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Options for a Framework Agreement

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

Introduction

1. There are clear and substantive differences amongst OEWG participating governments on approaches and favoured proposals to achieve and maintain a world without nuclear weapons;
2. Whereas some governments favour early negotiation of a comprehensive prohibition on nuclear weapons - through either a nuclear weapons convention or a ban treaty - others favour a phased process of negotiations such as through a building blocks approach which envisions the negotiation of a prohibition instrument after other measures have been achieved.
3. There are also different opinions on whether proposed measures require participation of nuclear-armed states at the outset;
4. A framework agreement could bridge these differences by providing for a range of measures and approaches within an agreed framework;
5. A framework agreement that emphasizes political rather than legal commitments at the outset might be the most conducive to building engagement with nuclear-armed States on interim measures while simultaneously providing possibilities for early adoption of stronger measures by non-nuclear States.

Framework agreements

6. A framework agreement is generally a treaty that sets out broad commitments and a governance system which are then implemented and expanded upon in a further instrument or series of instruments and through various processes to provide more detailed technical, legal and other arrangements.
7. A well-known example of a framework agreement is the United Nations Framework Convention on Climate Change (UNFCCC). Since its adoption in 1992, additional measures to implement the broad agreements in UNFCCC have been negotiated including the 1997 Kyoto Protocol and the 2015 Paris Agreement, and elaborate ongoing assessment and generation of commitments takes place in annual conferences of parties.

8. In the disarmament field, the Convention on Conventional Weapons (CCW), is an example. Since its adoption in 1980, five additional protocols have been adopted.
9. In addition, the NPT under Article VI establishes a framework for achievement of the elimination of nuclear weapons through negotiation; however, it is very general in nature not specifying, for example, processes, measures or timelines.
10. The Universal Declaration of Human Rights is a related example of a political instrument that, like a framework agreement, establishes a set of commitments, laying the basis for further adoption of implementing measures. Since its adoption in 1948, a whole series of legally binding human rights instruments have been negotiated to give effect to the commitments in the Declaration, which themselves have come to be regarded as customary international law.

Framework agreement on nuclear disarmament

11. A framework agreement on nuclear disarmament could be constructed as a variant of a nuclear weapons convention. It could consist of a chapeau agreement that establishes key provisions at the beginning, such as a prohibition on the use of nuclear weapons and on expansion and modernization of existing forces, create a body or mechanism to increase transparency regarding nuclear weapons and monitor progress on disarmament, and provide for further negotiations on matters that could not be settled at the outset, such as stockpile reductions, verification, enforcement, and control and disposition of fissile materials. It should also include a process for achieving the complete elimination of nuclear weapons and ensuring that it is permanent, even if a specific timeframe for elimination is not possible to adopt in the initial chapeau agreement.
12. A framework agreement could include provisions which are adopted at different stages by differing States. For example if a prohibition on use in effect from entry into force cannot be agreed, a protocol prohibiting use could be adopted by non-nuclear States at an earlier stage than nuclear reliant States, and a protocol on non-use against non-nuclear States could be adopted with participation of nuclear States. A protocol adopted by non-nuclear States could also prohibit development, possession, and related matters.
13. A framework agreement would have a number of benefits including institutionalization of the process of disarmament, possible early treaty codification of the obligation of non-use, and early development of protocols on other provisions.
14. On the other hand, most nuclear-armed States and nuclear reliant States appear unwilling to adopt a comprehensive, legally binding agreement on disarmament, even if it leaves key matters for further negotiation. Their attitude appears to be that possession of nuclear arsenals and nuclear-use doctrines remain necessary until a better security environment is achieved.
15. As such, a modified version of a nuclear disarmament framework agreement might be more feasible – one that has less stringent legal measures, and is more political in nature.

A political-legal framework agreement

16. A political-legal framework could expand on the political agreements already reached in other forums such as the NPT Review Conferences and the first Special Session on Disarmament, reaffirm existing obligations and applicable law, and add at least procedural legal commitments.
17. Such an agreement could, for example,
 - a. reaffirm the disarmament obligation in NPT Article VI and customary international law;
 - b. acknowledge the humanitarian consequences of nuclear explosions and affirm the at least general incompatibility of use of nuclear weapons with international humanitarian law;
 - c. state the common objective to extend forever the practice of non-use;
 - d. outline non-binding aims for achieving reductions and elimination of nuclear weapons within an aspirational timeframe;
 - e. set out processes for achieving these aims, including further negotiations and reporting mechanisms;
 - f. agree on supporting measures such as further work on verification, confidence-building and establishing security without nuclear weapons.

Conclusion

18. A political-legal framework agreement would appear to provide the best opportunity to engage nuclear armed States on interim measures, strengthen their political commitment to nuclear disarmament, and develop aspirational goals for achieving this, at the same time as allowing flexibility for non-nuclear States to adopt stronger measures earlier. As such, it might be the best option for the OEWG to recommend for the start of multilateral negotiations in 2017.