

## A Nuclear Weapons Convention: Now We Can

As world leaders line up behind President Barack Obama's vision of a world free of nuclear weapons – an objective that has motivated civil society disarmament campaigns since 1945 – a greater number of governments are now turning their attention to consideration of the multilateral political, legal and technical architecture that would form the sustainable basis for prohibiting and eliminating nuclear weapons.

The use, development and deployment of chemical weapons have been prohibited and are in the process of being eliminated through the 1993 Chemical Weapons Convention. Biological and toxin weapons are prohibited and stigmatised through the 1972 Biological Weapons Convention, even though it lacks an effective verification regime. Following the UN Secretary General's five point disarmament plan, put forward in October 2008, in which he spoke of the need to negotiate a nuclear weapons convention or framework of agreements, in April 2010 the International Committee of the Red Cross (ICRC) and the Interaction Council of former government leaders made similar calls. ICRC President Dr. Jakob Kellenberger argued that preventing the use of nuclear weapons requires fulfilment of existing obligations to pursue negotiations aimed at prohibiting and completely eliminating such weapons through a legally binding international treaty. The Interaction Council's Communiqué argued: A convention prohibiting nuclear weapons should be concluded in the same manner as conventions prohibiting biological and chemical weapons.

Forty years have elapsed since the NPT entered into force, and despite all the talk of a step-by-step process, the Article VI undertaking to pursue nuclear disarmament in good faith remains unfulfilled and nuclear-weapon states still place a dangerously high value on such weapons as indispensable for their own security. Moreover, there is growing recognition that the current NPT regime lacks the powers, authority and tools that are needed to tackle today's nuclear dangers and prevent further proliferation. While agreements to reduce nuclear arsenals have been concluded at the bilateral level (United States and Russia) and there have been unilateral reductions (France and the United Kingdom as well as the United States and Russia), no multilateral nuclear disarmament negotiations of the kind envisaged by the NPT have yet been launched. Recognition of the importance of a clear, comprehensive goal such as a nuclear weapons convention (NWC) was foreshadowed by the 2000 NPT Review Conference's 13 practical steps, which contained the following commitments: An unequivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament to which all States parties are committed under Article VI and Engagement as soon as appropriate of all the nuclear-weapon states in the process leading to the total elimination of their nuclear weapons.

The NPT was an important cornerstone for Cold War non-proliferation. To prevent the spread of nuclear weapons and risks in the 21st century, a nuclear abolition regime must be built, requiring a nuclear weapons convention as the new and more durable cornerstone. Without the tangible goal of a comprehensive abolition treaty, it is too easy for governments to backtrack on incremental steps or bog them down in years of procedural wrangling – as evidenced over the past decade. A NWC is conceived not as achieving complete nuclear disarmament in a single gesture but as providing the legal-normative goal and practical process and means to achieve that end. Negotiating a nuclear abolition treaty would provide a mechanism for fulfilling the security, non-proliferation and nuclear disarmament purposes and obligations enshrined in the NPT. Such negotiations, if undertaken in good faith, would also halt the erosion of the non-proliferation regime, reconstitute and reinforce the important norms, rules and institutions, and engage the nuclear-armed non-NPT states (India, Pakistan and Israel) with NPT Parties (and reintegrate North Korea) in order to construct a universally applicable nuclear restraint and prohibition regime. Preparatory steps that lay the groundwork for negotiations would also help the current non-proliferation and nuclear security rules and instruments to function more coherently and effectively than they do at present. In addition to the political benefits of having the clear goal of a comprehensive abolition regime in sight, the very process of working towards a NWC would build confidence as alternative security approaches are developed during the period of transition. This may take some years, but once the comprehensive treaty goal is accepted, the process of achieving it is likely to prove much quicker than the naysayers predict.

