

Preparatory process for a Nuclear Weapons Convention: practical, useful, timely?

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Introduction:

On United Nations Day 24 Oct 2008, UN Secretary-General **Ban Ki-moon** released a Five-point plan for nuclear disarmament, in which he called on governments to fulfill their nuclear disarmament obligations through negotiating a package of instruments or a comprehensive nuclear weapons convention. Mr Ban also indicated a number of other disarmament steps that should be taken in order to support such negotiations and help secure a nuclear-weapons-free world.

Since then, governments have taken some of the steps outlined in Mr Ban's five-point plan, including resumption of bilateral negotiations between the US and Russia; commencement of discussions in the UN Security Council on nuclear disarmament; an agreement to start work in the Conference on Disarmament on a fissile-materials treaty, entry-into-force of the African & Central Asian nuclear-weapon-free zones, and plans to hold a World Summit on disarmament, non-proliferation and terrorist use of weapons of mass destruction.

In addition, an informal process of communication and collaboration between like-minded governments supporting the UN Secretary-General's five-point plan has begun.

A key question for governments is where to slot the Nuclear Weapons Convention into the package of steps and measures included in the five-point plan – and indeed in the package of measures being considered in multilateral forums including the 2010 NPT Review Conference and the Conference on Disarmament.

It is perhaps too early to commence actual **negotiations** on a Nuclear Weapons Convention as proposed by the UNSG. A number of disarmament, confidence-building and security-enhancing steps would probably need to be achieved before

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the principal Nuclear Weapon States will be prepared to join such negotiations – and it would be rather meaningless to conduct such negotiations without them.

However, a number of prestigious reports, such as the Blix Commission and the International Commission on Nuclear Non-proliferation and Disarmament, have indicated that a comprehensive approach – such as work on a Nuclear Weapons Convention – must be done in conjunction with work on initial disarmament steps to ensure that such steps can be universally acceptable and thus will succeed. Without a comprehensive approach being undertaken alongside initial steps, those countries prejudiced by the initial steps because of their differing nuclear capabilities, will resist or refuse to join. This message was emphasized by political-realist Henry Kissinger speaking at the launch of Ban Ki-moon's five point plan.

Possibilities for preparatory work on a Nuclear Weapons Convention:

So, is there preparatory work on a Nuclear Weapons Convention (or package of agreements) that could be undertaken prior to the commencement of negotiations, and that could contribute to the achievement of initial steps, pave the way for the start of actual negotiations, and build some of the elements that will need to be part of the final convention or package? A number of governments and think-tanks have indicated possibilities for preparatory action of four main types – exploratory, mapping, building-block development & implementation, and security-building.

a) Exploratory

Working paper 41 submitted to the 2005 NPT Review Conference by Costa Rica and Malaysia, calls for the exploration of the legal, technical, institutional and political elements required to achieve and maintain a nuclear-weapons free world – such exploration being guided by the Model Nuclear Weapons Convention. The paper also proposes that States Parties undertake an analysis of which of these elements already exist, whether they need to be improved or enhanced, and how they could be integrated into a comprehensive nuclear abolition regime.

"A comprehensive overview of the legal, technical and political requirements for a nuclear weapons-free world would be able to affirm such elements which already exist, assess those which are currently being developed, evaluate and link those which have been proposed, and identify additional elements which would also be required." (NPT working paper NPT/CONF.2005/WP.41 para 12).

The ICNND supports this approach noting that:

"It is not too early to start now on further refining and developing the concepts in the model NWC [nuclear weapons convention], making its provisions as workable and realistic as possible, and building support for them, with the object of having a fully-worked through draft available to inform and guide the multilateral disarmament negotiations we see as gaining real momentum during our medium term time-frame, from 2012 to 2025. We

recommend, accordingly, that interested governments support with appropriate resources the further development of the NWC."

A value of such work is that it helps to build a clearer vision of what elements will be required to achieve a nuclear-weapons-free world and how these elements can be developed. The Hoover Institute initiative, argues that a vision of a nuclear-weapons free world is required to guide disarmament negotiations, but that such a vision is like a tall mountain that is still covered in clouds. Exploratory work on a Nuclear Weapons Convention will help remove those clouds to bring a clearer and common view of the peak.

Another value of mapping work is that it provides guidance as to what steps could be taken – and by whom – in the short, medium and long-terms to pave the way to the achievement of a nuclear-weapons-free world.

