

BRIEFING PAPER

**National Legislative Measures
to Further Nuclear Abolition**

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Disarmament Working Group

The World Future Council brings the interests of future generations to the centre of policy making. It addresses challenges to our common future and provides decision makers with effective policy solutions.

In November 2009 the World Future Council established the Disarmament Working Group, which unites experts from around the world and brings to bear on the disarmament work the three core strengths of the WFC: 1) integrated thinking; 2) future orientated, and; 3) policy– focused. Its work programme ranges from spreading best policies in the demilitarization and disarmament domain to studying the linkages between nuclear disarmament and issues such as climate change, environmental protection, human rights, development and security.

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National Legislative Measures to Further Nuclear Abolition

It is a measure of arrogance to assert that a nuclear weapons-free world is impossible when 95% of the nations of the world are already nuclear-free. I think that the vast majority of people on the face of this earth will endorse the proposition that nuclear weapons have no place among us. There is no security in nuclear weapons. It is a fool's game.

— **General Lee Butler**, former head of US Strategic Nuclear Forces, 1991–1994

Our nuclear free status is a statement of our belief that we and our fellow human beings can build the institutions which will one day allow us all to renounce the weapons of mass destruction. We are a small country and what we can do is limited. But in this as in every other great issue, we have to start somewhere.

— **David Lange**, former Prime Minister of New Zealand, 1984–1989

INTRODUCTION

Policies offering solutions to tackle the global challenges we face often already exist. The World Future Council (WFC) raises global awareness for these solutions and serves policymakers by assisting them in adapting such policies to their national political frameworks, helping spread best policies and exposing and working to overcome policies which endanger current and future generations.

WFC Councillors and Advisors from all continents ensure an integrated approach and multiply the effectiveness of WFC initiatives. The experiences and varied background of the WFC secretariat provide a high leverage factor, delivering concrete results and ‘value for money.’ Its independence means that policymakers worldwide welcome the WFC not as lobbyists but as trusted advisors.

The WFC is already working successfully to bring about positive change through legislation in a number of fields, including renewable energy, environmental preservation, food security and future justice.

In November 2009 the World Future Council established the Disarmament Working Group, which unites experts from around the world and brings to bear on the disarmament work the three core strengths of the WFC: 1) integrated thinking; 2) that is future orientated; and 3) policy focused. It works to neutralize the existential threat that nuclear weapons pose so that coming generations can enjoy their right to life, liberty and security in person without what US President John F. Kennedy called a “nuclear sword of Damocles”¹ hanging over them.

Currently, the main focus of the Disarmament Programme is on identifying, raising awareness for and spreading policies that further nuclear abolition. This booklet highlights a number of such exemplary domestic legislative measures. It does not seek to offer in-depth policy analysis or provide a policy-toolkit. Instead it aims to raise awareness for some visionary policies in the nuclear disarmament domain and intends to inspire legislators in other countries to undertake similar action.

THE GAP BETWEEN RHETORIC AND ACTION: HOW NATIONAL LEGISLATIVE MEASURES CAN FURTHER UNIVERSAL NUCLEAR DISARMAMENT

Nuclear weapons and the postures relying on them pose an existential threat to humanity and other complex forms of life and carry unacceptable risks to the livelihoods of current and future generations. Although arsenals have been reduced after the end of the Cold War, more than 20,000 nuclear weapons still remain across the globe with an average explosive yield twenty to thirty times higher than that of the bomb dropped on Hiroshima. Roughly ten percent of these warheads are maintained on hair-trigger alert,² keeping humankind on the constant brink of nuclear warfare. The prolongation of this situation increases the probability of these weapons being used by accident, design or miscalculation. Any such use would cause indiscriminate human suffering on an unimaginable scale and cause catastrophic and irreversible damage to the environment.

Achieving a world free of nuclear weapons has been described by former US Secretary of State Sam Nunn as “climbing a mountain, the top of the mountain being zero nuclear weapons.”³ In the last few

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years the momentum for achieving that mountain peak has been building, owing to the efforts of UN Secretary-General Ban Ki-moon, US President Barack Obama and other Heads of State, former high-level officials, elder statesmen and high-ranking military leaders, civil society groups, parliamentarians, mayors, Nobel Peace Prize laureates, and a number of middle power governments.

