



Two effective measures to impact on policies and practices of the nuclear-armed States

Working Paper submitted to the 2016 Open Ended Working Group on Taking Forward Multilateral Nuclear Disarmament Negotiations

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Introduction

This working paper focuses on two effective measures to impact on the policies and practices of the nuclear-armed States in the areas of:

- a) nuclear prohibition deliberations and negotiations;
- b) nuclear-risk reduction.

Specific reference is made in this working paper to paragraphs 27-31, paragraph 36 and paragraph 50 of the *Draft Report of the Open-ended Working Group on taking forward multilateral nuclear disarmament negotiations* ('Zero Draft')

A. Ensuring that multilateral deliberations and negotiations impact on the nuclear-armed States

1. There appears to be a majority of countries in the OEWG that support the proposal for the United Nations General Assembly to initiate negotiations in 2017 on a legal instrument or instruments to prohibit nuclear weapons.
2. There are a range of approaches to take for such negotiations. They could negotiate a ban treaty, nuclear weapons convention, framework agreement or a package of instruments (hybrid approach). Each approach has advantages and disadvantages. (Paragraphs 27-31 of the 'Zero Draft').
3. The approach most favoured appears to be a ban treaty. This has an advantage in that it would enable the negotiations to conclude an agreement relatively quickly without being blocked by any State.
4. A disadvantage of the ban treaty approach is that it is not supported by any of the nuclear-armed States, nor any of the states under extended nuclear deterrence. As such, a quick conclusion of such a treaty by non-nuclear States would mean that its provisions only apply to those States Parties, i.e. non-nuclear States.

¹ *Basel Peace Office is a joint initiative of the Canton of Basel (Switzerland), University of Basel Sociology Seminary, Parliamentarians for Nuclear Nonproliferation and Disarmament, Global Security Institute, Middle Powers Initiative, World Future Council, IPPNW Switzerland and the swisspeace foundation*

5. The other approaches – a nuclear weapons convention, framework agreement or hybrid approach – enjoy support from some of the nuclear armed and allied States. However, there is no guarantee that key nuclear-armed States would join negotiations in 2017, nor that such negotiations could be concluded quickly.
6. One approach to ensure engagement of at least some of the key nuclear armed States in discussing a draft prohibition agreement, is to initiate an NPT amendment conference in parallel to multilateral negotiations proposed to be established by the UN, and possibly also in parallel to nuclear disarmament deliberations in the Conference on Disarmament.
7. Such a proposal for an amendment (protocol) to the NPT is mentioned in paragraph 36 of the 'Zero Draft'.²
8. Article VIII paragraph 1 of the Non Proliferation Treaty holds that:

Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment.
9. Therefore, if one-third of NPT member states request such a conference, Russia, the UK and the USA (NPT depository governments) would be required to hold the conference and invite all NPT members to participate.
10. In order to support negotiations initiated by the UN as envisaged in para 27 of the 'Zero Draft', the amendment proposal should be similar in effect to the draft agreement/s being considered in the UN-initiated negotiations.
11. A simple amendment along these lines would be to replace the terms 'nuclear-weapon State' and 'non-nuclear-weapon State' with 'State', so that the obligations of non-acquisition and non-transfer of nuclear weapons would apply to all States Parties. This would turn the NPT into an acquisition ban treaty, an essential component of any comprehensive agreement to prohibit nuclear weapons.
12. The amendment (protocol) would also remove the discriminatory nature of the NPT, the principle rationale given by India and Pakistan for staying outside the NPT. The initiative for such an amendment could therefore contribute to efforts for universalization of the NPT.
13. However, the object of an NPT amendment conference would not be to have the amendment adopted at the conference. The conditions for adoption are too onerous³, and the details in a comprehensive ban treaty would be better negotiated in the UN initiated conference.

