

FIRST COMMITTEE MONITOR

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Action on Armed Violence
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International Campaign to Abolish Nuclear Weapons
International Network on Explosive Weapons
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Reaching Critical Will of WILPF



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About Reaching Critical Will

Reaching Critical Will is your primary source for information, documents, and analysis about the United Nations General Assembly First Committee and other multilateral disarmament conferences.

On www.reachingcriticalwill.org you can find:

- All editions of the *First Committee Monitor*;
- All statements, working papers, resolutions, and voting results from all First Committee meetings since 2001;
- All statements and documents from the Conference on Disarmament, and regular reports on the plenary meetings;
- All statements, documents, and reports from NPT Review Conferences and Preparatory Committees, and archived editions of the *News in Review*;
- Research and analysis of critical issues related to disarmament and arms control; and
- News and information about civil society engagement for a nuclear weapon free world.



Editorial: The role of First Committee in building a better world

Ray Acheson | Reaching Critical Will of WILPF

With the Arab Spring, the disaster at the Fukushima nuclear power plant, famine in the Horn of Africa, the continuing economic crisis, and floods, hurricanes, and other extreme weather around the world, 2011 has thus far been a remarkable year. As governments and civil society settle in for another round of First Committee, it is imperative to draw on lessons learned from these experiences and their consequences. These lessons—of international solidarity and support, emergency response, and intervention, among others—are vital to international security and to disarmament and arms control.

The various crises have strained the global financial system and put unprecedented strain on national budgets. But spending USD 1.6 trillion a year on militarism cuts severely into budgets for sustainable development and emergency relief. The world needs conflict prevention tools to avoid catastrophic wars and oppression, and truly sustainable development to mitigate the effects of natural or human-made disasters. But our collective toolkit is full of weapons and soldiers, not mediators, engineers, or doctors. By prioritizing the profits of the arms manufacturers and the military-industrial-academic complexes, by heeding to the doctrines of “might makes right” and “strength in force,” the world pays a heavy price in malnourishment, poverty, disease, illiteracy, and deaths from bullets, bombs, and neglect.

This year’s theme of the General Assembly is the role of mediation in the settlement of disputes by peaceful means. At the general debate, several government leaders expressed their concern with the reliance on military solutions to all the world’s ills. Prime Minister Gonsalves of Saint Vincent and the Grenadines noted, “Too often, the difficult work of mediation, negotiation and peaceful dispute resolution is prematurely abandoned in the search for a ‘quick fix’ of militarism, brinksmanship or ill-advised unilateral action. ... the frenzied pursuit of a military solution to every dispute is sometimes sickeningly palpable.”

This “frenzied pursuit” is not limited to military interventions in foreign countries. It is the pursuit of military security ahead of human security, of investing vast sums on weapons and war while billions of people live in poverty around the world. While many delegates speaking at the general debate reiterated their interest in pursuing peace and development through the United Nations, Nepal’s Prime Minister Bhattarai pointed out that sustainable peace is not possible when there is so much inequity, deprivation, and marginalization throughout the world, due at least in part to excessive military spending.

“Lacking political will and indeed, clarity of vision, we deny with clever arguments what we know to be the cause of our predicaments,” lamented Bhutan’s Prime Minister Thinley. “So we go on, doing what is irrational. [For example,] We continue acquiring arms to prevent war.”

These irrational responses to the challenges confronting humanity and our planet are systemic and deep-rooted; they tend to exclusively serve the interests of the elite and wealthy of all our countries. But such responses are not inevitable. Many civil society and government actors from around the world have over the years articulated practical and achievable paths to a more reasoned, sustainable, nonviolent, equitable, and dignified future for all. The difficulty lies in effectively applying these ideas and their implementation.

Those who work in the context of First Committee and other aspects of the UN’s disarmament machinery are intimately familiar with the struggle of gaining consensus on issues that will affect collective security. Many delegates, after experiencing a year or two in the Conference on Disarmament, complain that the art of diplomacy has been lost, that the consensus rule has been turned into a veto, and that the interests of the few are permitted to outweigh the interests of the many.

Reform of procedure and process may well be necessary. It seems that the only way to make progress in disarmament and arms control these days is to set up innovative parallel structures that do not rely on the stalemated mechanisms established in the Cold War era. But these successful enterprises do not merely utilize new structures. They also embrace new philosophies and rationales for their undertakings. They recognize the importance of putting human security at the centre of debate and decision-making. They reject the conception of militarized security; their goal is protection of civilians through disarmament and arms control, not through the development and use of weapons and of force.

Reducing military spending and ceasing to rely on militarism for security will be imperative for meeting the world’s challenges successfully. In the context of First Committee, this will mean pushing firmly for bold action on concrete commitments to disarmament, and for implementation of these commitments. This includes, among other things, working for a robust, comprehensive, legally-binding arms trade treaty, reform of the Conference on Disarmament and/or the establishment of alternative structures to negotiate the items on its agenda, and demanding the nuclear-weapon possessors fulfill their commitments to nuclear disarmament and cease their plans to indefinitely extend the lives of their arsenals.

UN Secretary-General Ban Ki-moon warned in 2009, “The world is over-armed and peace is under-funded.” This does not bode well for our future survival, but there is still time for change. Members of civil society attending First Committee and those watching around the world look forward to passionate, bold, concrete, and immediate actions from our governmental colleagues and elected representatives. •

Reflections on the UN General Assembly general debate 2011

Ray Acheson | Reaching Critical Will of WILPF

The United Nations General Assembly (UNGA) held its general debate from 21–28 September. The theme for this year's debate, set by UNGA President Nassir Abdulaziz Al-Nasser of Qatar, was the role of mediation in the settlement of disputes by peaceful means. A good number of states incorporated these theme into the presentations to the UNGA, though only a few related to issues of militarism, disarmament, or arms control.

Meanwhile, nuclear weapons received much less attention than in recent years, especially when compared to 2009, when elite rhetoric in favour of a nuclear weapon free world was at its highest. However, for the first time since 2008, more delegations referred to conventional weapons than nuclear. The international community has made greater progress in conventional arms control and disarmament than in nuclear over the last decade, with the successes of the landmines and cluster munitions conventions and the small arms and arms trade treaty processes.

By the numbers

How many countries referred to...

Disarmament

- 2008: 19 countries
- 2009: 80 countries
- 2010: 71 countries
- 2011: 44 countries

Non-proliferation

- 2008: 19 countries
- 2009: 71 countries
- 2010: 65 countries
- 2011: 31 countries

Nuclear weapons

- 2008: 17 countries
- 2009: 73 countries
- 2010: 72 countries
- 2011: 36 countries

Conventional weapons

- 2008: 21 countries
- 2009: 31 countries
- 2010: 41 countries
- 2011: 50 countries

Militarism or military spending

- 2008: 23 countries
- 2009: 21 countries
- 2010: 14 countries
- 2011: 25 countries

Nuclear weapons

After the height of rhetoric in favour of nuclear disarmament in 2009, the year of US President Obama's famed Prague speech, the attention given to nuclear weapons this year mirrors the disappointment most of the world feels with the scant progress over the past two years. Several governments voiced this frustration at the

general debate. Ambassador Carrión-Mena of Ecuador lamented the lack of effort given to the elimination of nuclear weapons, arguing that it seems nuclear weapon possessors are only concerned with "issues that fall within the sphere of non-proliferation". The Minister for Foreign Affairs of the Central African Republic noted that "non-nuclear weapon states are entitled to ask the nuclear powers to assume full responsibility in implementing concrete measures for real nuclear disarmament," while Malaysia's Foreign Affairs Minister called for good faith engagement by all nuclear weapon possessors and negotiation of a nuclear weapons convention. Vanuatu's Prime Minister Livtunvanu called on the nuclear-armed states to engage in irreversible disarmament as the only way to prevent the further proliferation of nuclear weapons.

Conventional weapons

The number of countries speaking about conventional weapon issues has increased by about 10 each year since 2008. With the arms trade treaty negotiations and the Review Conference of the UN Programme of Action on small arms coming up in 2012, 50 countries gave their support to these initiatives and to call upon their neighbours to do so as well. Conventional weapon issues really emphasize global interdependence. Belize's Minister of Foreign Affairs and Trade noted that while crime and violence in Central America has escalated drastically over the last decade, "none of the arms used in these murders are produced in Central America. They are the product of the illicit trafficking in guns and drugs between South and North America. The transnational nature of these crimes is exacerbated by the cross border collaboration of criminals. This type of criminal activity clearly requires the collaboration and cooperation of the international community if it is to be combated successfully." Antigua and Barbuda's Prime Minister Spencer likewise noted that the Caribbean has been found to have the highest murder rate of any region in the world and that small arms and light weapons are used in 70% of these murders. Both of these countries, along with many others, called for the negotiation of a robust, comprehensive, legally-binding arms trade treaty to help curb the proliferation of weapons.

Nicaragua's Minister for Foreign Affairs highlighted one of the difficulties in negotiating such a treaty—the arms industry, which seeks to maintain its profits. However, he argued that the arms industry is not important for the world economy: "despite what small arms producers would have us believe, their trade and trade in munitions and other components represents less than 0.01 percent of the world's industrial transactions." Meanwhile, Minister López noted, "More than eight million small arms and more than 16 billion munitions are produced every year; this is equivalent to 2.5 munitions for every person on this

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UNGA general debate (cont.)

planet. This arms proliferation causes irreparable direct and indirect harm to the populace and their economy.”