In 2010 the States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) further strengthened this newfound disarmament vigour by including the following provision in the action plan on nuclear disarmament:

“The Conference calls on all nuclear-weapon states to undertake concrete disarmament efforts and affirms that all States need to make special efforts to establish the necessary framework to achieve and maintain a world without nuclear weapons. The Conference notes the five-point proposal for nuclear disarmament of the Secretary-General of the United Nations, which proposes, inter alia, consideration of negotiations on a nuclear weapons convention or agreement on a framework of separate mutually reinforcing instruments, backed by a strong system of verification.”⁴

In addition, the Conference created an important opening for bringing the “rule of law” to disarmament, as it expressed *“its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons, and reaffirm[ed] the need for all states at all times to comply with applicable international law, including international humanitarian law.”⁵*

Notwithstanding these political and legal commitments to the goal of a nuclear weapon-free world, nuclear abolition has proved to be an elusive objective. The Nuclear Weapon States continue to fail in their disarmament obligations and vertical and horizontal nuclear proliferation persists. As recently noted by Dr. Randy Rydell of the UN Office for Disarmament Affairs, there are no concrete plans to achieve nuclear disarmament, nor are there national disarmament agencies or legislation to implement this goal in countries that possess nuclear weapons. Meanwhile, long-term plans are underway to modernize or improve nuclear warheads or their delivery systems in all such countries.⁶

Article VI of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons affirms that all States Parties should undertake “to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control.”⁷ In its landmark *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice (ICJ) clarified this article, stating that “there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”⁸

Although the Nuclear Weapon States should continuously be reminded of their disarmament obligations, they should not be waited on to initiate a process leading to the enactment of a universal, verifiable, irreversible and enforceable legal ban on nuclear weapons. The Final Document of the 2010 NPT Review Conference affirms this by holding that “all States need to make special efforts to establish the necessary framework to achieve and maintain a world without nuclear weapons.” Similarly, the NPT places the disarmament obligation with “Each of the Parties to the Treaty,”¹⁰ a sentiment echoed by the ICJ: “Indeed, any realistic search for general and complete disarmament, especially nuclear disarmament, necessitates the cooperation of all States.”¹¹ It is in this context that the value of national nuclear-free legislation becomes apparent.



Presentation by Rob van Riet on exemplary disarmament policies at a parliamentary roundtable hosted by the Permanent Mission of Germany to the UN, 24 October 2011, New York (l-r: Rob van Riet, Christer Winbäck MP)

To return to Nunn’s mountaineering analogy, there is not one route but several mutually reinforcing climbing routes and techniques leading to the nuclear-free top. Some will inevitably prove to be dead ends, while others might only take us up so far. One particularly effective effort in ascending the anti-nuclear mountain is for states to adopt national legislative measures to prohibit nuclear weapons, for example by banning the stationing, storage or transport of nuclear weapons within their territorial boundaries. Such actions by governments and legislatures act as a powerful counter-force to the inauspicious nuclear postures of a few, contribute to building and conceptualizing the multilateral nuclear prohibition norm, place limitation on nuclear weapons-related activities, and reframe the mindset on how to pursue common security objectives.

Regionally, states have taken legislative steps toward nuclear abolition by entering into multilateral agreements establishing Nuclear Weapon-Free Zones,¹² which now span the entire Southern hemisphere, as well as cover large parts north of the equator. Other countries have drawn up national legislation prohibiting nuclear weapons or have taken other policy action to outlaw these arms. This booklet highlights a number of such exemplary domestic legislative measures. These include the 1987 *New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act*, the 1987 *Nuclear Weapons-Free Provision in the Philippine Constitution*, the 1999 *Constitutional Law in favor of a Nuclear-Free Austria*, the 2000 *Law of Mongolia on its Nuclear-Weapon-Free Status* and the 2004 *Ethical Guidelines for the Norwegian Government Pension Fund*. Furthermore, it examines one example of a legislative initiative currently being undertaken, a proposed bill in the Bangladesh Parliament aimed at establishing the country as a Nuclear Weapon Free Zone.

Such national legislative measures should not be regarded as alternatives to the global undertaking of creating a framework for the prohibition and elimination of nuclear weapons, but should be assessed as effective complementary measures to achieving that goal.

NEW ZEALAND NUCLEAR FREE ZONE, DISARMAMENT, AND ARMS CONTROL ACT, 1987¹³

The horrific health and environmental consequences of nuclear testing in the South Pacific, growing concern about the risks of nuclear war, and government plans to develop nuclear energy led to a surge in anti-nuclear sentiment in Aotearoa-New Zealand in the 1970s. Among the campaigns employed by the anti-nuclear movement was the declaration of Nuclear Weapon-Free Zones (NWFZ) in classrooms, work places, towns and cities. By the 1984 general election, over 66 percent of New Zealanders lived in such NWFZs, and the victorious Labour Party, under leadership of David Lange, had adopted an unequivocal policy to ban nuclear weapons from the country's territory and waters. In 1987 the nuclear-free policy was firmly cemented in the *New Zealand Nuclear Free Zone, Arms Control, And Disarmament Act*.

Among the campaigns employed by the anti-nuclear movement was the declaration of Nuclear Weapon-Free Zones (NWFZ) in classrooms, work places, towns and cities. By the 1984 general election, over 66 percent of New Zealanders lived in such NWFZs.

