

# **Nuclear abolition:**

## **Achieving the ‘impossible’ through a common security framework.**

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### **Summary:**

In January 2022, the Bulletin of Atomic Scientists set the Doomsday Clock to 100 Seconds to Midnight, indicating the risks of nuclear war and the climate crisis, and the threats these pose to humanity and the future.

The International Court of Justice affirmed in 1996 that there is an unconditional obligation to achieve the global elimination of nuclear weapons. Yet, the nuclear armed and allied states continue to rely on nuclear deterrence for their security and appear no nearer to achieving nuclear abolition than they were three decades ago.

Initiatives to highlight the humanitarian impact of nuclear weapons use and to stigmatise the possession of nuclear weapons have resulted in the negotiations of a Treaty on the Prohibition of Nuclear Weapons. But not one nuclear armed or allied state has joined the treaty, so it does not apply to them. On the contrary, even some non-nuclear States have decided not to join, and some are even applying to join nuclear alliances as a result of the Russia invasion of Ukraine and other conflicts between nuclear armed states.

In this political reality is the vision, aspiration and obligation to achieve a nuclear-weapon-free world at all feasible or is it just a pipe dream?

In this presentation, I argue that nuclear abolition is possible if we recognize that there are security roles ascribed to nuclear deterrence, explore how these security roles can be replaced by common security approaches, and work with the nuclear armed and allied states to make a transition to reliance on common security.

### **The common security approach:**

Common security is an approach to achieving national security by taking into account one's own security needs and also the security of other nations, including one's adversaries. It is based on the assumption that sustainable national security cannot be obtained by undermining or threatening the security of others, but rather on resolving conflicts with one's adversaries and ensuring the security of all is upheld. It relies on diplomacy, negotiation, mediation, arbitration and on the application of international law to ensure fairness and security for all.

Common security does not rule out national defence and some reliance on military power for security. However, a common security framework places a much greater emphasis on conflict resolution and international law, reserving military approaches to a last resort if all other methods fail.

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## The United Nations and the OSCE: A promise and potential for peace, common security and nuclear abolition

The United Nations was established in the wake of World War II as a global common security organization. The Charter prohibits the threat or use of force in international relations<sup>2</sup> and requires the peaceful resolution of international conflicts.<sup>3</sup> It also outlines a number of approaches to resolving conflicts peacefully including diplomacy, negotiation, mediation, arbitration and adjudication.<sup>4</sup> And it establishes mechanisms to facilitate the peaceful resolution of conflicts and the application of law, including through the Security Council, UN General Assembly, UN Secretariat and the International Court of Justice.

In addition, the UN Charter requires the Security Council to adopt a plan for global disarmament in order to ensure that there is the least diversion possible of resources to militaries from economic and social development.<sup>5</sup> And the very first resolution of the UN established the obligation to achieve the global elimination of nuclear weapons and other Weapons of Mass Destruction.<sup>6</sup>

The UN was supplemented in 1973 by the *Conference on Security and Cooperation in Europe* (CSCE), guided by the Helsinki Final Act<sup>7</sup>, which like the UN Charter, requires members to resolve international conflicts peacefully, refrain from the threat or use of force in international relations and adhere to obligations under international law. In 1996 this was transformed and renamed as the *Organisation for Security and Cooperation in Europe* through the adoption of the *Lisbon Declaration on Common Security*.<sup>8</sup>

UN and OSCE member states have made use of these approaches and mechanisms in numerous occasions in order to resolve conflicts, prevent or end war and facilitate a lasting peace. However, the full employment of these common security mechanisms has been hampered by:

Despite their imperfections, the UN and the OSCE provide the potential to resolve conflicts peacefully, uphold international law and facilitate disarmament, if member states choose to increase their focus on common security and reduce their reliance on military security.

There are a number of opportunities over the next two years to highlight the common security mechanisms and approaches of the UN, encourage nations to better use these, and also to improve them. These opportunities include the development by the UN Secretary-General of a New Agenda for Peace (with input from member states and civil society)<sup>9</sup> and the UN Summit for the Future which is being convened in 2024 by the UN General Assembly.<sup>10</sup>

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<sup>2</sup> UN Charter Article 2 (4) <https://legal.un.org/repertory/art2.shtml>

<sup>3</sup> UN Charter Article 2 (3) <https://legal.un.org/repertory/art2.shtml>

<sup>4</sup> UN Charter Articles 33-38 <https://www.un.org/en/about-us/un-charter/chapter-6>

<sup>5</sup> UN Charter Article 26 <https://legal.un.org/repertory/art26.shtml>

<sup>6</sup> UN Resolution 1 (1) "Establishment of a Commission to Deal with the Problems Raised by the Discovery of Atomic Energy" <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/032/52/PDF/NR003252.pdf?OpenElement>

