



Progress Toward a Treaty to Prohibit Use or Possession of Nuclear Weapons

By Aaron Karp
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Introduction

In a historical development, the First Committee of the United Nations General Assembly voted on 27 October 2016 to start negotiations in 2017 on a legally binding instrument to prohibit nuclear weapons. This issue brief provides materials reviewing these the General Assembly's First Committee, stressing country positions and options for further action.

None of the current nuclear powers voted in favor of the resolution. Without their support, an agreement can try to establish long-term goals or normative principles, but is unlikely achieve rapid or direct action. Only if the goals of the negotiations are tailored to the needs of current nuclear powers can actual disarmament be achieved.

In the later years of the Cold War, nuclear disarmament made unprecedented progress, as first the United States in the 1970s and the Soviet in the 1980s greatly reduced their nuclear arsenals by eliminating excess and unwanted weapons. In 1987 they signed the Treaty in Intermediate Range Nuclear Forces (INF), the first nuclear disarmament treaty, leading to the destruction of several thousand more weapons. INF was followed by a series of Strategic Arms Reduction Treaties (START) leading to further reductions. The current Russian-American agreement is New START, signed in 2010, which will lead both signatories to reduce their deployed strategic nuclear warheads to 1,550. It will not reduce tactical (short-range) nuclear nuclear warheads. No treaty calls for specific reductions in the smaller nuclear arsenals of China, France and the United Kingdom, or more recent nuclear states like India, Israel, Pakistan or North Korea.

There has been no progress in new nuclear disarmament agreements since 2010, and current agreements like the INF Treaty are endangered by new programs in Russia (long-range cruise missiles which are criticized by the United States) and the United States (missile defenses criticized by Russia). All nuclear weapons states are modernizing their forces, several investing in massive long-term modernization and improvement programs for the long-range ballistic missiles, nuclear missile armed submarines, and long-range bomber.

Critics note that the nuclear weapons states are no longer are making significant progress toward their legal commitments under the 1968 Nuclear Non-Proliferation Treaty (NPT) to make progress toward nuclear disarmament, as required under Article VI. This commitment applies to NPT signatories China, France, Russia, the United Kingdom and United States. It does not apply to India, Israel, North Korea or Pakistan, none of which are parties to the NPT.

[The latest GA resolution \(A/C.1/71/L.41\) only authorizes negotiations.](#) The key paragraph 'Recommends that additional efforts can and should be pursued to elaborate concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons, reaffirms the importance of the Treaty on the Non-Proliferation of Nuclear Weapons and the commitments made therein, and considers that the pursuit of any such measures, provisions and norms should complement and strengthen the nuclear disarmament and non-proliferation regime.'

It leaves much to be decided, including specific goals. The commitment to a nuclear ban treaty leaves much to be decided. Among the issues before the First Committee are:

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- What should be the goals of a nuclear ban treaty?
- Should it include a strict schedule for global nuclear disarmament?
- Or should it establish general normative goals and leave the specific goals to the states themselves?
- Should it only prohibit use of nuclear weapons, or possession also?
- Should it focus on specific nuclear-armed states, such as the nuclear weapons parties to the NPT, or all

nuclear armed states, including non-signatories of the NPT?

- How to determine if a country is a nuclear armed state?

These issues have been widely debated and remain highly controversial. Establishing the terms of reference of nuclear weapons ban will not be easy. Whether it is possible is unknown. That is the job of First Committee. To help guide deliberations, several articles describing the state of work on the nuclear ban proposal follow below. The stress country positions and alternative proposals for an actual treaty.



Russian Topol intercontinental range ballistic missiles (ICBMs) in protective canisters on transport vehicles, during a rehearsal for the nation's annual Victory Day parade in 2008. *Dima Korotayev/AFP/Getty Images*



Test launch of a North Korean submarine launched ballistic missile (SLBM) in 2015. *Voice of America.*



India's Agni medium-range ballistic missile displayed in 2012



ODUMUNC Issue Brief
First Committee: Disarmament and International Security



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INDEPENDENT

UN votes for global nuclear weapons ban negotiations in 2017

Thirty eight countries voted against the resolution including five of the world's nine nuclear powers
Matt Payton
2 November 2016

The [United Nations General Assembly](#) has voted to begin negotiations on a unilateral [nuclear weapons](#) ban next year.

In its 71st session, the Assembly voted 123 in favour of negotiations with 38 countries voting against and 16 abstaining.

The passed resolution [proposes](#) "to convene in 2017 a United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination".

The number of nuclear weapons currently in existence is estimated between 10,000 and 15,000. There are nine countries currently in possession of nuclear weapons: the UK, Russia, United States, China, India, Israel, France, North Korea and Pakistan

Campaigners for disarmament have praised the passing of the vote - describing it as the next logical step after banning land mines,

cluster bombs, chemical and biological weapons.

Kate Hudson, the Chair of the Campaign for Nuclear Disarmament ([CND](#)) said: "It's very encouraging to see so many countries say loud and clear it's time for the world to move on from nuclear weapons.

