

## APPENDIX: CONTROVERSIAL WEAPONS BACKGROUND

Based on Swiss Sustainable Finance's "[Focus: Controversial weapons exclusions](#)"<sup>1</sup>

### A. Definition of controversial weapons

It is generally accepted that democratic states have the right to use armed force to safeguard national security and secure peace. There are, however, a number of weapons that cause disproportionate harm and remain a threat long after a conflict has been resolved.

Although there is no official definition of what constitutes a "controversial weapon", and different countries, regions, and institutions hold varying views, it typically possesses one or more of the following characteristics:

- **Indiscrimination:** the weapon is indiscriminate in nature, i.e., it does not distinguish between military and civilian targets;
- **Proportionality:** the weapon is considered to be excessively harmful, i.e., it causes an inordinate amount of pain and suffering relative to the anticipated military advantage; and/or
- **Illegality:** the production and use of the weapon is prohibited by international legal instruments.

The controversial weapons most frequently identified by responsible investors are those that have been subject to widespread bans or restrictions by international agreements, i.e., cluster munitions, anti-personnel mines, biological and chemical weapons, as well as nuclear weapons which are produced for countries that have not signed the Treaty on Non-Proliferation of Nuclear Weapons.

### B. Types of Controversial Weapons

- **Anti-personnel mines (APMs)** – their use, stockpiling, production, acquisition, transfer, and assistance for or encouragement of any such activity – are prohibited by the Anti-Personnel Mine Ban Convention ("Ottawa Convention"). These are explosive devices that are placed under, on, or near the ground or any other surface and which are conceived or modified so as to explode as a result of the presence, approach, or contact of a person. They are considered controversial owing to their indiscriminate nature, as they are triggered by their victims, whether combatants or civilians, and because the danger of undetonated APMs remains many years following the end of a conflict. The resulting social and monetary costs are significant. APMs not only cause death and injury, but also prevent civilians accessing food, water, and medical care both during and after a conflict.
- **Cluster munitions** are addressed in the Convention on Cluster Munitions ("Oslo Convention"), which prohibits state parties from using, stockpiling, producing, acquiring, or transferring cluster munitions, or assisting in any of these activities. These are weapons containing multiple explosive sub-munitions. They are considered controversial owing to the indiscriminate nature of the weapon system, i.e. the sub-munitions are not specifically targeted but, instead, when released, they impact a wide area without differentiating between military and civilian targets. As sub-

<sup>1</sup> Swiss Sustainable Finance, "Focus: Controversial weapons exclusions", 2017

munitions often fail to function as intended, huge quantities can land undetonated on the ground, remaining a fatal threat and obstructing economic and social development long after a conflict ends. The 2006 bombing of areas in southern Lebanon lent particular impetus to the campaign to ban cluster munitions.

- **Biological and chemical weapons** are banned by several international conventions: the Geneva Protocol of 1925, the Biological Weapons Convention, and the Chemical Weapons Convention. Combined, these instruments ban the development, stockpiling, acquisition, retention, production, transfer, and use of such weapons. Both chemical and biological weapons are relatively simple and cheap to produce, but their effects are enormous. Even the smallest quantities have the potential to kill thousands of people. Concern about the use of chemical weapons has increased in recent years owing to their reported use in Syria.
  - Biological weapons are biological agents or toxins, of types and in quantities that are not justified for prophylactic, protective, or other peaceful purposes, and/or weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict. The weaponization and use of biological agents and their use in warfare are controversial owing to the potentially widespread and indiscriminate impact they have on a population.
  - Chemical weapons are toxic chemicals and their precursors that can cause death, temporary incapacitation, or permanent harm through their chemical action, where they are produced and stockpiled in amounts that exceed requirements for non-prohibited purposes (e.g. peaceful or law enforcement purposes), as well as munitions or other devices specifically designed to deliver chemical weapons. They have been universally recognized as controversial owing to their indiscriminate nature and unpredictability, coupled with their sometimes gruesome, and excessively injurious effects.
- **Nuclear weapons** are considered controversial owing to their enormous destructive capabilities. They are indiscriminate, considered a weapon of mass destruction and excessively harmful owing to the potential for radioactive fallout and the long-term health impacts on populations. The Treaty on Non-Proliferation of Nuclear Weapons that came into force in 1970 aimed to prevent the spread of nuclear weapons and weapons technology, and to further the goal of achieving nuclear disarmament. The Treaty on the Prohibition of Nuclear Weapons, negotiated in 2017 but not yet in force, grew out of a renewed recognition of the catastrophic humanitarian consequences of nuclear weapons use, the rising risk of accidental or intentional nuclear use, and a growing sense of frustration that key nuclear disarmament commitments were not being fulfilled. It will prohibit state parties from using and/or threatening to use, develop, produce, manufacture, acquire, possess, stockpile, transfer, station or install nuclear weapons. The treaty also forbids every form of assistance in the production or maintenance of nuclear weapons. While not expressly mentioned, many countries appear to consider the financing of nuclear weapons a form of prohibited assistance.