Once deemed the ultimate in strategic force, nuclear weapons are on the way to losing their perceived strategic and social capital, and now represent more of a security problem than an asset. In the 21st century, strategic power and security derive more from a strong economy and stable political system than from military hardware, however numerous and sophisticated. Strategic stability will increasingly be assessed in terms of cooperative security arrangements and sustainable energy and environmental resources and flexibility to meet the critical climate challenges to come. Having already become greatly diminished in their military role, nuclear weapons are already being rebranded as terrorist tools rather than something that responsible states would use. The nuclear threats exchanged between India and Pakistan soon after their May 1998 weapons tests, combined with the desperation of the nuclear ambitions of North Korea and Iran, have revealed the nuclear club in all its blustering fears and pathetic vainglory.

A universal, non-discriminatory ban would remove the sense of double standards which pervades, and weakens, the NPT. And the recognition that nuclear weapons are not legitimate tools of national security or power projection for anyone would enhance the climate in which the negotiation of the verification regime would take place, strengthening the authority and effectiveness of the Convention with regard to universality and preventing non-compliance. The essential rationale of a NWC is that if no state possessed nuclear weapons, any country that pursued them would become a pariah. The pursuit of a NWC would also serve to bring the non-NPT nuclear-armed states into the process, which the NPT has regrettably failed to do in its 40 year history. In this regard, it is noteworthy that both India and Pakistan have long advocated a non-discriminatory nuclear weapons convention. Though that is no guarantee that they will be among the first to kickstart the negotiations process, a non-discriminatory NWC will be far more difficult for them to hold out on than the NPT.

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## **The need for a Nuclear Weapons Convention**

It is anomalous that the international community has developed successful multilateral treaties banning biological and chemical weapons but has not yet tried to establish negotiations to prohibit the use, production and deployment of the most destructive weapon of all. The NPT's unusual distinction between the obligations of a small group of powerful weapons possessors and the rest, the convoluted drafting of article VI and the absence of a firm deadline for nuclear disarmament are complicating factors. But these cannot be treated as excuses two decades after the Cold War ended. The bargain on which the NPT was based is unmistakably clear – those States that did not already have nuclear weapons would not acquire them and those that did possess them would, as the 2010 US Nuclear Posture Review phrased it – forsake them.

The 1996 Advisory Opinion of the International Court of Justice on the Use and Threat of Use of Nuclear Weapons considered all elements of relevant humanitarian and international law and unanimously concluded that there existed an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects – and that this obligation must be performed within reasonable time. The ICJ Opinion inspired a number of civil society scientists, lawyers and nuclear analysts to draft a Model NWC, as summarised in Box 1. This Model NWC drew from a number of existing treaties banning other weapons systems and was intended as a resource to stimulate thinking on what nuclear abolition would entail. It is not presented as a blueprint, and its principal framers are well aware that once negotiations begin in earnest, governments will develop their own approaches and solutions. Nevertheless, it contains much food for thought and practical technical and legal proposals. For example, if a treaty banning the production of fissile materials for weapons is not already in force, as looks likely if the Conference on Disarmament (CD) continues to be deadlocked, such a ban would be encompassed early in the negotiations on a NWC. In this context, issues such as stocks – a major block in current efforts to negotiate a Fissile Materials Cut-Off Treaty (FMCT) – would be coherently addressed, together with consideration of ways to restrict weapon-usable fissile materials currently produced and transported for commercial purposes.

For some years the main visible champions of the Model NWC were Costa Rica and Malaysia, with UN resolutions and strategies that ensured that this text was translated into the primary UN languages and circulated as a UN document. Following the failure of the 2005 NPT Review Conference, the newly-formed International Campaign to Abolish Nuclear Weapons (ICAN) launched an updated, revised version of the Model NWC at the 2007 PrepCom and encouraged more governments to include references to some kind of nuclear abolition treaty in their statements and working papers. In October 2008, UN Secretary-General Ban Ki-Moon put forward a five-point disarmament plan which called for negotiations on nuclear disarmament to be undertaken on a framework of mutually reinforcing instruments or by negotiating a nuclear weapons convention, backed by a strong system of verification, as has long been proposed at the United Nations.

