

MIDDLE POWERS INITIATIVE

Building bridges between governments to support the elimination of nuclear weapons

A Beacon of Light

A Middle Powers Initiative Briefing Paper

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SUMMARY

As the 70th anniversary of the atomic bombings of Hiroshima and Nagasaki nears, as modernization of their nuclear systems by all states possessing nuclear arsenals continues, as the “catastrophic humanitarian consequences” of the use of nuclear weapons becomes better understood, as the risk of use of even one of the 16,300 existing nuclear weapons grows through accident or miscalculation, as regional turmoil boils over spawning new networks of insurgents and terrorists, as the international debate about the elimination of nuclear weapons limps along – it is imperative to start a comprehensive process leading to the enactment of a legal framework for the prohibition and elimination of nuclear weapons. The time has come for the international community to work directly on the establishment of a nuclear weapons-free world. As the 2010 Non-Proliferation Treaty (NPT) Review Conference rightly declared: “All states need to make special efforts to establish the necessary framework to achieve and maintain a world without nuclear weapons.” The Middle Powers Initiative (MPI), an international civil society coalition which has for fifteen years brought together a range of like-minded states to discuss the legal, technical and political requisites for a nuclear weapons-free world, is convening a series of meetings to examine how a legal framework for the verified, irreversible, and enforceable prohibition and elimination of nuclear weapons could be constructed. This work is meant to buttress UN and NPT processes.

THE CURRENT SITUATION

1. Has the violence-torn summer of 2014 extinguished any hopes for progress in nuclear disarmament? Have the televised killings in Gaza, Ukraine, Syria and Iraq made it impossible to focus attention on the 16,300 nuclear weapons still in existence, any one of which, by design, accident or terrorism, could set off a catastrophe of epic proportions? On the contrary, global instability is not a time to back away from the United Nations goal of a nuclear weapons-free world; when barbarism breaks out, it is time to de-double our efforts to build the rule of law. The current, dangerous destabilization of the international system underlines the urgent need for states to begin a process of working together to eliminate nuclear weapons as a means of regaining global stability.
2. The Ukraine conflict shows (so far) that while the United States and Russia have learned to be prudent in their relations even when deeply at odds, risks remain of great power military confrontations, involving those states or others, with the potential to spiral into war. Tensions are rising also in the Asia-Pacific region, and in general stresses are likely to arise in unpredictable ways from resource scarcities and a warming climate. Despite pervasive complacency on the matter, use of nuclear weapons cannot be excluded if hostilities between nuclear-armed states in fact occur.
3. To avoid further human suffering and reestablish peace and security, it is imperative to reduce and end conflicts in Ukraine, the Middle East, and Africa; to prevent conflicts in East Asia and elsewhere; and to make the United Nations, especially the Security Council, and other cooperative security

mechanisms such as the Organization for Security and Cooperation in Europe more effective in conflict prevention and resolution.

4. In the nuclear sphere, it is of utmost importance to resolve the dispute over Russia's alleged violation of the INF Treaty and to preserve that treaty; to resurrect arms control – including control of non-nuclear strategic systems – between Russia and the United States, along with reforming US-European-Russian economic and security architecture; to broaden arms control to include China and other possessor states; to hold a conference on a Middle East Zone Free of WMD as promised by the 2010 NPT Review Conference; to reaffirm with conviction commitments to non-proliferation and disarmament made at the United Nations and in the NPT and its review process; to reach a permanent settlement of differences with Iran over its nuclear program; and to develop a workable diplomatic and political path toward denuclearization of the Korean peninsula.

5. Beyond those crucial tasks, it is necessary to go further, to decisively take potential nuclear conflict out of the dynamic, twisting evolution, or devolution, of regional and global politics in coming years and decades. That requires the universal prohibition and elimination of nuclear forces. Notwithstanding present upheavals, the ground in fact is being prepared for the initiation and execution of the abolition of nuclear weapons, in two key respects.

a) In the two decades plus since the end of the Cold War, measures and principles integral to an abolition process have been repeatedly identified in NPT conferences, UN General Assembly resolutions, meetings of the 2013 UN Open-Ended Working Group, and other governmental and civil society settings, not least MPI Article VI Forums and Framework Forums.¹ What needs to be done to get to a nuclear weapons-free world is reasonably well understood.

b) A second dimension of preparation of the ground for abolition has reemerged forcefully. The slow, halting and tortuous implementation, or ignoring, of commitments regarding such measures and principles has given rise to a crucial realization: Well-substantiated and widely acknowledged understanding of the sheer unacceptability of nuclear weapons – of which only one of the 16,300 currently in existence can destroy a city – must frame and guide the process of elimination and give it momentum. The conferences on the humanitarian consequences of nuclear weapons held in Oslo (March 2013) and Nayarit (February 2014) have powerfully made the point.

