



Non-Proliferation Treaty Review Conference 2010

Nuclear Weapons Convention Briefing Paper

Prepared February 2010

1. Context

The sixth Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) will take place in New York from 3 to 28 May 2010. The NPT is generally considered to be the cornerstone of the current non-proliferation regime, and Article VI of the treaty contains an obligation on States parties to pursue in good faith negotiations for nuclear disarmament. In 1996 the International Court of Justice, in its advisory opinion on the Legality of the Threat or Use of Nuclear Weapons,¹ affirmed that all States are required to bring such negotiations to a conclusion under strict and effective international control.

Each year since the advisory opinion was handed down roughly two-thirds of all member States of the United Nations have voted in favour of a General Assembly resolution entitled 'Follow-Up to the Advisory Opinion of the ICJ on the Legality of the Threat or Use of Nuclear Weapons'.² This resolution calls on all States immediately to fulfil their obligation under Article VI of the NPT by commencing negotiations leading to an early conclusion of a nuclear weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination.

The NPT Review Conference in May will provide an opportunity for States to set in motion the process for negotiating such a convention. A nuclear weapons convention would enable the 13 practical steps agreed at the NPT Review Conference in 2000 to be implemented as part of a comprehensive process. Malaysia and Costa Rica have submitted a Working Paper exploring the possibility of a nuclear weapons convention,³ along with a model convention prepared by civil society. The negotiation of a nuclear weapons convention, or a framework of mutually reinforcing agreements, is the first point in the five-point plan announced by UN Secretary-General Ban Ki-moon in 2008.⁴

¹ *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226, 267.

² UN GOAR, 64th sess, 55th plen mtg, UN Doc A/64/55 (2 December 2009).

³ *Model Nuclear Weapons Convention: Working Paper*, 1st sess, UN Doc NPT/CONF.2010/PC.I/WP.17 (2007).

⁴ 'The United Nations and Security in a Nuclear-Weapon-Free World' (Address delivered at the East-West Institute, New York, US, 24 October 2008).

2. How It Would Work

A nuclear weapons convention would establish a comprehensive framework for the complete elimination of nuclear weapons by an agreed date, and ensure that a world free of nuclear weapons is maintained. It would be an effective way of implementing the NPT, by combining non-proliferation measures with disarmament measures. The NPT by itself is not sufficient to achieve a nuclear-weapon-free world, which is why multilateral treaties such as the Comprehensive Test Ban Treaty have been negotiated subsequent to its entry into force. A nuclear weapons convention would also help to bring those States currently not parties to the NPT into the negotiating arena.

A nuclear weapons convention would prohibit the development, testing, production, stockpiling, transfer, use and threat of use of nuclear weapons. It would also prohibit the production of weapons-useable fissile materials and require delivery vehicles to be destroyed or converted to make them incapable of use with nuclear weapons. States parties would be required to declare all nuclear weapons, nuclear material, nuclear facilities and nuclear weapons delivery vehicles in their possession or under their control. They would then be required to destroy their nuclear arsenals according to a series of phases, for example:

- Taking the weapons off high alert status;
- Removing the weapons from deployment;
- Removing the warheads from their delivery vehicles;
- Disabling the warheads by removing and disfiguring the pits; and
- Placing all fissile material under international control.

It is likely that, in the initial phases of implementing the convention, the United States and the Russian Federation, which possess approximately 95 per cent of all nuclear weapons in the world,⁵ would be required to make the deepest cuts. An international monitoring system would be established to verify compliance with the nuclear weapons convention, for example, through declarations and reports from States, routine inspections, surprise inspections, on-site sensors, satellite photography, radionuclide sampling and citizen reporting. The convention might also contain protections for persons reporting violations, including the right of asylum.

States parties would be required to adopt any necessary legislative measures to implement their obligations under the nuclear weapons convention, and perhaps also create a national authority responsible for implementation. An international agency would be created to ensure that all States implement the convention. Unlike the International Atomic Energy Agency, it would not have the task of promoting nuclear energy. Its primary objectives would include the containment and surveillance of all materials, equipment and facilities that could contribute to the development, production or maintenance of nuclear weapons.

⁵ Stockholm International Peace Research Institute, *SIPRI Yearbook 2009: Armaments, Disarmament and International Security* (2009).

