

Ireland, Irish Finance and the Nuclear Weapons Industry

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Summary

Weapons which are indiscriminate in their impacts have come under increasing scrutiny for their lack of compliance with international humanitarian law. Against this backdrop, Irish-based investors help to finance the global arms industry without due consideration to Ireland's international commitments to human rights and humanitarian law and Ireland's stated political position on nuclear weapons. Such investors include the Irish State's National Pensions Reserve Fund, and the Allied Irish Banks Group. An overview of the implications of Irish investment policy, with particular attention to the nuclear weapons industry, is required. This paper offers an overview of the situation in relation to nuclear weapons in terms of Irish policy, and in particular, the investment policy of the NPRF, and, in the light of international law, compares this with the policy in Norway and New Zealand on nuclear weapons. It concludes that Irish policy is inconsistent and needs legislative changes to provide a more coherent framework.

1. Nuclear Weapons

The devastation caused by the dropping of atomic bombs on the Japanese cities of Hiroshima and Nagasaki in August 1945 is well known and needs little elaboration here. Tens of thousands of civilians were killed instantly by the force of the blast, with the death toll rising to hundreds of thousands within a year. Environmental damage, particularly through radiation, was also very significant. The effects of the use of nuclear weapons are indiscriminate, that is, their use does not differentiate between military and civilian, and indeed, environmental impacts. As such, these weapons can be held to be in contravention of international humanitarian law; the significance of this will be developed more fully below.

Today's nuclear weapons are many times more powerful than those used in 1945, and their potential effects, if used, would be on a scale incomparable with the destructive effects of any other weapon: "The destructive power of nuclear weapons cannot be contained in either space or time. They have the potential to destroy all civilization and the entire ecosystem of the planet. The radiation released by a nuclear explosion would affect health, agriculture, natural resources and demography over a very wide area. Further, the use of nuclear weapons would be a serious danger to future generations. Ionizing radiation has the potential to damage the future environment, food and marine ecosystem, and to cause genetic defects and illness for future generations."¹

1.1 International Humanitarian Law and nuclear weapons

In the context of the customary international law governing the conduct of war, the Geneva Conventions stipulate that "In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."² Because of the large-scale impact of nuclear weapons and their consequent lasting effects on the civilian population in affected areas, they are incapable of being directed solely at military targets.

Nuclear weapons can also be seen to contravene Article 51, dealing with the protection of the civilian population, which prohibits indiscriminate attacks, i.e., attacks which are "of a nature to strike military objectives and civilians or civilian objects without distinction." Clearly both the blast and radiation impacts of nuclear weapons are indiscriminate in this sense, while the radiation and toxicity of depleted uranium can also be seen to be indiscriminate. A similar case can be argued in relation to Article 35.2: "It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering."

Article 35.3 of Additional Protocol I states: "It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment." This is enlarged upon by Article 55.1: "Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population." Again, nuclear weapons can be expected to have the kind of negative impact on the environment that is prohibited by this article.

In November 2011, the Council of Delegates of the International Red Cross and Red Crescent movement passed a resolution speaking of "the destructive power of nuclear weapons, the unspeakable human suffering they cause, the difficulty of controlling their effects in space and time, the threat they pose to the environment and to future generations and the risks of escalation they create [and] the serious implications of any use of nuclear weapons for humanitarian assistance activities and food production over wide areas of the world." The resolution called on all states "to ensure that nuclear weapons are never again used, regardless of their views on the legality of such weapons, [and] to pursue in good faith and conclude with urgency and determination negotiations to prohibit the use of and completely eliminate nuclear weapons through a legally binding international agreement, based on existing commitments and international obligations."³

The potential humanitarian impact of the use of nuclear weapons was also noted in the Final Document agreed at the 2010 Non-Proliferation Treaty Review Conference, which expressed "deep concern at the continued risk for

humanity represented by the possibility that these weapons could be used and the catastrophic humanitarian consequences that would result from the use of nuclear weapons.”⁴

1.2 International Court of Justice ruling on the legality of nuclear weapons

As a consequence of the passing of Resolution 49/75K at the United Nations General Assembly in December 1994, the UN requested an advisory opinion from the International Court of Justice on the legality of the threat of use, or use, of nuclear weapons. Judgement on this request was delivered in July 1996, and included, *inter alia*, consideration of the principles of customary international law outlined above. The Court's opinion stated that: "the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law."⁵

The Court further found that "there exists an obligation to pursue in good faith and to bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."⁶ Despite initial hopes on the part of campaigners against nuclear weapons that this judgement would provide a new legal impetus towards disarmament, this has not proved to be the case, though the advisory opinion continues to form the principal international legal evaluation of nuclear weapons.⁷

1.3 Ireland and the Treaty on the Non-Proliferation of Nuclear Weapons

The idea behind the Non-Proliferation Treaty (NPT)⁸ was first put forward by the Irish Minister for External Affairs, Frank Aiken, at the United Nations in 1958, and a further series of Irish-sponsored resolutions eventually came to fruition with the signing of the NPT in 1968. Ireland was the first country to sign and ratify the treaty, which entered into force in 1970, having been ratified, as required by its terms, by the United States, the USSR, the United Kingdom, and forty other countries.