Military spending and militarism

Nicaragua’s Minister López also addressed the issue of military spending, arguing, “It is unjustifiable and unacceptable that the present world continues to increase its spending for the development and testing of all types of arms and to decrease spending for promotion of the life and development of human beings. While millions of persons suffer the effects of the economic and financial crisis,” he lamented, “military spending in the world continues to skyrocket. During the last ten years, these expenditures have increased by 50 percent, rising to 1.5 trillion dollars.” Venezuela’s Minister of the People’s Power for Foreign Affairs stated that “war is capital’s *modus vivendi*” while Prime Minister Gonsalves of Saint Vincent and the Grenadines noted, “All too frequently, the loudest champions of expensive and unnecessary military action are those leaders of military powers who seek to shore up sagging local political fortunes with bullets, bombs and the bodies of faceless foreigners in far away lands.” He and many others called for alterna-

tive solutions to tension and conflict, including mediation, the theme of this year’s general debate.

“For too long, the international community has focused too little attention on mediation and preventive diplomacy and far too much effort and resources on military aspects of peace and security,” argued President Goodluck Jonathan of Nigeria. “As I see it, our goal should always be to present the peaceful alternative as a less costly and effective way of achieving political and social objectives.”

He and others highlighted the importance of focusing on mediation as a tool for conflict prevention, through which, he said, “we are able to address the real triggers of conflict.” Madagascar’s President Rajoelina noted that “even after the use of force, war and conflict always end around a table. It clearly shows that mediation can be chosen as an alternative to guns.”

Reaching Critical Will, with the assistance of WILPF’s PeaceWomen project, tracked all references to disarmament and arms control at this year’s UNGA general debate. Two indexes, by country and by topic, are available at www.reachingcriticalwill.org. PeaceWomen also maintains an index on gender and women, available at www.peacewomen.org.

UNITED NATIONS INSTITUTE FOR DISARMAMENT RESEARCH

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UNIDIR is pleased to invite you to the following seminars

The Nuclear Fuel Cycle***Meeting the Global Challenges***

Thursday, 13 October 2011, 13:15–14:30

Conference Room I

EU-UNIDIR side event***Supporting the ATT Negotiations***

(presenting selected background papers)

Monday, 17 October 2011, 13:15–14:30

Conference Room A

TCBMs in Outer Space Activities***Looking Back and Moving Forward***

Wednesday, 19 October 2011, 13:15–14:30

Conference Room I

International Law and War in Cyberspace***Many Questions, Few Answers***

Thursday, 20 October 2011, 13:15–14:30

Conference Room I

IDEAS FOR PEACE AND SECURITY

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Report on the high-level meeting on nuclear safety and security

Ray Acheson | Reaching Critical Will of WILPF

In response to the Fukushima Dai-ichi disaster, UN Secretary-General Ban Ki-moon called for a high-level meeting (HLM) on nuclear safety and security, which he envisioned as a global debate on the future of nuclear energy, including “a new cost-benefit analysis of nuclear energy”.¹ The meeting convened on 22 September, however, fell very far short of such a debate.

The majority of delegations that took the floor during the HLM reiterated the importance of nuclear power for meeting their countries’ energy needs, while the countries that have rejected nuclear power because of its dangers to human health and the environment were too reserved about criticizing the continued use of nuclear power as a form of energy or about countering claims that it can ever be safe, clean, or economical.

Highlights

- Most participating delegations concluded that nuclear power remains a viable option for meeting their energy needs, though several others (including Austria, Germany, Greece, and Ireland) have rejected nuclear power and are looking to renewable energy and energy efficiency as the key to a safe and sustainable future.
- Most delegations highlighted the international nature of nuclear disasters and the effects on the environment and human health, though many still reiterated that the decision to develop nuclear energy is a sovereign one.
- The vast majority of participating delegations supported strengthening global nuclear safety measures and mechanisms; strengthening the role of the IAEA in nuclear safety; and developing further international coordination in disaster preparedness and response.
- Several states indicated they would be willing to submit to “peer review” inspections of their nuclear facilities.
- Most states recognized that public confidence in nuclear power has been shaken by Fukushima and

acknowledged the need to improve transparency in all aspects of nuclear power. However, several delegations seemed to think that the main goal is to “reassure” the public that nuclear power is safe and clean rather than actually listening to their population’s demands for cessation of use or development of nuclear power.

- Norway’s delegation argued that nuclear safety cannot be dealt with in isolation from nuclear security, non-proliferation, and disarmament and that nuclear safety efforts will be complementary to efforts to promote a world free of nuclear weapons.
- Brazil railed against nuclear weapons as a source of global insecurity and P5 privilege.
- The Marshall Islands called for remediation of the affects of nuclear weapons testing to which its population was subjected.
- The Secretary-General made several suggestions for action, including:
 - o forwarding his final summary to the General Assembly plenary, the Fourth Committee, the 2012 Seoul Nuclear Security Summit, and the 2012 NPT preparatory committee;
 - o having the General Assembly ensure that the UN Scientific Committee on the Effects of Atomic Radiation has all the necessary capacity and resources to accomplish its task;
 - o encouraging the 2012 NPT preparatory committee to consider allocating specific time to discuss nuclear safety and security;
 - o urging all states to become party to and to implement all relevant international nuclear safety and security instruments;
 - o recommending that the preparatory process for Rio+20 consider addressing nuclear safety and security issues;
 - o asking the Inter-Agency Standing Committee to study ways to enhance capacity of its members in order to strengthen the link between the international nuclear response system and the international humanitarian coordination system; and
 - o encouraging the G8 to further develop its nuclear safety and security initiatives, taking into account the issues raised by the Fukushima disaster.

For the full report please go to www.reachingcriticalwill.org/political/energy/hlm/

Notes

1. Ban Ki-moon, “A Visit to Chernobyl,” International Herald Tribune, 25 April 2011; Ban Ki-moon, Remarks to the Kiev Institute of International Relations, 21 April 2011; and Ban Ki-moon, Remarks to Sophia University, 5 May 2011. •

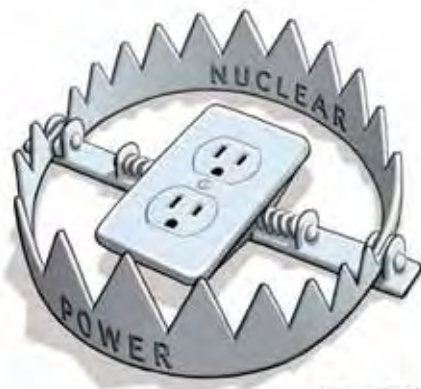


Illustration: David Price Jones, WILPF

Nuclear weapons: hazardous *and* illegal

John Burroughs | Lawyers Committee on Nuclear Policy

In security analysis, the view increasingly is that reliance on nuclear arsenals to prevent war and to prevent use of nuclear weapons is too hazardous in a multi-player nuclear arena, and will become even more so if additional states acquire such weapons. One policy implication, reflected in some governmental positions, is that the practice of non-use since World War II should be reinforced. In their 8 November 2010 joint statement, Indian Prime Minister Singh and US President Obama said that they “support strengthening the six decade-old international norm of non-use of nuclear weapons.”

Law is vital to the entrenchment of the practice of non-use. No one can deny that a nuclear weapon, like any weapon, is subject to rules governing the conduct of warfare. But that truth can be ignored. It was therefore an important innovation in the NPT context that the 2010 Review Final Document expresses the Conference’s “deep concern at the catastrophic consequences of any use of nuclear weapons, and reaffirms the need for all states at all times to comply with applicable international law, including international humanitarian law [IHL].”

During last year’s First Committee, a number of states, plus the International Committee of the Red Cross (ICRC), vigorously took up the IHL theme (see Final Edition, 2010 *First Committee Monitor*). And its elaboration continues.

Early this year, the International Association of Lawyers Against Nuclear Arms joined with The Simons Foundation to develop a declaration assessing the current state of law applicable to nuclear weapons. Entitled “Law’s Imperative for a Nuclear Weapon-Free World” and released in March, the Vancouver Declaration has been endorsed by former International Court of Justice (ICJ) judges, leading international law scholars, former diplomats and officials, and civil society organizations. It observes that with their uncontrollable blast, heat, and radiation effects, nuclear weapons are indeed weapons of mass destruction that by their nature cannot comply with fundamental rules forbidding the infliction of indiscriminate and disproportionate harm.

The declaration builds upon developments since the 1996 ICJ advisory opinion on nuclear weapons, among them the establishment of the International Criminal Court, the entry into force of the Chemical Weapons Convention, and the achievement of treaty bans on landmines and cluster munitions. In connection with already banned weapons, the declaration states: “Reasons advanced for the continuing existence of nuclear weapons, including military necessity and case-by-case analysis, were once used to justify other inhumane weapons. But elementary considerations of humanity persuaded the world community that such arguments were outweighed by the need to eliminate them. This principle must now

be applied to nuclear weapons, which pose an infinitely greater risk to humanity.”

The declaration also takes firm positions on several issues which the ICJ did not resolve:

1) It states: “Use of nuclear weapons in response to a prior nuclear attack cannot be justified as a reprisal. The immunity of non-combatants to attack in all circumstances is codified in widely ratified Geneva treaty law and in the Rome Statute of the International Criminal Court, which provides *inter alia* that an attack directed against a civilian population is a crime against humanity.”¹ This recalls the position taken by Mexico before the ICJ in 1995: “Torture is not a permissible response to torture. Nor is mass rape acceptable retaliation to mass rape. Just as unacceptable is retaliatory deterrence—‘You have burnt my city, I will burn yours.’”

