University of Oxford Ethical Investment Review - Oxford STAR Submission

This submission is being made to the Ethical Investment Representations Review Sub-Committee (EIRRS) on behalf of the Oxford University Student Action For Refugees (STAR), which includes the Divest Borders Oxford Campaign. We believe that the University's current ethical investment policy is wholly inadequate, and allows investments to be held in companies enabling significant human rights violations.

We argue that the University should place a complete restriction on both its direct and indirect holdings in any companies involved in the production or proliferation of arms and military technology. We further believe that the scope of this review should be expanded to include other ethical considerations, and that the University should divest from all holdings in companies facilitating war crimes, apartheid, displacement, and other activities that further human suffering throughout the world. In particular, our student society aims to push the University to divest from the border industry, which propagates human rights violations, and results in the abuse and death of asylum seekers.

We will first respond to some of the questions raised during the EIRRS webinars held in Michaelmas Term 2024, elaborating on why we believe that the review should expand current restrictions on 'direct investment in companies which manufacture arms that are illegal under the Cluster Munitions (Prohibitions) Act 2010 or the Landmines Act 1998' to exclude all direct and indirect investments in any companies that manufacture any kind of arms. We will then outline some changes that we believe need to be made to ensure expanded ethical investment restrictions are implemented fully and in a way that builds trust between trustees and the University's beneficiaries, highlighting the importance of a holistic approach to ethical investments.

1. Principles set out in the previous debate that no longer apply

The current policy on arms investments was decided over a decade ago, after deliberation from the Socially Responsible Investment Review Committee (SRIRC) in 2009. We do not believe that their reasoning remains persuasive in 2024. Highlighted below are some of their recommendations, and our reasons for believing such arguments do not still apply.

a. Duties of a trustee

The SRIRC recommendations to Council suggested that the legal obligations of a trustee meant that banning investment in arms manufacturing companies was not feasible unless 'the activities of the companies are, on ethical grounds, inconsistent with the education objectives of the University'. We believe that the promotion of war is inherently against the University's mission of promoting and securing 'the advancement of learning'. Between 2015 and 2020, more than 22,000 students, teachers and academics were harmed or killed during armed conflict or insecurity.[1] In 2022, the Global Coalition to Protect Education from Attack (GCPEA) showed a 17% increase in attacks on students, teachers, and schools, with more than 3,000 incidents in that year alone.[2] Over the past year, Israeli forces have destroyed 85% of schools, and destroyed every university in Gaza, in what UN experts have called a 'scholasticide'.[3] These forces are supplied by companies that the University holds investments in through its Blackrock Capital Account, including Elbit Systems and L3HarrisTechnologies.[4] Through failing to exclude all investments in all arms companies, the University leaves itself open to funding scholasticide, directly in conflict with its mission to advance education. In addition, forced displacement caused by war deprives millions of people of their education - crises that disproportionately affects girls, children with disabilities, and other minority groups.[5] We therefore fundamentally believe that failing to ban investments in arms manufacturing companies is inconsistent with the education and teaching objectives of the University.

Furthermore, there have been many developments in charity law recommendations in the years since the SRIRC's recommendations. The Butler-Sloss High Court ruling in 2022 highlighted trustees discretion over excluding investments they believed were in conflict with their charity's objectives.[6] Additionally, the Charity Commission has released further guidance on investing charity money (CC14) and decision-making for charity trustees (CC27) since 2009. CC14 highlights that trustees can take into account environmental, social and governance (ESG) factors when investing, including human rights issues.[7] Indeed, the University's current investment policy excludes investments in the tobacco industry as a whole, despite it being one of the most profitable sectors in the world.[8] This underlines that the University has previously made ethical investment decisions guided by more than the protection of financial profit. It should similarly prioritise the protection of human rights and the prevention of war.

b. Right of defense

The SRIRC also suggested that arms could be used for both good and bad purposes, and so should not be divested from entirely. The EIRRS echoed these comments, indicating that there