The NPT is frequently understood to be built around three key pillars: non-proliferation, disarmament, and the right to the peaceful use of nuclear energy. Article I obligates nuclear-weapons states (defined by article IX as states which have exploded a nuclear device before 1 January 1967) not to transfer weapons to the control of non-nuclear-weapons states, or to assist them in acquiring nuclear weapons. Five countries, the United States, the Soviet Union, Britain, France and China were thus recognised as nuclear weapons states by the terms of the treaty. Article II requires non-nuclear-weapons states not to receive, manufacture or seek assistance to acquire nuclear weapons. Articles III, IV and V provide for the civil use of nuclear energy, with the treatment of fissionable materials subject to International Atomic Energy Agency safeguards.

Disarmament is covered by the NPT's brief sixth article, quoted here in full: "Each of the Parties to the Treaty undertakes 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."⁹

The NPT has been the cornerstone of Ireland's policy on nuclear weapons since its entry into force, and, having had its genesis in an Irish initiative, is an international diplomatic achievement of which Ireland can be justly proud. Ireland has continued to play an active part in seeking international momentum towards nuclear disarmament, and was one of the founding members, at a meeting in Dublin in June 1998, of the New Agenda Coalition (NAC), which now comprises Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden. The declaration issued in Dublin called on nuclear weapons states "to commit themselves unequivocally to the elimination of their respective nuclear weapons and nuclear weapons capability and to agree to start work immediately on the practical steps and negotiations required for its achievement."¹⁰ As part of the NAC, Ireland was instrumental in achieving agreement on "Thirteen Practical Steps" towards nuclear disarmament at the 2000 NPT Review Conference.

At the 2010 NPT Review Conference, Ireland again played a key role, with the head of the Irish delegation chairing the sub-committee which, against considerable odds, reached agreement on positive proposals to advance a Nuclear-Weapons-Free Zone in the Middle East.¹¹ Speaking at the opening plenary session of the conference, Minister for Foreign Affairs Micheál Martin reiterated Ireland's commitment to nuclear disarmament, urging nuclear weapons states to "work speedily for further substantial reductions and the eventual elimination of all nuclear weapons, including non-deployed and non-strategic nuclear weapons." Following the successful conclusion of the conference with commitments by the nuclear-weapons-states to report on measurable progress towards disarmament, Ireland, on behalf of the NAC, introduced a draft resolution entitled, "Towards a nuclear-weapon-free world: accelerating the implementation of nuclear disarmament commitments" at the First Committee of the United Nations General Assembly in October 2010.¹² The resolution was accepted by a large majority.

Ireland's comprehensive commitment to nuclear disarmament was reiterated by Minister for Foreign Affairs and Trade Eamon Gilmore in a statement to the Dáil in June 2012: "For more than five decades, the Government has pursued a policy of complete opposition to nuclear weapons and in this has enjoyed strong cross-party political support in this House." He continued, "In terms of establishing the foundations for success at the 2015 NPT review conference, Ireland will be among those states looking to the nuclear-weapon states to build confidence that they are seriously and in good faith fulfilling their obligation to achieve the total elimination of their nuclear arsenals." He concluded his speech with the observation that "we are still a considerable distance from where we all would like to be, that is, in a world free of nuclear weapons. It is important that the international community continue with this crucial work, which was launched by Frank Aiken in the late 1950s and which

has given Ireland special prominence in the international efforts to eliminate nuclear weapons. I assure the House that this will remain a top priority for the Government."¹³

Ireland's political and diplomatic commitment to the elimination of nuclear arms seems unquestionable. The question must therefore be posed, whether the investment of state funds, by, for example, the National Pension Reserve Fund, in companies responsible for the testing, maintenance and development of nuclear weapons is compatible with this commitment.

2. Irish Finance

This section will examine the provision of finance from Irish sources to companies engaged in the nuclear weapons industry, looking at two instances: the investment of state monies through the National Pensions Reserve Fund, and the provision of funds by a self-governing financial institution, namely, Allied Irish Banks.