"We have united before to ban biological and chemical weapons, land mines and cluster bombs, and now the international community is taking decisive steps to ban nuclear weapons.

Despite decades of signing treaties towards nuclear disarmament, the leading [nuclear powers](#) - UK, US, France and Russia all voted against the resolution.

Israel, an officially undeclared nuclear power, also voted against the motion.

The Foreign Office said in a statement the government voted against the resolution in favour of "gradual multilateral disarmament".

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A spokesman said: "The UK voted against the resolution at the UN General Assembly First Committee as we do not believe that the negotiations it mandates will lead to progress on global nuclear disarmament.

"We firmly believe that the best way to achieve a world without nuclear weapons is through gradual multilateral disarmament negotiated using a step-by-step approach and within existing international frameworks."

Out of the 38 countries that voted against the resolution, 27 were members of the [North Atlantic Treaty Organization](#) (Nato).

Against (38):

Albania (Nato member)
Andorra
Australia
Belgium (Nato member)
Bosnia & Herzegovina
Bulgaria (Nato member)
Canada (Nato member)
Croatia (Nato member)
Czech Republic (Nato member)
Denmark (Nato member)
Estonia (Nato member)
France (nuclear power) (Nato member)
Germany (Nato member)
Greece (Nato member)
Hungary (Nato member)
Iceland (Nato member)
Israel (undeclared nuclear power)
Italy (Nato member)
Japan
Latvia (Nato member)
Lithuania (Nato member)
Luxembourg
Micronesia
Monaco
Montenegro
Norway (Nato member)
Poland (Nato member)
Portugal (Nato member)

Of the 16 countries abstaining from the vote, the Netherlands was the only Nato member. Three nuclear powers also abstained: India, Pakistan and China.

The most vocal supporters of the treaty including Austria, Brazil, Ireland, Mexico and South Africa. North Korea was the only nuclear power to vote in favour of the resolution.

Here is the full list of the countries that voted against the resolution and those that abstained:

Romania (Nato member)
Russia (nuclear power)
South Korea
Serbia
Slovakia (Nato member)
Slovenia (Nato member)
Spain (Nato member)
Turkey (Nato member)
United Kingdom (nuclear power) (Nato member)
United States (nuclear power) (Nato member)

Abstain (16):

Armenia
Belarus (former nuclear power)
China (nuclear power)
Finland
Guyana
India (nuclear power)
Kyrgyzstan
Mali
Morocco
Netherlands (Nato member)
Nicaragua
Pakistan (nuclear power)
Sudan
Switzerland
Uzbekistan
Vanuatu

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Bulletin
of the
Atomic
Scientists

The UN makes history on a nuclear weapons ban. Does the US care?

Joe Cirincione

2 November 2016

Joe Cirincione is president of Ploughshares Fund, a global security foundation.

If a treaty rises in the United Nations and US media don't notice, does the treaty make a difference?

This is the situation confronting proponents of the process begun October 27, when—by a vote of 123 for, 38 against, and 16 abstaining—the First Committee of the UN agreed “to convene in 2017 a United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons.”

It was a historic moment. Despite dozens of nuclear crises and war scares, UN members have never in the 71-year history of the body voted for such a sweeping measure. Yet no major US paper covered the vote. Why not?

Whether for or against the treaty, delegates clearly thought it important. “There comes a time when choices have to be made and this is one of those times,” [said](#) Helena Nolan, Ireland’s director of disarmament and non-proliferation. “Given the clear risks associated with the continued existence of nuclear weapons, this is now a choice between responsibility and irresponsibility. Governance requires accountability and governance requires leadership.”

Ireland, Mexico, Austria, Brazil, Nigeria, and South Africa helped spearhead the effort to forge a

treaty banning nuclear weapons, and scores of other nations joined in, many enthusiastically.

The United States, however, adamantly opposed the resolution and, according to some observers, fiercely lobbied its allies, particularly those enclosed in the US “nuclear umbrella,” to vote against the new process. “How can a state that relies on nuclear weapons for its security possibly join a negotiation meant to stigmatize and eliminate them?” [argued](#) Ambassador Robert Wood, the U.S. special representative to the UN Conference on Disarmament in Geneva. “The ban treaty runs the risk of undermining regional security.”

The lobbying worked to some degree, but not well enough to block the lopsided 3-to-1 vote in favor of negotiations toward a ban treaty. And US lobbying may not hold all the countries who initially voted against the nuclear weapons ban. “Although Japan voted against the resolution due to pressure exerted by the US,” [wrote Jiji Kyodo for The Japan Times](#), “Foreign Minister Fumio Kishida said Friday that Japan intends to join UN negotiations to outlaw nuclear weapons.” Other states may feel the same way. Kishida said he has strong doubts about the treaty, preferring more “concrete and pragmatic

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measures,” but he wanted to “proactively join” the talks.