## **Pre negotiations: preparatory work and political pressure**

Although the CD agreed a mandate on 29 May 2009 for a Working Group that would exchange views on practical steps for progressive and systematic efforts to reduce nuclear weapons with the ultimate goal of their elimination, including on approaches toward potential future work of a multilateral character, few now have confidence that it will succeed. This is due in part to its long failure to start negotiations on a fissile materials treaty, which is itself symptomatic of the CD's structural inadequacies and inflexibility. Negotiations on a NWC will be undeniably complex, but fear of the difficulties and the nuclear club's reluctance should not be allowed to prevent the start of a pre-negotiations process.

The challenge is to frame a NWC as both achievable and desirable. President Obama clearly wants this outcome, but the 2010 US Nuclear Posture Review demonstrates timidity in the face of the out-dated but still dominant mindset of Cold War securicrats that continue to hold sway on nuclear policy issues, not only in the United States, but other nuclear-armed states and some of their allies. The difficulties in moving forward with bilateral arms reductions or partial treaties like the FMCT have led some to believe that a nuclear weapons convention will be much harder if not impossible to negotiate. History, however, suggests that political rivalries and hedging are far more likely to be impediments in partial approaches where advantages are selectively instituted for some but not all participants, than in comprehensive negotiations aimed at outlawing and removing a whole class of weapons, thereby removing the strategic value and incentive to block or cheat.

Similarly, the difficulties and instabilities that are evoked to stoke up fears about how to get from low levels of nuclear arms to zero are predicated on present-day assumptions that a nuclear-armed adversary, terrorist or blackmailer could gain advantages by threatening to blow up another country's capital or major cities. Keeping some weapons would not deter a terrorist but it might have the opposite effect of preventing the implementation of policies that would keep nuclear capabilities out of terrorist hands. As the world moves towards nuclear abolition, any leaders contemplating such attacks would be treated as a pariah. When nuclear weapons have no legitimacy, deterrence becomes stronger. The certain knowledge that others would unite to deny them political, territorial or other advantage (and to put them on trial for crimes against humanity) would have a more powerful deterrent effect on potential aggressors than the current unconvincing threats of nuclear retaliation against a country's cities and bases. Historical research and experience indicates that the loss of cities and civilian populations is less decisive in war and would constitute a less effective deterrent than holding the leaders' personal liberty and status at risk.

Problems viewed as technically or politically insuperable now will resolve themselves as the world makes progress in securing nuclear materials, reducing current arsenals, and stigmatising both the possession-deployment of nuclear weapons and their use as immoral, illegitimate and contrary to our humanity and security. Requiring a profound change in the security doctrines and domestic and international policies of some of the major powers, the process of embedding the abolition norms, pre-negotiations and then negotiations will entail actions on three intersecting levels – domestic, international and transnational – and among three interacting sets of actors: governmental, civil society and epistemic (legal, scientific, academic and policy experts, non-governmental as well as in government).

To help leaders in the nuclear-armed states to transform their security infrastructure and prepare the way for a nuclear-free world, it will be necessary to build an international constituency and movement committed to a nuclear abolition treaty. This will require leadership from non-nuclear governments, transgovernmental collaboration between officials from different states, transnational interaction between civil society actors from different states, and cross-level, transboundary engagement, in which partnerships are formed between governmental and nongovernmental actors from different states. These multiple levels of political engagement and policy influence played key roles in bringing to fruition the Comprehensive Nuclear Test Ban Treaty (CTBT) in 1996; the 1997 Mine Ban Treaty; and the 2008 Cluster Munitions Conventions.

The specific conditions and strategies were different in all these cases and those seeking a nuclear weapons convention will need to work their own route, strategies, negotiating body and institutions. Clinging to Cold War institutions and approaches will prove frustrating and self-defeating – just as trying to emulate a process that worked for some other weapon will not necessarily work for nuclear weapons. While it may be too early to say whether negotiations should commence among a committed group of states or a more formal body established under UN auspices, what is foreseeable is that success will depend on building multiple partnerships for expertise sharing, trust building and political pressure. Waiting for the nuclear-armed states to be all on board from the beginning is a recipe for paralysis. In the 1960s, China and France held apart from the Partial Test Ban Treaty (PTBT) and only joined the NPT in 1992, but that did not stop other nuclear-weapon states negotiating those treaties and embedding their norms in international law so that within a few years both hold-outs had become effectively bound by these treaties.

