

BANNING NUCLEAR WEAPONS

AN EFFECTIVE MEASURE FOR DISARMAMENT

OCTOBER 2014



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Reaching Critical Will is a programme of the
Women’s International League for Peace and
Freedom

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Reaching Critical Will is the disarmament pro-
gramme of the Women’s International League
for Peace and Freedom (WILPF), the oldest
women’s peace organization in the world.
Reaching Critical Will works on issues
related to disarmament and arms control of
many different weapon systems; militarism and
military spending; and gendered aspects of the
impact of weapons and of disarmament
processes.

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INTRODUCTION

Frustrated with the failure of nuclear-armed states to effectively pursue (let alone achieve) nuclear disarmament, the New Agenda Coalition (NAC) explored a range of options for moving forward in a working paper they tabled at the 2014 nuclear Non-Proliferation Treaty (NPT) Preparatory Committee.¹ These options included a nuclear weapons convention, a ban treaty, a framework agreement, and a hybrid. This paper examines the first three of these options and argues that in the current context the most effective and achievable measure for nuclear disarmament is a treaty banning nuclear weapons. Such a treaty would provide the framework for the prohibition and elimination of nuclear weapons, bridging “the gap between the aspirations for nuclear disarmament and the seemingly intractable legal and political landscape that exists today.”²

Under article VI of the NPT, all states parties are legally obligated to pursue “effective measures” to end the nuclear arms race and achieve nuclear disarmament. Yet in the 44 years since the Treaty entered into force, no such measures have been pursued.³

While it has been largely successful in preventing proliferation, “the NPT has some inherent shortcomings and faces significant challenges stemming primarily from implementation inconsistencies and imbalanc-

es.”⁴ Principal among these is lack of implementation of disarmament obligations and commitments.

As the NAC paper outlines, the nuclear-armed states have rolled back or failed to implement commitments agreed in 1995, 2000, and 2010. They have also failed to abide by the unequivocal undertaking to accomplish the elimination of their nuclear arsenals. While overall numbers of nuclear weapons have diminished since the end of the Cold War, modernisation programmes have ensured that the possession of “smaller but still potentially world-destroying nuclear arsenals” will continue into the indefinite future.⁵

The NAC has previously asserted that the key to maintaining the integrity and sustainability of the NPT is through the elaboration of “a clear, legally binding, multilateral commitment to achieve nuclear disarmament, which would underpin and guide all future efforts towards nuclear disarmament.”⁶ This call has been echoed by the vast majority of governments and civil society groups.⁷ It is in this context that the NAC and others have put forward concrete options for consideration.

This briefing paper explores the options outlined in the NAC paper and provides a brief assessment of the benefits and challenges of each.

OPTIONS AND ANALYSIS

A nuclear weapons convention (NWC)

The NAC paper describes a “comprehensive nuclear weapons convention” as a treaty providing for the time-bound, transparent, verifiable, and irreversible elimination of nuclear weapons. A model convention was produced by civil society in 1997 and updated in 2007.⁸ It submitted to the General Assembly and the NPT review process as an official document by the governments of Costa Rica and Malaysia.

Benefits: A nuclear weapons convention as conceived by the 2007 model would provide for the time-bound, transparent, verifiable, and irreversible elimination of nuclear weapons. If it were negotiated, adopted, and fully implemented by the nuclear-armed states, it would result in the elimination of nuclear weapons and provide a structure and system for the maintenance of a nuclear weapons free world.

Challenges: The principal shortcoming of this option is that it places the onus on the nuclear-armed states to lead the process. But under prevailing domestic and international political circumstances, the nuclear-armed states are unlikely to support any serious efforts towards the elimination of nuclear weapons in the foreseeable future. The nuclear-armed states and some of their allies frame the convention as a possible final step in a decades-long process at best, and at worst, an always-out-of-reach “vision”. Either way, the convention is viewed by these states as a long way off. Even amongst the states that promote the near-term negotiation of a nuclear weapons convention, many have proposed that work take place only within the Conference on Disarmament. Progress in that forum seems unrealistic against the background of an almost two-decades long failure to adopt a programme of work and a deeply embedded culture of geopolitical posturing.

