties, including more than 120 in the first year after the strikes.⁷ In Iraq, Human Rights Watch concluded that two million submunitions used by the US and United Kingdom caused hundreds of civilian casualties during the 2003 invasion, more than any other weapon (other than small arms fire).

At the time, there was very little awareness around the companies that were actually producing all of those bombs, let alone about the financial relations backing up those companies. In the Netherlands that really started to change with a documentary that aired in 2007. Called the Cluster Bomb Feeling, the documentary revealed that major Dutch pension funds, including the PAX pension fund, were investing in producers of cluster munitions.

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PAX started doing more in depth research and mapping the global investments in the companies producing cluster munitions. After the Convention on Cluster Munitions was negotiated and adopted in 2008 and as it entered into force in 2009, we published our first comprehensive report blacklisting producers of cluster munitions and their investors, and providing a first look at the financial institutions that were already deciding to divest from the industry. We listed 8 producers and 136 investors from around the world and even then we were already able to show over 30 financial institutions with some form of policy to not invest in cluster munition producers.

During and after the negotiations on the CCM, states were also starting to speak out about these investments. The CCM prohibits assistance with the production and states were increasingly

recognizing investing was also a form of assistance, something PAX and the CMC of course encouraged.

Belgium was the first country to adopt national legislation prohibiting investments in cluster munitions and landmines and did so already in 2006, so even before the Convention was in place. Some other countries prohibited investments as part of their national implementation legislation, such as Ireland. Since those early days, the number of countries interpreting assistance to also cover investments has grown consistently and we are now at 46 states that consider investments to be prohibited, 11 of which have in place national legislation explicitly prohibiting such investments.

State of play divestment from cluster munitions

It would also make sense for states that have a genuine interest in eliminating cluster munitions to get on board with this concept. First it makes sense in a moral way: if we decided to prohibit cluster munitions because of the humanitarian consequences of their use, why would we allow investments in the companies that produce them, and why would it be ok to make a profit from their production? It also makes sense because it is a very effective way to target producers, including producers in countries that so far remain outside of the CCM.

That it is an effective strategy is evidenced by some major successes of the divestment campaign since 2009. There have been a number of companies that used to produce cluster munitions that have ceased that production, often based on pressure from the financial sector or reputational risk. I'll give two examples:

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Textron & Orbital ATK

The American company Textron produced the so-called Sensor Fuzed Weapon. This weapon was used among others in the conflict in Yemen. Another American company, Orbital ATK, produced the rocket motors for Textron's cluster bombs. These two producers has been on our blacklist since 2009. We've also had engagement with them, because they maintained their SFW was not within the scope of the CCM – it clearly was though. They even sent a bunch of lawyers to our offices in Utrecht at some point. Over time, more and more financial institutions were excluding Textron and Orbital ATK from their investments. Additional pressure was added when Saudi forces used the cluster bombs in Yemen in 2016 and US president Obama decided to install a moratorium on cluster munitions in the US. Long story short, in the summer of 2016, Textron announced it would be discontinuing the production of its SFW. Financial media subsequently said that the ownability of Textron stock had come under pressure, especially among European investors, because of its involvement in the production of cluster munitions. Orbital ATK's production of key components naturally also ended there, but Orbital ATK went a step further and in early 2018 it produced a paper, together with the US business council, where it explicitly mentioned the PAX divestment campaign as a source of public pressure on cluster munition producers and where it called on the US to move away from cluster munitions in its arsenal.

This story really shows how both the Convention and the mainstreaming of divestment from a weapon that is so clearly immoral and illegal in most of the world, has an impact in the US, a company that has consistently refused to join the Treaty.

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In terms of the private sector, our latest report still listed 7 producers of cluster munitions, mostly from China and South Korea. Companies there are much harder to target, also because of cultural barriers. We found USD 9 billion in investments by 88 financial institutions, which is a major decrease compared to 2 years ago, when we still found USD 31 billion. However, the clearest indication of progress is that we now have a list of 110 financial institutions that have in place policies to not invest in cluster munitions, and that really is only the tip of the iceberg.

So looking at this part of the story, the private sector part, it is clear divestment can have a major impact, even on companies that are outside of the scope of the Convention. At the same time, it is clear divestment works better in targeting some companies than others. It is mostly effective for publicly traded companies and in countries where the public is active and ready to pressure

companies for the way they do business. Conversely, so far it has been more difficult to target producers in for example China.

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National divestment legislation

I'd like to talk a bit more about investment legislation at the state level now, as that is the topic of this panel.