² 'Another approach discussed was the idea of an additional protocol to the NPT, which could be negotiated as a separate instrument and would serve as a bridge between a comprehensive nuclear weapons convention, a framework agreement, and the building block approach. Such an approach would keep nuclear disarmament as an integral part of the NPT.' Para 36 of the **Draft Report of the Open-ended Working Group on taking forward multilateral nuclear disarmament negotiations**

³ Article VIII paragraph 2 holds that:
Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty,

14. Rather, the objects of an NPT amendment conference would be to:
 - a. ensure that at least some of the nuclear armed and allied States have to address to proposal for a ban on nuclear weapons,
 - b. build support for the UN-initiated negotiations, and
 - c. demonstrate that there is a developing customary norm that would broaden the legal effect of an agreement adopted in the UN negotiations.
15. Calling for an NPT amendment conference would hold no risks of undermining the NPT or opening the door to frivolous amendments. As noted above, the process for actually adopting any amendment to the NPT are onerous and serve to protect the NPT.

Amendment process precedent – From PTBT to CTBT

16. There is a compelling precedent for the proposal for an NPT amendment process, i.e. the Amendment Conference of the Partial Test Ban Treaty in 1991.
17. In 1982, the Conference on Disarmament established a subsidiary body on the proposed Comprehensive Nuclear Test Ban Treaty. However, progress was blocked for nearly a decade by the reluctance of key nuclear-armed States to accept a negotiating mandate.
18. In 1989, frustrated by this lack of progress, the governments of Indonesia, Mexico, Peru, Sri Lanka, Venezuela and Yugoslavia proposed an amendment to the PTBT that would turn it into a ban on all nuclear tests. Once they secured the support of 1/3 of the members of the PTBT, the depositaries of the PTBT (UK, US and USSR) convened a preparatory meeting for the conference in May 1990 and the conference itself in January 1991.⁴
19. The PTBT amendment conference was instrumental in moving the nuclear-armed States to agree to a negotiating mandate for a CTBT in the Conference on Disarmament.

Conclusion

20. Initiating an NPT amendment process could complement multilateral nuclear disarmament negotiations established by the United Nations General Assembly. Such a process would ensure that nuclear-armed States and other parties to the NPT **have to consider** the proposal for a ban on acquisition of nuclear weapons, but would give them **no power to block** comprehensive nuclear ban negotiations, as long as the negotiations are undertaken in accordance with UNGA rules of procedure in a UNGA established forum.

B. Nuclear risk reduction: No-first-use

21. The *Draft Report of the Open-ended Working Group taking forward multilateral nuclear disarmament negotiations* ('Zero Draft') includes a number of draft recommendations on measures to reduce the risks of nuclear weapons being used.

including the votes of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency.

⁴ See Report of the PTBT Amendment Conference. PTBT/Conf/L.2. [https://disarmament-library.un.org/UNODA/Library.nsf/534c532818e440ce8525789a006d94f5/8ac8f3a8d4878c82852578aa0056282b/\\$FILE/PTBT-CONF-L-2.pdf](https://disarmament-library.un.org/UNODA/Library.nsf/534c532818e440ce8525789a006d94f5/8ac8f3a8d4878c82852578aa0056282b/$FILE/PTBT-CONF-L-2.pdf)

22. These measures include '*Reduce the role of nuclear weapons in security doctrines*' (para 50.a.vi), and '*Conclude agreements to eliminate launch-on-warning from their operational settings and carry out a phased stand down of high-alert strategic forces*' (para 50.a.viii)
23. One specific measure to reduce the role of nuclear-weapons in security doctrines is for all the nuclear-armed states to adopt policies to never use nuclear weapons first in a conflict ('no-first-use;).
24. No-first use policies are no guarantee against a nuclear exchange. Only the complete prohibition and elimination of nuclear weapons can provide such security. However, no-first-use policies could significantly reduce the risk of nuclear weapons being used by accident, miscalculation or intent.
25. No-first-use policies would also enable nuclear-armed States to more easily de-alerting all their nuclear weapons systems, and rescind launch-on-warning policies, as they would no longer be threatened by the possibility of a first strike against them.
26. No-first-use policies would also remove one of the principle barriers to nuclear-armed States joining nuclear disarmament negotiations. As long as some nuclear-armed States have policies of first-use of nuclear weapons, perhaps against non-nuclear threats, they will be unwilling to agree to nuclear disarmament. However, if their nuclear weapons are only for retaliation against nuclear strikes, then they could join such negotiations as long as they include all nuclear-armed States.
27. The adoption of no-first-use policies would not legitimize retaliatory use. Indeed, the International Court of Justice has already affirmed that the threat or use of nuclear weapons is generally illegal. The adoption of no-first-use policies could therefore be seen as one small measure to implement the general prohibition against use of nuclear weapons.