Regime building is a process, and the transition to abolition will need to pay careful attention to security considerations. These would likely include: securing and dismantling warheads and delivery vehicles; securing nuclear materials, facilities and technology; preventing theft and cleaning up contaminated sites to minimise health and environmental harm due to toxic and radioactive materials; deterring break-out and attempts by the current nuclear-armed states to retain a clandestine hedge; addressing rogue proliferators and terrorists; developing collective security approaches to promote peace and provide stability and confidence in place of the nuclear-weapons-related concepts of strategic stability and nuclear deterrence that continue to dominate the mindsets of too many governments.

*The pursuit of a NWC would also serve to bring the non-NPT nuclear-armed states into the process, which the NPT has regrettably failed to do in its 40 year history*

## Basic elements for a Nuclear Weapons Convention

**Preamble:** enshrining the vision, objectives, ideals, context and exhortations

**General Obligations:** A NWC would need to prohibit the development, testing, production, stockpiling, transfer and use of nuclear weapons. States possessing nuclear weapons will be required to destroy their arsenals according to a series of phases. The treaty would also need to prevent the production of weapons-usable fissile material and address delivery vehicles, which would either need to be destroyed or converted to make them non-nuclear capable.

**Phases for Elimination:** A NWC would need to identify steps and stages for the reduction and elimination of nuclear weapons, such as: further deep cuts in the largest arsenals; removal of all weapons from prompt launch and deployment; removing nuclear warheads from their delivery vehicles; disabling the warheads; and placing the fissile material under international controls and safeguards.

**Verification and Implementing Authority:** A NWC would need to establish a comprehensive verification regime backed up by a strong implementing authority.

**International and National Implementation:** Like any modern treaty, a NWC would also require provisions on entry into force; compliance and enforcement; irreversibility and transparency; technology and resources for dismantlement and destruction; securing the nuclear materials (transport, storage and disposal); training and technical infrastructure and resources for verification. In view of the critical security considerations, this treaty should place the barriers to withdrawal extremely high, or else withdrawal following entry into force should not be permitted.



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## What needs to be done?

States Parties should include support for a nuclear weapons convention in their statements and working papers to the 2010 NPT Review Conference and do their utmost to achieve recognition in any final document or disarmament decision of the need to commence preparatory work leading to negotiations on a universal nuclear weapons convention or framework treaty for the sustainable, verifiable and enforceable abolition of nuclear weapons worldwide.

A leadership group of representative governments is needed now to work with civil society in taking the concept of a nuclear abolition treaty forward by convening preparatory talks.

If the nuclear-weapon states continue to resist this objective or call it premature, they should be required to provide clear reasons as to

- why the idea of a comprehensive nuclear weapons treaty is problematic,
- if not now, then when?
- how they envisage fulfilling the NPT's Article VI nuclear disarmament obligation within reasonable time without consideration of a universal nuclear abolition treaty of some kind.



Hibakusha put candelight message in front  
of Hiroshima Bomb Dome

## Further reading

Rebecca Johnson, Rethinking the NPT's Role in Security: 2010 and Beyond, International Affairs 86:2, 2010, pp 429-445.  
<http://www.chathamhouse.org.uk/publications/ia/archive/view/-/id/2466/>

NPT/CONF.2010/PC.I/WP.17 Model Nuclear Weapons Convention - working paper submitted by Costa Rica (see also UN Doc A/C.1/52/7)  
<http://www.reachingcriticalwill.org/legal/npt/prepcom07/workingpapers/17.pdf>

International Campaign to Abolish Nuclear Weapons (ICAN), Securing Our Survival (SOS): The Case for a Nuclear Weapons Convention, April 2007.  
<http://www.icanw.org/securing-our-survival>

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