



Building the framework for a nuclear weapon-free-world

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

*Basel Peace Office**

Introduction

This working paper follows on from Working Paper A/AC.281/NGO.2 *Bridging the gaps - building the framework - ensuring success* submitted to the OEWG in 2013.

Approaches to ensure progress and success

1. The deliberations of the February 2016 session of the OEWG demonstrate that there are clear and substantive differences in perspectives, approaches and favoured proposals on addressing concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons.
2. Where-as some governments favour the negotiations of a comprehensive prohibition on nuclear weapons - through either a nuclear weapons convention or a ban treaty - others favour a phased process such as through a building blocks approach.
3. A framework or hybrid process (package of agreements) which allows for both approaches would be the most conducive to success.
4. Such a process could include norm-building measures that are not able to be adopted by all States in the short term, such as criminalization of the employment of nuclear weapons through the International Criminal Court, prohibition of nuclear weapons through national legislation, negotiation of a treaty prohibiting the use of nuclear weapons, and/or negotiation of a treaty banning the threat, use and possession of nuclear weapons.
5. Such a process could also include building blocks that are not as ambitious, but have more widespread support such as stockpile reductions, CTBT entry-into-force, a fissile materials treaty, establishment of additional nuclear-weapon-free zones, development of verification measures and other measures identified in OEWG Working paper A/AC.286/WP.9 A *progressive approach to a world free of nuclear weapons: revisiting the building blocks paradigm*.

* *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*

From the humanitarian dimension to nuclear prohibition

6. The humanitarian initiative has raised serious concerns about nuclear deterrence, including the risks of nuclear weapons use by accident, miscalculation, unauthorized access or intent, and the catastrophic humanitarian consequences of any use of nuclear weapons;
7. The humanitarian initiative relates most directly to preventing the use of nuclear weapons.
8. The only certain way to prevent use of nuclear weapons is to prohibit and eliminate them. Those states rejecting nuclear deterrence should be able to agree to adopt national, regional and multilateral measures to comprehensively prohibit nuclear weapons.
9. However, nuclear-armed States and those under extended nuclear deterrence relationships still rely on nuclear deterrence for some aspects of their security. Until they abandon this reliance, they will be unwilling or unable to agree to the comprehensive prohibition of nuclear weapons.
10. An interim measure could be an agreement to prohibit the use of nuclear weapons. This follows the process for chemical weapons, the use of which was first prohibited by the Geneva Gas Protocol of 1925, followed by comprehensive prohibition through the Chemical Weapons Convention in 1980.
11. Negotiations on an agreement to prohibit the use of nuclear weapons could be initiated by a mix of countries (non-nuclear countries, those under extended nuclear deterrence relationships and/or some of the nuclear-armed countries) without having to wait for agreement by all nuclear-reliant countries.
12. An agreement to prohibit the use of nuclear weapons would re-affirm, codify, strengthen and implement the existing norm against the use of nuclear weapons which has been expressed in the 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, UN General Assembly resolutions affirming that any use of nuclear weapons would be a crime against humanity and a violation of the UN Charter, pronouncements of the ICRC that the use of nuclear weapons could not be reconciled with international humanitarian law, and affirmations by nuclear reliant countries on the practice of non-use of nuclear weapons and the importance that this practice is extended indefinitely.
13. An agreement prohibiting use, as a codification of existing international law, would have universal legal impact, reaching beyond the states parties to such an agreement.
14. An agreement prohibiting use would pave the way for negotiations to commence on the comprehensive prohibition and elimination of nuclear weapons.
15. Negotiations on an agreement prohibiting use of nuclear weapons should not detract from, or replace other complementary measures to achieve a nuclear-weapon-free world as outlined in paragraphs 3-5.

Security without nuclear weapons

16. A significant number of countries are either nuclear armed States or rely on nuclear weapons for their security. However, they also are under an obligation, affirmed by the 1996 International Court of Justice Advisory Opinion, to negotiate in good faith the complete prohibition and elimination of nuclear weapons. This obligation requires such countries to phase out their reliance on nuclear weapons.
17. The majority of countries in the world find their security without nuclear weapons. Some of these had fledgling nuclear weapons programs which they abandoned. Some have hosted nuclear weapons on their territories and have ended such hosting arrangements. One had produced nuclear weapons but has now destroyed their weapons and closed their nuclear weapons facilities. Some have been under extended nuclear deterrence relationships but have now rejected these. Most have never hosted, produced or been otherwise reliant on nuclear weapons.
18. The existence of such a large number and variety of non-nuclear countries indicates that it is possible to achieve security without nuclear weapons.
19. However, the non-nuclear countries have not done a good job in convincing the nuclear-reliant countries that they too could enjoy security without nuclear weapons. The OEWG could help rectify this by establishing a multilateral project to examine the specific security roles played by nuclear weapons, evaluate the effectiveness of nuclear weapons to fulfill those roles, and highlight better non-nuclear alternatives to filling those roles. Such a project should emphasise the legal, political and humanitarian imperative to eliminate the role of nuclear weapons in security doctrines.

Building political will including from the nuclear-armed States

20. The nuclear-armed States are not participating in the OEWG. Some progress can be made without their participation – including on developing and adopting some of the measures listed above. However, their participation will be required in order to eliminate the risks of nuclear-weapons-use and to achieve the global prohibition and elimination of nuclear weapons.
21. The OEWG should therefore give attention on ways to engage the nuclear-armed States and/or to impact on their policies and actions for nuclear disarmament.
22. One such way would be to initiate a high level political process on nuclear disarmament similar to the high level Nuclear Security Summits. This could be done by elevating the UN High Level Conference on Nuclear Disarmament (agreed by the UN General Assembly to be held no later than 2018) into the first of a series of Nuclear Disarmament Summits.
23. Another way to put political pressure on the nuclear-armed States to implement their nuclear disarmament obligation is for governments in the OEWG to join the Marshall Islands case lodged against the nuclear-armed States in the International Court of Justice on this issue.

24. A third way would be for a group of countries to establish a leadership initiative similar to the Six Nation Initiative of the late 1980s. Such an initiative would ensure that nuclear disarmament is elevated to a top priority for the nuclear-armed States.

Summary of proposals

The Open Ended Working Group should:

1. Recommend to the UN General Assembly to adopt a resolution at its 71st Session renewing the Open Ended Working Group and giving it a mandate to commence negotiations, or pre-negotiations (preparatory work), on a framework agreement or package of agreements for the achievement of a nuclear-weapon-free world;
2. Recommend that negotiation of a treaty to prohibit the use of nuclear weapons be included in the framework agreement or package of agreements to be negotiated by the renewed Open Ended Working Group;
3. Encourage governments to take national, regional and multilateral initiatives to strengthen the legal norm against nuclear weapons, including national prohibition legislation, establishment of additional nuclear-weapon-free zones, criminalization of nuclear-weapons-use through adoption of a protocol or amendment to the Rome Statute (International Criminal Court), and possibly the negotiation of a treaty prohibiting the threat, use and possession of nuclear weapons;
4. Recommend the establishment of a multilateral project to examine the specific security roles played by nuclear weapons, evaluate the effectiveness of nuclear weapons to fulfill those roles, and highlight better non-nuclear alternatives to filling those roles;
5. Recommend to the UN General Assembly to elevate to summit-level the UN High Level Conference on Nuclear Disarmament to be held no later than 2018.