The Act contains a number of provisions. It prohibits manufacture, acquisition, possession or control over nuclear weapons as well as aiding and abetting any person in doing so, by New Zealand citizens or residents (section 5.1). The legislation also contains an extraterritoriality clause by prohibiting such acts by agents of New Zealand anywhere in the world (section 5.2). In addition, it bans the emplacement or transport of nuclear weapons on land or internal waters, including harbours, in New Zealand (section 6). This provision is not found in any of the regional treaties establishing nuclear weapon-free zones, which only ban stationing of nuclear weapons on their territories. The Act further authorizes the Prime Minister to reject the landing in New

Zealand of foreign military aircraft if there is reason to believe it may be carrying nuclear weapons (section 10) and bars entry into the country's internal waters of any ship whose propulsion is wholly or partly dependent on nuclear power (section 11). Those who contravene or fail to comply with the Act commit a criminal offence against it, punishable by imprisonment (section 14). The Act also established a Public Advisory Committee on Disarmament and Arms Control to advise the Minister of Foreign Affairs and Trade on any disarmament issues it deems important (section 16 & 17), the Chairman of which is the Minister for Disarmament and Arms Control (section 18); a unique position not found in any other country.

New Zealand's nuclear-free legislation is among the strongest existing legal prohibitions against nuclear arms and effectively renounces the nuclear deterrence theory. It goes beyond the country's obligations under the 1985 *South Pacific Nuclear Free Zone Treaty* (Treaty of Rarotonga), which permits port visits of nuclear ships. However, it still has significant limitations. It does not ban the entrance of nuclear weapons into New Zealand's territorial waters (12-mile extension from land) or Exclusive Economic Zone (EEZ) (200-mile extension). There have been calls and initiatives to further strengthen and extend New Zealand's nuclear-free policy. In 2000, the Greens Party introduced a bill aimed at extending the legislation to prohibit the transit of nuclear-armed or propelled warships, as well as transport of nuclear waste through the 200-mile EEZ. This was not unprecedented, as the 1995 *Treaty on the Southeast Asia Nuclear Weapon-Free Zone* (Bangkok Treaty) includes a prohibition of threat or use of nuclear

weapons within signatory states' EEZs.¹⁴ However, the New Zealand Government held that such an extension would be unenforceable, as well as in breach of the *UN Convention on the Law of the Sea* (UNCLOS). In his testimony to the New Zealand Select Committee on Foreign Affairs, Defence and Trade, Judge Christopher Weeramantry, former Vice-President of the International Court of Justice, disputed both claims. Regarding the perceived enforceability difficulties, Judge Weeramantry drew on his experience with implementation of the ICJ's decisions, noting that norms are generally complied with, even in the absence of effective enforcement mechanisms. As for the legality of such an EEZ-extension under UNCLOS, he held that nuclear weapon-armed submarines could be banned from the EEZ as they would constitute a threat of use of nuclear weapons, which the ICJ's 1996 Advisory Opinion had found generally illegal under international law.¹⁵ These arguments were unfortunately to no avail and the bill was defeated in its second reading in Parliament.

Although New Zealand's nuclear-free legislation came under severe pressure from its Western allies – particularly the United States, United Kingdom and Australia– and led to significant diplomatic ostracism, successive governments have been steadfast in maintaining the policy and keeping it a cornerstone of the country's identity. A shift in the US attitude towards the anti-nuclear legislation has taken place under the Obama administration. In November 2010, during the signing of an agreement to forge stronger strategic ties between the two countries, US Secretary of State Hilary Clinton commended New Zealand's leading role on nuclear non-proliferation, effectively ending the 25-year nuclear row.¹⁶ As long-time Aotearoa peace educator and nuclear abolition advocate Alyn Ware has noted, now that the US has done a u-turn and is commending New Zealand's nuclear-free policy as being consistent with President Obama's vision for a nuclear weapons-free world, it opens the door for other US allies to consider the same, with the understanding that such moves would now not face the intense opposition from the US which New Zealand endured, but could instead be welcomed.

SINGLE STATE NUCLEAR WEAPON-FREE ZONES

Although not as far-reaching as New Zealand, other countries have implemented legislation prohibiting nuclear weapons, and in one case even nuclear energy.

MONGOLIA | Mongolia's anti-nuclear stance came largely from the fear of being caught in the middle of a conflict between its nuclear neighbours, China and the former Soviet Union, which had an increasingly tense and confrontational relationship in the 1960s and 70s. Nuclear testing by the two countries near Mongolia's territory further heightened anxieties about the dangers of nuclear weapons.