Working paper 41 identifies a number of **areas** in which exploratory work would be useful. These include the legal obligations of States and citizens in a nuclear-weapons-free regime, control mechanisms required for the protection and accounting of nuclear weapons and fissile material holdings, phases and steps for the systematic and progressive destruction of all nuclear warheads and their delivery vehicles, mechanisms for verifying the destruction of all nuclear weapons, mechanisms for ensuring compliance, and the political and societal mechanisms required to support a nuclear-weapons-free regime.

As indicated earlier, various initiatives relating to these areas are, or have been, undertaken by individual states or groups of like-minded states. These include, for example, the verification studies undertaken by the UK and Norway on warhead identification, and the initial exploration of compliance issues (non-proliferation and disarmament) by Germany (NPT working paper 16, 2004). However, these studies are rather limited and could be expanded and complemented by studies in other key areas with the framework of global nuclear abolition and elimination in mind.

b) Mapping

Mapping activities go beyond exploration and involve formulating objectives and making commitments. The WMD Commission outlines some mapping activities that could be undertaken:

"All states possessing nuclear weapons should commence planning for security without nuclear weapons. They should start preparing for the outlawing of nuclear weapons through joint practical and incremental measures that include definitions, benchmarks and transparency requirements for nuclear disarmament." (WMD Commission recommendation 30).

These ideas could be fleshed out considerably. The ICNND has started this process by mapping out in more detail a range of measures that should be undertaken within two time-periods (up until 2012 and from 2012-2025) with the conclusion of a Nuclear Weapons Convention in the third and final phase. Notable in the ICNND

exercise has been the mapping of nuclear doctrine changes to phase out nuclear deterrence in steps (see also 'Security-building' below). This is a very useful exercise. However, the ICCND's program reflects the approach of the Hoover Institute in giving more attention to mapping out the short-medium term goals in order to establish a 'base camp' from which a final attempt at the mountain top of nuclear elimination could, at some stage, be attempted. Preparatory mapping for a NWC would include greater attention to the requirements to reach the peak.

Mapping activities do not need to be confined to the states possessing nuclear weapons. Non-NWS that are currently covered by extended nuclear deterrence could undertake a mapping process of progressive steps to lower the role of nuclear weapons in their security doctrines pending negotiations for a NWC. In this respect, Germany has recently announced a process for the removal of the remaining US nuclear weapons on foreign territories in Europe. The incoming Japanese administration has begun that process with proposals on no-first-use, sole-purpose (only purpose of nuclear weapons to deter a nuclear weapons threat) and the establishment of a North East Asia Nuclear Weapon Free Zone. These steps could be enhanced if they were more consciously framed in the context of initial steps towards the general obligations prohibiting nuclear weapons which would underpin a Nuclear Weapons Convention.

c) Building-block development & implementation

Exploratory and mapping work could identify steps that can be developed and implemented prior to the commencement of negotiations on a Nuclear Weapons Convention. These could include:

- i) *Verification mechanisms.* There are already a number of verification mechanisms for non-proliferation and disarmament including the IAEA safeguards, Comprehensive Test Ban Treaty verification regime, and the Intermediate Nuclear Forces and START verification systems. Verification for the complete abolition and prohibition of nuclear weapons will need to build on these and include additional measures and mechanisms.

Some of these will require the participation of the NWS to complete. However, there is a lot of preparatory work that could be done by non-NWS to build multi-lateral capacity for verification. This could include the development of remote-sensing capacity (such as satellite surveillance), information sharing, and the application/extension of existing non-proliferation and border control technology to nuclear disarmament tasks.

The value in such preparatory work by non-NWS was demonstrated by the verification work undertaken by non-NWS prior to the commencement of negotiations on the Comprehensive Test Ban Treaty. This work was very helpful in demonstrating the feasibility of

verification for a CTBT and thus removing political blocks to the start of negotiations .

Societal verification is going to be very important in confidence-building and compliance with a NWC. Preparatory work could be undertaken on the collaborative mechanisms between international organizations, governments, and the non-governmental sector that would best assist a NWC.

- ii) *Compliance.* Confidence in compliance of a nuclear-weapons-free regime will likely require a mix of treaty-based and universal-norm-based measures. States will need to be assured that the basic obligations of the NWC will apply universally even if other States have not ratified the convention. The role of the Security Council will be important. In fact, the Model NWC assumes that its basic provisions will be affirmed and enforced by the Security Council. Preparatory work can be undertaken in the UN Security Council on building a nuclear disarmament norm and ensuring compliance with this. UNSC Resolutions 1540 and 1887 could be seen as contributing to this process.