As I mentioned earlier, PAX and the CMC have promoted the interpretation of the CCM to also cover investments in cluster munition producers. This relates specifically to article 1(1)c of the Convention, which prohibits assistance with the other prohibited activities. And as I explained before, it just makes a lot of sense to people that if you decide to prohibit these weapons because of their humanitarian consequences, why would you allow financial institutions to make a profit by investing in the producers of those weapons? And then there is the clear evidence that curbing those investments is an effective way to pressure producers.

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We are now at 46 states that consider investments to be prohibited, 11 of which have in place national legislation explicitly prohibiting such investments. This little map shows the countries in yellow that have in place legislation and the countries in orange that have stated in other ways they consider investments in cluster munitions to be prohibited.

When we look at those different pieces of legislation, it is interesting to see that they're all different and all have different strengths and weaknesses. There is no one piece of divestment legislation I would consider to necessarily be the best or to be perfect. Some elements that make up good legislation and that ensure the legislation has impact on cluster munition producers, and that we see coming back in different places, are the following:

- The legislation should prohibit investments in producers of cluster munitions, not just the production; it is really not possible for financial institutions to invest in parts of a company that produces cluster munitions and make sure that money does not in one way or another contribute to that production, even if the initial investment was aimed for something else. It is just too easy for companies to move around money internally.
- It should prohibit investments in all producers of cluster munitions, regardless of their country of origin or their other activities
- It should apply to all investments by all financial institutions under the jurisdiction of the country
- There should be a monitoring and enforcement mechanism in place

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Lessons & conclusions

So what can we learn from this for the nuclear weapons and other divestment campaigns?

First, having in place a treaty that prohibits production as well as assistance is really helpful. It is helpful as a tool in engagement with states and it is helpful when engaging with the financial sector, because you no longer have just your moral arguments, but also legal measures.

In that respect, the adoption of the TPNW in 2017 is already making a difference. Our research project Don't Bank on the Bomb offers a nice tool to track changes in the financial sector. What we used to see a lot was that financial institutions, especially from NATO countries, referenced the NPT in their policies as a reason to exclude nuclear weapons producers from investment, but only producers from countries outside the NPT so for example India. They would say that production and possession of nuclear weapons for the P5 is legitimized by the NPT and therefore it is also ok to invest in the companies involved. Of course we would beg to differ there already as the NPT requires disarmament, and investing in companies that are working to maintain, modernize or even expand existing arsenals is hardly in line with that disarmament requirement. But with the adoption of the TPNW, we see a growing recognition that ALL nuclear weapon producers are illegitimate. That in itself is based on both intrinsic and pragmatic motivations: financial institutions are often quite happy to get guidance from

states on what is acceptable or not and are happy if a legal instrument is put in place that they can then base their CSR policies around. A more pragmatic line of thinking is also that those financial institutions will simply have to deal with countries joining the TPNW and outlawing production but often also investments.

A great example is the Dutch pension fund ABP. This pension fund is one of the 5 largest globally and in January 2018, so very shortly after the adoption of the TPNW, they decided to exclude ALL nuclear weapon producers from investment, rather than just non-NPT producers.

Of course what applied and still applies to cluster munitions is not necessarily directly applicable to nuclear weapons. When we started with this campaign, divestment was not a very well known tactic and it was not very common for financial institutions to have in place CSR policies. That has changed drastically. Especially in Europe, every self-respecting financial institution has in place some form of CSR policy and most also acknowledge some products are just unacceptable and their producers are not investable. With controversial weapons and especially cluster munitions and landmines, that has become the mainstream. In other areas this is slightly less developed. Especially the US and Asia are lagging behind in the recognition of the social responsibility of private enterprises. But also there customers are starting the demand change, and companies are responding. So there is a clear trend and newer divestment campaigns like the one on nuclear weapons will benefit from that trend: they can build on the knowledge and norms that are already in place.

On the other hand, in the case of nuclear weapons we are more often dealing with strong political linkages between the private companies producing nuclear weapons and the governments owning the nuclear weapons. Nukes are more closely related to some very problematic beliefs systems around national pride, identity and security than cluster munitions ever where. We are also dealing more often with companies that also have large civilian involvement, such as both Airbus and Boeing (although Boeing is having a hard time).

So divestment work around nuclear weapons is both easier and more difficult than the work on cluster munitions. But regardless, it remains an important and effective tool, especially considering the potential to expand the impact of a treaty, in this case the TPNW, beyond its states parties. Divestment will help us delegitimize and stigmatize nuclear weapons. And finally, it is also a very powerful tool for ordinary citizens to get involved.

I'd like to leave it there for now but am happy to take questions and discuss elements after the other speakers.

Thank you.