

TOWARDS A GLOBAL BAN ON NUCLEAR WEAPONS – THE ROLE OF AFRICAN STATES: ROUNDTABLE DISCUSSION PAPER

There are still over 20 000 nuclear weapons in the world. Nine states are known to be armed with nuclear weapons: USA, Russia, China, France, UK, India, Pakistan, Israel and North Korea. Five more have US nuclear weapons on their soil. These are Belgium, the Netherlands, Germany, Italy and Turkey. USA and Russia still have about 95% of the total stockpile. Israel neither confirms nor denies that it has nuclear weapons, but is commonly counted among the nine nuclear-armed states.

No African country possesses nuclear weapons today. After a long process, dating back to the early 1960s, Africa became a nuclear-weapon-free zone in July 2009 when the Treaty of Pelindaba entered into force. During the Apartheid era, South Africa developed nuclear weapons. These were voluntarily dismantled in the early 1990s and the nuclear weapons programme was discontinued. The status as a nuclear-weapon-free continent provides African states with moral and political capital that could make them key players in the process towards a global ban on nuclear weapons.

THE CURRENT FRAMEWORK

The Nuclear Non-Proliferation Treaty (NPT)¹ is the key

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1 <http://nwp.ilpi.org/wp-content/uploads/2011/10/Non->

legal framework governing nuclear weapons under international law. Membership is close to universal² (only Israel, India, Pakistan and North Korea are outside), and it regulates both nuclear weapons and peaceful use of nuclear energy. The treaty is said to have three main pillars: non-proliferation, disarmament and peaceful use. It has a five-yearly review cycle, with outcome documents adopted by consensus. The NPT further sets up a two-tier system by formally recognizing five countries as nuclear-weapon states (those that had tested nuclear weapons before 1967, i.e. USA, Russia, UK, France and China), while the rest of the states parties are referred to as non-nuclear-weapon states.

The founding bargain of the treaty was that those who did not have nuclear weapons would not seek them, while those who had them would eventually get rid of them. There is, however, no specified timeline for the completion of this bargain. The treaty was originally due to expire in 1995, and the non-nuclear-weapon states only reluctantly agreed to extend the treaty indefinitely, in exchange for comprehensive political commitments on disarmament from the nuclear-weapon states.

While the NPT has served an important purpose in curtailing proliferation of nuclear weapons over the last 40 years, there has been much less focus on the disarmament pillar of the treaty. Critics argue that the treaty mainly serves to consolidate status quo with a biased focus on nuclear non-proliferation, and that it lacks clear instruments for implementing the obligations on

Proliferation-Treaty1.pdf

2 <http://unhq-appspub-01.un.org/UNODA/TreatyStatus.nsf>

“general and complete disarmament”, as stated in article VI. That being said, the NPT remains important and any efforts to eliminate nuclear weapons should seek to supplement the NPT, not to undermine it.

Such supplements have come in different forms over the years. These can generally be categorized as either arms limitation treaties between the nuclear-armed states (e.g. SALT, INF, START I/II/III, SORT, New START)³ or as global control regimes aiming for universal adherence (e.g. CTBT, FMCT, UNSC Res 1540)⁴. Several regional agreements have also served to supplement the NPT regime, notably the various nuclear-weapon-free zones (NWFZ) that now cover more than 100 states. These regional bans are mandated under article VII of the NPT.

Most of the bilateral agreements have been properly implemented (except START II and III), but due to NPT proliferation restrictions, there has been no international verification of these treaties. In terms of the multilateral treaties, the progress has been scant. The negotiation of the Comprehensive Nuclear Test Ban Treaty (CTBT) back in 1996 was seen as a real achievement, yet the treaty still lacks the ratification of 8 key states before it can enter into force.⁵ The CTBT bans the testing of all nuclear weapon devices.⁶

In addition to the CTBT, there are on-going attempts to negotiate a treaty on fissile material, as well as binding agreements on negative security assurances and on

the prevention of an arms race in outer space. The task of negotiating these instruments has been given to the Conference on Disarmament (CD) in Geneva, the only permanent multilateral disarmament forum. However, the CD has been deadlocked since the late 1990s, a situation partly attributable to the absolute consensus rule by which the forum operates. The CD has also been criticized for its lack of representation (membership is limited to 65 states)⁷ and for conducting its work in outdated regional groupings. Access for civil society is also very limited. Many are therefore questioning the credibility of the CD as a platform for negotiating international arms control treaties.