2.1 The National Pensions Reserve Fund

The National Pensions Reserve Fund (NPRF) was established in 2001 to provide for the anticipated extra costs of meeting the state's pension payment commitments from 2025 onwards. By this time it is expected that a greater cohort of pensioners within the state's overall demographic profile will place considerable extra pressure on the payment of pensions from current tax receipts, hence the need for a distinct, ring-fenced fund to provide at least a partial buffer against such pressure through pre-funding. The aim is to meet "as much as possible of the cost to the Exchequer of social welfare pensions and public service pensions to be paid from the year 2025 until the year 2055"¹⁴ with the possibility of extension beyond this date. Under the Act establishing the NPRF, one per cent of the country's Gross Domestic Product (GDP) is invested annually in the fund, and cannot be paid back into the Exchequer before 2025. Management of the NPRF is the responsibility of the National Pensions Reserve Fund Commission, under the National Treasury Management Agency. The sole criterion for investment set down in the Act is "to secure the optimal total financial return."¹⁵

This policy of investment for maximum financial return was modified in 2009 to give the Minister for Finance the power to direct the Commission to invest in a listed credit institution in order to "to remedy a serious disturbance in the economy of the State" or "to prevent potential serious damage to the financial system in the State and ensure the continued stability of that system."¹⁶ This power was then used to provide capital to several Irish banks facing funding difficulties at the time. Under the Credit Institutions (Stabilisation) Act (2010), further powers were given to the Minister to direct the NPRF to invest in Irish government securities, or to make payments to the exchequer for capital expenditure between 2011 and 2013.¹⁷ Thus, since 2009, the Fund's operations have been split between its discretionary portfolio, over which it retains full control, and the directed investments, controlled by the Minister for

Finance. In December 2010, the Irish government undertook that further funds from the NPRF would be used as part of the state's contribution of €17.5 billion to the €85 billion EU/IMF programme of financial support for Ireland.¹⁸

These measures have resulted in substantial depletion of the fund's discretionary portfolio. At the end of December 2009, the discretionary fund alone was valued at €15.3 billion,¹⁹ while at the end of June 2012, the total value of the NPRF had fallen to €13.9 billion, comprising a discretionary portfolio of €5.8 billion, along with €8.1 billion in directed investments.²⁰

2.2 The NPRF and investment in the nuclear arms industry

Apart from directed investments, the only further constraint on the NPRF's investments is a legal preclusion on agencies of the state from investing in companies which produce either landmines or cluster munitions, under legislation passed by the Oireachtas following Ireland's ratification of the international conventions to ban these types of weapons.²¹

According to the most recent full breakdown of the NPRF's portfolio, in its 2011 Annual Report, published in July 2012, the NPRF invests in a number of companies which are directly involved in the production or maintenance of single-use components for nuclear weapons, or in the production of the delivery systems for nuclear weapons. Single-use components are elements in a weapons system which have no use other than as part of that weapons system, and which thus can be clearly identified as integral elements of such systems. These companies, for whom detailed information as to their involvement in the nuclear arms industry is openly available, are set out in the table below.²² Almost €10 million of state funds was invested in these companies on 31 December 2012.

BAE Systems	€442,484
Boeing	€2,695,339
EADS	€1,383,867
Finmeccanica	€100,404
Honeywell International	€2,109,061
Jacobs Engineering	€244,785
Larsen and Toubro	€296,457
Rolls-Royce	€1,811,452
Safran	€404,115
Serco	€102,092
Thales	€160,747
Total	€9,887,557

Honeywell is responsible for the maintenance and development of the simulated testing systems used for the United States' nuclear weapons at its White Sands, New Mexico, missile base, and is a partner in a programme to extend the life of the United States Navy's Trident II D5 nuclear missiles.

Boeing provides maintenance and upgrade services for the American Minuteman III intercontinental ballistic missile. Babcock and Wilcox provides a range of nuclear components and related services to the United States military, including the modernization of the US Navy's Trident missiles at its Pantex plant in Carson County, Texas.

BAE (UK), Finmeccanica (Italy) and EADS (Netherlands) are partners in developing the ASMP-A missile to carry nuclear warheads for the French military. EADS is involved in the production of the M51 submarine-launched missile, also to carry nuclear warheads for the French military, along with French companies Safran and Thales. BAE and Rolls-Royce (UK) are partners in Future Submarines, aiming to develop the Successor submarine which will replace the current Vanguard submarines as the carrying vehicle of the United Kingdom's Trident nuclear missiles. Jacobs Engineering Group (USA) and Serco (UK) are partners in Atomic Weapons Establishment, which has responsibility for the maintenance of the UK's Trident II missile system. Larsen and Toubro (India) have been involved in designing and building submarines to carry India's nuclear missiles, and have tested a launch system for India's missiles.

