

Open-ended Working Group taking forward multilateral nuclear disarmament negotiations¹

Geneva 2016

Item 5 (a) of the agenda

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

The contribution of domestic policies to advancing multilateral nuclear disarmament and global security

Submitted by the World Future Council

1. Considering the breadth of submissions already made to the Working Group, this paper will be fairly concise and focus on the role of domestic measures in advancing the nuclear disarmament agenda.
2. The rich discussions held during the meetings of the Group have covered key aspects related to the achievement and maintenance of a world free of nuclear weapons. Although mentioned in passing, the role of national nuclear disarmament policies in informing and supporting the global nuclear disarmament endeavour deserves further consideration. This paper highlights several domestic policies in the areas of nuclear prohibition and nuclear divestment and contends that such policies can constitute effective measures in strengthening the prohibition against nuclear weapons, especially when emulated by additional countries, and advancing regional and multilateral nuclear disarmament efforts.
3. The treaties establishing the existing Nuclear Weapon-Free Zones (NWFZ)² are well known and generally regarded as providing critical contributions to regional security and to the global nuclear non-proliferation and disarmament enterprise. The right of states to pursue such zones is well-established, including in Article VII of the Non-Proliferation Treaty (NPT). Over the course of half-a-century, 114 states have used that right to erect regional NWFZs. UN General Assembly resolution 3472 B (1975) reaffirmed that right and outlined the conditions for such zones. The 2010 Review Conference Action Plan specifically encourages states to establish NWFZs in regions where no such zone yet exists.
4. The instances of national legislation prohibiting nuclear weapons or the unique example of a 'single state' NWFZ model have not received the same amount of attention or credit. This is unfortunate as these policies have contributed to the strengthening of a norm of prohibition against nuclear weapons as well as addressing specific security challenges. Such policies could be replicated by countries seeking to enhance their security, more comprehensively codify nuclear abolition measures, and amplify their disarmament credentials. The national prohibitions also contain potentially valuable lessons for the global nuclear disarmament endeavour.

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

² Five such zones exist today, with four of them spanning the entire Southern Hemisphere. The regions currently covered by such commitments are: Latin America (the 1967 Treaty of Tlatelolco), the South Pacific (the 1985 Treaty of Rarotonga), South-East Asia (the 1995 Treaty of Bangkok), Africa (the 1996 Treaty of Pelindaba) and Central Asia (the 2006 Treaty of Semipalatinsk).

5. National nuclear prohibition policies have been adopted by New Zealand (1987 New Zealand Nuclear Free Zone, Arms Control and Disarmament Act), the Philippines (1987 Nuclear-free amendment to the Philippines constitution), Austria (1999 Constitutional Act for a non-nuclear Austria) and Mongolia (2000 Law of Mongolia on its nuclear-free status).

6. Although these policies broadly share the same goal – prohibiting 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 – each of them is different and some offer innovative elements to the prohibition norm, such as the inclusion in the New Zealand law of an extraterritoriality clause covering such acts.³ All policies contain elements and lessons that could be considered in the development of such a policy by additional countries as well as in advancing multilateral efforts.

7. Mongolia's efforts to have its nuclear free-status recognised by the five nuclear-armed states identified by the NPT and obtain from them negative security assurances have led to its policy generally being recognised for having established a 'single-state NWFZ'. This is further evidenced by Mongolia's participation in coordinated initiatives by the states belonging to NWFZ, including the 'Conference of States Parties and Signatories to Treaties that Establish Nuclear-Weapon-Free Zones and Mongolia'.

8. Furthermore, these policies have to varying degrees democratised the nuclear disarmament enterprise, with some of them originating from public movements or mandates, institutionalised nuclear disarmament expertise and commitment through the creation of organs committed to promoting policy objectives (e.g. the Public Advisory Committee on Disarmament and Arms Control and post of Minister for Disarmament established by New Zealand's legislation), and served as educational tools, both domestic and abroad.

9. Another area where national policies have contributed is addressing the investment in and financing of nuclear weapons. In the area of arms control and disarmament, divestment policies have already been pursued with some vigour. They were employed in delegitimising landmines and cluster munitions and ran parallel in the successful campaigns to ban these weapons through an internationally binding legal treaty.

10. Divestment from corporations involved in the production of key components of nuclear weapons has been pursued by the Norwegian and New Zealand Government Pension Funds. More recently, the Swiss War Materials Act was revised to prohibit, *inter alia*, the financing of nuclear weapon producers.

11. Apart from the monetary impact of such policy decisions on investment portfolios, nuclear divestment measures make an invaluable contribution to delegitimising nuclear weapons. This is particularly true when policies are amended to broaden the category of prohibitive arms, such as landmines, cluster munitions and chemical and biological arms – for which international prohibition treaties – to incorporate nuclear weapons.

12. Indeed, while references have been made in the proceedings of the Working Group to the experiences with concluding multilateral treaties prohibiting cluster munitions and cluster

³ For a more detailed overview of these policies, see <http://www.futurepolicy.org/wp-content/uploads/2016/03/Comparison-of-Nuclear-Prohibition-Legislation.pdf>.

munitions (primarily in the context of transferring lessons to a similar effort for nuclear weapons) it should be noted that countries such as Belgium preceded these international processes – which would, respectively, culminate in the 1997 Mine Ban Treaty and the 2008 Convention on Cluster Munitions – with the adoption of national legislation banning landmines and cluster munitions as well as any investment in such weapons. This demonstrates how domestic legislative initiatives can inspire, strengthen and shape the international processes that culminate in international disarmament treaties.

13. Another aspect of national legislation that could have relevance for multilateral negotiations is that of individual responsibility. The New Zealand legislation, for example, makes it a crime for any person to commit any of the proscribed acts within New Zealand including aiding and abetting anyone else to manufacture, deploy, test, use or threaten to use nuclear weapons. And it makes it a crime for any official of New Zealand to commit any of these acts anywhere in the world. Similar measures in other countries could provide support for multilateral efforts to criminalise nuclear weapons employment such as through the Rome Statute for an International Criminal Court, as proposed by Mexico, or through a nuclear weapons prohibition treaty.

14. To conclude, the domestic disarmament policies highlighted in this paper should not be regarded as goals in themselves, but rather as complementary, or interim, measures to regional and global efforts for the achievement of a world free of nuclear weapons. That is not to say that such policies cannot have an immediate effect on their own. They often do. Such domestic policies offer an opportunity to countries to codify their disarmament positions and take the initiative out of the hands of the nuclear-armed states. If replicated widely, they can amount to significant pressure on the nuclear-armed states. Finally, they can flesh out and strengthen elements to be included in the multilateral nuclear disarmament enterprise.