Nuclear-armed States, allied States and no-first-use: The momentum is building

28. Currently China and India have adopted no-first-use policies.
29. On July 10, the Washington Post reported that United States President Obama is considering a number of executive actions to further nuclear disarmament. These include the possibility to rescind launch-on-warning and to adopt a policy of no-first-use.⁵
30. President Obama had already expressed a commitment in the *2010 Nuclear Posture Review* to achieve a policy of 'sole purpose' which is very close to 'no-first-use.'

⁵ *Obama plans major nuclear policy changes in his final months*, Washington Post, July 10, 2016. www.washingtonpost.com/opinions/global-opinions/obama-plans-major-nuclear-policy-changes-in-his-final-months/2016/07/10/fe3d5ca-4521-11e6-88d0-6adee48be8bc_story.html

31. The no-first-use proposal has received considerable support in the U.S. Congress. This includes joint letters from U.S. Senators⁶ and Members of the House of Representatives.⁷
32. In Europe the no-first-use proposal has received support from the parliaments that comprise the Parliamentary Assembly of the Organisation for Security and Cooperation in Europe (OSCE PA). On July 4, 2016, the OSCE PA adopted by consensus the Tbilisi Declaration which includes language specifically supporting no-first-use and de-alerting.⁸
33. The significance of the OSCE PA resolution is that it includes cross-party delegations from the parliaments of France, Russia, the UK, the USA, all NATO countries and all former soviet countries.
34. In Japan, 204 parliamentarians representing all political parties signed a letter to U.S. President Obama, when he was preparing the U.S. Nuclear Posture Review, supporting 'sole purpose' which is very similar to 'no-first-use'. The endorsers included a number of Liberal Democratic Party members, three of whom are now members of the Cabinet of Prime Minister Abe. Endorsers of the letter also included two former Foreign Ministers.⁹

Proposals

The Open Ended Working Group should recommend:

35. States Parties to the NPT to convene an NPT amendment conference to discuss a draft amendment/protocol to remove the distinction between nuclear-armed and non-nuclear States, therefore turning the NPT into a simple ban treaty. The NPT amendment conference would complement and support multilateral nuclear disarmament deliberations and negotiations initiated by the United Nations General Assembly or in the Conference on Disarmament.
36. The adoption of no-first-use policies by nuclear armed and allied States as a measure to reduce the risk of nuclear-weapons-use, and as a step toward implementing the general prohibition against the threat and use of nuclear weapons affirmed by the International Court of Justice in 1996.

⁶ See *U.S. Senators to Obama: Scale back nuclear-use policies*, PNND, July 21, 2016. www.pnnd.org/article/us-senators-obama-scale-back-nuclear-use-policies

⁷ See *Senior Congressional Dems Urge Obama to Adopt No First Use*, The National Interest, July 25, 2016. <http://nationalinterest.org/blog/the-buzz/senior-congressional-dems-urge-obama-adopt-no-first-use-17106>

⁸ See *OSCE Parliamentary Assembly calls for nuclear weapons stand-down*, PNND, July 10, 2016. <http://www.pnnd.org/article/osce-parliamentary-assembly-calls-nuclear-weapons-stand-down>

⁹ See *204 Japanese legislators call on President Obama to adopt 'sole purpose' doctrine*, PNND Feb 19, 2010. http://archive.pnnd.org/archives/Diet_Obama.html