In addition, the Dutch investment companies PGGM and PfZW exclude five further companies in which the NPRF has investments, on the basis of their involvement in the nuclear weapons industry, although their exclusions lists do not give details as to the nature of these companies' involvement in nuclear arms. These are the American companies Exelis (€86,212), Goodrich (€767,783), ITT (€92,071) and Rockwell Collins (€411,156).²³ Adding the NPRF's investments in these companies to its investment in the eleven companies detailed above gives a total of €11,244,779. This represents around 0.2% of the total value of the NPRF's discretionary portfolio.

2.3 Irish financial institutions and investment in the nuclear arms industry

Research covering the period since 2008 by the International Campaign to Abolish Nuclear Weapons (ICAN), in conjunction with Netherlands-based economic research consultancy Profundo, indicates that one Irish financial institution has been involved in providing finance to a company heavily involved in the nuclear weapons industry. Allied Irish Investment Bank, a subsidiary of the Allied Irish Banks Group, was one of a group of eighteen international banks which provided a four-year revolving credit package, valued at \$700 million, to US arms maker Babcock and Wilcox in May 2010. AIB's contribution to the loan is estimated at \$28 million.²⁴ As noted above, Babcock and Wilcox provide a significant range of components and services related to the US nuclear arsenal. In a letter to ICAN dated 31 January 2012, AIB refused to comment on its transactions with Babcock and Wilcox.

The question arises as to whether it is appropriate for an institution operating in the state to engage in financial transactions which could be seen to undermine Ireland's stated policy in other areas. This issue is accentuated by

the fact that AIB, at this time, was in majority state ownership following the receipt of substantial bailout funds.

3. International Case Studies: Restrictions on Investments in the Weapons Industry

This section will examine three international case studies where restrictions have been placed on investments in companies involved in the nuclear weapons industry. In two instances, Norway and New Zealand, the restrictions apply specifically to the state pension fund, while in the third case, Australia, the restrictions are of more general applicability. Finally, the preclusion in Irish law of investments in companies involved in the production of cluster munitions and anti-personnel mines will be examined.

3.1 Norway: Nuclear weapons manufacturers and the state pension fund

Norway has a substantial state pension fund financed by yields from the country's oil and gas fields, and invested internationally, the Government Pension Fund - Global, operated by Norges Bank. Following concerns that investments by the fund might be in breach of Norway's obligations under international law, for instance, in relation to human rights, the Norwegian government established a Council on Ethics in November 2004 to advise the fund on its investments according to ethical guidelines which came into force on 1 December 2004. The guidelines cover a number of areas of ethical concern, and provide for the exclusion from the fund's investments of companies which are engaged in activities which would breach the guidelines. Included among these are companies which "produce weapons that violate fundamental humanitarian principles through their normal use."²⁵ Other areas of concern include human rights violations, severe environmental damage, gross corruption and the tobacco industry.

On the grounds that nuclear weapons would not discriminate between military and civilian targets, would cause long-term environmental damage, and could result in superfluous injury and unnecessary suffering, nuclear weapons manufacturers are excluded from the pension fund's investment portfolio. The exclusion applies to companies involved in the development, maintenance and testing, including simulated testing, of nuclear weapons, and also companies involved in the production of missile systems which only serve to deliver nuclear warheads.²⁶ Also excluded from investment are companies involved in the cluster munitions and anti-personnel mines industries.

3.2 New Zealand: Nuclear weapons manufacturers and the state pension fund

The New Zealand Superannuation Fund was established in 2001 to pre-fund New Zealand's future pension requirements. The act of parliament establishing the fund requires best-practice portfolio management, maximising

return with undue risk, and "avoiding prejudice to New Zealand's reputation as a responsible member of the world community."²⁷ While this requirement is not further defined in law, it has led the Superannuation Fund's Guardians, the body responsible for the control of the fund, to engage a comprehensive framework for responsible investment of the fund's assets, based around two core responsible investment principles in relation to environmental, social and governance (ESG) concerns: "Responsible asset owners who exercise best-practice portfolio management should have concern for ESG matters of companies; and improving ESG factors can improve the long-term financial performance of a company."²⁸