2) The declaration holds that nuclear weapons are subject to the prohibition found in Protocol I to the Geneva Conventions of use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment. A major ICRC study has found that this prohibition has now become part of universally binding customary law. Obviously many uses of nuclear weapons come under it. As the declaration notes: “Recent studies have demonstrated that the detonation of a small fraction of the global nuclear stockpile (e.g. 100 warheads) in cities and the ensuing fire storms would generate smoke causing a plunge in average global temperatures lasting years. Agricultural production would plummet, resulting in extensive famine.”

3) And, the declaration states: “Threat as well as use of nuclear weapons is barred by law. As the ICJ made clear, it is unlawful to threaten an attack if the attack itself would be unlawful. This rule renders unlawful two types of threat: specific signals of intent to use nuclear weapons if demands, whether lawful or not, are not met; and general policies (‘deterrence’) declaring a readiness to resort to nuclear weapons when vital interests are at stake. The two types come together in standing doctrines and capabilities of nuclear attack, preemptive or responsive, in rapid reaction to an imminent or actual nuclear attack.” The ICJ had indeed clarified the law regarding threats of unlawful attack, but declined to pass judgment on ‘deterrence’. The declaration draws the unavoidable implication that “deterrence” is unlawful.

Another notable statement this year was a landmark, comprehensive speech on nuclear disarmament by Archbishop Francis Chullikatt, Permanent Observer of the Holy See to the UN. It was delivered on 1 July 2011, in Kansas City, Missouri, USA, home to a new facility now under construction that would be used to build the non-nuclear components of nuclear warheads.

Nuclear weapons spending: a theft of public resources

Tim Wright | International Campaign to Abolish Nuclear Weapons

In 2011 the nine nuclear-armed nations will spend an estimated US\$105 billion maintaining and modernizing their nuclear weapons, despite the International Court of Justice having declared it illegal to use and threaten to use such weapons.

This expenditure—up from \$91 billion in 2010—casts serious doubt on the sincerity of leaders' pledges to work for a world free from nuclear arms, suggesting instead a commitment to retain such weapons indefinitely.

Beyond the pro-disarmament rhetoric of the nuclear weapon-possessors is the disturbing reality of a massive effort to bolster the world's nuclear forces, the consequences of which are potentially catastrophic.

Nuclear weapons: at what cost?

The Global Zero group of ex-military and political leaders has calculated that the United States will spend US\$61.3 billion on its nuclear arsenal this year—more than every other nuclear weapon state combined and twice what it spent on foreign aid in 2010 (US\$30.2 billion).

Russia is forecast to squander \$14.8 billion, China \$7.6 billion, France \$6.0 billion, Britain \$5.5 billion, India \$4.9 billion, Israel \$1.9 billion, Pakistan \$2.2 billion, and the Democratic People's Republic of Korea \$0.7 billion.

The design, development, manufacture, maintenance, and modernization of nuclear forces divert vast public resources from health care, education, climate action, disaster relief, and other essential services.

The World Bank estimates that an annual investment of just US\$40 to \$60 billion—roughly half the amount currently spent on nuclear weapons—would be enough to meet the Millennium Development Goals by the target date of 2015.

With opinion polls in nuclear-armed nations showing strong public support for the total abolition of nuclear weapons—and most political leaders also championing the cause—is it beyond time that these investments ceased.

The promised disarmament dividend

In the years immediately following the cold war, the United States and Russia dismantled several thousand of their nuclear weapons. Over the course of the conflict, the two superpowers had amassed close to 70,000 warheads—enough to destroy every city in the world several times.

For a brief period in the 1990s, global military spending began to decline as both countries engaged in significant disarmament. Some nations expressed hope that the new order would result in wealth being redirected towards meeting the needs of the world's poor.

But the dividend never came. By the late 1990s, military spending was once again on the rise, and the

September 11 terrorist attacks on the United States in 2001 caused it to skyrocket. In 2010, nations spent an estimated \$1630 billion on their armed forces, with the global financial crisis of 2008 barely making a dent in military budgets.

Expenditure on nuclear weapons represents 6.4% of the total global military outlay—a sizeable portion considering that only nine out of close to 200 nations possess nuclear weapons.

With five of the nuclear powers having made a legal pledge to eliminate their nuclear arsenals—and the other four being obliged under customary law to disarm also—it defies belief that all are wasting billions of dollars strengthening their nuclear forces.

By extending the useable lifetime of warheads for several decades—and building new missiles, submarines, and bombers to carry them, as well as new facilities in which to construct them—nations are undermining disarmament efforts and fuelling a new nuclear arms race.

A diversion of public resources

In 2010, foreign aid by wealthy governments to Africa—the poorest continent on Earth—was a paltry US\$29.3 billion, or less than one-third of the amount spent on nuclear weapons.

As millions across the globe go hungry and are denied access to clean water, basic medicines, and sanitation, the nuclear-armed nations spend US\$287 million every day—or US\$12 million an hour—on their nuclear forces.

The US nuclear weapons budget is roughly equivalent to the gross domestic product of North and South Sudan (US\$62bn in 2010), whose combined population is 45 million. Total global nuclear weapons spending is more than the gross domestic product of Bangladesh (US\$101bn), a nation of 158.6 million people.

Just one year of nuclear weapons spending is equal to 42 years of the regular UN budget of US\$2.5 billion or 14 years of UN peacekeeping operations. As Secretary-General Ban Ki-moon remarked in 2009, “The world is over-armed, and peace is under-funded.”

Money for nuclear disarmament?

The UN Office for Disarmament Affairs—the principal UN body responsible for advancing a world free of nuclear weapons—runs operations and offices in New York, Geneva, Lome, Lima and Kathmandu, with a total of some 100 staff.

In addition to working on nuclear disarmament, it also addresses the threat of chemical and biological weapons, landmines, cluster munitions and small arms. Its annual budget is approximately US\$10 million—less than the amount the nuclear-armed nations spend on their nuclear weapons *every hour*.

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Nuclear weapons spending (cont.)

The global nuclear weapons budget of US\$104.9 billion is more than 10,000 times greater than the UN disarmament and non-proliferation budget.

National disarmament programmes are also grossly under-funded. US spending on nuclear warhead dismantlement has dropped dramatically under President Obama. In 2009, it was US\$186 million. This was slashed to \$96 million in 2010 and just \$58 million in 2011.

There has been a corresponding decline in the rate of dismantlement, with an estimated 260 warheads taken apart by the United States in 2010 compared with 648 in 2008. In the 1990s more than a thousand warheads were dismantled every year.

US dismantlement work has been scaled back because the same facilities are used for disassembly as for re-assembly. Building new nuclear weapons from old warheads—a process the government refers to euphemistically as “refurbishment”—has taken priority over dismantlement.

The United States now spends 1000 times more on the maintenance and modernization of its nuclear forces than it does on dismantling warheads.

US President Barack Obama, who won the Nobel Peace Prize for his nuclear-free vision, supports a major boost in US nuclear weapons spending over the next decade.

His modernization plan includes the construction of three new nuclear bomb factories. The expected total cost is US\$213 billion, which is on top of the regular annual US nuclear weapons budget of more than US\$60 billion.

Ending nuclear weapons spending

There is an alternative to this madness. With the global financial crisis prompting governments to cut funding to education, health, and other social services, citizen groups are in the strongest position yet to challenge nuclear weapons spending.

Investing billions of dollars in these weapons of terror and mass destruction is an outrage in the best of economic times. It is all the more ridiculous and shameful given the world’s current financial woes.

We must put pressure on national legislators to knock back budgetary requests for nuclear weapons work, and persuade banks, pension funds and other financial institutions worldwide to divest from companies that manufacture nuclear weapons.

It is not difficult to come up with better ways to achieve security in the world than investing US\$104.9 billion a year in instruments that could turn the world into a radioactive inferno.

Tim Wright is the Campaign Director at the International Campaign to Abolish Nuclear Weapons (ICAN) Australia. •

Hazardous and illegal (cont.)

Regarding IHL, Archbishop Chullikatt stated inter alia: “International law and the Church’s Just War principles have always recognized that limitation and proportionality must be respected in warfare. But the very point of a nuclear weapon is to kill massively; the killing and the poisonous radiation cannot be contained (Hiroshima, Nagasaki, Chernobyl are permanent ominous reminders). The social and economic consequences of nuclear war in a world whose life-support systems are intimately interconnected would be catastrophic.”

In a remark that would serve well as a guide to First Committee work, Archbishop Chullikatt said the NPT Review Conference’s affirmation of the application of IHL to nuclear weapons “lays the groundwork for a possible outlawing of nuclear weapons. The international community is now challenged to ensure that every step on the non-proliferation and disarmament agenda is geared toward ensuring the security and survival of humanity and built on principles of the preeminent and inherent value of human dignity and the centrality of the human person, which constitute the basis of international humanitarian law.”

Dr. John Burroughs is Executive Director of the Lawyers Committee on Nuclear Policy and author of The Legality of Threat or Use of Nuclear Weapons: A Guide to the Historic Opinion of the International Court of Justice (2007). He was one of the drafters of the Vancouver Declaration.

Notes

1. For in-depth legal analysis of this and other issues relating to use of nuclear weapons, based in large part on US military manuals on the law of armed conflict, see the recently published article in the Fordham International Law Journal by Charles J. Moxley, Jr., John Burroughs, and Jonathan Granoff.