Kishida is not alone. There are legitimate concerns about the treaty process in many nations and among experts and former officials. Treaty proponents should treat these doubts seriously and respectfully. Does it really matter if 100-plus countries sign a treaty to ban nuclear weapons, but none of the countries with nuclear weapons joins? Will this be a serious distraction from the hard work of stopping new, dangerous weapons systems, cutting nuclear budgets, or ratifying the nuclear test ban treaty?

The ban treaty idea did not originate in the United States, nor was it championed by many US groups, nor is it within US power to control the process. Indeed, this last point seems to be one of the major reasons the administration opposes the talks.

But the ban treaty movement is gaining strength. Two years ago, I covered the last of the three conferences held on the humanitarian impact of nuclear weapons for the *Defense One* website. Whatever experts and officials thought about the goals of the effort, I [said](#), “the Vienna conference signals the maturing of a new, significant current in the nuclear policy debate. Government policy makers would be wise to take this new factor into account.”

It would help clarify the humanitarian impact and nuclear weapons ban debate if there were some coverage of it in US media. So, why hasn’t there been? There are three main reasons.

First, the media doesn’t care much about anything that happens in the United Nations. If a US president isn’t speaking, or the vote doesn’t involve Israel, or there isn’t a showdown in the Security Council, there is a media vacuum. Many US reporters see the UN—not without some justification—as irrelevant. As one reporter told me, “Most think the UN is ineffectual, just theater, a place where far-fetched ideas get debated and resolutions passed that don’t go anywhere.” I haven’t actually done a survey, but I would bet Kim Kardashian gets many more column inches each year in US newspapers than the entire United Nations.

Second, many reporters take their cue from US officials. Here, the official line was that this vote on a

nuclear weapons ban treaty is a waste of time. “Successful nuclear reductions will require participation from all relevant parties, proven verification measures, and security conditions conducive to cooperation,” Mark Toner, a State Department spokesman, [said](#). “We lack all three factors at this time.”

The reporters seemed to agree. Not one asked a question about the treaty vote at the State Department daily press briefings that week. In fact, besides Ambassador Wood’s remarks to the UN First Committee, which deals with disarmament and other international security issues, the entire issue was ignored on the administration’s websites.

Third, and this may be the most important, we have our heads in the sand when it comes to nuclear dangers. With some notable exceptions, such as the comprehensive [stories by the Associated Press](#) on problems with the US missile force, the main way that the risks from nuclear weapons are discussed in the US media and in the body politic involves an adversary that presents a nuclear threat. Iran may get nuclear weapons. North Korea is testing nuclear weapons. Russia is rattling the nuclear sabre. The problem is not the weapons themselves, it is bad guys with the weapons.

This is not how most of the world sees it.

“We have reiterated many times our basic and firm position that the possession and deployment of nuclear weapons can never be the basis for a sustainable security for mankind. The catastrophic humanitarian consequences of any use of nuclear weapons are well documented and irrefutable,” [said](#) Swedish representative to the First Committee Eva Walder. “Sweden’s position is clear. The only guarantee that these weapons will never be used again is their total elimination.”

Sweden’s view is very close to those of past US presidents who saw, as Bill Clinton did, the grave threat to the nation “from the proliferation of nuclear, biological, and chemical weapons,” and sought, as Ronald Reagan did, “the total elimination one day of nuclear weapons from the face of the Earth.”

President George W. Bush, reflecting the ideology of many of his neoconservative advisors, changed that formula. He said in his [2003 State of the Union address](#), “The gravest danger facing

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America and the world is outlaw regimes that seek and possess nuclear, chemical, and biological weapons." Bush subtly changed the focus from "what" to "who." He sought the elimination of regimes rather than weapons. He believed that the United States could determine which countries were responsible enough to have nuclear weapons, and which ones were not. American power, not multilateral treaties, would enforce this judgment.

After the complete failure of that strategy, President Barack Obama switched American policy back onto the weapons. In speeches and statements well known to readers of the *Bulletin*, he stigmatized nuclear weapons, vowing to reduce their number and role in US strategy and to seek their elimination.

Despite his best efforts, he failed. Now, the Bush view has crept back into policy and reporting. It dominates thinking in the Department of Defense. Nuclear weapons are only dangerous when they are sought or held by adversaries. Our weapons are essential. Those held by our friends, including India, Pakistan and Israel, are not a problem.

This blindly optimistic view holds that nuclear weapon are beneficial to our security--the "bedrock" of our security, as the current defense secretary so often states. That their presence enhances international stability. And some, including one of the candidates for president this year, believe that the spread of nuclear weapons is inevitable, but manageable. The bulk of the media follows this unofficial but clearly held line.

There is hope for a more optimistic and safer view of nuclear threats to re-emerge. The treaty vote is one sign that many nations have lost patience with the barely discernable, "step-by-step" process that nuclear-armed nations have followed in regard to arms control and eventual nuclear disarmament. The alternative process the countries voting for the ban treaty have begun--encouraged and aided by [civil society groups](#)--is having an impact, and may spur the nuclear-armed states to move faster.