Within this framework, the Fund's Guardians decided to exclude certain companies involved in the testing and maintenance of nuclear weapons from their investment portfolio in 2009. The basis for an examination of this issue included the International Court of Justice ruling that the threat and use of nuclear weapons would generally constitute a breach of international law, and the commitment by nuclear-weapons-states, under the NPT, to pursue disarmament. While the report²⁹ on the issue found that investment in companies involved in nuclear weapons was not, in itself, incompatible with the fund's mandate, it also considered New Zealand's stance on nuclear disarmament: "Successive New Zealand governments have promoted nuclear disarmament and New Zealand is playing a role in complex new international negotiations. New Zealand has a well-known international reputation as a nuclear-free state, including being a member of the New Agenda Coalition."³⁰ In this light, the report presented its decision to divest from companies involved in testing nuclear weapons: "Successive governments have taken a strong stance on eliminating nuclear testing. In addition, testing (simulated or real) is crucial to the development of a nuclear explosive device. We concluded that we would exclude such companies from the Fund's investment universe and divest from any current holdings."³¹

The New Zealand Superannuation Fund's exclusion of nuclear weapons companies is narrower in range than that of the Norwegian Government Pension Fund - Global, as it only applies to companies involved in the testing and development of nuclear weapons, but not to companies producing missile delivery systems for nuclear warheads. The fund consequently divested from two companies - Honeywell International and Lockheed Martin - involved in the testing of nuclear weapons.³²

3.3 Australia: Prevention of proliferation of Weapons of Mass Destruction

In 1995, Australia passed the Weapons of Mass Destruction (Prevention of Proliferation) Act,³³ which aims to prevent the supply of goods or services that may assist in the development, production, acquisition, stockpiling or delivery of weapons of mass destruction (WMD), which, within the terms of the act, refers to nuclear, chemical and biological weapons. The act makes it an offence for either an individual or a corporate body to provide goods or services if there is a reasonable suspicion that those goods or services will or

may be used in a WMD programme. Services are interpreted to include “the lending of money or other provision of financial assistance.”

Thus, under the terms of this act, it is illegal not only for the Australian state, but also for Australian citizens and companies to furnish products or services, including financial services, for companies which are actively involved in the production of nuclear weapons or the missiles which deliver them, if there is a possibility that those products or services may be used in the proliferation of such weapons. The broad ambit of the act, however, has left a range of aspects open to interpretation, and in October 2011 a review of the act was initiated to provide clarifications and recommendations on a number of points, including the control by the act of investments in companies that develop, produce, acquire or stockpile weapons of mass destruction.³⁴

3.4 Irish restrictions on investment in certain types of weapons: the Cluster Munitions and Anti-Personnel Mines Act (2008)

The Cluster Munitions and Anti-Personnel Mines Act (2008) made it an offence to use, develop, produce, acquire, possess, retain or transfer to another person both cluster munitions and landmines, with the exception of members of the defence forces or Gardaí handling such objects in the course of their duty and for the purpose of destroying the weapon. This followed Ireland's ratification of the international Conventions on Cluster Munitions, agreed in Dublin in 2008, and on Anti-Personnel Mines, agreed in Oslo in 1997.³⁵

Part IV of this act also introduced a prohibition on the investment of public funds in companies involved in the manufacture of prohibited munitions.³⁶ An amendment proposed by the Fine Gael party, which would have required banks and pension funds operating in Ireland to divest from companies involved in the production of, or trade in, cluster munitions, was defeated by the then government at committee stage. Nevertheless, the prohibition as passed obviously includes the NPRF within its remit, and, in consequence of this prohibition, the NPRF has divested funds from seven companies, and has precluded any possible investment in four further companies.³⁷

Among the considerations engaged in the preamble to the Convention on Cluster Munitions are the principles of international humanitarian law that require military operations to differentiate between military objectives and civilian objects, and require protection to be afforded to civilian populations from the dangers of military operations. Similarly, the Anti-Personnel Mines Convention bases itself, in its preamble, on principles of international humanitarian law, requiring a distinction between civilians and combatants and prohibiting the use of weapons which would cause superfluous injury or unnecessary suffering. As discussed above, nuclear weapons can also be seen to be in contravention of these same principles of international humanitarian law.