6. Indeed, the demands of global conscience are increasingly being heard; there is a growing unwillingness to tolerate some states' reliance on weapons whose use is palpably inhumane and also contrary to law governing the conduct of warfare. That perspective for the first time penetrated the NPT review process when in 2010 the Conference acknowledged the humanitarian catastrophe of a nuclear explosion and the obligation of all states to comply at all times with international law, including international humanitarian law. Declarations on this theme from a growing number of states have been made in NPT and UN meetings since the spring of 2012, most recently in the UN First Committee in October 2013.²

¹ See *Creating the Conditions and Building the Framework for a Nuclear Weapons-Free World*, Middle Powers Initiative Briefing Paper for the Berlin Framework Forum, 20-22 February 2013, online at www.middlepowers.org.

² *Joint Statement on the Humanitarian Consequences of Nuclear Weapons*, delivered by Ambassador Dell Higgin, New Zealand, 21 October 2013; *Joint Statement on the Humanitarian Consequences of Nuclear Weapons*, delivered by Ambassador Peter Woolcott, Australia, 21 October 2013.

7. Thus understanding is deepening regarding the incompatibility of nuclear weapons with the “elementary considerations of humanity” which, the International Court of Justice explained, are at the foundation of international humanitarian law. The incongruity – the absurdity – of relying on nuclear weapons as an alleged means of “detering” resort to large-scale use of force while weapons of lesser effects are prohibited is becoming more and more apparent. As UN High Representative for Disarmament Affairs Angela Kane remarked in an April 2014 speech: “How many states today boast that they are ‘biological-weapon states’ or ‘chemical-weapon states’? Who is arguing now that bubonic plague or polio are legitimate to use as weapons under any circumstance, whether in an attack or in retaliation? Who speaks of a bioweapon umbrella?”³

8. Further, there is widespread rejection of the NPT nuclear-weapons states’ grotesque treatment of the NPT as a license to possess nuclear arsenals indefinitely. In addition to being hazardous and morally reprehensible, that view is legally mistaken, as demonstrated by the Marshall Islands’ filings in the International Court of Justice and the New Agenda Coalition Working Paper for the 2014 NPT PrepCom.⁴

NEXT STEPS

9. Against this background, states committed to nuclear abolition should work hard for the creation of a process that aims, first and early on, to affirm unequivocally the normative unacceptability of reliance on nuclear weapons, and second, to result in the establishment of a legal regime of zero in which nuclear weapons are irreversibly and verifiably eliminated as well as prohibited. There are several options for such a process. Among others, it could:

- emerge out of the series of conferences on the humanitarian impacts of nuclear weapons, with the next one held in December 2014 in Vienna;
- use as a vehicle a re-established UN Open-Ended Working Group (OEWG) on taking forward proposals for multilateral disarmament negotiations;
- be launched at the UN High-Level Conference on nuclear disarmament to be held by 2018 pursuant to the 2013 General Assembly resolution following up on the September 2013 High-Level Meeting. OEWG meetings could conceivably serve as a sort of preparatory process for that conference;
- be initiated by one or a few influential states independent of the above venues, in the way that the United States initiated the Nuclear Security Summits.

10. It would also be possible for an NPT Review Conference to launch an abolition process, with provision for participation by non-NPT parties. That indeed was attempted in 2010 under Austria’s leadership of Subsidiary Body I, but was rebuffed by the nuclear-weapon states. As that episode illustrates, unlike other options mentioned above, Review Conference decisions by practice are made by consensus. The same is true of the Conference on Disarmament, which in principle could decide – as most states favor – to commence negotiations on complete nuclear disarmament.

11. In thinking about what agreements on prohibition and elimination of nuclear weapons could be adopted through the above or other mechanisms, it is important to begin with the fact that there is already a legal instrument, the NPT, verifiably prohibiting possession of nuclear weapons by the vast

³ *The New Zealand Lectures on Disarmament*, UNODA Occasional Papers, No. 26, June 2014, p. 19.

⁴ *Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons*, 2 April 2014, NPT/CONF.2015/PC.III/WP.18.

majority of the world's states, with an associated system of legal safeguards monitored by the IAEA and enforced by the Security Council. There are also regional nuclear weapon free zones, established by treaty, covering the Southern Hemisphere. Additionally, there is an operating regime on prohibition of nuclear tests, though the test ban treaty itself has not entered into force. What is lacking are universal prohibitions on use and possession of nuclear weapons and a timebound program for the elimination of the existing nuclear arsenals.

12. It is a good sign that in recent years there has been significant, though far from sufficient, discussion of the form that agreements relating to prohibition and elimination of nuclear weapons could take. Proposed types of agreements include those discussed below, with the caveat that the distinctions are somewhat artificial; a Nuclear Weapons Convention could in part be a Framework Agreement, and a Ban Treaty could be a Framework Agreement or a Nuclear Weapons Convention. These are the issues MPI wishes to explore in its new series of meetings.