Acting Under Secretary of State for [Arms Control and International Security](#) Thomas Countryman also offered a thoughtful and constructive response to the treaty vote. While he [said](#) the United States would not participate in the ban treaty talks, "that does not mean we question the intentions of those with whom we disagree on process." In a post on the

State Department's official blog, he promised to redouble efforts to advance key US goals:

"Our priorities are supporting and sustaining key agreements, like the New START and Intermediate-Range Nuclear Forces Treaties; strengthening the NPT; improving strategic stability with the Russian Federation and China; implementing the Joint Comprehensive Plan of Action with Iran; working with allies and partners to address the North Korean nuclear program; pushing for negotiations on a treaty that would halt production of fissile material for use in nuclear weapons; securing the entry into force of the Comprehensive Nuclear-Test-Ban Treaty; expanding programs to combat nuclear terrorism; and developing technologies that will help us verify nuclear reductions in the future."

The US presidential campaign has [highlighted](#) the dangers of our own nuclear weapons for the US domestic audience, asking the question: Can we allow an unstable individual to "have his finger on the button?" The American electorate is being forced to confront nuclear fears in a way we haven't seen in a long time. It may be possible to translate this fear into a broader discussion: Should anyone be able to launch a nuclear war in 15 minutes--without debate, without a vote, without even a vestige of democracy? And such a debate could lead to discussion of constructive solutions.

There may be a new openness to consider such solutions. The [Democratic Party platform](#) pledges actions "reducing our reliance on nuclear weapons." It promises that "Democrats will also seek new opportunities for further arms control and avoid taking steps that create incentives for the expansion of existing nuclear weapons programs. To this end, we will work to reduce excessive spending on nuclear weapons-related programs that are projected to cost \$1 trillion over the next 30 years."

If elected, will Hillary Clinton keep these promises? Her campaign has a strong focus on nuclear dangers and has [run](#) ads evoking the famous "Daisy" ad from 1964. The Democratic candidate also [said](#) just this week in an appearance with [Global Zero](#) founder Bruce Blair, "President Ronald Reagan once said--and he worked hard for arms control, and I admired what he did working with the Soviet Union--that he feared 'some fool or some maniac or some accident triggering the kind of war that is the

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end of the line for all of us.’ That has been the fear and the commitment of Democratic and Republican presidents since the dawn of the nuclear age.”

We may get the chance to reaffirm this commitment in the year ahead, both in Washington and in the negotiating halls of the United Nations. The probability of that occurring would increase, if

major US news organizations gave negotiations toward a nuclear weapons ban treaty and the dangers from existing nuclear arsenals the attention they so clearly deserve.

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JT

The Japan Times

Japan's hypocritical nuclear stance

3 November 2016

Japan's vote at the United Nations last week to oppose a resolution to start talks on a treaty outlawing nuclear weapons is regrettable. It contradicts the nation's long-standing call for the elimination of such weapons as the sole country to have suffered nuclear attacks. Tokyo's latest move — which reflects the government's reliance on the U.S. nuclear umbrella for the nation's security — not only runs counter to the wishes of survivors of the 1945 Hiroshima and Nagasaki atomic bombings but will weaken its voice in international efforts to rid the world of nuclear arms.

On Oct. 27, the First Committee of the U.N. General Assembly, which deals with disarmament and international security, adopted the resolution, with 123 nations voting in favor, 38 against it and 16 abstaining. Six nuclear powers — the United States, Russia, Britain, France and Israel — voted against it, backed by U.S. allies such as Japan, South Korea, Germany and Australia. Three nuclear powers — China, India and Pakistan — abstained. Surprisingly, North Korea, which recently carried out a fifth nuclear weapons test, voted in favor.

Austria, Brazil, Ireland, Mexico, Nigeria and South Africa played leading roles in drafting the resolution and a total of 57 nations co-sponsored it, citing deep concerns about “catastrophic humanitarian consequences of any use of

nuclear weapons.” The resolution, which seeks to set up a U.N. conference in March to negotiate a “legally binding instrument to prohibit nuclear weapons, leading towards their total elimination,” will be put to a General Assembly vote in December.

Even if it is adopted by the General Assembly, the nuclear powers that opposed the resolution will most likely refuse to join the negotiations. Even if such a treaty comes into force, it is unlikely to have any practical effect of immediately eliminating nuclear arms because of the absence of cooperation from the nuclear powers. Yet it will be significant to legally stigmatize nuclear weapons — which could serve as a strong force to start concrete steps toward nuclear disarmament.

The nuclear powers should pay attention to the frustration of non-nuclear states about the lack of progress in global nuclear disarmament efforts. The Comprehensive Nuclear Test Ban Treaty has yet to come into force 20 years after it was negotiated. Among countries that have either not signed or ratified the treaty are the U.S., China, Israel, North Korea, Pakistan and India. The world still has a stockpile of more than 15,000 nuclear weapons — most of them in the military arsenals of the U.S. and Russia.