<sup>7</sup> *Conference on Security and Cooperation in Europe Final Act, Helsinki 1975* <https://www.osce.org/files/f/documents/5/c/39501.pdf>

<sup>8</sup> Full title is: *Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the twenty-first century* <https://www.osce.org/files/f/documents/1/0/39539.pdf>

<sup>9</sup> New Agenda for Peace, UN Political and Peacebuilding Affairs Department, <https://dppa.un.org/en/new-agenda-for-peace>

<sup>10</sup> See UN General Assembly sets date and modalities for a Summit of the Future <https://www.unfoldzero.org/un-general-assembly-sets-date-and-modalities-for-a-summit-of-the-future/>

## Common security and the Palme Commission

Another important development in the advance of common security was the *Independent Commission on Disarmament and Security Issues* which was established in 1982 by Olof Palme, Prime Minister of Sweden in order to challenge the nuclear deterrence security framework and suggest its replacement with Common Security.

The Commission advanced ideas and approaches for common security based on the notions that “*States can no longer seek security at each other’s expense; it can be obtained only through cooperative undertakings,*” and that “*Common security is security **together with**, and **not against**, a potential enemy.*” According to the Commission “*Ultimately, nations and populations can only feel safe when their counterparts feel safe.*”

### Some common security successes

Most of the time, nations are managing their international relations and resolving conflicts with each other through diplomacy, negotiation and international law, because to do so is recognized by all sides as mutually beneficial. In these cases, win/win solutions are being sort by both sides, and the common security mechanisms help facilitate this.

Of greater significance are the times one or more parties in a conflict are attempting to subjugate the other and are aiming for a win/lose outcome, especially if one of the parties is more powerful than the other. These are much greater challenges to common security. The successful use of common security mechanisms in these circumstances is much more significant. Here are just a few of the many examples:

- **French nuclear testing in the Pacific region:** In 1974, New Zealand and Australia took France to the International Court of Justice over its atmospheric nuclear testing program in Te Ao Maohi (French Polynesia).<sup>11</sup> France declared its sovereign right to continue atmospheric tests, but ended its atmospheric testing program the very next year. New Zealand revived the case in 1995 with respect to underground testing by France. France announced its right to continue underground testing, but then ended the test program the very next year and closed down the nuclear test site.
- **Nicaragua v USA:** In 1982 Nicaragua lodged a case against the United States in the International Court of Justice challenging the US military support for the Contras who were seeking to overthrow the government.<sup>12</sup> The Court found in favour of Nicaragua. The US announced that it would not abide by the Court’s decision. However, the US Congress then followed up by adopting the Boland Amendments prohibiting military aid to the Contras. The legal principles affirmed in the ICJ case also provided a strong supporting framework for the negotiations of the Central American Peace Accords, adopted in 1987, which helped end the civil wars in Central America.
- **French terrorist bombing of the Rainbow Warrior:** In 1985, the French DGSE (Secret Service) sunk the Greenpeace boat ‘Rainbow Warrior’ in Auckland Harbour (New Zealand) with limpet mines they

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<sup>11</sup> Nuclear Tests (New Zealand v. France) at <https://icj-cij.org/en/case/59> and Nuclear Tests (Australia v. France) at <https://icj-cij.org/en/case/58>. See also *Nuclear weapons and law for the future: The application of principles protecting future generations in international tribunals*, by Alyn Ware, Paper presented at ‘Taking Legal Action on Behalf of Future Generations’, November 17-18, 2017 University of Caen (France) <https://alynware.kiwi/blog/2020/12/nuclear-weapons-and-law-for-the-future>

<sup>12</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) <https://www.icj-cij.org/en/case/70>

had smuggled into the country. New Zealand police caught two of the DGSE agents, who were then prosecuted and convicted of manslaughter (one crew member was killed in the explosions). France responded by placing an economic boycott on New Zealand which prevented New Zealand trade with all of the European Economic Community, a primary market for New Zealand products. None of New Zealand's traditional allies (Australia, Canada, UK and USA) supported New Zealand because of the ban the country had just placed on nuclear weapons. New Zealand employed the mediation service of the Office of the United Nations Secretary-General to successfully resolve the conflict with France and restore friendly relations.<sup>13</sup>

