

---

**United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination**

12 June 2017

English

---

New York, 27-31 March 2017 and 15 June-7 July 2017

**A prohibition on financing in the nuclear weapon ban treaty****Submitted by Article 36****Authored by International Human Rights Clinic, Human Rights Program at Harvard Law School**

1. The nuclear weapon ban treaty should require states parties to prohibit anyone from financing nuclear weapons producers in any way. Including an explicit prohibition on financing in the treaty would place a clear obligation on states parties and advance the treaty's objective of eliminating nuclear weapons by creating obstacles to production. A prohibition on financing would draw on and further develop precedent in disarmament treaties that makes it unlawful to provide assistance to anyone engaged in activities that would be banned for states parties. The treaty could make explicit that financing is prohibited as part of its prohibition on assistance, encouragement, and inducement (draft Article 1(1)(f)) or it could articulate a more detailed prohibition in a separate provision.

**Importance of a Prohibition on Financing**

2. Companies generally require outside financing to fund their production of nuclear weapons. That financing can come from a variety of entities, and according to the Dutch organization PAX,<sup>1</sup> at least 390 financial institutions are significant investors in the nuclear weapons industry. Prohibiting the financing of nuclear weapons producers would:

(a) *Set a standard* that such financing is unacceptable and should be stigmatized.

(b) *Stop nuclear weapons production* by depriving producers of the funds and financial services necessary to continue production.

3. Stripping companies of financial resources has helped bring an end to harmful practices in other spheres. For example, divestment campaigns contributed to the downfall of apartheid in South Africa and have led some companies to cease production of cluster munitions, particularly after these weapons were prohibited by

---

<sup>1</sup> See [www.dontbankonthebomb.org](http://www.dontbankonthebomb.org)

an international treaty.

### **Need for the Treaty to Include an Explicit Prohibition on Financing**

4. Many recent disarmament treaties prohibit assisting with banned activities, including production, and a large number of countries consider financing a form of assistance. Making a prohibition of financing explicit in the nuclear weapon ban treaty would build on this growing consensus. In so doing, it would:

- (a) *Provide clarity to states parties and financial institutions.*
  - An explicit prohibition would establish a clear legal obligation for states parties and avoid the potential for the competing interpretations that can emerge when financing is covered only by the more general prohibition on assistance.
  - The prohibition would also benefit financial institutions, which have indicated that they appreciate guidance about the scope of their responsibilities regarding banned weapons.
- b) *Strengthen the influence of ban treaty.*
  - An explicit prohibition on financing would oblige states parties to impose domestic penal sanctions for violations, assuming the final nuclear weapon ban treaty includes a provision on national implementation measures comparable to those in other recent disarmament treaties or at least as strong as that in draft Article 7.
  - Such a legal prohibition would also reinforce the stigma against nuclear weapons production and could thus influence states and entities outside of the treaty.
- c) *Advance international law.*
  - If included in the nuclear weapon ban treaty, a prohibition on financing would bolster arguments that the financing of all banned weapons should be considered unlawful.
  - The evolution toward stronger and more specific provisions would parallel that of victim assistance obligations. The 1997 Mine Ban Treaty merely listed victim assistance as one of form of international assistance, while the 2008 Convention on Cluster Munitions included a stand-alone article that detailed an affected state's responsibilities.

### **Components of a Financing Prohibition**

5. If negotiating states choose to prohibit financing in a separate provision, the treaty text should articulate certain essential components of the prohibition while leaving states the flexibility to tailor their laws to meet specific needs and financial systems. To maximize effectiveness, the treaty should prohibit:

(a) *Financing of producers—not just the production—of nuclear weapons.*

- Even if an entity does not intend to finance nuclear weapons production, a company can typically use general capital for a range of activities, including weapons production. Prohibiting the financing of producers would help ensure that funds are not diverted to produce nuclear weapons.

(b) *All forms of nuclear weapons financing.*

- A prohibition on financing should capture the broad range of financial activities that support nuclear weapons production and encourage states parties to adopt national legislation that defines the prohibited financing comprehensively to include, for example, loans, credit facilities, project finance, asset management, and assistance in bond and stock issues.
- The wider the range of financing activities captured by the prohibition, the greater the pressure placed on nuclear weapons producers to cease production. Prohibiting even indirect forms of financing sends a strong message that it is unacceptable for a financing entity to engage with nuclear weapons producers.
- A prohibition on financing does not necessarily deem unlawful the purchase of goods other than nuclear weapons from a producing company.

(c) *Anyone from financing nuclear weapons.*

- The prohibition should not only bind public entities, such as state pension funds, but also ensure states restrict the investments of private actors, such as investment banks and asset managers.