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Open-ended Working Group taking forward multilateral nuclear disarmament negotiations¹

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**Taking forward multilateral nuclear disarmament negotiations
concrete effective legal measures, legal provisions and norms
that will need to be concluded to attain and maintain a world
without nuclear weapons**

Closing our wallets to nuclear weapons: the necessity of including explicit language on financing in a nuclear weapons prohibition treaty or framework of agreements

Submitted by PAX

Introduction

1. The international community has generally recognised there is a broad legal gap concerning nuclear weapons. This gap includes the absence of an explicit non-discriminatory international legal instrument that would prohibit its parties, their nationals, and any other individual subject to its jurisdiction from engaging in the development, production, testing, acquisition, stockpiling, transfer, deployment, threat of use, or use of nuclear weapons, as well as prohibit assistance, financing, encouragement, or inducement of these acts. This paper looks at the benefits of including explicit language prohibiting financing the development, production and stockpiling of nuclear weapons in any new legal instrument or as a norm building measure.

Power of the purse

2. States cannot eliminate nuclear weapons they themselves do not possess, but all States can contribute to the establishment of norms. One mechanism would be to institute policies and practices which would have a direct and profound effect on nuclear weapons programmes in several nuclear armed States such as a specific prohibition on the financing of companies involved in producing key components for nuclear weapons. States can strengthen their condemnation of nuclear weapon possession (including modernisation

¹ Established pursuant to resolution 70/33 of the General Assembly of the United Nations.



programmes) by "putting their money where their mouth is" and prohibiting any investment by national banks, pension funds and/or other financial institutions based in or operating in their jurisdictions in the companies known to manufacture key components of nuclear warheads or other nuclear explosive devices.

3. Public exclusions by investors including governments and financial institutions have a stigmatizing effect on companies associated with illegitimate activities. There are a myriad of examples from child labour to tobacco where financial pressure had a profound impact on industry. While it is unlikely that divestment by a single financial institution or government would create sufficient pressure on a company for it to end its involvement in nuclear weapon production, divestment by even a few institutions, or States based on the same justification can impact a company's strategic direction. National actions that prohibit financing of nuclear weapon producers contribute to the stigma associated with, and strengthen the norm against, nuclear weapons. Including a prohibition on financing in a future legal instrument provides added incentives for the financial industry to exclude nuclear weapon associated companies from their investment universe, and raises the economic cost of nuclear weapons deployment, stockpiling and modernisation.

4. Investments are not neutral. Financing and investing are active choices, based on a clear assessment of a company and its plans. Any financial service delivered to a company by a financial institution demonstrates tacit approval of their activities. Moreover financial institutions provide crucial and necessary support to the company, so that it is able to carry out its projects. In choosing which companies to invest in or provide financial services to, and projects to finance, financial institutions can have a huge impact on societies and the environment.

5. Choosing, on the other hand, to avoid investment in controversial items or the companies that make them- from tobacco to nuclear arms, can result in changed policies- and reduces the chances of humanitarian harm. Just as it wasn't smokers that got smoking banned indoors across the planet, it's not likely that nuclear armed states will show normative leadership in cutting off the flow of money to their weapon producers.

6. Divestment, and legal imperatives to divest are powerful tools to compel change. The divestment efforts in the 1980s around South Africa are often cited as having a profound impact on ending the Apartheid Regime. Global efforts divesting from tobacco stocks, have not ended the production or sale of tobacco products, but have compelled the producing companies to significantly modify behaviours- and delegitimized smoking. According to a 2013 report by Oxford University 2 "in almost every divestment campaign ... from adult services to Darfur, tobacco to Apartheid, divestment campaigns were effective in lobbying for restricting legislation affecting stigmatized firms". The current global fossil fuel divestment campaign³ is mobilizing at all levels of society to stigmatize relationships with the fossil fuel industry resulting in divestment by institutions representing over \$3.4 trillion in assets, and inspiring investment towards sustainable energy solutions.⁴

7. There is indication that companies feel this type of pressure. For example, US company Lockheed Martin, which describes itself as the worlds largest arms manufacturer, announced that it ceased its involvement with the production of rockets, missiles or other

² "Stranded assets and the fossil fuel divestment campaign: what does divestment mean for the valuation of fossil fuel assets?" October 2013, available at: <http://www.smithschool.ox.ac.uk/research-programmes/stranded-assets/SAP-divestment-report-final.pdf>

³ <http://gofossilfree.org/>

⁴ Divestment Commitments Pass the \$3.4 trillion Mark at COP21. *Fossil Free*. Available at: <http://gofossilfree.org/press-release/divestment-commitments-pass-the-3-4-trillion-mark-at-cop21/> [Accessed March 16, 2016].

delivery systems for cluster munitions and stated it will not accept such orders in the future. The arms manufacturer expressed the hope that its decision to cease cluster munitions related activities would enable it to be included in investor's portfolios again. This suggests that pressure by financial institutions (and facilitated by governments including through legislation prohibiting investment) was a contributing factor in Lockheed Martin's decision to end its involvement with cluster munitions production.

8. By enacting policies to prohibit investment in the companies producing inhumane weapons, the financial sector can have a deep and lasting impact on the strategic direction companies take. States can and should demand these policies by recognising the direct link between the provision of assistance in the development, production, and maintenance of inhumane weapon systems and needed company financing. Explicitly prohibiting the financing of companies involved in the production of nuclear weapons would strengthen any new legal instrument and could have a direct impact on modernization and production of nuclear weapons.