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[1] https://news.un.org/en/story/2020/09/1071952
[2] https://www.hrw.org/news/2023/10/29/students-schools-under-attack-despite-landmark-un-resolution
[3] https://theintercept.com/2024/10/06/israel-bombing-schools-children-gaza-education/ ; https://euromedmonitor.org/en/article/6108/Israel-kills-dozens-of-academics,-destroys-every-university-in-the-Gaza-Strip ; https://www.ohchr.org/en/press-releases/2024/04/un-experts-deeply-concerned-over-scholasticide-gaza
[4] https://www.blackrock.com/uk/literature/annual-report/blackrock-collective-investment-funds-en-annual-report-2024.pdf ; https://investigate.afsc.org/company/elbit-systems ; https://investigate.afsc.org/company/l3harris-technologies ;
[5] https://www.un.org/en/transforming-education-summit/education-crisis-situations
[6] https://www.bailii.org/ew/cases/EWHC/Ch/2022/974.html
[7] https://www.gov.uk/government/publications/charities-and-investment-matters-a-guide-for-trustees-cc14/charities-and-investment-matters-a-guide-for-trustees#financial-investment
[8] https://ash.org.uk/tobacco-industry ;

have been recent trends in Europe to invest in more conventional weapons as a result of the war in Ukraine. We find this reasoning for continued investment in armament companies entirely unconvincing.

Firstly, there is no way to know whether a weapon will be used for a 'bad purpose'. There has been an EU imposed embargo on arms exports to Russia since its invasion of Crimea in 2014, yet French weapons, manufactured by Thales and Safran, continued to be exported to Russia until 2020.[9] In June 2023, a report found that Russian missiles relied upon electronics manufactured in the west, mostly in the USA and France.[10] These examples highlight the importance of divesting not just from armaments companies, but from any companies involved in the proliferation of military technology. Supply chains for weaponry are difficult to track, and it is next to impossible to ensure that weapons from companies the University does invest in are not being used for 'bad purposes'.

Moreover, we reject the idea that the University has any place in deciding whether the purpose of a weapon is 'good' or 'bad'. Armaments are ultimately created with the purpose of destruction and violence. We do not believe that the University should play a role in promoting this violence through its investments. Even when this violence occurs in the context of 'defense' and protecting 'national security', the results are often catastrophic for many people. Over the past year, claims that Israel is acting in 'self-defense' have been used to excuse weapons being exported to the state. This 'self-defense' has manifested as indiscriminate bombing campaigns, ground invasions, and further attacks that have caused the death of over 45,000 people in Palestine, and over 4,000 people in Lebanon. These Israeli attacks have resulted in the International Criminal Court (ICC) issuing arrest warrants for Benjamin Netanyahu and Yoav Gallant, and the International Court of Justice (ICJ) advising that Israel is plausibly committing genocide.[11] UN experts, a UN Special Committee, and Amnesty International are among those who have also found that Israel is committing a genocide in Gaza.[12] Despite evidence of these mass atrocities, the government has continued allowing armament exports from the UK to Israel.[13] This underlines that arms being used purportedly for defense still cause complete devastation, and the University should not play any role in furthering such destruction.

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[9] https://disclose.ngo/en/article/war-in-ukraine-how-france-delivered-weapons-to-russia-until-2020

[10] https://www.lemonde.fr/en/economy/article/2023/06/17/war-in-ukraine-hundreds-of-western-electronic-components-found-in-russian-weapons_6032830_19.html#

[11] https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges ; https://www.icj-cij.org/node/203454

[12] https://www.ohchr.org/en/documents/country-reports/a79384-report-special-rapporteur-situation-human-rights-palestinian ;
https://www.ohchr.org/en/press-releases/2024/11/un-special-committee-finds-israels-warfare-methods-gaza-consistent-genocide ;
https://www.amnesty.org/en/latest/news/2024/12/amnesty-international-concludes-israel-is-committing-genocide-against-palestinians-in-gaza/

[13] https://caat.org.uk/news/statement-on-uk-arms-exports-to-israel/

c. UK law

We further reject the suggestion from SRIRC and EIRRS that relying on UK law is a neutral middle ground ‘to fall back on’ for the University’s ethical investment policy. UK law is not a neutral starting point for considering ethical investments, particularly in regards to the arms trade. Following UK law inherently means following the changing policies of successive governments. When considering arms investments, this means that companies the University invests in can be implicated in war crimes and immense human suffering. For example, in just nine months of 2017, the UK issued arms exports to Saudi Arabia worth £2.94 billion.[14] These exports happened in spite of documented Saudi attacks on Yemen that violated international law. Indeed, the UK even failed to condemn the use of cluster munitions in this conflict, despite them being both internationally and domestically banned. In 2019, these sales were ruled unlawful, but the fact that these weapons had already been exported highlights that UK law alone does not prevent the exportation of weapons which are then used to commit war crimes.[15] It is therefore incumbent upon the University to expand its own prohibition on investment in arms to ensure that it is not helping to fund war crimes.