Revitalizing multilateral disarmament negotiations

Ray Acheson | Reaching Critical Will of WILPF

The Conference on Disarmament (CD), the UN-affiliated body mandated to negotiate disarmament treaties, has been deadlocked for 15 years. Since 1996, all disarmament treaties have been negotiated outside of the CD, including the bans on anti-personnel landmines and cluster munitions. So far, the nuclear and outer space files have remained within the CD's mandate and no serious attempts to remove them have been undertaken. But the continued deadlock is taking its toll and civil society and many governments are pushing for immediate action to change this status quo.

On 24 September 2010, UN Secretary-General Ban Ki-moon hosted a high-level meeting to revitalize the work of the CD. Then, at the request of 49 member states, the UN General Assembly convened three plenary meetings on 27–29 July 2011 as a follow-up to the September 2010 meeting. Statements and reports from the both meetings are available on the Reaching Critical Will website.

These meetings acted as a gauge for state positions on the critical issues related to advancing disarmament through multilateralism, such as, should negotiations be pursued outside of the CD? Should the CD itself be reformed? What is the next logical treaty that should be attempted? At the minimum, the meetings indicated that while the international diplomatic community is frustrated over the continued deadlock, the majority of countries—including many of those in the Non-Aligned Movement (NAM) and most of permanent five members of the UN Security Council (P5)—appear unwilling to consider actions that could potentially disrupt the status quo.

Reform or revolution?

Judging by their statements to the General Assembly plenary meetings, most of the P5 (with the exception of the United States) have signaled unwillingness to start negotiations on any of the CD's four core issues outside of the CD. Despite issuing a collective statement that indicated unwillingness to reform or circumvent the CD, the Non-Aligned Movement (NAM)'s position on this matter cannot be considered uniform. Several members of the Movement spoke in their individual capacity with remarks contradictory to this position, including Chile, Colombia, the Philippines, and South Africa. Based on this sample, it could be concluded that other NAM states may also disagree with the umbrella NAM statement.

At the same time, most of the NAM and at least two of the P5 (China and Russia) are also opposed to reforming the CD's working methods or rules of procedure.

Most countries argue that the problem with the CD is not procedural but political. They're not wrong. The CD has, in the past, managed to negotiate international disarmament and arms control treaties, with the same working methods it operates under today. Furthermore, with

all nuclear weapon-possessors currently undertaking or planning modernization programmes for their nuclear weapon arsenals, delivery systems, and related facilities, it is clear that genuine political will to achieve nuclear disarmament is a missing key ingredient.

However, the solution of continuing to call for "more political will," after fifteen years without negotiations, is like calling for another bucket of water to put out a fire that's been blazing for months. What is needed is a massive downpour, a change in climate—or in the case of the CD, a fundamental shift of governmental thinking around disarmament, arms control, and national security.

Many of the states delivering statements to the plenary meetings recognize this. The Costa Rican and Swiss delegations in particular emphasized the need for a new approach to these critical topics.

"We are living in a global, interdependent world that faces as a community a multitude of disarmament and non-proliferation challenges," said Swiss Counselor Serge Bavaud. "It is important to move from one-dimensional approaches to arms control, disarmament and non-proliferation to more holistic approaches." He also noted, "It is critical to recognize that disarmament and nonproliferation affect numerous areas of concern to the international community besides peace and security, notably human security and human rights, development, the environment and health to name just a few. Only if we further include these aspects will we be able to confront the challenges we are facing."

Similarly, Costa Rica's Ambassador Eduardo Ulibarri said that "disarmament is not an isolated event of an exclusively militaristic nature. It is an organic process that interests and affects us all, and in which we must constantly advance through productive negotiations." Arguing that "an essentially militaristic approach on security and disarmament could bring us closer to arms regulation and the control of international arsenals, but never to global disarmament," he urged that "any action taken in the process of revitalization and restructuring of the multilateral disarmament negotiations must prioritize a focus on human security."

Highlighting the relationship between human rights, international law, and disarmament and arms control, Ambassador Ulibarri also suggested that the CD "could begin to interact and cooperate with the bodies in charge of the promotion and protection of human rights and international humanitarian law, with the goal of carrying out a more effective follow up to the fulfillment of the States' duties in those subjects in light of their commitments to disarmament." For example, "the fulfillment of the agreements on disarmament [should] be incorporated as a variable to the Universal Periodic Review of the Human Rights Council."

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Multilateral disarmament (cont.)

The NAM itself recognized the need for a paradigm shift, arguing that part of realizing a world free of nuclear weapons will require the “colossal global expenditures and energies” devoted by nuclear weapon-possessors to the “possession, development and modernization of nuclear weapons” to instead be “used to further global development and peace.”

Yet for the most part, discussions related to the substantive work of the CD continue to be firmly predicated on a narrow, traditional view of “national security”.

Breaking the deadlock

Ambassador Ulibarri of Costa Rica described the CD as “going through the ‘illusion of disarmament’,” arguing, “It is the illusion that destroying certain weapons signifies an advance, despite their being immediately replaced by more powerful ones; it is the illusion of proscribing certain weapons because the strategic advantage they may have is exponentially inferior to the one offered by newer and more advanced ones; it is the illusion of fulfilling the requirements of civil society, when the only result is a paralyzed and paralyzing process.”

The states that are most actively seeking to break this status quo of illusion and paralysis do not want to “circumvent” the CD so that they can “get their way”. These states are also not pursuing action simply for the sake of negotiating an FMCT—most of them actually probably prefer negotiations directly on nuclear disarmament. Rather, these states seek to break through the rigid conception of national security and pursue collective security, human security in a multilateral forum that respects the views and concerns of all states but does not allow the interests of the few to outweigh the interests of the many.

Furthermore, those that seek to reform the CD and/or go outside the body to begin negotiations do believe that political will is essential. They do not assume that taking up negotiations in a different venue will magically eliminate the political problems faced by the CD. However, as Ambassador Alexander Kmentt, Austria’s Director for Disarmament, Arms Control and Non-Proliferation, argued, “political will can also be created through process.” That is, “by starting to address the issues that have been stuck on the CD agenda for all these years,” states that are resistant to engage can be encouraged to join in by the reality of the international community moving along without them. This has been seen in other negotiation process and with treaty ratifications.

A suggestion from civil society

Before the plenary meetings, Reaching Critical Will and the Lawyers Committee on Nuclear Policy drafted a possible formulation to advance multilateral disarmament negotiations. We suggest that the UN General Assembly establish two open-ended working groups: one on nuclear disarmament and the other on prevention of

an arms race in outer space. The open-ended working group on nuclear disarmament could have three main committees: a convention or framework agreement on nuclear disarmament; fissile materials; and negative security assurances and the prohibition of use of nuclear weapons.

In addition to cutting off future production for weapons purposes, we argue that an agreement on fissile materials must prevent the use of existing materials, civilian and military, in weapons, and contribute directly to irreversible disarmament. Its negotiation must not be treated as a step to be completed before negotiations on elimination of nuclear forces are commenced. A convention or framework agreement on nuclear disarmament could have a protocol on fissile materials, or provide for its subsequent negotiation. The policy of sequentialism, which has not proved to be an efficient way to achieve nuclear disarmament, must be abandoned, and a policy of integration and parallelism adopted.

As many delegations have pointed out over the years, the FMCT is not the only item “ripe” for negotiation. The majority of CD member states appear ready to work on any of the other core issues of the CD’s agenda—very few would block the commencement of negotiation on any particular issue, even if they might prefer one over another.

What now?

The question now is what happens next. Almost every single delegation taking the floor at the plenary meetings said they wanted to revitalize the CD. It is unclear what this means to those delegations that do not wish to reform its working methods or rules of procedure. Unfortunately, many of the delegations participating on the plenary meetings did not offer concrete proposals for moving forward, leaving uncertainty about what will be tried—and what will succeed—at First Committee.

The US and UK indicated that the P5 would be engaging in consultations ahead of the next UNGA, and it’s clear that many non-nuclear weapon states are interested in pursuing something concrete during First Committee in October. A decision needs to be made before the end of year about what should happen with the CD and with multilateral disarmament negotiations. Otherwise, the CD is likely destined to waste another year in 2012. There seems to be very little to be done in terms of “revitalization” if states are unwilling to change the way the CD operates or to consider creative, alternative methods and venue of work. It is the sincere hope of civil society that the states take a bold step this year by taking a concrete decision at the General Assembly’s current session to begin multilateral negotiations with an integrated approach that links disarmament and non-proliferation to human security. •

The CCW: Re-legitimizing cluster munitions and de-legitimizing the partnership between concerned states and civil society

Katherine Harrison | Action on Armed Violence

Negotiations on cluster munitions within the Convention on Conventional Weapons (CCW) framework are slated to start in a full-force, final attempt to secure agreement on a protocol text during the upcoming CCW 4th Review Conference in Geneva from 14–25 November. While raising alarm bells throughout the anti-cluster munition community, these negotiations have significant and potentially far-reaching implications for multilateral disarmament processes. At one level, there are concerns about protecting the standard of the Convention on Cluster Munitions (CCM) and ensuring meaningful steps forward to address the humanitarian harm caused by these weapons. At another level, there are concerns about protecting the humanitarian-centered partnership between governments and civil society as a viable model for disarmament negotiations and maintaining respect for the integrity of international humanitarian law (IHL).