Relationship with existing agreements

9. Nuclear Weapon Free Zones (NWFZ) have already formulated specific prohibitions relating to nuclear weapons. While there is no specific treaty-based prohibition on investing in companies that produce nuclear weapons, some regional nuclear-weapon-free zones prohibit states from assisting or encouraging the manufacture of nuclear weapons both inside and outside the zone. Some of these could be interpreted to also include prohibitions on financing. Examples from existing nuclear weapon free zones include:

(a) Latin American Nuclear-Weapon-Free Zone Treaty (Treaty of Tlatelolco): Nations must not take any action "to assist or encourage" the development or manufacture of nuclear weapons inside or outside the zone.⁵

(b) South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga): Nations must not do anything "to assist or encourage the manufacture" of nuclear weapons by any other nation, whether it is in the zone or not.⁶

(c) African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba): Nations must not "take any action to assist or encourage the research on, development, manufacture ... of any nuclear explosive device".⁷

(d) Southeast Asian Nuclear-Weapon-Free Zone Treaty (Treaty of Bangkok): Nations must "refrain from engaging in, encouraging or authorizing, directly or indirectly, ... manufacture ... of any nuclear weapon".⁸

(e) Central Asian Nuclear Weapon Free Zone Treaty (Treaty of Semipalatinsk): Parties undertake "Not to take any action to assist or encourage the conduct of research on, development, manufacture, stockpiling, acquisition or possession of any nuclear weapon or other nuclear explosive device;" and not to allow in its territory "Any actions, by anyone, to

⁵ Treaty for the Prohibition of Nuclear Weapons in Latin America, opened for signature 14 February 1967. Article 1(2).

⁶ South Pacific Nuclear Free Zone Treaty, opened for signature 6 August 1985, article 3(c).

⁷ African Nuclear-Weapon-Free-Zone Treaty, opened for signature 11 April 1996, article 3(c).

⁸ Treaty on the Southeast Asia Nuclear Weapon-Free Zone, opened for signature 15 December 1995, article 3(4)(b).

assist or encourage the development, production, stockpiling, acquisition, possession of or control over any nuclear weapon or other nuclear explosive device."⁹

10. All NWFZ treaties contain obligations on parties not to assist other states with acts prohibited under the treaties, but these prohibitions are not the same under each of the treaties. For example, all NWFZ treaties prohibit the production of nuclear weapons, but only three explicitly prohibit the development of nuclear weapons (treaties of Bangkok, Pelindaba, Semipalatinsk). All but the Rarotonga Treaty prohibits assistance with possession.

11. Notwithstanding the differences, the formulations used in the respective NWFZ agreements could be understood to prohibit financial assistance in the manufacture of nuclear weapons [or other nuclear explosive device], if there were a general understanding that assistance includes financing. States parties to NWFZ treaties could use the NWFZ language as the basis for a further elaboration of prohibition on financial assistance to companies involved in nuclear weapon programs.

12. According to the PAX research "Don't Bank on the Bomb" most investments in nuclear weapon producing companies come from countries that are not party to any nuclear weapon free zone agreements. No financial institutions headquartered in the area covered by the treaties of Tlatelolco and Pelindaba have financial relationships with nuclear weapon producing companies. This could suggest that the prohibitions in these zones of action to "assist or encourage... development or manufacture" of nuclear weapons is also applied to investment in nuclear weapon producing companies. The exceptions are financial institutions operating in Australia (Treaty of Rarotonga), Indonesia & Singapore (Treaty of Bangkok).¹⁰ A global prohibition would encourage these outliers to end their investments.

13. There are currently no known explicit prohibitions on financing in other international instruments prohibiting other inhumane and indiscriminate weapons, however, 28 States have explicitly acknowledged that the Convention on Cluster Munitions' prohibition on assistance in the development and production of cluster munitions also prohibits investments in producers of cluster munitions and 10 States (mostly in Europe) have instituted national bans on financing cluster munitions producers¹¹.

14. These legislative acts have been mostly welcomed by the financial industry, which is often seeking clear guidance on definitions, scope, and responsibility. When looking ahead towards a nuclear weapons prohibition, the inclusion of a ban on financing would stimulate the strengthening of existing policies and practices of financial institutions in acceding countries. Most banks, pension funds and asset managers are not involved in this form of financial assistance, and the remaining few have often indicated that what is lacking is a national or international legal instrument prohibiting financing or ownership of nuclear weapon producing companies. For the large majority of those financial institutions, implementation of such a prohibition would not be problematic, as this sort of assistance is increasingly regarded as unethical, unnecessary and a reputational risk.

⁹ Treaty on a Nuclear-Weapon-Free Zone in Central Asia, opened for signature 8 September 2006, articles 3(c) and 3(d)(iii)

¹⁰ Don't Bank on the Bomb "Hall of Shame", available: <http://www.dontbankonthebomb.com/who-invests/>, viewed 9 March 2016.

¹¹ Stop Explosive Investments, "Legislation banning investments in cluster munitions", available at <http://www.stopexplosiveinvestments.org/legislation>, last viewed 7 March 2016.

Conclusion

15. In examining concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons the relationship between the financial and nuclear weapon production industries cannot be overlooked.

16. Explicitly prohibiting the financing of companies directly involved in the development, testing, production, stockpiling or trade of nuclear weapons related technology, parts, products or services would increase the norm against nuclear weapons possession and the impact of any legally binding nuclear weapons prohibition. The inclusion of financing in such a prohibition now would also strengthen the impact of future efforts to reduce humanitarian harm through strengthened global norms and international law, and would be a cooperative approach to ensuring the creation and maintenance of a world without nuclear weapons.