13. A *Nuclear Weapons Convention* building on the NPT and other existing instruments would have the advantage of incorporating in one agreement obligations, measures and mechanisms for the comprehensive abolition of nuclear weapons. A model convention, drafted by several MPI co-sponsors and circulated within the United Nations at the request of Costa Rica and Malaysia, could serve, as UN Secretary-General Ban Ki-moon has said, as a “good point of departure” for negotiations. A disadvantage could be that even with political will a convention could take a number of years to negotiate.

14. A variant of the proposal, recently put forward by Professor David Koplow of Georgetown Law, suggests a two-stage process.⁵ First, states – including nuclear-armed states – would enter into a political agreement to create the conditions for the elimination of nuclear weapons, through measures like transparency, limits and reductions involving all possessor states, elimination of short-notice launch, control of fissile materials and limits on nuclear technology, as well as universal adherence to the conventions on biological and chemical weapons and the Additional Protocol. In the second stage, a treaty for the establishment of a permanent global regime of zero nuclear weapons would be negotiated. Global Zero has advanced a similar plan for phased reductions combined with other supporting measures, followed by negotiations on a global treaty to eliminate nuclear weapons by 2030.

15. A *Framework Agreement* would establish basic obligations, including non-use and non-possession, and provide for further negotiations on elimination, for example on a verification protocol and control of fissile materials. It would be possible to negotiate more quickly than a Nuclear Weapons Convention, and for that reason would have the advantage of earlier codification of the legal and moral illegitimacy of nuclear weapons, in particular via a non-use obligation. India seems a potential supporter of such an approach. Among other steps, India contends that an “agreed global and non-discriminatory multilateral framework” and a convention on the prohibition of use would pave the way for global elimination through a Nuclear Weapons Convention.

16. While the notion of a *Framework of Instruments* has not been well developed, it appears that it would tie together existing and future instruments, on testing, reductions and elimination, fissile

⁵ *What Would Zero Look Like? A Treaty for the Abolition of Nuclear Weapons*, 45 *Georgetown Journal of International Law*, 683-781 (2014). In addition to acknowledging the value of the model convention, Koplow notes the contributions of participants in a Joint Enterprise Workshop held at the Hoover Institution in July 2012.

materials, non-proliferation, and so on. It does not necessarily contemplate a global agreement with near universal participation of states. Instead, for example, an agreement with a limited number of parties including the nuclear-armed states plus a Security Council resolution might suffice if the approach was accepted by NPT states parties collectively. This proposal has an affinity with the “step-by-step” approach.

17. The *Ban Treaty* strategy tends to assume that a process would be initiated by non-nuclear weapon states. In some versions of this proposal, if states possessing nuclear arsenals declined to participate, participating non-nuclear weapon states would agree to prohibit possession and use of nuclear weapons with provision for nuclear-armed states joining subject to an obligation of eliminating their arsenals. Such a treaty concluded by non-nuclear weapon states, assuming a significant number of parties, would make a contribution to the delegitimization of nuclear weapons.

CONCLUSION

18. Determining what approach to nuclear zero is best requires further debate and will depend to some degree on which states are initially participating in a process. This determination by states should be done with the benefit of extensive civil society consultation. MPI notes:

- The aim should be a comprehensive and effective regime of zero, in which elimination is verified, irreversible, and enforceable.
- The early delegitimization of nuclear weapons, and the phasing out of the role of nuclear weapons in security doctrines, would greatly facilitate undertaking and sustaining a process of elimination.
- Participation of a diverse range of states is essential. Optimally, at least some states possessing nuclear arsenals would participate in a process, but their non-participation in early stages at least should not be viewed as an insurmountable obstacle. However, when it comes to final negotiation, as opposed to drafting, of provisions of an agreement dealing with such matters related to elimination of existing arsenals as verification, enforcement, control of fissile materials, and phase-out, the participation of key nuclear-armed states would be necessary, certainly if their joining the treaty is envisaged. On the other hand, a legal instrument prohibiting use, or use and possession, initially concluded without nuclear-armed states could serve as a building block for abolition.

19. MPI stands ready to assist states in seizing the present moment. The groundwork has been done and it is time to start a legal process leading to the prohibition and elimination of nuclear weapons. This work has now become vital and will provide a beacon of light for a world in disarray.

This MPI Briefing Paper was written by Dr. John Burroughs, Executive Director of Lawyers Committee on Nuclear Policy, UN Office of the International Association of Lawyers Against Nuclear Arms.



Middle Powers Initiative is an initiative of the Albert Schweitzer Institute, Global Security Institute, International Association of Lawyers Against Nuclear Arms, International Network of Engineers and Scientists for Global Responsibility, International Peace Bureau, International Physicians for the Prevention of Nuclear War, Nuclear Age Peace Foundation, and Women's International League for Peace and Freedom.

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