Since bilateral arms control treaties remain unverifiable and controlled by nuclear-armed states (e.g. New START), and the multilateral treaties either lack key ratifications (e.g. CTBT) or remain stuck in the CD (e.g. FMCT), the most effective supplements to the NPT over the last decades have been the nuclear-weapon-free zones. These zones today comprise more than 100 countries, including the whole of Latin America and Africa, as well as Central and South-East Asia, and the Pacific. In 2005, the NWFZ-states met for the first time

7 Among the 65 members of the CD, 12 are African: Algeria, Cameroon, Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Morocco, Nigeria, Senegal, South Africa, Tunisia, Zimbabwe.

- 3 Strategic Arms Limitation Treaty (SALT), Intermediate-Range Nuclear Forces Treaty (INF), Strategic Arms Reductions Treaty (START), Strategic Offensive Reductions Treaty (SORT).
- 4 Comprehensive Test-Ban Treaty (CTBT), Fissile Material Cut-off Treaty (FMCT).
- 5 Indonesia deposited its instrument of ratification in February 2012, reducing the number of required key state ratifications (Annex 2 states) to 8: China, Egypt, Iran, Israel and the United States have signed but not ratified the Treaty, and India, North Korea and Pakistan have not signed it.
- 6 Three African states (Mauritius, Somalia and South Sudan) have not yet signed the CTBT, and ratification is pending from 11 countries (Angola, Chad, Comoros, Republic of Congo, Egypt, Equatorial Guinea, the Gambia, Guinea-Bissau, Sao Tome and Principe, Swaziland and Zimbabwe) Egypt’s ratification is mandatory for the Treaty to enter into force, since Egypt is one of the 44 “Annex 2” states that all must ratify the treaty before it enters into force.

ILPI’s Nuclear Weapons Project

The ILPI Nuclear Weapons Project started in September 2011 with the aim to shape and inform the debate on how to eliminate nuclear weapons, by way of analysis, networking and outreach. The core of the project is policy-oriented analyses of the relationships between nuclear weapons and international law, as well as on security, developmental and environmental dimensions of nuclear weapons. The project will communicate and cooperate with others working to eliminate nuclear weapons, from States, international organisations and civil society.

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in their capacity as such in Mexico. This was followed up in 2010, and there is now an on-going dialogue between these countries. The NWFZs offer an alternative perspective in the disarmament debate on how regions may contribute to eliminate nuclear weapons. One could argue that the experiences from regional bans on nuclear weapons provide important lessons for the global level, and that the group of NWFZ-states could become a driving force for the negotiation of a global nuclear weapons ban.

The African nuclear-weapon-free zone entered into force in July 2009, following the NWFZs in Latin America and the Caribbean, the South Pacific, and Central Asia.⁸ The Treaty of Pelindaba seeks to ensure that nuclear weapons are not developed, produced, stockpiled, tested, acquired or stationed in Africa, including its islands. In line with other NWFZs, the Treaty of Pelindaba includes protocols for the five nuclear-weapon states to sign and ratify and thus respect the status of the zone and to provide negative security assurances. All 53 members of the African Union (AU) are signatories to the Treaty, including the territory known as the Sahrawi Arab Democratic Republic (also known as Western Sahara), and 34 states have ratified the Treaty. Additionally, Morocco has signed but not ratified the Treaty.

All the regional bans on nuclear weapons prohibit possession, manufacture and transfer of nuclear weapons. Three of them also include explicit bans on the *use* of nuclear weapons. There has been some debate on whether a global ban only on the use nuclear weapons may be a viable path to go towards elimination, the argument being that if they cannot be used, there is not reason for keeping them. On the other hand, nuclear weapons have not been used since August 9, 1945, and there is little reason to think the nuclear-armed states would eliminate their arsenals even if the *use* of nuclear weapons were to be explicitly prohibited. This raises the question of the role of nuclear weapons under international humanitarian law (IHL).

⁸ In addition to the regional zones, Mongolia has declared itself a single-state NWFZ, and is the only country recognized as such by the UN. New Zealand, Austria and the Philippines are also self-declared nuclear-weapon-free states, but have yet to gain international NWFZ status. Other agreements establish the Antarctic, Outer Space, the Moon, and the Seabed as nuclear-weapon-free.

NUCLEAR WEAPONS AND IHL

International Humanitarian Law (IHL) applies to armed conflicts. This body of law is mainly laid down in the four Geneva Conventions and their Additional Protocols, as well as in customary law. Some of the main rules of IHL are also reflected in treaties regulating specific weapons. A main obligation of any warring party is at all times to distinguish between military targets and civilian objects or persons, and to only attack military targets, in other words; to observe the *rule on distinction*.