### C. Legal framework

A number of international conventions prohibit the development, production, acquisition, stockpiling, transfer and use in armed conflict of weapons and methods of warfare causing unnecessary injury or suffering.

However, none of them explicitly addresses the *financing* of the development, manufacture, or acquisition of such weapons. While a growing number of countries<sup>2</sup>, particularly in the context of the Convention on Cluster Munitions, have made statements to the effect that they interpret the ban on assistance to include the implicit prohibition of (certain types of) investments, a few states' parties<sup>3</sup> have expressed the contrary view, that the Convention does not prohibit the financing of cluster munition production.

Building on the international conventions, some countries<sup>4</sup> have put in place specific laws, albeit of differing scope:

- They predominantly focus on cluster munitions and anti-personnel mines, with only very few extending to other controversial weapons;
- Some prohibit the financing of companies involved in controversial weapons, while others ban the financing of the production of prohibited war materials only;
- The types of prohibited investments differ (e.g. all forms of financial support; acquisition for the institution's own account of financial instruments issued by a controversial weapons producer; investments of public money only);
- Some explicitly allow investment in index funds, as well as the financing of clearly defined projects carried out by an enterprise, provide such funding is not used for prohibited activities.

It should be noted that laws may also apply extra-territorially. For example, the relevant law in New Zealand applies explicitly to all acts undertaken or omitted outside New Zealand by a New Zealand citizen, a person who is ordinarily resident in New Zealand, or an entity incorporated in New Zealand.