In September 1992, the same year the last Russian troops left Mongolia, Mongolian President Punsalmaagin Ochirbat announced at the 47th session of the UN General Assembly that Mongolia's territory would be a nuclear weapon-free zone and that the country would work to have its status internationally recognized.¹⁷ A 1974 comprehensive study on nuclear weapon-free zones, as mandated by UN General Assembly Resolution 3261 F, created the possibility for such unilateral action as it proclaims that "*obligations relating to the establishment of nuclear-weapon-free zones may be assumed not only by groups of states, including entire continents or large geographical regions, but also by small groups of States and even individual countries.*"¹⁸

Following constructive multilateral diplomacy, notably with its neighbours, and practical work through the United Nations,¹⁹ Mongolia cemented its policy into law in 2000 when the State Great Khural

(national parliament) adopted the *Law of Mongolia on its nuclear-weapon-free status*, which entered into force that same day.²⁰

The Law prohibits individuals, legal persons, or any foreign state on Mongolian territory from developing, manufacturing or otherwise acquiring, possessing, or having control over nuclear weapons (Section 4.1.1); stationing or transporting nuclear arms by any means (Section 4.1.2); testing or using nuclear weapons (Section 4.1.3); or dumping or disposing nuclear weapons grade radioactive material or nuclear waste. It further bans transportation of nuclear weapons, parts or components thereof, as well as nuclear waste or any other nuclear material designed or produced for weapons purposes through the

Mongolia's declaration of a single state nuclear weapon-free zone and subsequent work to gain international recognition of that status also provides an interesting example of how a nation was able to move out of the shadows of its behemoth nuclear armed neighbours and forge a new independent identity as a responsible stakeholder, while addressing some of its key security concerns and shoring up the global nuclear non-proliferation and disarmament regime.

territory of Mongolia (Section 4.2). The Law covers the territory of Mongolia in its entirety, including its air space, land, waters, and sub-soil (Section 1). It does not prohibit the peaceful use of nuclear energy (Section 5). Among other verification measures, the legislation gives the Mongolian government the right to gather information, stop, detain, and search any suspected aircraft, train, vehicle, individual, or group of persons (Section 6.2). In addition, non-governmental organizations or individuals may exercise public oversight of the implementation of the legislation and submit proposals thereon to the relevant state authority (Section 6.4). An individual or legal person that violates the law shall be held liable in accordance with the Criminal Code and shall pay compensation for the damage caused to the interest of Mongolia as well as to the population, the environment and the properties, in accordance with the relevant legislation of Mongolia or in conformity with the appropriate international treaty, the principles and norms of international law (Section 8.3).

The Mongolian initiative remains unique and innovative with respect to the theory of Nuclear Weapon-Free Zones established under the auspices of the UN, in that it is not comprised of a group of countries covering a specific geographic area but rather one state declaring its sovereign territory free of nuclear arms. Furthermore, its legislation obliges Mongolia's National Security Council to coordinate the international institutionalisation of its nuclear weapon-free status. To this end, Mongolia has worked multilaterally and bilaterally to secure negative security assurances²¹ from Nuclear Weapon States. Mongolia's declaration of a single state nuclear weapon-free zone and subsequent work to gain international recognition of that status also provides an interesting example of how a nation was able to move out of the shadows of its behemoth nuclear armed neighbours and forge a new independent identity as a responsible stakeholder, while addressing some of its key security concerns and shoring up the global nuclear non-proliferation and disarmament regime. Mongolia's novel solution could be an inspiration to states in similar geopolitical circumstances and faced with comparable security issues.

AUSTRIA | A referendum on 5 November 1978 led to the prohibition by law of the use of nuclear fission power for electricity production in Austria. Although the country has imported nuclear power, the Austrian government recently announced it will cease imports of nuclear energy by 2015 (legislation expected later this year) and will instead increase investment in hydropower and expand its renewable energy resources to cover the 6% shortfall that the ban will leave.

In July 1999 the Austrian Parliament passed the *Constitutional Law in favor of a Nuclear-Free Austria*, which prohibits the testing, production, storage, or transport of nuclear weapons within Austrian territory (Section 1). Transport, as defined by this law, includes fissile material, unless it is for the purpose of exclusively peaceful use (Section 3). In addition, the Constitutional Amendment reaffirms the ban on constructing or operating nuclear power plants in Austria (Section 2). Moreover, the law includes a provision which guarantees that damages which are caused by a nuclear accident in Austria should be compensated appropriately, and that this right to compensation could be enforced versus foreign natural and legal persons who have caused the damage (Section 4).

PHILIPPINES | In 1987 the Philippines amended its constitution to affirm that the country adopts and pursues a policy of freedom from nuclear weapons in its territory (Article II, Section 8 of the 1987 Philippine Constitution). This constitutional policy means that the government may not store or allow anyone to store nuclear weapons inside the national territory, and nuclear armed aircraft and vessels may not be allowed to enter.

As with previously discussed nuclear-free legislation, the Philippines' policy proved an effective tool in the country's work to build and affirm an independent identity. It preceded the government's decision in 1992 to end the Military Bases Agreement with the US, which for decades had been the focal point of the Philippines' struggle against unchecked US (military) influence in the region.