Explaining Tokyo's opposition to the resolution, Foreign Minister Fumio Kishida said

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it did not suit Japan's pursuit of a nuclear weapons-free world through cumulative concrete and practical measures and that negotiating a treaty banning nuclear arms when security in Northeast Asia is confronted with North Korea's nuclear and missile development and threats from China would deepen a schism between the haves and have-nots. But he also said that Japan is ready to join the U.N. talks on the treaty. In essence, Japan wants a gradual approach to eliminating nuclear arms through cooperation between the nuclear powers and non-nuclear states.

It is clear, however, that the U.S. put pressure on its allies, including Japan, to oppose the resolution. The U.S. government reportedly sent a letter dated Oct. 17 to NATO member nations urging them to "vote against negotiations on a nuclear treaty ban, not to merely abstain" and "to refrain from" joining talks on such a treaty. The letter said such a treaty, if enforced, "could have a direct impact on the U.S. ability to meet its NATO and Asia/Pacific extended deterrence commitments and the ability of our allies and partners to engage in joint defense operations with the United States and other nuclear weapons states." A government official has disclosed that Washington made similar representations to Japan.

It would be logical to assume that Japanese officials believed they cannot resist such

pressures given Japan's dependence on the U.S. nuclear umbrella. But did it not occur to them that opposing the resolution would deprive Japan of moral credibility in its repeated calls for creating a nuclear weapons-free world, or could they not at least have considered abstaining from the vote — just like the Netherlands, a NATO member, did — even merely as a gesture? It is absurd to think that the U.S. would not care about Japan's unique and special position as the only country to have experienced nuclear attacks.

Japan submitted a resolution calling for the abolition of nuclear weapons for the 23rd time in a row this year and it was adopted the same day as the one to begin talks on the nuclear weapons ban treaty cleared the same U.N. committee — with 167 nations in favor, four countries — China, North Korea, Russia and Syria — voting against and 17 abstaining. The U.S., which abstained from the vote last year, joined in co-sponsoring the resolution. The development raises suspicions that Tokyo opposed the resolution for the nuclear weapons ban treaty as a quid pro quo for Washington's support of Japan's resolution.

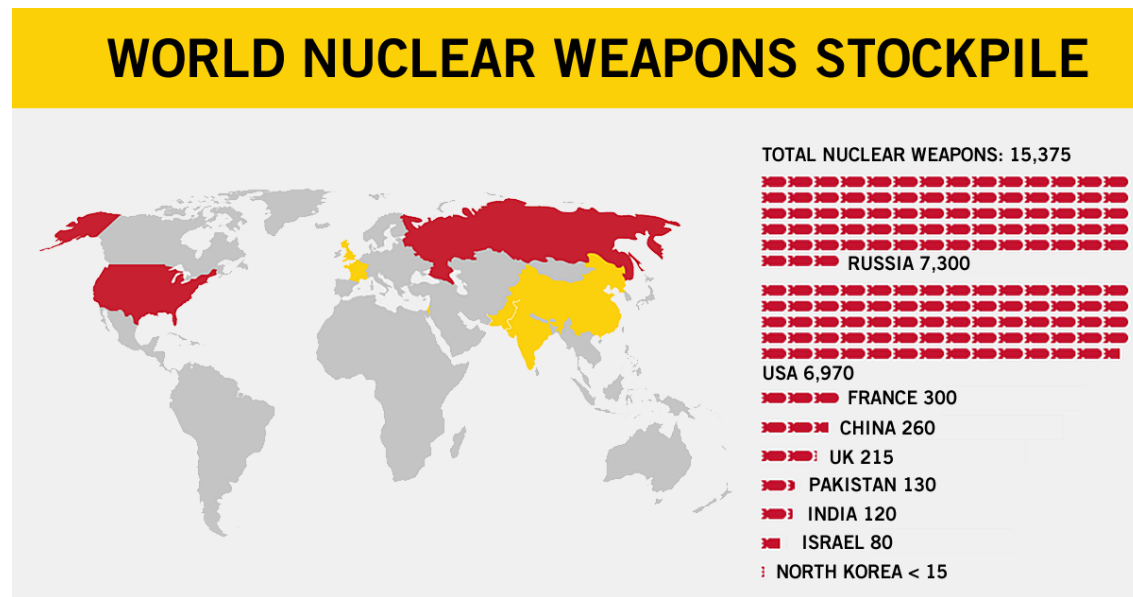
Given its contradictory behavior, it will be extremely difficult for Japan to regain the trust of other nations in U.N. efforts to seek the elimination of nuclear weapons.