Furthermore, the University already prohibits investments in tobacco and fossil fuel companies, which is not mandated under UK law. This demonstrates that the University is willing to make ethical decisions outside of the constraints of legality, and it should also do so with regards to arms investments.

2. What should be considered a “controversial weapon”

The EIRRS asked representations to reflect on ‘what should be considered a "controversial weapon" beyond those already banned under UK law’ and whether ‘the UK government should expand the type of weapons that are illegal’. We argue that these questions are irrelevant to the subject of the review, which is the *University’s* ethical investment policy. As outlined above, the University must not base its ethical restrictions on UK law alone.

Regardless of issues of legality, we consider any distinction between ‘controversial’ and ‘conventional’ weapons meaningless. It is indisputable that all arms, including those usually classed as conventional weapons, bring about human suffering. Not only do arms kill people directly, they also exacerbate other problems humanity faces throughout the world. Bombing and military activity causes significant environmental damage, which can impact harvests, increase floods and droughts, and destroy necessary infrastructure for human life. It is therefore imperative that the University extends its ethical investment policies to exclude all investments, both direct and indirect, in all companies which produce any kind of weapon or military technology.

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[14] https://www.amnesty.org.uk/exposed-british-made-bombs-used-civilian-targets-yemen

[15] https://www.judiciary.uk/wp-content/uploads/2019/06/CAAT-v-Secretary-of-State-and-Others-Open-12-June-2019.pdf

It is also vital that these exclusions extend to dual use companies. One such dual use company is Rolls-Royce. Although arms comprise around a third of its total sales, it is still the 22nd largest company by arms revenue in the world, and the 2nd largest in the UK, as of 2023.[16] These weapons cause devastation to communities around the world, no matter which company produced them. We therefore ask for an expansion on arms investment exclusion to include any company involved in the arms sector, as defined by the 2022 OHCHR document *Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights*.[17] This means the exclusion of 'the full value chain of actors producing or being directly linked to the research, development, design, production, delivery, maintenance, repair and overhaul of military weapons systems, subsystems, parts, components, and ancillary equipment', as well as any 'actors providing "technical assistance, training, financial or other assistance, related to military activities or the provision, maintenance or use of any arms and related materiel"'.

3. The importance of a holistic approach to ethical investment

The EIRRS's review of the current prohibition on direct investments in companies manufacturing arms that are illegal under UK law (introduced in 2010) as well as investment in funds which invest primarily in such companies (introduced in 2021) is insufficient. The review must also consider the necessity of transparency and accountability throughout the University's investments. At present, the vast majority of the University's endowment is invested indirectly. The lack of clarity surrounding what accounts for a fund 'primarily' invested in companies manufacturing arms that are illegal under UK law is startling. If the University's claim that it seeks to listen to 'various representative groups across the University to hear diverse student and staff voices' is to be taken seriously, the University must allow students and staff to speak with full information by fully disclosing its existing investments. Meaningful debate cannot take place as long as University stakeholders do not have complete understanding of the University's current investment in the arms industry. Additionally, the University, OUEM, and any other investment managers of the University must engage in compliance reporting, so that University stakeholders can see the extent to which the University's investment policy is being implemented.

In addition to this, we believe that ethical decisions regarding arms should not be made without also considering the University's investments in other sectors that cause human rights violations and facilitate human suffering. This should include an extension of existing ethical investment restrictions to also exclude investments in the border industry. By the border industry, we refer to companies profiting from controlling, tracking, and preventing the forced movement of peoples. Many of these companies, such as Airbus, would also be excluded from an ethical investment policy that prohibited investments in arms. This is why it is vital to consider the ethical

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https://www.sipri.org/visualizations/2024/sipri-top-100-arms-producing-and-military-services-companies-world-2023

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https://www.ohchr.org/en/documents/tools-and-resources/responsible-business-conduct-arms-sector-ensuring-business-practice

investment policy as a whole when making new decisions on exclusions, rather than highlighting specific aspects for review.