A nuclear weapons ban treaty

The NAC paper describes a ban treaty as a “short legally binding instrument that codifies in relatively simple terms the detail of prohibitions implicitly assumed by all of the non-nuclear-weapon States when they joined the Non-Proliferation Treaty.”⁹ The paper notes that a ban treaty would not have to prescribe legal or technical provisions for the elimination of nuclear weapons, but could do so later within the treaty or in future arrangements. The NAC suggests viewing such a treaty as a short-term instrument building upon existing obligations within a longer-term process towards elaborating effective measures for achieving and maintaining a nuclear weapons free world. As with the NWC, the NAC paper indicates that a treaty banning nuclear weapons would complement the CWC and BTWC in prohibiting weapons of mass destruction. The NAC also argues that a ban treaty could establish existing NPT obligations and commitments “on a more clearly defined footing.”¹⁰

Benefits: Whether it is conceived of as a direct, stand-alone instrument that prohibits any activity related to the use, development, production, stockpiling, transfer, acquisition, deployment, and financing of nuclear weapons, or as a comprehensive framework that also provides for the elimination of nuclear weapons and maintenance of a nuclear weapons free world, the ban treaty has several key benefits. It does not rely on the nuclear-armed states’ acquiescence. It empowers non-nuclear-armed states to establish a clear legal standard rejecting nuclear weapons and enhancing the stigma against them. Without the nuclear-armed states, such a treaty would not in itself constitute disarmament, but its provisions could very well provide significant incentives for disarmament in the future. It is achievable in the near future and provides a unique opportunity for mobilisation of both states and civil society.

Challenges: A key challenge to the pursuit of a treaty banning nuclear weapons will be building confidence amongst committed states that there is legitimacy and relevance, as well as transformative potential, in pursuing a treaty prohibiting nuclear weapons even without the nuclear-armed states. Other challenges could be that some states might think such an instrument would be incompatible with existing security and defence arrangements; or that it would be antagonistic towards the nuclear-armed states and would receive severe pushback.

A framework of agreements

The NAC paper also suggests a framework arrangement that would elaborate a series of mutually

supporting instruments that would address various elements of achieving and maintaining a nuclear weapons free world. It suggests that the NPT would be at the center of the framework and that additional instruments could include the Comprehensive Test Ban Treaty (CTBT), a fissile materials cut-off treaty (FCMT), an NWC or a nuclear weapons ban treaty, and “an instrument establishing the necessary technical, legal and other arrangements for the implementation and oversight of related nuclear disarmament activities and nuclear non-proliferation safeguards within the arrangement.”¹¹

Benefits: A recent paper by the Middle Powers Initiative usefully distinguishes between a framework of instruments and a framework agreement.¹² These two approaches are conflated in the NAC paper but there are important differences. A *framework agreement* could be conceived in the same way as a ban treaty—it could consist of prohibitions against nuclear weapons possession and related activities and provide for further negotiations on issues directly related to the achievement and maintenance of a nuclear weapon free world. The NAC’s suggestion of an instrument establishing an institution for nuclear disarmament activities and non-proliferation safeguards is particularly interesting in this regard, as currently there is no such institution to facilitate or ensure compliance with disarmament obligations.

Challenges: However, the NAC’s suggestion that this option would include additional instruments such as the CTBT and FMCT aligns it with the “step-by-step” and “building blocks” approach to nuclear disarmament consistent with a *framework of instruments*. This approach initially emerged in the 1950s, due to ongoing deadlock in negotiations between the United States and Soviet Union.¹³ The idea was to pursue disarmament in phases under a single agreement. But no such negotiations have taken place since 1965. By 1977, the General Assembly decided that nuclear disarmament should be achieved pursuant to separate agreements providing for partial disarmament measures.¹⁴ The sole objective remained the complete elimination of nuclear weapons and their delivery systems. But neither the steps identified at that time nor the complete elimination of nuclear weapons have been achieved or even effectively pursued.

A hybrid arrangement

The NAC paper suggests that individual elements of the other three options elaborated in its paper could be combined or added to in order to devise an instrument or set of instruments. This option is not assessed in this paper.



MAKING THE CASE FOR THE BAN TREATY

Of the options considered by the NAC paper, a treaty banning nuclear weapons would be the most feasible and effective contribution to nuclear disarmament at this time.

The NAC's description of a ban treaty is largely consistent with the formulation suggested by Reaching Critical Will and Article 36 in their recent paper on a treaty banning nuclear weapons.¹⁵ However, these two civil society organisations see the ban treaty itself as a framework agreement. In their assessment,

banning nuclear weapons would entail the development of an international legal instrument that would prohibit its parties, their nationals, and any other individual subject to its jurisdiction from engaging in any activity related to the use, development, production, stockpiling, transfer, acquisition, deployment, and financing of nuclear weapons, as well as assistance with these acts under any circumstances. It should provide a framework for the elimination of nuclear weapons within agreed timeframes, for those states with nuclear weapons that join. Furthermore, it should recognise the responsibilities of states to ensure the rights of victims of nuclear weapon use or testing, require decontamination and remediation of affected areas, and provide for cooperation and assistance to meet these obligations.