The fundamental flaws contained in the draft Chair's protocol text are manifold. The text prohibits the use of cluster munitions produced before 1 January 1980, an arbitrary date not associated with any technological improvements in cluster munition production. These cluster munitions are already 30 years old and of little military value. By the time a CCW protocol is adopted and enters into force, these weapons are likely to be over 40 years old and slated for destruction regardless of any CCW regulation. The draft protocol legally permits the use of all other cluster munitions and contains specific exceptions allowing the continued use of cluster munitions with a so-called 1% failure rate, one or more vaguely defined "safe guards," and blanket exceptions for undefined "anti-ship" and "anti-runway" munitions. The protocol also foresees a 12 year transition period during which any and all cluster munitions can continue to be used.

Proponents of the protocol claim that it will affect mythical calculations such as "90%" of the world's cluster munition stockpiles not covered at present by the CCM, as certain major military powers refuse to be bound by its provisions. This is deeply misleading. What the protocol does provide, however, is legal cover for the use, production, stockpiling, and transfer of these country's munitions, which include nearly every single type of cluster munitions that have been used to date and have repeatedly been demonstrated to cause unacceptable humanitarian harm.

The CCW negotiations thus strive to permit and re-legitimize the use of cluster munitions, which are already banned on humanitarian grounds by the CCM. The negotiations run counter to the positive obligations contained in Article 1(c) and Article 21 of the CCM. States Parties' obligations under the CCM to not assist, encourage, or induce any activity relating to the use, production, stock-

piling, and transfer of cluster munitions, to discourage use, and to promote norms that stigmatize these weapons are at odds with the participation of these states in the creation of a lower legal standard that allows for and facilitates cluster munition use in the future.¹

Encourage others to join the convention

States Parties are obliged under Article 21(1) to take concrete actions to encourage non-States Parties to ratify or accede to the CCM. However States Parties choose to do this—whether through multilateral forums, bilateral contacts, or both—according to the Oxford commentary on the Convention, "the positive legal obligation on States Parties introduced by the words 'shall encourage' *will not be satisfied if States remain silent on the matter in relevant contacts with representatives of States not party.*"²

The CCW is a place for such contacts, and States Parties should make use of the opportunity to encourage others to join the Convention in their many interactions with non-States Parties, bilaterally and multilaterally. Many countries have made public statements throughout the course of the negotiations of a proposed CCW protocol calling on all countries to join the CCM.³

These statements will be undermined, if not rendered entirely symbolic, however, if the States Parties making them are simultaneously developing an alternative to joining the CCM. The adoption of a CCW protocol would provide an "out" for countries that have not yet joined the CCM by allowing them to adopt weak standards while claiming to be meaningfully addressing the humanitarian harm caused by cluster munitions. It is difficult to reconcile efforts by States Parties to the CCM to promote the proposed weak CCW protocol with their obligations to work toward universalization of the CCM.

Promote the norms

Article 21(2) further obligates States Parties to promote the norms of the CCM.⁴ Discussions over the last several years in the CCW have revealed the extent of the sea-change of international opinion brought about by the CCM. This is evident in the considerable shifts of national positions of a number of large military powers not party to the Convention, which now concede that cluster munitions can cause humanitarian harm on a level that merits at least some restrictions on their use.

However, for States Parties to the CCM, working for the achievement of an agreement requiring non-States Parties to take small ambiguous steps towards distant restrictions on the use, production, stockpiling, and transfer of certain cluster munitions is fundamentally at odds with promoting the absolute norms of the Convention, which ban such activities categorically and immediately. In addition, stigmatizing the use of a weapon through absolute prohibitions has shown to be a much more power-

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CCW and cluster munitions (cont.)

ful tool for influencing the behavior of non-States Parties than weak and permissive legal regulations. For example, the stigmatization created by the Mine Ban Treaty's absolute ban significantly decreased use of antipersonnel landmines even by non-States Parties.

Discourage use of cluster munitions

Article 21(2) requires States Parties to make their best efforts to discourage the use of cluster munitions.⁵ Under Article 1, States Parties are further obligated not to do anything that would encourage the use of cluster munitions or assist in activities that facilitated future use of cluster munitions, including in non-conflict situations.

Proactively working towards the adoption of the CCW protocol that would permit continued use, production, transfer, and stockpiling of cluster munitions, however, is clearly not discouraging future use. States actively condemning the use of cluster munitions, as seen in recent conflicts in Libya and Thailand/Cambodia, should not then allow the adoption of an agreement that establishes a new legal framework for the continued use of the very same weapons.⁶

Conclusion

States that have joined the CCM must not be complicit in the adoption of a protocol which would re-legitimize banned cluster munitions, weaken the norm against their use, and provide a disincentive for non-States Parties to join the CCM.⁷

The International Committee of the Red Cross has voiced strong criticism of the Chair's protocol text under discussion as risking the fragmentation of IHL and establishing a dangerous precedent through which international law is regressed by the adoption of a weaker agreement following the adoption of a high standard on an issue. Other UN organizations have raised strong opposition to the protocol, including the UN Development Programme, UN Mine Action Service, and UNICEF, which have pointed out that the draft would allow the continued use of all cluster munitions that have repeatedly caused deaths and injuries to deminers in the field.

Given the lack of humanitarian provisions in the draft protocol, questions arise over the motivation of the handful of states not party to the CCM, which are working so assiduously in the CCW to obtain weak standards regulating the use of cluster munitions. These efforts are arguably as much about process as they are about cluster munitions. The one state most committed to obtaining consensus on a bad protocol seemingly at any cost is a state that has not joined either the Mine Ban Treaty or the CCM and has strongly attempted to thwart both the Ottawa and Oslo Process, a suspicion which has been resoundingly confirmed by the recent deluge of Wikileaks cables relating to cluster munitions.

The message being sent to the multilateral disarmament community is clear: initiatives undertaken in part-

nership with governments and civil society outside of stalemated UN frameworks to achieve results amongst the willing will be undermined and in effect re-negotiated by major powers opposed to these endeavors. To those states that argue that forcing these major military powers to agree to "something" in the CCW is better than nothing—we should ask, at what price? Is worth risking undermining the credibility of a model that has been widely celebrated as the future of multilateral and humanitarian disarmament? At a time when progress is being made towards an Arms Trade Treaty and calls are being made to take stalled talks on a Fissile Material Cut-off Treaty outside of the Conference on Disarmament? To risk undermining the power of the CCM to bring about the humanitarian benefits that were so proudly fought for by States Parties and signatories? It is far too high a price to pay for weak, ambiguous, far-off restrictions on cluster munitions likely to have little or no impact on the ground. Fundamentally, it is a price that states who are proud supporters of the Mine Ban Treaty and CCM and active leaders in the Ottawa and Oslo processes should not be willing to pay.

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Notes

1. Articles 21(1) and 21(2) of the Convention on Cluster Munitions govern the relationship between States Parties and non-States Parties to the convention and set out positive obligations, which States Parties are legally bound to carry out. Article 21(1) mandates that States Parties encourage non-States Parties not party to join the convention, with the goal of attracting universal adherence to the convention. Article 21(2) contains a legal obligation for States Parties both to "promote the norms" of the convention and to make "best efforts to discourage States not Party to this Convention from using cluster munitions." Article 1(c) prohibits assistance, encouragement, or inducement of any act prohibited by the convention. The positive obligations of Article 21 are unprecedented in a weapons treaty. As such, while clearly established under the convention as binding legal obligations, they have yet to be concretely interpreted, since there is no established precedent or definition for what activities constitute "promoting" the norms or what is meant by "best efforts" to discourage use. Two commentaries on the convention provide guidance for the interpretation of these obligations. The Vienna Convention on the Law of Treaties should further inform their interpretation. See Gro Nystuen and Stuart Casey-Maslen, eds., *The Convention on Cluster Munitions: A Commentary*, Oxford University Press, New York, 2010 and Human Rights Watch, "Staying True to the Ban on Cluster Munitions: Understanding the prohibition on assistance in the Convention on Cluster Munitions," June 2009.
2. Gro Nystuen and Stuart Casey-Maslen, eds., *The Convention on Cluster Munitions: A Commentary*, Oxford University Press, New York, 2010, pp. 566-567, emphasis added.
3. The danger posed to the universalization of the Convention on Cluster Munitions is not hypothetical and is already apparent in the policy positions of a number of states who have indicated their preference for a protocol on cluster munitions within the framework of the CCW. States such as Argentina, Belarus, Brazil, Estonia, Finland, Greece, Latvia, Poland, Romania, Serbia, Turkey, and Ukraine, all committed to the Mine Ban Treaty, are amongst those opting to support negotiations on a CCW protocol and wait for their conclusion, rather than take meaningful steps



Moving forward on the arms trade treaty

Katherine Prizeman | Global Action to Prevent War

As the arms trade treaty (ATT) process enters its final stages, diplomats are preparing for the UN negotiating conference on the ATT from 2–27 July 2012. During February and July of 2011, delegates participated in the second and third preparatory committees, continuing an exchange of views on a wide range of ATT-related issues including: the goals and objectives of the treaty; scope and criteria of weapons covered under the treaty; implementation including national authority and systems; record-keeping and transparency; international cooperation and victims' assistance; an implementation support unit (ISU); and final provisions. A general consensus has not been reached on these elements and debate over what is to be included in a final ATT is anything but complete. However, as has been expressed by the Chair of the negotiations, Ambassador Roberto Garcia Moritán of Argentina, the preparatory committee groundwork has run its course, paving the way for negotiations next July over final status treaty language. It is time to prepare for the final negotiating stage.