We argue for full divestment from the border industry on the basis of the harm it does to vulnerable people throughout the world. An increasing reliance on for-profit companies in the border industry results in the increasing militarisation of borders and the removal of safe paths for asylum seekers. This all makes the abuse and death of asylum seekers horrifyingly commonplace throughout the UK, Europe, and the world more widely. In 2015, Alan Kurdi, a three-year-old child from Syria, drowned in the Aegan Sea.[18] Photos of his death horrified the world, yet did not prompt real change within the international refugee protection system or the border industry. Since then we have seen an ever increasing number of migrant deaths. At the beginning of October this year, 2024 had already become the deadliest year for migrants crossing the English Channel; from January to October 2024, 54 people had died at sea trying to reach England.[19] 2023 was the deadliest year on record for migrant deaths throughout the world, with nearly 8,600 deaths.[20] Each and every one of these deaths is preventable. Divesting from the border industry would demonstrate the University's solidarity with those communities affected by these companies and choices. Such a decision would also show the University's role as a global leader and help shift conversations that legitimate these deaths as simply an inevitable part of migration policy.

The University has a duty to its own community members that are affected by the border violence it continues to profit from, as well as a duty to uphold its commitments to migrants and refugees. As a University of Sanctuary, the University claims to be committed to creating a university environment that is welcoming to all, and developing public-facing outreach for its social responsibility to support refugees and migrants.[21] We believe that in order to truly embody being a University of Sanctuary, the University of Oxford must materially demonstrate its commitment to justice and access, through divesting from the border industry.

As with arms investments, reliance on UK law is simply inadequate on the subject of the border industry and justice for migrants and asylum seekers. Over the past few years, the UK government has followed increasingly stringent anti migrant policies. New policies, such as the Rwanda Plan, have been pushed for and then walked back on, and new laws have been introduced that the UK government has acknowledged do not comply with duties under international law. Indeed, when introducing the Illegal Migration Bill 2023 to the House of Commons, Suella Braverman was unable to make a statement that the provisions of the bill are

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[18] https://www.hrw.org/news/2016/09/02/death-small-syrian-boy
[19] https://www.bbc.co.uk/news/articles/cj9j8r8z90wo ; https://www.lemonde.fr/en/france/article/2024/10/25/54-people-have-died-crossing-the-channel-in-2024-are-the-rescue-operations-adequate_6730412_7.html#
[20] https://www.iom.int/news/deadliest-year-migrants-spurs-new-un-recommendations-protect-lives-and-rights
[21] https://universities.cityofsanctuary.org/award-2

compatible with the European Convention on Human Rights (ECHR).[22] In May 2024, the High Court in Belfast ordered 'the disapplication of provisions of the Illegal Migration Act 2023 in Northern Ireland', declaring it incompatible with the ECHR.[23] These domestic changes accompany continued UN criticism of the asylum system in the UK. As far back as 2021, the UNHCR has stated deep concerns at the 'discriminatory two-tier' asylum system in the UK.[24] In the past two years, the UN has also voiced concerns regarding the safety of the Rwanda Plan, and warned that the Illegal Migration Bill would have 'profound impact on human rights' and be in 'clear breach' of international law.[25]

Relying on UK law for investment decisions means aligning with policies later deemed illegal by the courts, both domestic and international, and it means following the whims of successive governments. Choosing to invest in the border industry is not a politically neutral action, and the University should thus look to make its investment decisions based on ethical choices that prioritise the wellbeing of all those in the University community.

4. Conclusions

To sum up our recommendations to the EIRRS, we demand that the University should:

- Extend its existing ethical investment policy on arms to exclude any direct or indirect investments in any company producing weapons or military technologies
  - This exclusion should make no distinction between 'controversial' and 'conventional' weapons, and the policy should exclude dual-use companies
- Increase transparency about the investments, through disclosing its investment funds and engaging in thorough compliance reporting
- Add a section to its ethical investment policy to exclude any direct or indirect investments in the border industry
- Broaden the scope of future EIRRS reviews to consider the ethical investment policy as a whole, understanding the intertwined nature of various ethical issues

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22 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1140977/ECHR_memo_Illegal_Migration_Bill_FINAL.pdf

23 https://www.judiciaryni.uk/files/judiciaryni/2024-05/Summary%20of%20judgment%20-%20In%20re%20NIHRC%20and%20JR%20295%20%28Illegal%20Migration%20Act%202023%29%20-%20130524_0.pdf

24 https://www.unhcr.org/uk/news/news-releases/unhcr-deeply-concerned-discriminatory-two-tier-uk-asylum-plans-urges-rethink

25 https://news.un.org/en/story/2024/04/1148901 ; https://www.ohchr.org/en/press-releases/2023/07/uk-illegal-migration-bill-un-refugee-agency-and-un-human-rights-office-warn ; https://news.un.org/en/story/2023/03/1134312