3. A Comprehensive Approach

The number of States calling for a nuclear weapons convention has grown significantly in recent years. This is due largely to the dissatisfaction among non-nuclear-weapon States with the rate of progress towards disarmament under the current step-by-step process. Influential commissions such as the Weapons of Mass Destruction Commission in 2006 and the International Commission on Nuclear Non-Proliferation and Disarmament in 2009 have called for a comprehensive approach. Individual steps towards disarmament such as the negotiation of a fissile material cut-off treaty or the entry into force of the Comprehensive Test Ban Treaty are unlikely to have any real effect unless they are part of a comprehensive process that seeks to devalue the role of nuclear weapons in security doctrines.

The vast majority of non-government organizations working in the field of nuclear non-proliferation and disarmament also support negotiations for nuclear disarmament. The International Campaign to Abolish Nuclear Weapons was set up in 2007 with the specific purpose of promoting the commencement of negotiations. More recently, Global Zero adopted an action plan supporting the call for a comprehensive abolition treaty. The general public also overwhelmingly favours a nuclear weapons convention, with opinion polling conducted in 21 countries in 2008 showing that roughly 76 per cent of people globally would be happy for their government to work with other governments in reaching a binding agreement to abolish nuclear weapons according to a timetable.⁶

High-Level Statements of Support

'An important project for the medium term will be to develop, refine and build international understanding and acceptance of the need for a Nuclear Weapons Convention — a comprehensive international legal regime to accompany the final move to elimination ... There is no reason why detailed further work on such a convention should not commence now, and with government support.'

– International Commission on Nuclear Non-Proliferation and Disarmament, 2009⁷

'A nuclear disarmament treaty is achievable and can be reached through careful, sensible and practical measures. Benchmarks should be set, definitions agreed, timetables drawn up and agreed upon, and transparency requirements agreed. Disarmament work should be set in motion.'

– Weapons of Mass Destruction Commission, 2006⁸

⁶ World Public Opinion, 'Publics around the World Favor International Agreement to Eliminate All Nuclear Weapons' (Media release, 9 December 2008).

⁷ ICNND, *Eliminating Nuclear Threats: A Practical Agenda for Global Policymakers* (2009) 201.

⁸ WMDC, *Weapons of Terror: Freeing the World of Nuclear, Biological and Chemical Weapons* (2006) 109.

4. The Path Forward

The NPT Review Conference in May will be an opportunity to set in motion a process for a nuclear weapons convention. Progress has already been made on other aspects of the UN Secretary-General's five-point plan, for example, the resumption of bilateral negotiations between the United States and Russia, the commencement of discussion in the UN Security Council on nuclear disarmament, an agreement to start work on a fissile materials cut-off treaty, and entry into force of the African and Central Asian nuclear-weapon-free zones. Now States should begin to focus on heeding the call for a nuclear weapons convention, backed by a strong system of verification.

Some of the nuclear-armed States may not yet be ready to commence actual negotiations on a nuclear weapons convention. However, this should not prevent these and other States from beginning preparatory work on a convention, such as exploration of the legal, technical, institutional and political elements required to achieve and maintain a nuclear-weapon-free world. States could begin to consider the possible ways to verify a convention and ensure that there will be a sufficient level of confidence in compliance. Such preparatory work could begin soon after the conclusion of the upcoming NPT Review Conference, and would help to pave the way to actual negotiations by building the political commitment for a convention.

UN Secretary-General's Support

"I urge all NPT parties, in particular the nuclear-weapon States, to fulfil their obligation under the treaty to undertake negotiations on effective measures leading to nuclear disarmament. They could pursue this goal by agreement on a framework of separate, mutually reinforcing instruments. Or they could consider negotiating a nuclear weapons convention, backed by a strong system of verification, as has long been proposed at the United Nations."

– UN Secretary-General Ban Ki-moon, 2008⁹

⁹ 'The United Nations and Security in a Nuclear-Weapon-Free World' (Address delivered at the East-West Institute, New York, US, 24 October 2008).

5. Suggested Actions

The International Campaign to Abolish Nuclear Weapons (ICAN) suggests that States take the following two steps to advance negotiations for a nuclear weapons convention:

1. In their official statements at the NPT Review Conference, States should express their clear and unqualified support for the commencement of negotiations on a nuclear weapons convention, and explain why it would be the most effective way of implementing both the non-proliferation and disarmament provisions of the NPT;
2. In working papers submitted to the NPT Review Conferences, States should present proposals for preparatory work on a nuclear weapons, for example, the convening of a high-level meeting of like-minded States to explore the technical and political requirements of achieving and maintaining a nuclear-weapon-free world.