Whilst the treaty's prohibitions should be clear up front, certain details of implementation could be agreed later by states working under the framework that it provides. For example, technical provisions relating to processes for the verified elimination of stockpiles could be negotiated and agreed subsequently by state parties as required after the treaty has entered into force. Such an approach might be helpful because it would allow the instrument to be developed in the short term by committed states, while recognising that nuclear-armed states not necessarily participating initially would have particular interests in crafting such provisions. Leaving such components open for more detailed delineation in the future might also avoid those specific elements being held up later by some states as excuses not to join the treaty.¹⁶

In this conception, the ban treaty is consistent with the objectives of both a framework agreement and an NWC. However, one crucial difference is that the ban treaty avoids the deadlock of the step-by-step approach to nuclear disarmament. Another is that it does not require waiting for participation of the nuclear-armed states to commence negotiations.

Avoiding deadlock

At best, the step-by-step approach established in 1977 has been largely overtaken by events mainly because

its objectives have long since been realised in practice. A *de facto* nuclear testing moratorium is observed by most nuclear-armed states, while most sites for the conduct of nuclear testing and production of fissile material in the five NPT nuclear-armed states have been dismantled or otherwise have not operated in decades.

At worst, the step-by-step approach has arguably legitimised the continued possession of nuclear weapons. It has entrenched the *status quo* of a select group of countries possessing nuclear weapons indefinitely. The nuclear-armed states have maintained and are now modernising their arsenals, planning for a future with rather than without these weapons. At the same time, they are pursuing stricter non-proliferation measures to ensure that they retain their exclusive hold over these weapons of mass destruction.

These countries each have different, apparently mutually exclusive, priorities for the essential "next step" and opposing perspectives on what is preventing achievement of their objectives. They use the lack of agreement on one step as a pretext for no progress at all, creating a perpetual stalemate in the traditional UN disarmament fora.

Those states choosing to incorporate nuclear weapons in their security doctrines facilitate this situation by supporting variations of the step-by-step approach. Continuing to call for "pragmatism," these states disingenuously pay lip service to the "ultimate" goal of a nuclear weapons free world while supporting an approach that has given no indication of the possibility of achieving it.

A TREATY BANNING NUCLEAR WEAPONS

Developing a legal
framework for the
prohibition and elimination
of nuclear weapons

The NPT nuclear-armed states and some nuclear weapon-dependent states argue that any activities not explicitly sanctioned by the 2010 NPT Action Plan will distract and detract from “progress” on these steps. But article VI of the NPT does not specify a step-by-step approach. While NPT outcome documents from 1995, 2000, and 2010 outline a variety of steps, the principles and objectives outlined in 1995 make it clear that these are not necessarily exhaustive or sequential lists.¹⁷

Moving forward without the nuclear-armed states

Article VI also makes it clear that nuclear disarmament is the responsibility of all states. And the 2010 NPT outcome document affirmed that all states “need to make special efforts to establish the necessary framework to achieve and maintain a world without nuclear weapons.”¹⁸ Failure to effectively implement the Action Plan “will need to be met with resolve for concrete action by non-nuclear-armed states so as to avoid further entrenchment of the status quo of the indefinite possession of nuclear weapons.”¹⁹

The NAC has argued that the failure to establish a “structured framework” to pursue nuclear disarmament “has meant that the process of disarmament has taken on the appearance of a voluntary endeavour to be undertaken by the nuclear weapons states at a pace, in a manner, and on terms to be decided exclusively by them.”²⁰ This “appearance” is further entrenched by treating the nuclear-armed states as essential participants in any negotiations on nuclear weapons. This “gives them a decisive voice over the initiation, scope, pace, and the success or failure” of such negotiations.²¹

Disarmament will require states to reject nuclear weapons as instruments of security and to disengage from nuclear weapons activities. A ban treaty could provide non-nuclear-armed states with the opportunity to directly challenge the acceptability of nuclear weapons for any state under any circumstances, and thus facilitate further legal, political, economic, and normative measures to eliminate nuclear weapons.²²

CONCLUSION

The NAC’s initiative to explore options for effective measures for nuclear disarmament is a welcome development. Recent international discussions about the humanitarian impact of nuclear weapons have brought to the fore the catastrophic consequences that any nuclear weapon detonation would cause. New evidence of the risk posed by existing stockpiles of nuclear weapons underscores the urgency of taking action now. And as the NAC argues, “the NPT framework for nuclear disarmament lacks the mechanisms to bring about the urgency, focus and clarity necessary for the Treaty to achieve its own objective.”²³ While the NPT provides space for discussions and legitimacy to efforts on nuclear disarmament, on its own it will not precipitate disarmament.

A treaty banning nuclear weapons is currently the most achievable, feasible, practical, logical, and impactful measure for advancing nuclear disarmament. It is not a radical proposal—human society has come together many times in the past to prohibit and eliminate indiscriminate or inhumane weapons. And it has several benefits in the current context:

- It circumvents the stalemate of the traditional step-by-step approach.
- It can be undertaken now, even without the participation of the nuclear-armed states.
- It can be crafted in such a way as to establish a

comprehensive set of prohibitions against nuclear weapons and provide a framework under which they can be eliminated.