In Additional Protocol I to the Geneva Conventions, there are rules that specify in more detail what the obligation to distinguish between military targets and civilian objects and persons entails. One expression of the distinction rule is the corresponding and specific prohibition against indiscriminate attacks. An indiscriminate attack is one that for example employs means of combat which cannot be directed against a specific military objective, or which employ means whose effects cannot be limited according to the rules of the protocol, inter alia with regard to severe damage to the environment.

Another core rule of IHL is that the acts of warfare employed should never be excessive in relation to achieving the objective of overpowering the enemy, or the proportionality rule. The point of departure for IHL is that it is never militarily necessary to attack civilian persons or objects. Finally there is a prohibition in IHL against employing means of warfare that cause unnecessary suffering and superfluous injury.

Considering these fundamental rules of IHL, it is hard to imagine how nuclear weapons could be used without grossly violating IHL. But if this were the case, why would an explicit ban on nuclear weapons be necessary? When civilians are killed or injured in connection with armed conflict, it is typically not because of a lack of rules. What is lacking is more often compliance with existing rules. Still, certain weapons have been explicitly banned. This is the case for chemical and biological weapons, anti-personnel mines, cluster munitions, blinding lasers and undetectable fragments. While it is theoretically possible to use for example chemical weapons or anti-personnel mines without violating the rules on distinction, it is recognized that the risk of prohibited use would be great if these weapons were part of available military equipment.

Another rationale for outlawing specific weapons is the prohibition against attacks that may be expected to cause damage to civilians to an extent that would

be *excessive* in relation to the concrete and direct military advantage. The specific characteristics of nuclear weapons, leaving dangerous toxic waste for staggering amounts of time after the attack, are significant for this proportionality test. An attack that continues to cause harm for a lengthy time period *after* the conflict is over would appear to be *excessive* because such harm cannot reasonably constitute any military advantage.

GETTING TO ZERO

Officially, there is little disagreement internationally with regards to the ultimate goal of nuclear arms control: A world without nuclear weapons. Statements and resolutions from innumerable forums make this abundantly clear. There is, however, quite a bit of disagreement on how this goal can best be reached.

Broadly speaking, there are two competing approaches in the debate on how to eliminate nuclear weapons. On the one hand there are those who believe that the most secure and viable path to nuclear elimination goes through a so-called ‘pragmatic’ or ‘step-by-step’ approach. Proponents of this approach argue that the only realistic way to eliminate nuclear weapons is by incrementally adding pieces of international law on issues such as those that are on the agenda of the CD, and by gradually building down the size of nuclear arsenals through reciprocal and (preferably) verifiable arms limitation treaties. Critics of the step-by-step solution complain that in practice it is painfully slow, and that it is largely dependent on the initiative and cooperation of mainly two states (USA and Russia). It has also been criticized for its narrow, state-centred view of security. The step-by-step approach to nuclear arms control rests firmly within a state-security discourse, which to a large extent has succeeded in making the world accept the notion that; “if they have them, we must have them too”. The nuclear weapons have thus come to be seen as crucial to national (or regional) security.

At the opposite side of this debate, there are those who call for the negotiations of a comprehensive solution that deals with all aspects of nuclear weapons, i.e. a treaty banning all nuclear weapons along the lines of the chemical and biological weapons conventions. This call is partly born from frustration over lack of progress towards the universally agreed goal of zero nuclear weapons, and partly based on an outright rejection of the state-security approach to nuclear arms control. In this perspective, nuclear weapons are seen as immoral weapons whose use would violate international human-

itarian law and cause human and ecological catastrophe.

Over the last decade, there have been several attempts by states to form groups that could push the disarmament agenda forward. Most of these have fizzled out without notable impact (e.g. New Agenda Coalition and the 7 Nation Initiative). Others continue in the margins, hoping to give at least some form of boost to the nuclear disarmament agenda (e.g. 10 Nation Initiative from 2010). These groups have had in common an overall adherence to the step-by-step approach to nuclear disarmament. They have *inter alia* pushed for negotiations on an FMCT, called for the ratification of the CTBT, or expressed frustration over the stalemate in CD, but not called outright for a ban on nuclear weapons.