4. Conclusions

From the issues examined above, the following points can be summarised:

It has been established by the International Court of Justice's 1996 advisory opinion that the use or threat of use of nuclear weapons would generally be contrary to international law, in particular, international humanitarian law;

Ireland has a very strong track record of working for nuclear disarmament, with the full implementation of the Non-Proliferation Treaty a key priority in this area;

Several countries, including Norway and New Zealand, have specifically prohibited their state pension funds from investing in companies involved in the nuclear weapons industry, using international humanitarian law as a basis for this, and, in the case of New Zealand, also citing that country's strong record in campaigning for the elimination of nuclear weapons;

Ireland has implemented legal prohibitions on investment of public money in the manufacturers of certain types of weapons, on the grounds of international conventions invoking international humanitarian law as their basis;

On the basis of these points, it would seem that Ireland's position on the manufacture of weapons with indiscriminate effects, and which thus can be seen to contravene international humanitarian law, is characterised by a degree of inconsistency. On the one hand, involvement with cluster munitions and anti-personnel mines is banned, as is the investment of state funds in companies involved in these weapons industries. On the other hand, while the NPT precludes Ireland from seeking to acquire a nuclear weapon, there is no ban on investments in nuclear weapons companies.

Part of the problem underlying this inconsistency is that Ireland's NPRF is mandated to seek the maximum financial return on its investments, but has no framework for consideration of ethical issues in relation to investment, such as Norway and New Zealand both have put in place. While the NPRF is a signatory to the United Nations Principles for Responsible Investment,³⁸ which recognise the role of ESG issues in investment, these principles are aspirational and do not contain any specific mechanism of implementation, or any particular stance on divestment from companies whose activities contravene responsible investment standards in preference to continuing engagement in such companies.³⁹ Comparison of the performance of assets invested in responsible investment funds with those invested in conventional funds generally show that the performance of responsibly-invested funds is not inferior to conventional funds.⁴⁰ At a time when there is considerable disquiet in Irish society about the lack of ethical standards represented by the past activities of certain companies, particularly in the financial sector, it is appropriate that such issues should now be addressed in a comprehensive fashion.

5. Recommendations

1. The inconsistencies in Irish policy in relation to weapons whose use would contravene international humanitarian law should be addressed.
2. Legislative changes should be implemented to give effect to a consistent policy in relation to weapons whose use would contravene international humanitarian law.
3. In respect of any weapons whose possession, development or use is banned in Irish law, there should be a corresponding prohibition on investment in companies involved in their production.
4. The ambit of a prohibition on investment in certain weapons companies should be given careful consideration, as to whether such a prohibition should apply to state monies (as in the case of Norway's pension fund, and existing restrictions on the NPRF), or also to individuals and institutions operating in the state (as in the Australian case).
5. Legislation in this respect on nuclear weapons should be introduced as speedily as possible, given both the issues in relation to international humanitarian law, and Ireland's prominence (like that of New Zealand) in working for the elimination of such weapons.
6. An overall ethical framework for the investment of state funds should be developed.

NOTES

¹ International Court of Justice, *Reports of Judgments, Advisory Opinions and Orders: Legality of the Threat or Use of Nuclear Weapons: Advisory Opinion of 8 July 1996*, p. 21-22; available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=e1&p3=4&case=95>.

² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 48; available at <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument>. Subsequently quoted articles of the protocol are also available at this URL. See also the International Committee of the Red Cross, *Customary International Humanitarian Law*, in particular, chapters 1-6 and 14; available at <http://www.icrc.org/customary-ihl/eng/docs/v1>.

³ Council of Delegates of the International Red Cross and Red Crescent, "Working towards the elimination of nuclear weapons," 26 November 2011, available at <http://www.icrc.org/eng/resources/documents/resolution/council-delegates-resolution-1-2011.htm>

⁴ 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Vol. 1, p.12; available at [http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50%20\(VOL.I\)](http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50%20(VOL.I)). For a range of recent views on the application of International Humanitarian Law to nuclear weapons, see Nuclear Abolition Forum 1 (2011), *International Humanitarian Law and nuclear weapons: Examining the humanitarian approach to nuclear disarmament*; available at <http://www.abolitionforum.org/site/wp-content/uploads/2012/01/NAF-First-issue.online-version.pdf>.

⁵ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons: Advisory Opinion of 8 July 1996*, p. 44.

⁶ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, p. 45.

⁷ Contrasting interpretations of the significance of the judgement for nuclear weapons states were quick to emerge; see the differing perspectives of R.A. Falk, "Nuclear weapons, international law and the World Court: A historic encounter," and Michael J. Matheson, "The opinion of the International Court of Justice on the threat or use of nuclear weapons," both in *American Journal of International Law* 91 (1997), and the essays collected in Laurance Boisson De Chazournes, Philippe Sands (ed.), *International law, the International Court of Justice, and nuclear weapons* (Cambridge: Cambridge University Press, 1999).

