

**Briefing Note** | May 2016

## **May session of the UN open-ended working group on nuclear disarmament**

**T**he United Nations open-ended working group on taking forward multilateral nuclear disarmament negotiations will reconvene in Geneva from 2 to 13 May 2016 for its second substantive session. At its first session, in February, many States voiced their support for the start of negotiations on a treaty prohibiting nuclear weapons, which would complement the Non-Proliferation Treaty and regional nuclear-weapon-free zones. The May session is an opportunity to debate in greater detail the elements for such a treaty, and to develop a road map for negotiating it.

### **Agenda item 5(a)**

**Concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons:**

#### **Filling the legal gap:**

- Nuclear weapons are the only weapons of mass destruction not yet prohibited under international law in a comprehensive and universal manner. Like-minded States should work together to correct this unacceptable legal anomaly.
- In the UN General Assembly, the vast majority of States have acknowledged that a legal gap exists in the current regime governing nuclear weapons, and have pledged to cooperate in efforts to fill this legal gap.
- Filling the legal gap requires the negotiation of a legally binding instrument prohibiting nuclear weapons. A partial prohibition, such as one on use only, would be inadequate, as would the pursuit of purely non-legal measures.
- A legally binding instrument prohibiting nuclear weapons would remove any doubt regarding the illegality of the use of nuclear weapons, and render illegal the development, production, testing, possession etc. of such weapons.

**Effective legal measures:**

- Under Article VI of the Non-Proliferation Treaty (NPT), all States (not just those defined as nuclear-weapon States) are legally obliged to pursue negotiations in good faith on “effective measures” for nuclear disarmament.
- This obligation applies unconditionally. Non-nuclear-weapon States must pursue negotiations for nuclear disarmament whether or not the nuclear-weapon States are doing so, and regardless of the prevailing “security environment”.
- A treaty prohibiting nuclear weapons would constitute an effective measure towards nuclear disarmament. Far from undermining the NPT, it would strengthen the treaty by contributing to its implementation.
- Not only are all States parties to the NPT obliged to pursue nuclear disarmament; they are also obliged to refrain from engaging in any acts that would make nuclear disarmament less likely or impossible to achieve.
- The resistance by some States to a prohibition on nuclear weapons and their support for the possible use of an ally’s nuclear weapons on their behalf raise serious questions about their commitment to Article VI of the NPT.
- The lack of implementation of Article VI of the NPT has placed the treaty under considerable strain. Success in stemming nuclear proliferation will depend on real progress towards eliminating existing nuclear arsenals.

**Prohibition, then elimination:**

- The prohibition of weapons typically precedes and accelerates their elimination – for example, the prohibition of biological and chemical weapons has been an essential step in ongoing efforts towards their elimination.
- Weapons that have been prohibited increasingly become seen as illegitimate. They lose their political status and, along with it, the money and resources for their production, modernization, proliferation and perpetuation.
- Certain States assert that nuclear weapons should be prohibited only *after* they have been eliminated – or once there are very few nuclear weapons in the world. But this position lacks logic and credibility.

**Type of legal instrument:**

- At the February session of this working group, States discussed a number of possible legal measures for advancing nuclear disarmament, with a “nuclear weapon ban treaty” emerging as the most feasible option for moving forward.
- While a comprehensive “nuclear weapons convention” (which would include a programme for the verified elimination of nuclear weapons) may appear more attractive, its success would depend on the goodwill of nuclear-armed States.

- A nuclear weapon ban treaty could be negotiated now, even without the participation of nuclear-armed States, and would constitute an important initial step towards the elimination of nuclear weapons.
- The treaty would be relatively simple and straightforward, and could be negotiated within a short timeframe among like-minded States. The focus would be on prohibition as a means of advancing the goal of elimination.
- The treaty need not include complex provisions relating to the destruction of nuclear stockpiles and to verification. Such provisions could be negotiated subsequently, perhaps in the form of protocols, once nuclear-armed States were willing to engage.