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IISS Strategic Comments

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A Nuclear Ban Treaty: prospects and issues In the next few weeks, the United Nations General Assembly (UNGA) is expected to authorize the negotiation of a treaty that would make nuclear weapons illegal – that is, a 'Ban Treaty'. This would mark a significant advance in the most recent 'ban the bomb' and anti-nuclear efforts that have been going on almost from the beginning of the nuclear age. The development has not attracted great attention from the media, particularly in states with nuclear weapons. Prospects look better this time, however. It would be the first time the negotiation of an actual legally binding document banning nuclear weapons had been authorized by the United Nations, and the effort appears to



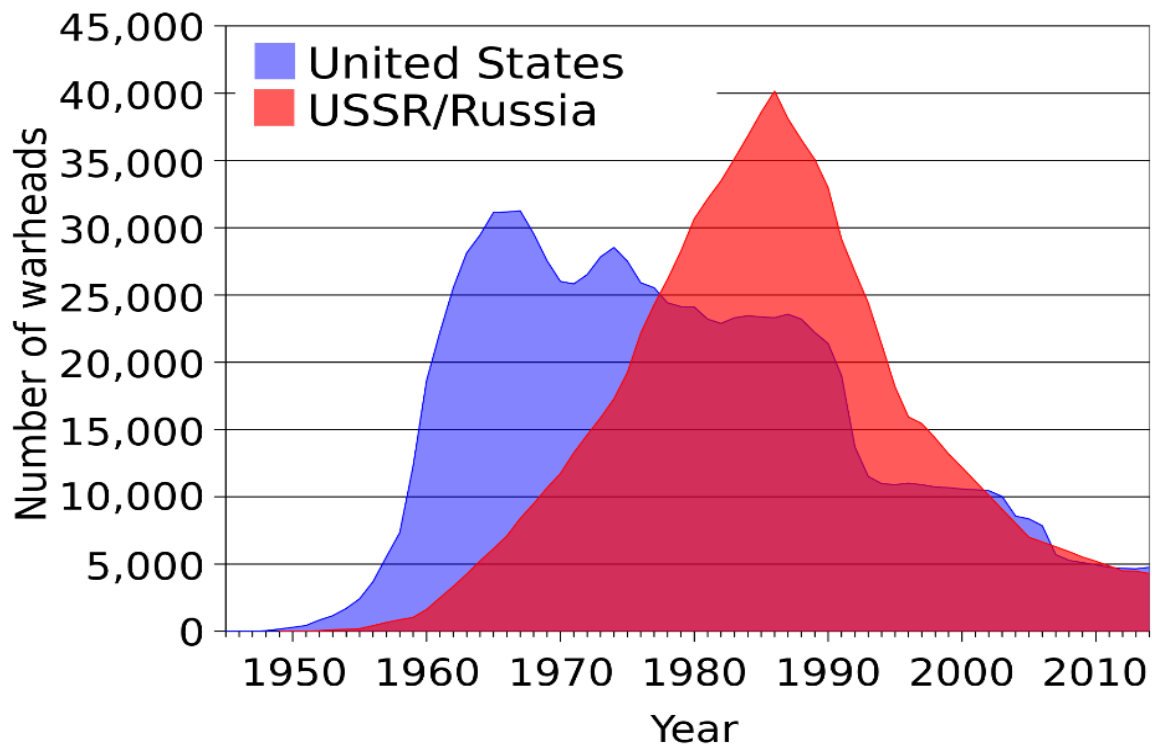
have the support of a clear majority of UN member states.

Source: Ploughshares Fund 2016

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Frustrations

This latest effort to ban and eliminate nuclear weapons arises from growing frustration with what is seen as the slow pace of movement toward the promise in Article VI of the Nuclear Non-Proliferation Treaty (NPT) to eliminate nuclear weapons. Although the Nuclear Weapons States (NWS) point to the considerable success of the Strategic Arms Limitation Talks (SALT) Agreement, Intermediate-range Nuclear Forces (INF) Treaty, Strategic Arms Reduction Treaty (START) I, Strategic Offensive Reductions Treaty (SORT) and New START Treaty in constraining and reducing nuclear weapons, it is estimated that at least 15,000 remain. Indeed, only the United States, the United Kingdom and France have even revealed how many such weapons they possess. Reductions from a Cold War high of perhaps 70,000 have resulted primarily from 85% reductions by the United States and Russia. Although these admittedly major reductions can be attributed to these five treaties, they focused on delivery vehicles and deployed warheads and did not actually require any reductions in nuclear weapon stockpiles. The British and French stockpile reductions have been entirely voluntary.



Soviet/Russian and American nuclear weapons inventories, 1945-2010

President Barack Obama's famous Prague speech in 2009 raised expectations for nuclear