⁸ The text of the Treaty on the Non-Proliferation of Nuclear Weapons is available at http://www.un.org/disarmament/WMD/Nuclear/pdf/NPTEnglish_Text.pdf.

⁹ Treaty on the Non-Proliferation of Nuclear Weapons, Article VI.

¹⁰ 'A Nuclear-Weapons-Free World: The Need for a New Agenda,' *Joint Declaration by the Ministers for Foreign Affairs of Brazil, Egypt, Ireland, Mexico, New Zealand, Slovenia, South Africa and Sweden, 9 June 1998*, paragraph 9; available at <http://www.acronym.org.uk/27state.htm>.

¹¹ See Alison Kelly, "NPT: Back on track," *Arms Control Today* (July-August 2010), pp. 21-24. Alison Kelly, at the time, was Director of Disarmament and Non-Proliferation in the Department of Foreign Affairs, and was head of the Irish delegation at the Review Conference.

¹² See <http://www.un.org/News/Press/docs/2010/gadis3415.doc.htm> and <http://www.un.org/News/Press/docs/2010/gadis3422.doc.htm>.

¹³ Eamon Gilmore TD, Minister for Foreign Affairs and Trade, Statement on Nuclear Disarmament and Non-Proliferation Issues, Thursday 21 June 2012; the text of the full debate, which included statements from representatives of all parties and from independent TDs, is available at <http://debates.oireachtas.ie/dail/2012/06/21/00007.asp>.

¹⁴ National Pensions Reserve Fund Act (2000), Section 18 (3). The Act is available at <http://www.irishstatutebook.ie/2000/en/act/pub/0033/index.html>

¹⁵ National Pensions Reserve Fund Act (2000), Section 19 (1).

¹⁶ Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act (2009), Section 8; available at <http://www.irishstatutebook.ie/2009/en/act/pub/0007/index.html>.

¹⁷ Credit Institutions (Stabilisation) Act (2010), Section 76; available at <http://www.irishstatutebook.ie/2010/en/act/pub/0036/index.html>.

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- ¹⁸ EU/IMF Programme of Financial Support for Ireland: Memorandum of Economic and Financial Policies, Section 29 (p. 31).
<http://www.finance.gov.ie/documents/publications/reports/2010/EUIMFmemo.pdf>
- ¹⁹ NPRF Commission, *Annual Report and Financial Statements 2009*, p.6;
<http://www.nprf.ie/Publications/2010/NPRFReport2009.pdf>.
- ²⁰ NPRF Second Quarter 2012 Performance and Portfolio Update;
http://www.nprf.ie/Publications/2012/Q2_2012_Performance_and_Portfolio_update.pdf, representing an increase of €0.5 billion on the Fund's value at the end of December 2011, as indicated in the simultaneously-published 2011 Annual Report: NPRF Commission, *Annual Report and Financial Statements 2011*, p.6;
<http://www.nprf.ie/Publications/2012/NPRFReport2011.pdf>.
- ²¹ Under Part IV of the Cluster Munitions and Anti-Personnel Mines Act (2008).
- ²² These companies have been identified using information provided by various campaigning organisations (in particular, the report on the financing of the nuclear weapons industry prepared by the International Campaign to Abolish Nuclear Weapons (ICAN), Jan Willem van Gelder, Petra Spaargaren and Tim Wright, *Don't Bank on the Bomb* (2012), pp. 43-53), and lists of companies 'blacklisted' by investment funds which have a formal policy of not investing in companies producing certain types of weapons, including the Norwegian Council on Ethics, which advises the state pension fund, the Government Pension Fund – Global (see <http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund/responsible-investments/companies-excluded-from-the-investment-u.html?id=447122>). See also the exclusions lists of the Dutch companies Pensioenfonds Zorg & Welzijn (<http://www.pfzw.nl/about-us/investments/responsible-investments/activities/Paginas/exclusions-of-companies.aspx>) and PGGM (http://www.pggm.nl/About_PGGM/Investments/Publications/Exclusions_lists/Exclusions_list_Companies.asp#0) and the Norwegian company KLP's Responsible Investment SRI Report December 2011, pp.33-35 (https://www.klp.no/polopoly_fs/1.11860.1322724271!/menu/standard/file/SRI_Report_2_2011_english.pdf).
- ²³ PfZW also lists the Chinese company PetroChina (in which the NPRF has an investment of €3,498,171) as excluded on the basis of its involvement in nuclear weapons, but PGGM excludes this company on the basis of its human rights record. Having reviewed publicly-available information about PetroChina, it seems probable that the PfZW exclusion list is in error at this point, though it has not been possible to corroborate this with PfZW. If PetroChina is included among the companies involved in the nuclear arms industry in which the NPRF has investments, it would bring the total NPRF investment in such companies to €14,742,950.
- ²⁴ Van Gelder, Spaargaren and Wright, *Don't Bank on the Bomb*, p.60.
- ²⁵ Guidelines for observation and exclusion from the Government Pension Fund Global's investment universe, Section 2, paragraph 1 (a). The English translation is published by the Council on Ethics for information purposes, and is available at http://www.regjeringen.no/en/sub/styret-rad-utvalg/ethics_council/ethical-guidelines.html?id=425277.
- ²⁶ Assessment of how nuclear weapons breach international humanitarian law, and recommendations on the exclusion of companies involved in the nuclear weapons industry were issued by the Council on Ethics in September 2005, and are available at <http://www.regjeringen.no/pages/1661428/Tilr%C3%A5dning%20kjernev%C3%A5pen%20engelsk%2019%20sept%202005.pdf>. For an overview, see also Gro Nystuen, "The Implications of the Ethical Guidelines for the Norwegian Petroleum Fund for the Application of International Humanitarian Law to Nuclear Weapons," *Nuclear Abolition Forum* 1 (2011), pp. 21-24.
- ²⁷ New Zealand Superannuation and Retirement Income Act (2001), Section 58.2. The text of the act is available at http://www.legislation.govt.nz/act/public/2001/0084/latest/whole.html?search=ts_act_New+Zealand+Superannuation+and+Retirement+Income+Act+2001_resel#d1m114280.
- ²⁸ New Zealand Superannuation Fund, *Responsible Investment in Practice Report, June 2009*, p. 3; available at <http://www.nzsuperfund.co.nz/files/Responsible%20Investment%20in%20Practice%20Report%20-%20%20July%202009.pdf>.
- ²⁹ A detailed report was issued by the Fund Guardians under the title, *Investment in companies associated with nuclear weapons*. The text is available at