ETHICAL GUIDELINES FOR THE NORWEGIAN GOVERNMENT PENSION FUND, 2004²²

The *Norwegian Government Pension Fund – Global* (formerly known as the *Government Petroleum Fund*) is the world's second largest sovereign wealth fund and the repository of the Norwegian peoples' excess oil and natural gas wealth. With a sharp increase in the Fund's value in the 1990s came a public debate on whether its investment and management should be governed by ethical principles. In 1999 it was brought to light that the Fund was invested in a Singaporean company (Singapore Technologies Engineering) manufacturing anti-personnel mines, even though Norway had been a key player in achieving the 1997 *Mine Ban Convention*, which prohibits the use, development, stockpiling, production and transfer of anti-personnel mines, and was a party to the Convention.

To address concerns about this apparent contradiction, the Norwegian Government established an Advisory Commission on International Law for the Fund in 2001.²³ Its mandate was to determine whether investments by the Fund could constitute a breach of Norway's commitments under international law. The Commission recommended the Ministry of Finance to exclude the Singaporean company from the Fund's investment universe (all companies worldwide it could invest in), as any investment in such a company could constitute a violation of Article 1 (c) of the Mine Ban Convention, which prohibits assisting, encouraging or inducing, in any way, anyone to engage in the Convention's prohibited activities.²⁴ This led to a wider debate on whether investments should be scrutinized on ethical grounds, instead of just legal, and how such considerations could be codified into guidelines.

In 2002, a governmental committee (the Graver Committee) was established and tasked with proposing ethical guidelines for the Fund. The Committee's report led to the adoption of the Ethical Guidelines for the Fund in November 2004. In addition, a Council on Ethics for the Fund was established.

At the core of the Ethical Guidelines lies the belief that the Fund should not make investments which constitute an unacceptable risk that the Fund may contribute to unethical acts or omissions, such as violations of fundamental humanitarian principles, serious violations of human rights, gross corruption or severe environmental damages.²⁵ The Guidelines' criteria prohibit investment in companies which themselves or through entities they control produce weapons that violate fundamental humanitarian principles through their normal use,²⁶ produce tobacco or sell weapons or military material to Burma (Section 2.1). Furthermore, the Ministry of Finance may, on the advice of the Council on Ethics, exclude companies from the Fund if there is an unacceptable risk that the company contributes to or is responsible for: a) serious or systemic human rights violations, b) serious violations of individuals' rights in war or conflict, c) severe environmental damage, d) gross corruption, or e) other particularly serious violations of fundamental ethical norms (Section 2.3). The Ministry of Finance makes the final decision regarding exclusion of companies according to these criteria, based on the recommendation from the Council on Ethics (Section 2.2). All of the Council's recommendations –regardless of whether the Ministry follows their advice– must be published (Section 5.7). Furthermore, the Ministry of Finance publishes a list of companies that have been excluded from the Fund or put under observation (Section 8).

Although other countries have adopted similar divestment policies, Norway's scheme is unique, due to its inclusion of divestment from companies involved in "the development and production of key components for nuclear weapons."

Although other countries have adopted similar divestment policies,²⁷ Norway's scheme is unique, due to its inclusion of divestment from companies involved in "*the development and production of key components for nuclear weapons.*"²⁸ Section 2.1 of the Guidelines states that the Fund shall not be invested in companies that produce weapons that "*violate fundamental humanitarian principles through their normal use.*" As Norway was a State Party to the conventions banning chemical weapons, biological weapons and anti-personnel mines, it was a relatively straightforward assumption by both the Advisory Commission on International Law and the Graver Committee to ban the Fund's investment in companies

that produce these types of weapons. However, the Graver Committee, supported by the Parliament, considered that nuclear weapons and cluster munitions, though not clearly prohibited under international law (at the time, the *Convention on Cluster Munitions* had not yet been adopted), might be considered to violate fundamental humanitarian principles, and should thus also fall under the Fund's divestment scope. As such, the preparatory work of the Guidelines lays down an exhaustive list of weapons that were considered to violate humanitarian principles. These are: chemical and biological weapons, blinding laser weapons, munitions with fragments not detectable by X-ray, incendiary weapons as referred to in the UN Convention on Certain Conventional Weapons, anti-personnel mines, cluster weapons and nuclear weapons.

The Graver Committee's conclusion that the Fund should not invest in companies that "*develop and produce key components to nuclear weapons*" has been interpreted by the Council as encompassing more than just the actual production of nuclear warheads. The exclusion criterion includes delivery mechanisms, such as missiles carrying the warhead (intercontinental ballistic missiles), certain forms of testing as well as maintenance of nuclear weapons. Furthermore, looking at possible future nuclear weapon production, the Graver Committee determined that so-called "mini-nukes" (nuclear devices that produce small amounts of radiation and/or earth-penetrating weapons to attack underground bunkers) would also fall within the exclusion criterion's scope.