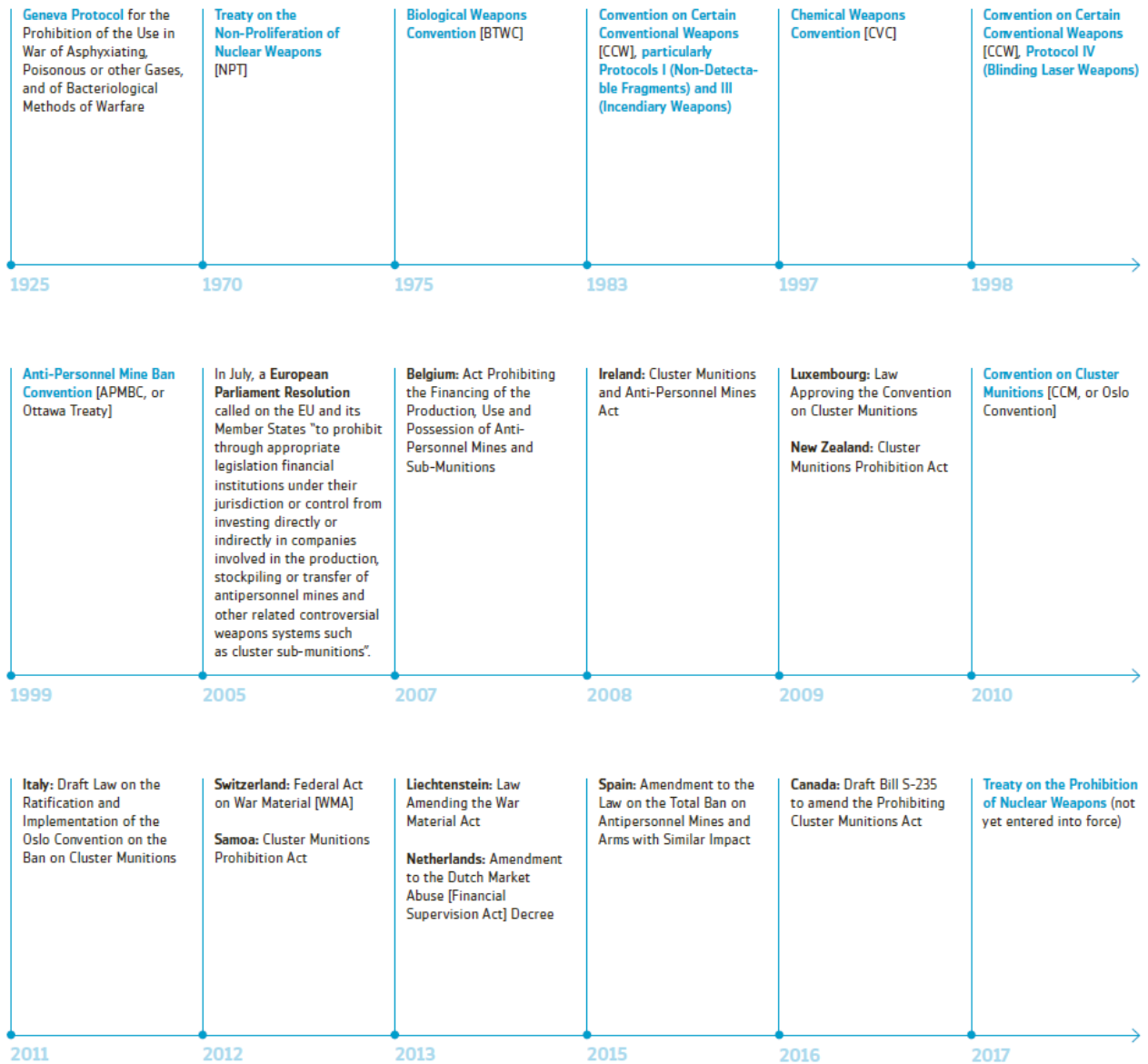
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<sup>2</sup> Australia, Bosnia and Herzegovina, Cameroon, Canada, Colombia, Costa Rica, Croatia, Czech Republic, Democratic Republic of the Congo, Republic of the Congo, France, Ghana, Guatemala, the Holy See, Hungary, Lao PDR, Lebanon, Madagascar, Malawi, Malta, Mexico, Niger, Norway, Rwanda, Senegal, Slovenia, United Kingdom, Zambia.

<sup>3</sup> This includes e.g. Germany, Sweden and Japan.

<sup>4</sup> Including Belgium, Canada (draft), Ireland, Italy (draft), Liechtenstein, Luxembourg, Netherlands, New Zealand, Samoa, Spain and Switzerland

The table below provides a chronological overview of how international and national legislation on controversial weapons has developed over the years, in particular where financing is concerned (international treaties are highlighted in blue).



Source: Swiss Sustainable Finance (2017)

**D. Weight of controversial weapons in selected equity and fixed income indices**

Sample indices	Equity	Fixed Income	Developed markets	Emerging markets	Estimated Weight of Companies involved in Controversial Weapons <sup>5</sup>
Index A	x		x		0.12%
Index B	x			x	0.22%
Index C	x		x	x	0.17%
Index E		x	x		0%
Index D		x		x	0%
Index F		x	x	x	0%

Source: Pictet Asset Management research, 2018

<sup>5</sup> Based on a representative list of companies involved in anti-personnel landmines, cluster ammunitions, chemical & biological weapons, nuclear weapons for non-NPT signatory countries. Includes majority-owned subsidiaries and parent companies.