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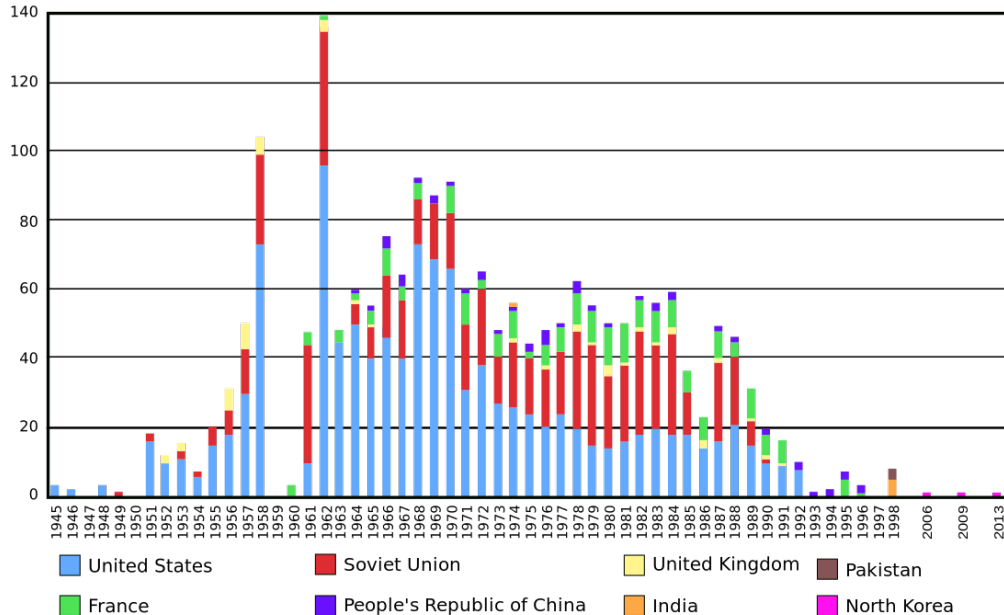
disarmament to what proved to be unrealistic levels. The Final Document of the 2010 NPT Review Conference contained hopeful language, but failed to lead to sustained progress. The 2015 Conference failed even to agree on a Final Document. The Draft Final Document did state that 'the Conference notes the affirmation by NWS of their unequivocal undertaking to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament, to which all party states are committed under Article VI, and affirms the importance of achieving and maintaining a world without nuclear weapons.' It also expressed 'deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons'. Since the Review Conference failed over Middle East issues, rather than disarmament ones, these statements were presumably acceptable to all states. Although implementation of the New START Treaty is going quite well, prospects for further progress appear bleak, with US and NATO relations with Russia tense and massive upgrades in nuclear delivery systems underway or planned on both sides.

The traditionally accepted path to nuclear disarmament has been the step-by-step approach. This has been considered to require steady reductions by the US and Russia (joined at some point by other nations with nuclear weapons), controls on fissile materials, entry into force of the Comprehensive Nuclear Test Ban Treaty (CTBT), agreement on the offence-defense relationship, solutions to the formidable verification problems posed by nuclear disarmament, new understandings on deterrence, and so on. While logical and still favoured by many of the world's most powerful states, this approach seems to have stalled, with no one able to demonstrate what the next big step will be or when it might be achieved.

Over the past few years, new understandings of the effects of nuclear weapons have only added to these frustrations. In the 1980s, research on such effects called attention to the 'nuclear winter' which could follow such use. Newer research indicated that the situation could be even worse than previously understood. In the scenario studied, the atmospheric effects of a nuclear exchange of 100 Hiroshima-size weapons on cities in India and Pakistan could lower global average surface temperatures to an extent that would have catastrophic impacts on agriculture, leaving perhaps a billion or more people at risk of starvation. The effects on China could be particularly dire. Without minimizing the horrific consequences of nuclear weapons use, it is important to note that the specific scenario involved the effects of 100 nuclear weapons on climate – a rather bad case. Thus, claims that 'any use' of nuclear weapons would produce comparable results are not supported by the research.

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Worldwide nuclear testing, 1945 - 2013



The humanitarian campaign

Added to frustrations with the lack of progress in disarmament and alarms about possible use were a renewed attention to 'humanitarian law' as it applies to armed conflict, and the 1996 Advisory Opinion of the International Court of Justice on the humanitarian consequences of nuclear war. The result was the Humanitarian Initiative (HI), which gathered strength with conferences in Norway in 2013 and in Mexico and Austria in 2014. The five NWS boycotted the first and second conferences, though the US and UK did attend the third conference. It produced the 'Austrian Pledge', later renamed the 'Humanitarian Pledge'. The pledge does not specifically mention any legal document, but does strongly point in that direction, pledging 'to identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons'. The concept of a 'legal gap' refers to the obvious point that chemical and biological weapons, but not nuclear weapons, are prohibited by international law. This concept has become highly controversial, since it appears to imply that the NPT is somehow flawed or mistaken in failing to ban nuclear weapons, though a ban, of course, was never intended to be part of the NPT. The Humanitarian Pledge has now been formally endorsed by 127 countries – a clear majority of states – but one that does not include any NWS, any members of NATO, or any key traditional arms control advocates such as Japan, Australia or Switzerland. Many of the supporting states are in Latin America or Africa and are already in nuclear-weapon-free zones. Norway and South Africa were very active during 2013–14 but now seem to have stepped back. In addition to Austria, which is slated to introduce the Ban Treaty resolution to the UNGA,

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Mexico, Brazil, Indonesia and the Philippines are now playing leading roles.