In line with this demarcation, since 2005 ten international companies have been excluded from the Fund's portfolio, on the grounds that they were involved in the development and production of key components for nuclear weapons.²⁹

The potential effects of ethical guidelines for investment policies, such as those adopted by Norway, should not be underestimated. Norway is the global leader in ethical investment. The Council on Ethics' recommendations and the Ministry of Finance's decisions regarding the ethics of its investments carry enormous influence in the international investment community, often affecting the behaviour of both corporations and investors. Furthermore, public divestment policies and ethical guidelines for public funds can help shape international public opinion by furthering the stigmatization of certain instruments, products and behaviour.

By bringing in cluster munitions and nuclear weapons under the exclusion criterion "*weapons that violate fundamental humanitarian principles,*" even though neither category of arms was banned by an international treaty, the Fund's divestment policy has strengthened the application of International Humanitarian Law to these types of weapons as well as contributed to bringing about a normative shift towards their prohibition. In 2008 concerted efforts by civil society and a group of like-minded governments led to the adoption of the *Convention on Cluster Munitions*. Similar attempts are currently underway with regard to nuclear weapons. Although the effects of divestment policies and ethical guidelines for public investments should not be overstated, such policy action does contribute to building and upholding the prohibition norm. At the least, states should bring their investment schemes in accordance with their international obligations as signatories to disarmament treaties, such as those banning chemical and biological weapons, anti-personnel mines and cluster munitions. Similarly, by divesting from companies manufacturing nuclear weapons, states can demonstrate and honour their commitments to achieving a nuclear weapon-free world.

PROPOSED BILL TO ESTABLISH BANGLADESH AS A NUCLEAR-WEAPON-FREE ZONE

Next to existing legislation that furthers nuclear abolition, initiatives are currently being undertaken by legislators to further nuclear disarmament goals. One particularly noteworthy example is a bill tabled by Saber Chowdhury MP in the Bangladesh Parliament (Jatiya Sangsad) in August 2011.³⁰ The proposed legislation would establish Bangladesh as a Nuclear-Weapon-Free Zone and prohibits any acts involving the threat, use, development, possession, testing or transfer of nuclear weapons by any persons, or the aiding and abetting of any of these acts. In addition, the bill contains an extraterritoriality clause by prohibiting such acts by any person, *who is a Bangladesh citizen or a person ordinarily resident in Bangladesh, (and who is a servant or agent of the Crown) beyond the Nuclear-Weapon-Free Zone.*

Interestingly, the Act further specifies as one of its purposes, to promote and encourage an active and effective contribution by Bangladesh to the essential process of the global abolition of nuclear weapons, and the reduction of global military expenditures to help fund the UN Millennium Development Goals and climate change adaptation needs of the most vulnerable countries.

The bill notes that Bangladesh's obligation to pursue such nuclear-free legislation arises from a) Article 26 of the United Nations Charter; b) The Treaty on the Non-proliferation of Nuclear Weapons (1969); c) The Treaty on the Prohibition of the Emplacement of Nuclear Weapons of Mass Destruction on the

Sea-bed and the Ocean floor and in the Subsoil Thereof of 11 February 1971; d) The International Court of Justice Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons of 8 July 1996; e) The Comprehensive Nuclear Test Ban Treaty (1996); f) United Nations Security Council Resolution 1540 (in conjunction with, and supplemental to, the Chemical Weapons (Prohibition) Act XXXVII of 2006; g) The International Convention on the Suppression of Acts of Nuclear Terrorism of 7 July 2007; h) United Nations Security Council Resolution 1887; i) The resolution adopted by the Bangladesh Parliament on 5 April 2010 supporting the UN Secretary-General's nuclear disarmament plan and especially the proposal for negotiations to conclude a Nuclear Weapons Convention; and j) The Vienna Convention on Civil Liability for Nuclear Damage.



Saber Chowdhury MP discussing his bill at the Annual Assembly of Parliamentarians for Nuclear Non-Proliferation and Disarmament, 16 October 2011, Bern (l-r: David Coltart MP, Jeremy Corbyn MP, Bill Kidd MSP, Saber Chowdhury MP)

Furthermore, the bill includes a provision banning the investment of government funds in ventures involved in the manufacture of nuclear weapons or their delivery vehicles. One final innovation in the bill is its provision that violators of the law shall pay compensation for damages, similar to the “polluter pays principle” in environmental law.³¹

The Bangladesh example is a particularly commendable policy-initiative. Its nuclear prohibition provisions are comprehensive and it could act as a catalyst in defusing some of the tensions in the region. As its initiator Saber Chowdhury has noted, the proposed legislation is “*a huge first step and given that South Asian region has two nuclear powers in India and Pakistan, a major development overall.*”³²