Delegates are encouraged to take the opportunity at this 66th session of the UN General Assembly First Committee to clarify and reinforce their commitment to a robust and comprehensive treaty that will ultimately provide the best possible protection against illicit trade in conventional weapons that can lead to criminality, corruption, human rights abuses, violations of international humanitarian law, atrocity crimes, violence against women, and the suppression of women's participation in public and political life.

Ambassador Moritán provided a Chair's draft paper during the final days of July's preparatory meeting. The paper is quite exhaustive and invites a broad and inclusive discussion among states. The draft paper is ambitious, as it includes a scope that covers small arms and light weapons, technology, part and components, ammunition, as well as references victims' assistance and international cooperation. Ambassador Moritán took a rather bold step forward in the hopes of laying the groundwork for final treaty language. It is now up to member states to provide the nuance necessary for turning a sprawling list of provisions into a coherent and forceful treaty. Ambassador Moritán's paper provides a comprehensive strategy for a robust ATT that should be utilized as a starting point for next's year negotiations.

When referring to a future ATT, it is important to identify and underscore three issue areas that need to be addressed as a final treaty begins to take shape—diversion, implementation, and regional cooperation. In light of this year's upcoming First Committee discussion, we encourage all member states to consider these issues in a broad context of peace and security concerns as well as their collateral consequences.

Reference to and the emphasizing of the issue of diversion is critical. Curbing the illicit arms trade requires special attention to the practice of diverting arms from legal consumers of conventional weapons to non-state and unauthorized parties who may use such weapons for criminal, corrupt, and abusive purposes. It is often in this indirect manner that the arms trade becomes a lethal and harmful practice. It is generally accepted that diversion is the root cause of alarm for the arms trade. Even those member states that vigorously contend that any ATT should neither encroach on territorial sovereignty nor limit the ability of states to conduct arms transfers through excessive international interference cannot argue against the dangers of diversion. As such, we encourage states to address diversion in formulating a robust treaty that sufficiently protects against this risk.

The second issue we call attention to is implementation. It is essential that negotiations on an ATT are forward looking and decide upon a structure for implementation once a treaty has been adopted. Adequate implementation of an ATT, no matter the final scope and parameters of such a treaty, will likely remain a concern at review sessions beyond the time of formal ratification. Nevertheless, at this time, we encourage member states to look realistically at the challenges that lay ahead for implementers. A litany of national challenges will arise once a treaty is penned, including promoting community participation and local buy-in through sustainable local interaction between the government and local authorities; building reconciliation and trust between communities and local security forces implementing the treaty provisions; building local institutional capacity such as border control and arms policing; allocating appropriate funding for an international secretariat, Implementation Support Unit, or other structure, as well as funding for local training and institution building. There is no obvious, existing mechanism that exists to coordinate such a logistical behemoth—coordination that has considerable legal, political, and technical aspects. However, it is undeniable that some structure must exist to put into practice the provisions of tracing international transfers and, most importantly, flagging those that are deemed questionable and ultimately illicit. We recommend, at a minimum, the establishment of an ISU to perform such monitoring.

However, as Reaching Critical Will noted during the July preparatory committee: if the ISU is to be hosted by the United Nations, the ISU's mandate to facilitate implementation of the ATT should by no means detract from the UN's core role in promoting disarmament and the effective regulation of armaments. As many delegations have said time and again, the ATT should be viewed as a floor, not a ceiling, for the regulation of the

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Arms trade treaty (cont.)

arms trade. States should be encouraged to adopt stricter standards. Any ATT must not be used as an excuse for the UN to limit or curtail its advocacy for more effective regulation and the strengthened application of international humanitarian and human rights law. Such a role may be especially important, especially if that treaty turns out to not be as robust as the majority of member states would like.

Thirdly, it is clear from the aforementioned implementation challenges that capacity-building will become a necessary part of the ATT process. It is necessary, then, to incorporate a great deal of regional and sub-regional collaboration to address some of these issues—most especially building local capacities for border control, arms policing, and other aspects directly related to regional and local buy-in. Regional organizations and economic blocs are in an advantageous position to address many of these implementation challenges of coordination, which are often endemic to individual regions. A legal structure in an ATT must be buttressed by sufficient regional support making implementation both manageable and effective.

We encourage member states to reference the ATT in light of this October's First Committee discussions on disarmament as it fits into the broader goal of a more peaceful and secure world. The ATT cannot and should not be negotiated in a diplomatic silo. We encourage member states to seek a harmonization of purpose to fuse the two objectives of a future ATT—regulating the business of trade in conventional weapons as well as making a normative statement on an industry where many of its products have been found in the illicit market prompting devastating insecurity across regions.

As advocated by UN Secretary-General Ban Ki-moon, the world demands “general and complete disarmament in all its aspects,” which reinforces the importance of not only nuclear non-proliferation and disarmament, but equally important, conventional weapon disarmament and arms control. And although nuclear issues receive the lion's share of attention at the First Committee, we recognize that conventional weapons, in being used around the world every day, are truly the “weapons of mass destruction”.

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CCW and cluster munitions (cont.)

towards acceding to the CCM. The pace of accession to the CCM for more than a dozen other states, also States Parties to the Mine Ban Treaty, could also be at risk. Beyond providing political cover for states to remain outside the CCM, a CCW protocol will allow them to go slow and do little on the issue

4. Human Rights Watch's commentary on the CCM, “Staying True to the Ban on Cluster Munitions,” states that the positive obligations of Article 21 “impose positive duties on states parties to ensure that the convention's norms are spread widely. They require states parties to abide by the rules of the convention in all contexts and to try to persuade others to do the same.” In “all contexts” would also include inside of the CCW framework. Human Rights Watch, “Staying True to the Ban on Cluster Munitions: Understanding the prohibition on assistance in the Convention on Cluster Munitions,” June 2009, pg. 10.
5. Like the other positive obligations of Article 21, this obligation is broadly understood to apply in all contexts. The Oxford commentary on the convention states clearly that “the obligation to discourage use is ... general and not limited to situations of interoperability.” For example, the commentary states that beyond conduct in armed conflict and joint military operations, “use” could comprise a range of activities such as training and exercises not covered by the limited exceptions for the purposes of detection, clearance or destruction techniques, or the development of countermeasures. Gro Nystuen and Stuart Casey-Maslen, eds., *The Convention on Cluster Munitions: A Commentary*, Oxford University Press, New York, 2010, pg. 569.
6. The nature of the obligations that the CCM establishes are firmly rooted in its object and purpose, which are clearly stated in the preamble as the determination “to put an end for all time to the suffering and casualties caused by cluster munitions.” The prohibition on use, combined with stockpile destruction obligations and prohibitions on production and transfer, further shows that the convention fundamentally aims to eliminate cluster munitions. Under Articles 26 and 18 of the 1969 Vienna Convention on the Law of Treaties, States Parties to a treaty are required to act in good faith in implementing their obligations under the treaty and are “obliged to refrain from acts which would defeat the object and purpose” of the treaty. Actively negotiating a legal instrument that would legitimize and even facilitate the future use of cluster munitions and the predictable subsequent humanitarian suffering would be contrary to both the object and purpose of the CCM and arguably, the provisions of the Vienna Convention. The Vienna Convention is considered to be customary international law, binding on all states.
7. Certain delegates to the CCW have countered that while the protocol would be contrary to the obligations of States Parties to the CCM, those states could simply opt not to ratify the protocol. However, even participating in the negotiations and facilitating the adoption of a protocol that allows the continued use of a broad group of cluster munitions could in itself contravene both the object and purpose of the CCM as well as its Article 21 and 1(c) obligations. States Parties to the Convention should thus not allow the adoption of a CCW protocol that is not complementary to the CCM. Concretely, they should not accept any protocol that permits the future use, production, transfer, and stockpiling of cluster munitions, which would be contrary to the object and purpose of the Convention “to end for all time” the suffering caused by cluster munitions. •

Responding the impact of explosive weapons

Richard Moyes | International Network on Explosive Weapons

The UN Secretary-General, in his message to September's Second Meeting of States Parties to the Convention on Cluster Munitions in Beirut, once again urged the international community to take action against the use of explosive weapons in populated areas. This reflects the fact that this pattern of violence is increasingly being recognised as a distinct issue of humanitarian concern.

Whether it is the shelling of market places in Mogadishu, airstrikes in villages in Afghanistan, car bombs in Iraq, or children killed by mortars in Gaza, the combination of explosive force and dense populations produces a predictable pattern of suffering. The use of explosive weapons in populated areas tends to cause high levels of harm to individuals and their communities, yet such incidents have often been considered a normal, if unfortunate, part of conflict or political violence. A new NGO partnership, the International Network on Explosive Weapons (INEW)—founded by Action on Armed Violence, Handicap International, Human Rights Watch, IKV Pax Christi, Medact, Norwegian People's Aid, Oxfam, and Save the Children UK—believes that this pattern can be challenged and deaths and injuries prevented.

Explosive weapons use blast and fragmentation to kill and injure people in the area where they detonate, as well as to damage objects, buildings, and infrastructure. They encompass a broad spectrum of weapons, from small hand grenades to large air-dropped bombs and multiple launch rocket systems. Despite this diversity in functioning and size, these weapons share the technical characteristics of blast and fragmentation around the point of detonation.

These weapons are also treated as a broad category in the common practice of states: they are generally excluded from use in domestic policing. Although police forces may have recourse to lethal force in the form of firearms, and other force options such as chemical sprays, explosive weapons are rarely considered acceptable as tools of policing because of the risk they present to people who are not the targets. So for states, the transition to the use of explosive weapons indicates a shift from 'policing' to a more aggressive orientation, where bystanders will be exposed to potentially deadly risk.