However, all initiatives have not been married to the step-by-step approach. There have also been calls, mainly by countries outside the old East-West divide, for negotiations on a comprehensive nuclear weapons convention. The obligation to negotiate such a treaty, laid down in the NPT, was confirmed by the International Court of Justice in 1996 and has been the reference point for initiatives such as the Malaysia-resolution, which is tabled annually in the UN General Assembly.⁹ This resolution calls for negotiations to start on a nuclear weapons treaty, and is voted through with a large majority every year. A study undertaken by the International Campaign to Abolish Nuclear Weapons (ICAN) shows that a total of 146 states are in fact supportive of the idea of a comprehensive nuclear weapons treaty.¹⁰ The question that follows from this is whether the step-by-step approach should be rejected as a viable path to nuclear elimination, and if so, whether a shift towards a comprehensive approach is actually feasible.

All these state-driven initiatives have been spurred by frustration over the lack of progress on the political commitments to disarm. But whether they have called for redoubled efforts on a step-by-step approach or for negotiations on a nuclear weapons convention, they have all found themselves confined by the inherent limitations of the multilateral disarmament machinery. Even the Malaysia-resolution makes reference to the CD as the only legitimate multilateral disarmament forum, suggesting that if negotiations were to start, the Non-Aligned Movement would insist for it to take place in

9 http://inesap.org/sites/default/files/inesap_old/mNWC_2007_Unversion_English_N0821377.pdf

10 <http://www.icanw.org/files/TowardsTreatyBanningNuclearWeapons.pdf>

the CD. To date, no state-driven initiative has seriously attempted to establish a separate process aimed at banning nuclear weapons.

EXPANDING THE POLITICAL SPACE

Discussions on nuclear weapons have tended to be dominated by a national security perspective on the one hand and a broad peace and disarmament perspective on the other. The arms control perspective promoting coordinated reductions in the arsenals of major nuclear-armed states has served to reinforce the concept of deterrence. This concept continues to underpin the national security perspective arguing against a prohibition on nuclear weapons. These dynamics will need to change if meaningful progress is to be made towards the prohibition and abolition of nuclear weapons.

Expanding the political space for discussing nuclear weapons requires a change in how people think about solving the global problem of the existence of 20 000 nuclear warheads capable of destroying the world as we know it. This involves changing the discourse on nuclear weapons and refusing to be constrained by existing mechanisms and forums for discussion.

Two important factors in changing the discourse on nuclear weapons are actors and arenas. Over the last few years, a number of new actors have entered the NGO landscape on nuclear disarmament. The Global Zero campaign was started in 2008 with endorsements of about 300 former military and political leaders, and the International Campaign to Abolish Nuclear Weapons (ICAN) sprung out of the IPPNW¹¹ in 2007. Both these initiatives call for the full elimination of all nuclear weapons, but while Global Zero has adopted a phased strategy with milestones and set targets for elimination, ICAN's sole demand is the negotiation of a comprehensive nuclear weapons convention.

In 2010, the International Committee of the Red Cross (ICRC) also started to show an interest in the issue, and at the Council of Delegates of the Red Cross and Red Crescent Societies in November 2011, the national movements adopted a landmark resolution calling for "negotiations to prohibit the use of and completely eliminate nuclear weapons through a legally binding international agreement".¹² The decision of the Council

of Delegates to engage in the work for a ban on nuclear weapons has given an enormous boost to the civil society work in this field. Most importantly, perhaps, is the contribution it has had in reshaping the debate, from a state-security perspective to a humanitarian perspective.

In the outcome document of the 2010 Review Conference of the NPT a reference was made to the humanitarian consequences of any use of nuclear weapons,¹³ and this language is gradually becoming more prominent in the multilateral discussions. In April this year, the Norwegian government announced that it intends to organize a conference in early 2013 on the humanitarian consequences of using nuclear weapons. This conference will not only be attended by states, but also by a broad range of civil society organizations, inter-governmental organizations and researchers, many of whom will likely have limited experience from the field of nuclear disarmament.

This expansion of the "landscape of stakeholders" is crucial, and it does not only translate into broader participation in established forums for debate on nuclear weapons, but also vice-versa. Nuclear weapons could be added to the agenda of other forums, including those discussing humanitarian affairs, human rights, development, food security. This would help to extricate the discussion from the polarised political frameworks that prevail in some countries. In the UK, for example, the discussion still seems to be suffering from a hangover from the cold war debate of the 1970s and 80s.

Progressive discussions around a prohibition on nuclear weapons should be run not only by disarmament and security thinkers, but also by humanitarian thinkers and practitioners. This means the idea of what constitutes an expert on nuclear weapons should be broadened. A key aspect of this is a necessary shift in emphasis towards the effects of nuclear weapons, rather than just their technical characteristics and the (increasingly questionable) military and security doctrines propping up their possession, deployment and modernization.