CONCLUSION

Achieving the global prohibition and elimination of nuclear weapons will come as the result of a concerted effort, involving a variety of approaches, initiatives, actors, and arenas. The adoption of national legislation to implement the nuclear abolition norm is a highly effective way to advance the nuclear disarmament agenda. As this briefing paper has shown, such policy action can also be crucial to achieving national and regional security objectives. Next to governments, legislatures have key role in pursuing nuclear-free legislation. In this context, the last words should come from the UN High Representative for Disarmament Affairs, Sergio Duarte, who noted, “*Parliaments help to give disarmament not only vision, but also some backbone, muscle, and teeth.*”³³

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- ² Refers to a state of extremely high launch-readiness of strategic missiles. Dr. Bruce Blair, Former Minuteman ballistic-missile launch-control officer and co-founder of Global Zero, notes: “Both US and Russian intercontinental ballistic missiles remain fueled, targeted, and waiting for a couple of computer signals to fire. They fly the instant they receive these signals, which can be sent with a few keystrokes on a launch console.” Hair-Trigger Missiles Risk Catastrophic Terrorism, *Bruce Blair’s Nuclear Column*, Center for Defence Information, April 23, 2009.
- ³ A World Without Nuclear Weapons: An Interview with Nuclear Threat Initiative Co-Chairman Sam Nunn, *Arms Control Today*, March 2008, p. 6.
- ⁴ 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document* (“Final Document”), Volume I, UN document NPT/CONF.2010/50, p. 20.
- ⁵ *Ibid*, p. 19.
- ⁶ Bringing Democracy and the Rule of Law to Disarmament, Remarks made by Randy Rydell at the Conference ‘Humanitarian Law, Human Security: The Emerging Paradigm for Non-Use and Elimination of Nuclear Weapons’, Vancouver, Canada, 10 February 2011.
- ⁷ Treaty on the Non-Proliferation of Nuclear Weapons (“NPT”), Article IV, *opened for signature* July 1, 1968.
- ⁸ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of the International Court of Justice (“Nuclear Weapons Advisory Opinion”), July 8, 1996, *ICJ Reports* (1996) 226, Para. 2F, *dispositif*. [underline added]
- ⁹ Final Document, p. 20. [underline added]
- ¹⁰ NPT, Article VI.
- ¹¹ Nuclear Weapons Advisory Opinion, Para. 100. [underline added]
- ¹² *Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean* (Treaty of Tlatelolco) – Adopted in 1967, entered into force in 1968: forbids its signatory nations from use, storage, or transport of nuclear weapons, and created an intergovernmental agency, OPANAL, to ensure that the obligations of the treaty be met; *South Pacific Nuclear Free Zone Treaty* (Treaty of Rarotonga) – Adopted in 1985, entered into force 1986: bans the manufacture, possession, stationing, and testing of any nuclear explosive device in Treaty territories for which the parties are internationally responsible; it also bans the dumping of radioactive waste at sea; *Treaty on the Southeast Asia Nuclear Weapon-Free Zone* (Bangkok Treaty) – Adopted in 1995, entered into force in 1997: it obliges its members not to develop, manufacture or otherwise acquire, possess or have control over nuclear weapons; *Treaty on a Nuclear-Weapon-Free Zone in Central Asia* (Semipalatinsk Treaty) – Adopted in 2006, entered into force in 2009: obliges its members not to manufacture, acquire, test, or possess nuclear weapons; *African Nuclear-Weapon-Free-Zone Treaty* (Pelindaba Treaty) – Adopted in 1996, entered into force in 2009: prohibits the research, development, manufacture, stockpiling, acquisition, testing, possession, control or stationing of nuclear explosive devices in the territory of parties to the Treaty and the dumping of radioactive wastes in the African zone by Treaty parties.
- ¹³ Much of this section is based on: Alyn Ware, New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act, *Berkshire Encyclopedia of Sustainability: Vol. 3: The Law and Politics of Sustainability*, 2010-2011; Kate Dewes, Challenges to New Zealand’s Nuclear Free Policy, *Pacific Ecologist*, Issue 5, Autumn/Winter 2003; Robert White, Nuclear Free New Zealand – From Policy to Legislation, Working Paper no. 8, Centre for Peace Studies, April 1998.
- ¹⁴ Article 2 (1), Treaty on the Southeast Asia Nuclear Weapon-Free Zone (Bangkok Treaty); *opened for signature* 15 December 1995; *entered into force* 27 March 1997.
- ¹⁵ Judge C.G. Weeramantry, Illegality of deployment of nuclear weapons within Nuclear Weapon Free Zones: Principles placed before the New Zealand Select Committee on Foreign Affairs, Defence and Trade, August 2003.
- ¹⁶ US, New Zealand sign strategic deal after nuclear row, *BBC News Asia-Pacific*, 4 November 2010.
- ¹⁷ Punsalmaagin Ochirbat, Address to the 47th UN General Assembly, UN Document A/47/PV.13, 25 September 1992.
- ¹⁸ Comprehensive study of the question of nuclear-weapon-free zones in all its aspects, *Special report of the Conference of the Committee on Disarmament*, p. 41, UN Document A/10027/Add.1, 30th UN General Assembly, 8 October 1975. [underline added]
- ¹⁹ Mongolia’s work for international recognition of its nuclear weapon-free status yielded fruit in 1998 with the adoption by the 53rd UN General Assembly of Resolution 53/77 D, entitled “Mongolia’s international security and nuclear-weapon-free-status,” which stated the international community’s unanimous support for Mongolia’s efforts to strengthen regional stability and invited UN Member States to cooperate with Mongolia to ensure its international security and nuclear weapon-free status. Since then, every two years the UN General Assembly has adopted the same Resolution (Resolution 55/33 S, Resolution 57/67, Resolution 59/73, Resolution 61/87, Resolution 63/56).
- ²⁰ This document was circulated at the 55th UN General Assembly, as UN Document A/55/56 S/2000/160.
- ²¹ Each treaty establishing a nuclear-weapon-free zone includes a protocol for the five nuclear-weapon states recognized under the NPT-China, France, Russia, the United Kingdom, and the United States-to sign and ratify. These protocols, which are legally binding, call upon the nuclear-weapon states to respect the status of the zones