Media monitoring by the UK NGO Action on Armed Violence has identified the use of explosive weapons in populated areas in 82 countries and territories between October 2010 and 31 August 2011. Of the 19,545 people killed and injured in those incidents, approximately 87% were civilians. Save the Children, have highlighted the particular impact of this pattern of violence on children.

Beyond these direct deaths and injuries, destruction of infrastructure vital to the civilian population, including water and sanitation, housing, schools, and hospitals, results in a pattern of wider, long-term suffering. Victims

and survivors of explosive weapons can then face long-term challenges of disability, psychological harm, and social and economic exclusion.

The incidents that produce this pattern of harm include attacks by both state and non-state actors. Some are part of established 'armed conflicts,' others are not.

This year, the UN's humanitarian chief, Valerie Amos, has consistently expressed her grave concern over the harm caused by the use of explosive weapons in populated areas in the context of violence in Cote d'Ivoire, Libya, and Sudan.

In response to this pattern of harm there are three tracks of response that can be worked through:

A first track can raise questions about the acceptability of certain explosive weapons when used in populated areas. Weapons that are particularly inaccurate or have substantial area-effects, if used in areas where civilians are known to be concentrated, are very hard to reconcile with the moral obligation to keep civilian harm to a minimum. For example, Amnesty International has said in response to the use of "Grad" rockets in Misratah that, "these rockets are indiscriminate weapons which cannot be directed at a particular target and their use may amount to war crimes."¹ Previously, Human Rights Watch has highlighted the indiscriminate effects of heavy artillery in populated areas.² The broad pattern of concern identified by INEW member organisations provides a basis for challenging the acceptability of such weapons in areas of civilian concentration.

A second track should recognise that use of explosive weapons by a state amongst its own population is an indicator of a form of crisis unfolding. Such incidents illustrate an orientation by the state to its citizens that accepts their exposure to high levels of risk, and that is at odds with normal standards of protection enshrined in national legislation and human rights law. The use of explosive weapons should be explicitly adopted into the array of indicators used for purposes of early warning, conflict prevention, and prevention of grave violations because it suggests a trajectory of violence escalating and protection being weakened. The recent crisis in Syria has been an example of a decision by a government to shift towards the use of explosive weapons against its own population, in this case shelling of residential areas by tanks. This decision to use explosive weapons has been accompanied by an increasing sense amongst many observers that the government is losing legitimacy.

Finally, concern at the impact of explosive weapon use in populated areas can provide another lens through which to view certain patterns of violence that are otherwise seen in political terms, often under the label of terrorism. This categorisation based on 'motivation' is open to political manipulation—with different groups using

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Does Unmanned make Unacceptable? An exploration of the debate on the use of drones and robots on the battlefield

Wim Zwijnenburg | IKV Pax Christi

In recent decades, the use of drones has risen sharply. At the same time, only a few states use armed drones. It is certain, however, that further development in robotics for military use will lead to more countries facing the decision of whether to acquire armed and even autonomous robots.

IKV Pax Christi's report *Does unmanned make Unacceptable* has argued that unmanned systems can play a useful role in supporting troop operations. At the same time, it has drawn attention to the downside of unmanned systems: unmanned systems cannot win a war. Moreover, there are several important ethical objections to using armed, unmanned systems. Does using drones not make it too easy to kill? Does a drone operator located thousands of miles away from his/her target have adequate information to make life or death decisions?

It is clear that there have been civilian casualties in operations involving armed drones. So far however, an extensive analysis is lacking. It is also unclear what the legal implications of deploying drones are. Are drone operators a legitimate target? Does this expand the battlefield? What are the rules for the proliferation of robot technology? There are also many questions about extrajudicial killings. Are they legal? If they are, are they effective? In other words, do they contribute to stabilizing a conflict situation? These questions, among others, are more prominent with the increasing prevalence of drone use. When considering using drones, it is important to take into account their ethical and legal implications and not just their practical military pros and cons. This is not simply about technological progress, but a question of the responsible use of new technology.

Unmanned warfare is not by definition a good idea. Responsible decisions must include a reliable assessment of the objectives. States currently using drones must be more open about disclosing their use and their effects on the ground. How many civilian casualties has their use resulted in? How do civilians living in the areas where they are used perceive them?

It is important for new weapon technologies to be considered against ethical and juridical principles before they are put to use. The deciding factor must be whether or not deployment of a new technology in combat increases or decreases capacity to protect civilians. There must be a responsible balance between the safety of soldiers and the safety of civilians. The deployment of robots is much safer for soldiers, but do they benefit the civilians these soldiers are supposed to be protecting?

Initial assessment against ethical and juridical principles leaves us with negative feelings about the deployment of armed or autonomous robots. Armed unmanned systems satisfy a desire in our society to wage war without putting our own people at risk. This urge seems to

be based on the misconception that wars can be waged clinically. Deploying robots and drones can make it easier to use violence, and that, in turn, can result in escalation of violence and conflict. Humans must remain in control if they engage in warfare. They are the ones who must draft the interpretations and make the decisions. This may never be left to computers or computer-generated data. Unarmed and unmanned aircraft can help soldiers to distinguish better between combatants and civilians. But the footage and intelligence gathered are only useful when they can be processed and interpreted. Continuous aerial surveillance without adequate interpretation or corroboration from other sources can lead to a one-dimensional approach to the complex situation on the ground. This approach also leads to more civilian applications and surveillance duties for drones while side-stepping discussions on their desirability and effectiveness.

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Explosive weapons (cont.)

the label to suit their own ends. The problem of explosive weapons in populated areas does not come loaded with that same political baggage. Yet it allows us to see an international pattern of harm from such violence that should be recognised as a significant humanitarian concern.

In 2011–2012, INEW will be building up a wider civil society partnership to work on these themes, and is calling on states and other actors to take action to address this pattern of harm. More information, including for organisations interested in joining INEW, can be found on the website: www.inew.org

Further background information can be found on the website of the United Nations Disarmament Research Institute project on explosive weapons: www.explosive-weapons.info.

Richard Moyes is the Coordinator of INEW.

Notes

1. Amnesty International, *Libya: Renewed Rocket Attacks Target Civilians in Misratah*, 24 June 2011; see also Amnesty International Public Statement, 23 June 2011 (IOR 63/002/2011), African Union must prioritize the protection of civilians in conflict situations, "Pro-al-Gaddafi forces used inherently indiscriminate weapons including those banned internationally such as anti-personnel mines and cluster bombs, and artillery, mortars and rockets in residential areas" [emphasis added]
2. Human Rights Watch, *Israel: Stop Shelling Crowded Gaza City – Effect of 155mm Artillery Indiscriminate in Populated Areas*, 16 January 2009. •

Looking forward to a successful 2012 on small arms and light weapons

Dr. Mirjana Dokmanovic | International Action Network on Small Arms and Light Weapons

They say that success is ninety percent preparation. With this in mind, the success of two milestone events next year related to small arms and light weapons (SALW)—the Review Conference of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit trade in Small Arms and Light Weapons In All Its Aspects (UNPoA); and negotiating the Arms Trade Treaty (ATT)—may be in part shaped by outcomes of this year's First Committee. This month ahead is an opportunity to gather momentum amongst member states and civil society alike. The responsibility of non-governmental representatives is to bring voices of civil society to discussions and to give a human face to facts, reports, and resolutions. We will aim to ensure that these views and perspectives are considered and taken into account at all levels and in all aspects of SALW related work of First Committee.

As we know, the widespread prevalence and easy availability of SALW, their misuse, and illegal trade impede global efforts to reduce gun violence. The 2011 Small Arms Survey reports that the annual global authorised trade in SALW and their ammunition is estimated to be more than USD 7 billion. The value of undocumented trade cannot be determined with any specificity, but may run in the billions as well. The trade in SALW can be considered the least transparent of all weapons systems. In his 2011 report on small arms (S/2011/255), the UN Secretary-General has noted that in many countries, because of a lack of regulation and controls, it is too easy for small arms to fall into the hands of recipients who use them to commit violations of international humanitarian or human rights law or divert them to the illicit market through theft, leakage, and corruption.

Therefore, we welcome the positions expressed by both developed and developing countries at the 2010 First Committee session acknowledging the problems of the illicit trade and unlawful use of SALW as dangerous impediments to peace, national and human security, development, and achieving the Millennium Development Goals. As more and more member states report on matters related to small arms and light weapons and ammunition, we suggest that the Group of Governmental Experts on the UN Register on Conventional Arms include the issue of small arms and light weapons in their sessions in 2012. This would facilitate debate on the UN policy documents related to SALW.

We want to see a strong and international legally-binding instrument on the conventional legal arms trade that includes SALW and ammunition, but we know that it cannot and should not replace the UNPoA. The UNPoA is focused on preventing the illicit small arms trade, and both instruments should complement each other. An effective Arms Trade Treaty (ATT) will accompany the

goals of the UNPoA in efforts to stop irresponsible and illicit trade of SALW. Civil society remains determined to secure political commitment from member states for the successful continuation of the UN small arms process.

This is why we will not stop in our efforts to advocate for including SALW and ammunition into the scope of the future ATT. The inclusion of both is vital if the ATT is to be effective in saving lives and reducing serious injury to people around the world. It is also of crucial importance to include criteria in an ATT that would prevent a transfer that would perpetuate a pattern of, or facilitate high levels of homicides with firearms.