Further short-term action by the Security Council will be useful, especially on nuclear doctrine aspects, as steps toward the prohibition of nuclear weapons. One such step, recommended by the WMD Commission, is for the NWS to “Accept the principle that nuclear weapons should be outlawed, as are biological and chemical weapons.” A practical way to do this would be through a SC resolution. Other nuclear doctrine steps – such as prohibiting first-use of nuclear weapons - could also be taken by the Security Council, but of course will not be able to move ahead of the willingness of the permanent members of the Security Council.

- iii) *National prohibition measures.* Non-NWS could review the basic obligations and the national implementation measures in the Model NWC and consider implementing some of these even prior to the commencement of negotiations on a NWC. This could include, for example, prohibiting and criminalizing the threat or use of nuclear weapons in national law and applying this law extra-territorially. (Note: Some countries have already done this). Such actions would strengthen the legal norm against nuclear weapons, highlight the aspiration for such prohibition to occur globally under a NWC, and increase the political momentum for negotiations to achieve global prohibition.
- iv) *Reinforcing measures.* There are a number of measures in the Model NWC that would reinforce the legal norm and build confidence in a nuclear-weapons-free regime. These include, for example, criminalizing

prohibited activities, improving cross-border policing and providing for action against suspected violators in national and international courts. Preparatory work could be done on the legal regimes required for this, building on UNSC 1540, the Convention for the Suppression of Acts of Nuclear Terrorism and the proposal for nuclear weapons employment to be included as a crime in the Rome Statute for the International Criminal Court.

There is also room for preparatory work on national and international information and education efforts that would assist in a NWC – noting that public understanding of a NWC and its importance will be necessary to ensure ongoing commitment to its compliance. Even now, most people in the world have never experienced a time when nuclear weapons were used in wartime and so have little direct knowledge of the devastation caused by nuclear weapons. The danger of nuclear weapons (and the catastrophic result of breakout) could drift even further from the minds of people unless a NWC includes ongoing public education.

- d) *Security building.* The ICCND identified a number of security concerns that prevent the NWS from moving ahead quickly or comprehensively on implementing their nuclear disarmament obligations. Some of these security concerns may be exaggerated, irrelevant to the new political realities, or merely hiding the actual - but indefensible - reasons for some States to hold onto nuclear weapons - such as the discriminatory power and privilege afforded by them, or the close links between governments and the self-interested nuclear weapons corporations. However, there are legitimate security concerns that give rise to nuclear weapons possession, and such security concerns must be acknowledged even by those who believe that the weapons themselves are illegitimate.

A Nuclear Weapons Convention approach inherently deals with some of these security concerns – such as the threat of nuclear weapons being used against one's country if one does not have nuclear weapons to deter such attack. With the prohibition and elimination of nuclear weapons under a NWC backed up by the Security Council, such a nuclear deterrence posture would no longer be required. However, there are a range of security issues, including the possibility of cheating and breakout, that are not resolved merely by the idea of a NWC, but would need to be addressed in the development of the NWC regime.

The political commitment to commence negotiations on a NWC would be enhanced by preparatory work on those security issues that are currently preventing such commitment. This may require additional elements than those currently included in the Model NWC. Or it may be that an increased political and public attention to the elements already proposed in the Model

NWC would help alleviate concerns and build political momentum. The key is to consider such security issues not in a vacuum - as happens too frequently - but to place them in the context of preparatory work for a NWC and a nuclear-weapons-free world.

Preparatory conference(s) for a NWC

Preparatory work towards a NWC could be enhanced by the holding of a high level preparatory conference, or a series of such conferences, which would give additional impetus to the preparatory work being undertaken and build political momentum for the commencement of actual negotiations. Preparatory conferences were very helpful, for example, in paving the way for negotiations on the Cluster Munitions Treaty, especially in building commitment by key States to join the negotiations. Nuclear weapons are unique, and special attention will need to be given to the best way to engage the Nuclear Weapon States in such preparatory conferences. Such considerations could be part of the preparatory work conducted by a group of like-minded States working to advance the NWC.

Next steps:

There are a number of steps that governments could take in the near-term to implement the ideas suggested above including:

1. Establish a like-minded group of countries in support of the Nuclear Weapons Convention and the UN Secretary-General's five-point plan for nuclear disarmament. Already there have been two informal meetings of countries interested in this idea, one meeting of which was addressed by the UNSG;
2. Agree at the 2010 NPT Review Conference to undertake a preparatory process for a Nuclear Weapons Convention or package of agreements, [and task the management of this process to the UNSG like-minded group and the Conference on Disarmament];
3. Develop a working paper for the 2010 NPT Review Conference that would explore possible preparatory work for a NWC, including the idea of a Preparatory Conference for a NWC once sufficient exploratory and practical work had been achieved.