**Scope of prohibitions:**

- The treaty should prohibit the development, production, testing, acquisition, stockpiling, transfer, deployment, threat of use and use of nuclear weapons, as well as assistance, financing, encouragement and inducement of these acts.
- The aim of the treaty should be to close all loopholes in the existing regime governing nuclear weapons, including loopholes that allow certain non-nuclear-weapon States to claim a security “benefit” from an ally’s nuclear weapons.
- In light of the catastrophic humanitarian impact of nuclear weapons, the treaty should be as broad as possible in its prohibitions. States parties should be forbidden from engaging in any acts that may undermine nuclear disarmament.
- Specific issues that States should discuss include how the treaty would address fissile materials, delivery vehicles for nuclear weapons, the financing of nuclear weapon programmes, and non-explosive means of nuclear testing.
- Although the treaty would not, initially, include a complex system for verifying the destruction of nuclear stockpiles, it would be important to consider ways to assure compliance with the various prohibitions it contains.
- The treaty would strengthen, not undermine, existing instruments such as the NPT and nuclear-weapon-free zones (as well as the Comprehensive Nuclear-Test-Ban Treaty), building on the prohibitions they contain.

**Positive obligations:**

- A nuclear weapon ban treaty should require its States parties to work for the fulfilment of the rights of victims of nuclear weapons. Victim assistance provisions are an important part of other recent disarmament treaties.
- The treaty should, moreover, require its States parties to address damage to environments affected by nuclear weapon detonations, such as through decontamination and remediation programmes.

**Effect of the treaty:**

- A nuclear weapon ban treaty would strengthen the global norm against the use and possession of nuclear weapons. It would clarify that, in the view of the international community, nuclear weapons are inherently unacceptable.
- The treaty would be a tool with which parliamentarians, the media, non-governmental organizations and the general public could exert pressure on their governments to end reliance on nuclear weapons in military doctrines.
- The treaty would present States with a simple question: Are nuclear weapons acceptable or not? For the overwhelming majority – including many of those in “nuclear alliances” – the answer, over time, will be no.
- Through prohibitions on, for example, the financing of nuclear weapons or the transit of nuclear weapons through territorial waters, the treaty would make it more difficult for States to retain and modernize their nuclear arsenals.
- More than any other proposal on the table, a nuclear weapon ban treaty has the potential to break through the current logjam, fundamentally alter the political dynamics, and open up new opportunities for progress towards disarmament.

**Agenda item 5(b)****Recommendations on other measures that could contribute to taking forward multilateral nuclear disarmament negotiations:****(i) Increasing transparency:**

- Nuclear-weapon States should be more transparent with respect to their nuclear arsenals in order to facilitate greater progress towards disarmament – and give the rest of the international community confidence that progress is being made.
- Non-nuclear-weapon States that deploy an ally’s nuclear weapons on their territory should provide details about the number, type, status and location of such weapons, as well as details of their associated delivery vehicles.
- All non-nuclear-weapon States in “nuclear alliances” should report on the steps they have taken, and plan to take, to diminish the role and significance of nuclear weapons in their military and security concepts, doctrines and policies.

**(i) Reducing risk:**

- The risk of a nuclear weapon detonation appears to be increasing, not decreasing. Heightened tensions among nuclear-armed States and their allies in recent years mean that progress towards nuclear disarmament is all the more urgent.

- The present “security environment” – rather than serving as an excuse for inaction – must be a stimulus for action. Disarmament would enhance the security of all States, not least those currently with nuclear arsenals.
- Non-nuclear-weapon States that host nuclear weapons on their territory should report on measures they have taken to reduce the risk of the accidental, mistaken, unauthorized or intentional detonation of those weapons.

**(i) Raising awareness:**

- The three conferences in 2013 and 2014 on the humanitarian impact of nuclear weapons have increased global understanding of the full range of catastrophic, widespread and long-lasting consequences of nuclear weapon detonations.
- In light of these consequences – as well as the stark reality that the international community would be utterly powerless to respond in the aftermath of a nuclear attack – nuclear weapons should be prohibited and eliminated urgently.
- “Humanitarian concerns” are not distinct from “security concerns”. This is a false dichotomy. Indeed, humanitarian concerns include, first and foremost, concerns about the safety and security of civilian populations.
- States that claim protection from nuclear weapons through alliance arrangements should report on studies they have undertaken on the humanitarian impact of the use of nuclear weapons by their ally on their behalf.