and not to use or threaten to use nuclear weapons against treaty states-parties. Such declarations of non-use of nuclear weapons are referred to as negative security assurances.

²² Much of this section is based on: Gro Nystuen, The implications of the Norwegian Petroleum Fund's Ethical Guidelines for the application of IHL to nuclear weapons, *Nuclear Abolition Forum*, Issue 1, Autumn 2011; Gro Nystuen, Investment Policies and Arms Production – Experiences from the Norwegian Pension Fund–Global, published in, J.Borrie & V. Martin Randin (eds), *Thinking Outside the Box in Multilateral Disarmament and Arms Control Negotiations*, United Nations Institute for Disarmament Research (UNIDIR), 2006.

²³ The application of the Guidelines is not without criticism as a recently released report by Earth Rights International, entitled “Broken Ethics: The Norwegian Government’s Investments in Oil and Gas Companies Operating in Burma (Myanmar),” demonstrates.

²⁴ Question of whether investments in Singapore Technologies Engineering can imply a violation of Norway’s international obligations, *Memorandum to the Ministry of Finance*, The Petroleum Fund Advisory Commission on International Law, 22 March 2002.

²⁵ Ethical Guidelines for the Government Pension Fund – Global (“Ethical Guidelines”), Point 1, *adopted by the Ministry of Finance* 19 November 2004; *replaced by* Guidelines for the observation and exclusion of companies from the Government Pension Fund Global’s investment universe (“Ethical Guidelines”), *adopted by the Ministry of Finance* 1 March 2010.

²⁶ International Humanitarian Law recognizes these principles as being: 1) the *principle of proportionality*, which refers to weapons that through their normal use lead to unnecessary suffering or superfluous injury, and 2) the *principle of distinction*, which refers to weapons that do not distinguish between military objectives and civilians.

²⁷ E.g. Belgium, Luxemburg and Ireland have adopted national measures to ban investment in cluster munitions. A 2007 European Parliament Resolution calls on EU countries to follow their lead in adopting national measures that fully ban the use, production, export, and stockpiling of cluster bombs. Australia, Denmark, the Netherlands, New Zealand and Switzerland are at various stages of undertaking parliamentary action on such investments. Similar legislative measures have been undertaken with regard to banning investment in landmines-producers.

²⁸ The Report from the Graver Committee, Graver Committee, 7 November 2003.

²⁹ Companies that have been excluded so far: BAE Systems Plc., Boeing Co., EADS Co. (including its subsidiary), EADS Finance B.V., Finmeccanica Sp.A., GenCorp Inc., Honeywell International Inc., Northrop Grumman Corp., United Technologies Corp., Safran SA, Serco Group Plc., United Technologies Corp. *See* Annual Report 2007, Council on Ethics for the Government Pension Fund – Global, 2007.

³⁰ The bill is officially titled “Bangladesh Nuclear Weapons Non-proliferation Region Bill 2011” and, at the time of this writing, is being examined by an Expert Committee.

³¹ The application of this provision will also be sought in case the violators are foreign actors.

³² Remarks made by Saber Chowdhury MP at the Annual Assembly of Parliamentarians for Nuclear Non-proliferation and Disarmament, Bern, Switzerland, 16 October 2011.

³³ Remarks made by Sergio Duarte at the Annual Assembly of Parliamentarians for Nuclear Non-proliferation and Disarmament, Pugwash, Canada, July 2008.