- **Costa Rica v Nicaragua:** In 2010, Nicaragua initiated dredging in the San Juan river between Nicaragua and Costa Rica, and dispatched a military contingent to Island of Calero on the Costa Rican side of the river in order to 'protect' the dredging operation. Costa Rica alleged that this was an illegal occupation of Costa Rican territory. While some voices in Costa Rica called for a military response, the Costa Rican government decided instead to use common security mechanisms including the Organisation of American States and the International Court of Justice, to which it lodged the case in 2010.<sup>14</sup> The ICJ has made a number of rulings delineating the sovereignty of Nicaragua and Costa Rica over the disputed region, with Nicaragua emerging with superior rights over the river, and Costa Rica with sovereignty over most of the disputed wetlands. In light of the ICJ process, political tensions have de-escalated and neither country is considering military action.
- **Libya v Chad.** In the 1970s and 1980s, Chad and Libya had a serious conflict over the Aouzou Strip, a piece of mineral-rich land along the Chadian-Libyan frontier in the Sahara Desert. Claims by both sides to the strip led to military actions including annexation and counter-annexation, Libyan support for Chadian rebels attempting to overthrow the government and other armed conflict. Attempts to resolve the conflict were unsuccessful, until the two parties agreed to a proposal by the Organisation of African Unity that the case to go to the International Court of Justice. The ICJ delivered its judgement in February 1994, supporting Chad's claim on the territory.<sup>15</sup> As a result, Libya withdrew from the territory, under the supervision of the United Nations Aouzou Strip Observer Group.

## Nuclear weapons and common security – fulfilling the promise

The very first resolution of the UN established the objective to achieve the global elimination of nuclear weapons and other Weapons of Mass Destruction (WMD).<sup>16</sup> This objective was affirmed as an obligation in the Non-Proliferation Treaty adopted in 1970. However, this objective remains unfulfilled. There are nine nuclear armed countries and another 35 countries that rely on nuclear deterrence, which together comprise most of the northern hemisphere and nearly 2/3rds of the world's population.

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<sup>13</sup> See *Nuclear-free New Zealand: Sinking the Rainbow Warrior*, NZ History, New Zealand government online <https://nzhistory.govt.nz/politics/nuclear-free-new-zealand/rainbow-warrior>

<sup>14</sup> Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) <https://www.icj-cij.org/en/case/150>

<sup>15</sup> Territorial Dispute (Libyan Arab Jamahiriya/Chad) <https://www.icj-cij.org/en/case/83>

<sup>16</sup> UNGA Resolution 1 (1), Establishment of a Commission to Deal with the Problems Raised by the Discovery of Atomic Energy <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/032/52/PDF/NR003252.pdf?OpenElement>

Campaigns to highlight the humanitarian impact of nuclear weapons may have helped to develop restraint on actual use. Nuclear weapons have not been detonated in armed conflict since 1945. But have not had much impact at all on the production, possession and deployment of the weapons.

This is because nuclear deterrence will continue to be maintained as a part of security doctrines – and nuclear weapons will continue to be deployed to as part of these doctrines – unless the nuclear armed and allied states can be convinced that the security provided by nuclear weapons is no longer necessary, or can be replaced by something else. That something else could be a combination of common security and conventional force utilized strictly in accordance with international law.<sup>17</sup>

The Russia/Ukraine conflict has demonstrated that nuclear deterrence, while rationale on paper, fails miserably in real life situations. President Putin tried to use nuclear deterrence as a coercive tool to prevent Western military support for Ukraine. This failed. Military aid has poured into Ukraine, undeterred by Putin, and has been a major reason for the failure of Russia to quickly subjugate Ukraine. From the other side, the USA realized that making counter nuclear threats against Russia would be escalatory and dangerous. These realisations led to the remarkable agreement at the G20 Summit in Bali (agreed by China, France, India, Russia, the UK, USA and others) that *'The threat or use of nuclear weapons is inadmissible'*.<sup>18</sup>

This realization has opened the door to a process engaging the nuclear armed and allied states on a situation-specific evaluation of the role of nuclear weapons in conflicts and better alternatives to nuclear weapons in each of these situations, including the use of common security approaches and mechanisms. Indeed, in an increasingly inter-connected and globalized world, nuclear deterrence has less and less relevance and value.

The common security approaches outlined in the UN Charter and the Helsinki Final Act can be used instead of nuclear deterrence to address aggression, the threat of aggression and other threats to the peace and serious violations of international law. Non-nuclear states already rely on their security through these approaches and mechanisms and can play a positive role in working with the nuclear-armed and allied states to make the transition to non-nuclear security.

This positive approach to ending the reliance on nuclear deterrence is much more effective than the failed and counter-productive attempts to 'stigmatise' the nuclear armed and allied states for relying on nuclear deterrence. A common security approach could therefore play a vital role in helping to establish the peace and security of a nuclear weapon free world in our lifetimes.

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<sup>17</sup> See for example Rule of Force or Rule of Law? Legal Responses to Nuclear Threats from Terrorism, Proliferation, and War, Alyn Ware, *Seattle Journal for Social Justice*, Volume 2, Issue 1, Fall/Winter 2003. At <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1441&context=sjsj> and Nuclear threats, common security and disarmament, by Alyn Ware at <https://alynware.kiwi/blog/2022/06/nuclear-threats-common-security-and-disarmament/>

<sup>18</sup> See *G20 Bali Leaders' Declaration*, paragraph 4 <https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/16/g20-bali-leaders-declaration/>