It is also important that measures to prevent gender-based violence and sexual violence against women are part of the ATT. The 2011 UN Secretary-General's report acknowledged the victimisation of women through gender-based violence, including rape, violence in the home, and sexual exploitation as an important and often under-recorded consequence of armed violence. Gender roles must be considered in terms of the diverse impacts of SALW on men, women, boys, and girls, and the different points of engagement for positive action. We welcome the interest of those member states who have already highlighted and supported the importance of gender perspectives in the field of small arms control.

The year ahead is a crucial time for us all, civil society and member states alike. We carry the hopes and dreams of millions as we work towards making people safer by doing our part in supporting and assisting with the implementation of regulations and controls on SALW. Civil society will do all that it can to ensure that both the Review Conference and the ATT negotiations have outcomes that benefit human security and that will support rather than supplant each other.

Dr. Mirjana Dokmanovic is the Director of IANSA from 1 September 2011. •



What next for NATO?

Susi Snyder | IKV Pax Christi

Despite NATO member commitments at the 2010 nuclear Non-Proliferation Treaty (NPT) Review Conference to, *inter alia*, reduce the reliance on nuclear weapons in security doctrines, the 2010 NATO summit proclaimed that “NATO would remain a nuclear alliance as long as nuclear weapons exist”.

All NATO members have signed and ratified the NPT, all NATO members are bound to the decisions of the Review Conference. NATO’s 2010 Strategic Concept commits the alliance to “the goal of creating the conditions for a world without nuclear weapons – but reconfirms that, as long as there are nuclear weapons in the world, NATO will remain a nuclear Alliance.” This seems to be a direct contradiction to the agreement made by these same states during the NPT Review Conference.

For decades, the Non-Aligned Movement has raised concerns about NATO’s nuclear sharing policy. At the 2010 NPT Review Conference, the NAM advocated for these concerns to be addressed in the final document action plan. The NAM proposed language for the final document specifically calling on the nuclear weapons states to “withdraw nuclear weapons stationed on the territories of non-nuclear-weapon States in accordance with article I and II of the Treaty”. The proposed language also took into account the (then) forthcoming NATO Strategic Concept Review when the NAM suggested that nuclear weapon states should “abolish the role of nuclear weapons in all military and security doctrines as well as policies, and in strategic concepts of military and political alliances, in order to facilitate the process of their total elimination”. While this language was not adopted by NPT state parties, the agreement in the final document to “address the question of all nuclear weapons regardless of their type or their location as an integral part of the general nuclear disarmament process” and “to further diminish the role and significance of nuclear weapons in all military and security concepts, doctrines and policies” was agreed by consensus.

NATO members are currently undergoing a Defence and Deterrence Posture Review (DDPR) meant to define an “appropriate mix” between nuclear and conventional weapons and missile defence needed to uphold Alliance commitments to collective self-defence. The DDPR process began with a series of brainstorming sessions and seminars among members of the North Atlantic Council. The Terms of Reference for the process were agreed earlier in 2011 and the process is meant to be concluded by the time of NATO’s next summit in Chicago from 20 to 21 May 20-21 2012.

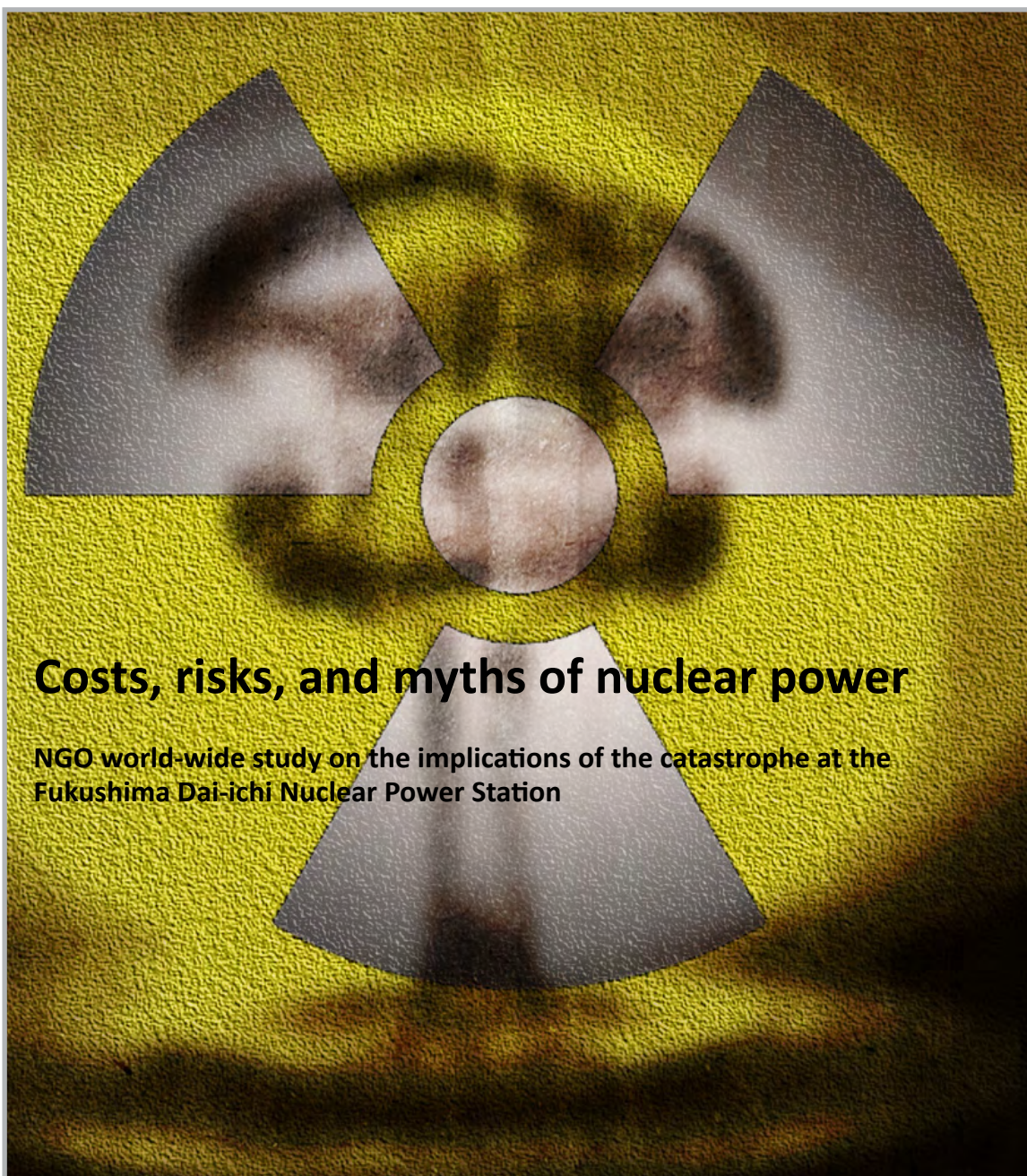
Aside from defining the appropriate mix of nuclear, conventional, and missile defence, other challenges await NATO in preparing for this coming summit. Not least is the need to, once again, redefine itself and its re-

lationship with Russia. NATO Secretary General, Anders Fogh Rasmussen, is hoping that agreement with Russia will be reached on missile defence cooperation. This has been a sticking point for relations between the two entities, and while agreement in principle was reached at the Lisbon Summit (November 2010), the devil remains in the details.

The role of US forward deployed sub-strategic (or tactical) nuclear weapons in five European countries is also going to be a point of contention leading up to the summit. Previous justifications for keeping these weapons in Belgium, Germany, Italy, Turkey, and the Netherlands, including the risk of these states otherwise acquiring nuclear weapons, are recognised as no longer valid. Instead, the current argument used in Brussels to retain the status quo is that the weapons represent a shared burden.

While at one time this may have been the case, the only way that the burden of the weapons is shared across the Alliance is by providing the illusion of a voice in decision making around them. The Nuclear Planning Group (all NATO members except France) discusses the potential use of the weapons, or the possibility of defining a declaratory policy for the alliance. Not all members participate equally in the actual hosting, training, flight support, or any other practical implementation of this “burden sharing”. Many NATO representatives recognise that when it comes down to an actual decision to ever use the weapons, the ultimate decision-maker will not be the Nuclear Planning Group, will not be the North Atlantic Council, but will be the United States. So the illusion of sharing the burden is nothing more than that—an illusion. The weapons themselves are simply a placeholder to make some alliance members feel better about the US commitment to their security. They are a representation of cold war thinking, a remnant of the past. These weapons are not necessary to secure European security, and are actually detracting from it as they are an obstacle towards further strengthening of the NATO-Russia relationship. As long as US nuclear weapons remain in Europe, European security will not be assured and NATO members will not move forward on their other international obligations and political commitments to seek a world free of nuclear weapons.

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Costs, risks, and myths of nuclear power: NGO world-wide study on the implications of the catastrophe at the Fukushima Dai-ichi Nuclear Power Station is a collaborative work of non-governmental researchers, scientists, and activists. It was released on 11 September 2011, six months after the disaster at Fukushima and in advance of the high-level meeting on nuclear safety and security that UN Secretary-General Ban Ki-moon convened at the United Nations on 22 September. The report provide non-government perspectives of the range of issues related to nuclear power. This report includes civil society analysis of nuclear power infrastructure and government policies from around the world. It also articulates arguments against the common myths of nuclear power in its relationship to safety, the environment, renewable energy, climate change, economics, and more.