- It is consistent with the other treaties prohibiting and eliminating weapons of mass destruction and other unacceptable weapons.
- It would be complimentary to existing instruments on nuclear weapons such as the CTBT and nuclear weapon free zone treaties.
- It would be entirely consistent with the NPT.

The NPT itself sets out both the rationale and obligation to ban nuclear weapons. The Treaty highlights the catastrophic consequences of the use of nuclear weapons as its motivation for preventing proliferation and achieving disarmament. It specifically seeks to end the arms race and the production of nuclear weapons, and to achieve the total elimination of nuclear weapons through good faith negotiations.

Banning nuclear weapons would promote each of the goals and obligations as set forth by the NPT. It would make operational the Treaty’s goal of achieving and maintaining a nuclear weapon free world. Growing tensions and frustrations within the NPT context signal the urgent need to finally achieve the implementation of article VI and related disarmament commitments. A treaty banning nuclear weapons could be instrumental in this regard.



NOTES

1. NPT/CONF.2015/PC.III/WP.18, "Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons," Working paper submitted by Ireland on behalf of the New Agenda Coalition (Brazil, Egypt, Ireland, Mexico, New Zealand and South Africa), 2 April 2014.
2. Ray Acheson, Thomas Nash, and Richard Moyes, *A treaty banning nuclear weapons: Developing a legal framework for the prohibition and elimination of nuclear weapons*, Reaching Critical Will and Article 36, April 2014, p. 3.
3. Michael Spies, "The Emergence of Partial Nuclear Disarmament and the Step-by-Step Approach," ACUNS/ASIL Summer Workshop on International Organization Studies, Vienna, 20–26 July 2013.
4. Ray Acheson and Beatrice Fihn, *Preventing collapse: the NPT and a ban on nuclear weapons*, Reaching Critical Will, October 2013, p. 3.
5. See *Assuring destruction forever: 2014 edition*, Reaching Critical Will, May 2014.
6. A/AC.281/WP.10, "Elements for the achievement and maintenance of a world without nuclear weapons," Working paper submitted by the New Agenda Coalition to the Open-ended Working Group, 2013, paragraph 14.
7. Each year more than 130 governments vote in favour of a General Assembly resolution calling, among other things, for the negotiation of a nuclear weapons convention. A growing number of countries are now also calling specifically for the negotiation of a treaty banning nuclear weapons. For a sampling of statements in support of such a treaty, see the ICAN website at <http://www.icanw.org/why-a-ban/positions/>.
8. *Securing Our Survival: The Case for a Nuclear Weapons Convention*, International Physicians for the Prevention of Nuclear War, International Association of Lawyers Against Nuclear Arms, International Network of Engineers and Scientists Against Proliferation, 2007, <http://www.inesap.org/book/securing-our-survival>.
9. NPT/CONF.2015/PC.III/WP.18, *op. cit.*, p. 14.
10. *Ibid.*, p. 14.
11. NPT/CONF.2015/PC.III/WP.18, *op. cit.*, p. 16.
12. John Burroughs, *A Beacon of Light, Briefing Paper*, Middle Powers Initiative, September 2014.
13. Spies, *op. cit.*
14. Final Document of the Tenth Special Session of the General Assembly, S-10/2.
15. Acheson, Nash, and Moyes, *op. cit.*
16. *Ibid.*, pp. 10–11.
17. See John Borrie and Tim Caughley, "After Oslo: Humanitarian Perspectives and the Changing Nuclear Weapons Discourse," UNIDIR, 2013.
18. NPT/CONF.2010/50 (Vol. I), "Final document, Volume I," 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, New York, 2010, p. 20.
19. Acheson, Nash, and Moyes, *op. cit.*, p. 18.
20. NPT/CONF.2015/PC.III/WP.18, *op. cit.*, p. 7.
21. Acheson, Nash, and Moyes, *op. cit.*, p. 17.
22. For examples of such measures, see pp. 24–29 of Acheson, Nash, and Moyes, *op. cit.* and John Borrie, "Humanitarian Reframing of Nuclear Weapons and the Logic of a Ban," *International Affairs* 90, 2014, pp. 625–646.
23. NPT/CONF.2015/PC.III/WP.18, *op. cit.*, p. 3.

**'IN THE PAST, WEAPONS HAVE BEEN
ELIMINATED AFTER THEY HAVE BEEN
OUTLAWED. WE BELIEVE THIS IS THE PATH
TO ACHIEVE A WORLD WITHOUT NUCLEAR
WEAPONS.'** **NAYARIT CHAIR'S SUMMARY**

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