<http://www.nzsuperfund.co.nz/files/Public%20Report%20Nuclear%20Weapons%2012%20Dec%20Final%20V3.pdf>

³⁰ New Zealand Superannuation Fund report, *Investment in companies associated with nuclear weapons*, Section 8.2.

³¹ New Zealand Superannuation Fund report, *Investment in companies associated with nuclear weapons*, Section 11.2

³² New Zealand Superannuation Fund, *Responsible Investment in Practice Report, June 2009*, p. 10.

³³ Available at <http://www.comlaw.gov.au/Details/C2010C00112/Html/Text#param1>.

³⁴ For the terms or reference of the review, see <http://www.defence.gov.au/oscdf/BlickReview/tor.pdf>.

³⁵ The texts of the Convention on Cluster Munitions, and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, are included in the 2008 Act as Schedules I and II respectively. The text of the Act is available at <http://www.oireachtas.ie/documents/bills28/acts/2008/a2008.pdf>.

³⁶ See Committee Amendment 16, available at <http://www.oireachtas.ie/documents/bills28/bills/2008/5208/B5208D-CN.pdf>.

³⁷ The seven companies in question are Alliant Techsystems Inc (US), General Dynamics Corp (US), L-3 Communications Holdings Inc (US), Lockheed Martin Corp (US), Northrop Grumman Corp (US), Raytheon Co. (US) and Textron Inc (US), while possible investment in Aerostar SA (Romania), Hanwha Corp (South Korea), Poongsang Corp (South Korea) and Singapore Technologies Engineering Ltd is also prohibited. See the reply of the Minister for Finance, Brian Lenihan T.D. to Dáil Question 45727/10, in response to a question from Pat Rabbitte T.D., available at <http://debates.oireachtas.ie/dail/2010/12/02/00080.asp>.

³⁸ See <http://www.unpri.org/principles/>.

³⁹ Issues in relation to the NPRF's attitude to responsible investment are discussed in Mark Cumming, "Responsible Investment and its place in development: Challenges for the Irish National Pensions Reserve Fund," *Trócaire Development Review* (2009), pp. 56-75.

⁴⁰ See, for example, Maria Ceu Cortez, Florinda Silva and Nelson Areal, "The Performance of European Socially Responsible Funds," *Journal of Business Ethics*, 87.4 (2009), pp. 573-588; Jeanett Bergan, "Exclusion doesn't equal underperformance," *Responsible Investor*, June 10' 2010, at <http://www.responsible-investor.com/home/article/klp/>.