Given the evidence on the human impact of a nuclear detonation, this discussion should also be relevant for humanitarian agencies, for first responders such as health professionals, fire departments, police and others. Are we prepared for a nuclear detonation? Could

11 International Physicians for the Prevention of Nuclear War.

12 <http://www.icrc.org/eng/resources/documents/resolu->

[tion/council-delegates-resolution-1-2011.htm](http://www.icrc.org/eng/resources/documents/resolu-)

13 NPT/CONF.2010/L.2.Conclusions and recommendations for follow-on actions, 1 (A) (v), page 17.

we respond at all or would we be overwhelmed? Recent research on the impact of a limited nuclear exchange on the global climate indicates that a ‘nuclear famine’ might be triggered, putting 1 billion people at risk of starvation. In other words, this discussion should be relevant for food security and agriculture specialists as well as those concerned with protecting vulnerable populations suffering from poverty.

Such widespread and long-term consequences inevitably lead to questions about how the use of a nuclear weapon could ever be consistent with the rules of international humanitarian law and international human rights law. This question was a prominent theme at the last Preparatory Committee of the NPT last month in Vienna. Hence, the question should be relevant for international lawyers and organizations concerned with violations of human rights and humanitarian law.

It should also be relevant for those concerned with economic stability and finance. A nuclear catastrophe would cause severe disruption to financial markets, given the destruction of infrastructure and the massive economic damage. Secondly there is growing concern about ethical investment and an increasing refusal by everyday bank account holders to see their money invested in companies supporting the manufacture of weapons of mass destruction. Several financial institutions have already ended their investment in companies involved in the production of nuclear weapons, and this list is likely to grow.

For those working on development, the diversion of massive economic resources towards the extremely costly production and maintenance of nuclear weapons should be a serious concern. With many communities suffering from extreme poverty in India and Pakistan, does it make sense for these governments to be investing millions in nuclear weapons? At a time of global financial crisis and ballooning national deficits, can we justify the continued investment of hundreds of billions of dollars in global spending on nuclear weapons that we say we never intend to use?

An expansion of the political space that allows engagement from these different communities of practice would be a significant step forward for nuclear abolition. It should be a priority for those working towards a prohibition on nuclear weapons to reach out to these communities and encourage them to consider the implications of these questions, the risks they are exposed to and the benefits they stand to gain by promoting a treaty banning nuclear weapons.

THE ROLE OF AFRICAN STATES

Notwithstanding the African nuclear-weapon-free zone Treaty, African states have not, to date, been significant actors in the international discourse addressing the elimination of nuclear weapons. A minority of African countries participate in the debates on nuclear disarmament in the multilateral system, such as the General Assembly, and only 12 of the African States are members of the Conference on Disarmament. In addition, about 20 states have yet to ratify the Treaty of Pelindaba and a number of ratifications are also pending for the CTBT.¹⁴

The lack of public and political interest in the topic of nuclear weapons is not unique for Africa. In most countries in the world, nuclear weapons remain low on the political agenda – with some notable exceptions. What is special about Africa is the potential role the states of the continent can play if that were to change. Through the process of negotiating the Mine Ban Treaty and the Convention on Cluster Munitions African states have shown that they may play a significant role in international negotiations, especially when acting in concert. With its demographic weight of 1 billion people and its voting block of 54 states in international bodies, Africa could play a key role also in the process towards banning nuclear weapons.

African states bring legitimacy to this call because of the Treaty of Pelindaba, which established the whole African continent as a nuclear-weapon-free region. Some may argue that the absence of nuclear weapons makes the nuclear weapons issue less relevant for the African continent. But Africa is part of the global village and would be heavily affected by the climatic effects of even a “limited” nuclear war.

Africa has the numbers and would be a tremendous resource if non-nuclear weapons states were to start negotiations on a ban on nuclear weapons. The key challenge, in Africa as elsewhere around the world, is to make people and politicians realize that nuclear weapons represent a global threat that requires a global response. And, equally important, that it is possible to do something about it when those who oppose them act in concert.

14 For more information on the issue of Africa and nuclear weapons, see e.g. the nuclear disarmament website of the Institute for Security Studies (<http://wmdafricafiles.blogspot.com/>) or ILPI’s background paper on the subject (<http://nwp.ilpi.org/?p=1489>).