When the 2015 NPT Review Conference failed to produce notable progress, the HI took its case to the UNGA, where, over the objections of the NWS, it got the green light to hold three sessions of an Open-Ended Working Group on disarmament in Geneva, without the usual UN consensus rule. With a clear majority in these meetings, the HI had little difficulty in producing the recommendation to the UNGA to start negotiations on a Ban Treaty which has just been approved.

Prohibition vs elimination

As described by advocates, a Ban Treaty would prohibit, but not actually require the elimination of, nuclear weapons. This is an important distinction. For many years, the disarmament movement advocated a Nuclear Weapons Convention (NWC), modelled after the 1993 Chemical Weapons Convention, which would both ban and eliminate nuclear weapons. A draft treaty that would do this was actually tabled at the United Nations by Costa Rica in 1997. Some members of the HI continue to favour this approach and believe a Ban Treaty does not go far enough. However, most members of the HI appear to accept that a NWC is a bridge too far, considering the formidable problems – for example, verification – that would have to be solved in such a document. They appear to believe that the Ban Treaty could be turned into a NWC by adding additional provisions at some later time.

As far as process is concerned, advocates of the Ban Treaty look to the 1999 Ottawa Convention (Land Mine Treaty). This agreement did indeed show that a group of like-minded countries and NGOs could produce an important treaty without the participation of key major powers. Even without the participation of the United States, Russia and China, the Ottawa Convention has made significant contributions to reducing the threat of anti-personnel landmines during and after armed conflicts. Like the Chemical Weapons Convention (CWC), however, it did not merely ban such weapons, but provided for their removal and elimination. Since entry into force in 1999, the Ottawa Convention has resulted in the destruction of tens of millions of landmines, while the CWC has resulted in the elimination of over 91% of the world's 71,000 metric tonnes of chemical weapons.

Legal issues

One would assume that the key operative language of the Ban Treaty would closely follow Article II of the NPT. Any differences could create an ambiguous situation regarding what are the precise obligations of the party states. In any case, Non-Nuclear Weapon States (NNWS) already under the NPT would be accepting an obligation they already have not to acquire, or seek to acquire, nuclear weapons or nuclear explosive devices. This could create an awkward legal situation, even if the language in the two documents were identical. Likewise, it would be important not to confuse or undermine states' existing relationships and obligations with respect to the International Atomic Energy Agency (IAEA).

Banning something without dealing with the existence of thousands of the banned item already

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in existence would create a novel and probably unprecedented legal situation. What could and could not legally be done with existing nuclear weapons would be a complex and probably controversial issue. Presumably activities related to safety and routine maintenance would be permitted, although some members of the movement would probably like to see these weapons simply wither away with no maintenance, rather than allow activities which prolong their useful lifetimes. In any case, drawing the line between maintenance and improvement would be hard, and monitoring and policing this line would be even more difficult. Consider, for example, the controversy that has arisen over whether or not the 'life extension program' for the US B-61 bomb has given it 'new' capabilities and missions.

Presumably the Ban Treaty would be formulated in such a way that a country with nuclear weapons could join, and certainly the hope of the treaty's authors would be that this would happen. In that case, all these issues would have to be solved and clearly formulated in the treaty. The key issue would be whether a state-party were allowed to have a nuclear stockpile that is safe, secure and effective until an NWC or other agreement provides an agreed path to eliminating it. An alternative would be to assume that for some considerable period only NNWS would join – a vastly simpler case for which the language could assume there were no existing nuclear weapons among the party states. Some sort of Protocol or Annex would then have to be agreed, either as one-size-fits-all or tailored to each new country with nuclear weapons as is done for IAEA Safeguards Agreements.

To be credible in urging that nuclear deterrence be removed from international relations, the movement would need to make clear that it supports conventional deterrence. This could be problematic for the segment of the movement that leans toward pacifism. It is highly unlikely that any country with nuclear weapons, or any member of NATO, would sign a Ban Treaty. In rejecting any such eventuality at the 2015 NPT Review Conference, US Secretary of State John Kerry stated, 'There are no shortcuts in this endeavor, and each step must be carefully taken to ensure that the security of all is increased along the way.' On 29 August 2016, a US State Department official called the Ban Treaty 'polarizing and unverifiable'. Following their meeting in Washington in September, the P5 issued a formal statement that said in part: 'The P5 expressed their deep concern with efforts to pursue approaches to nuclear disarmament that disregard the global strategic context. Such efforts will threaten the consensus-based approach that has served for decades to strengthen the NPT regime and enhance the Treaty's contribution to international security and may negatively affect the prospects for consensus at future NPT Review Conferences.' This statement was clearly directed at the Ban Treaty. Claims are sometimes made that the Ban Treaty, even if it does not include all the NWS, would create 'international law' or an 'international norm' which would have to be followed by all states. This is clearly not the case, as Article 34 of the Vienna Convention on the Law of Treaties states: 'A treaty does not create either obligations or rights for a third State without its consent.'

Conclusion

If a Ban Treaty is negotiated, its net effect would be difficult to predict. The focus of the conflict between the NWS and many NNWS could shift from the vague promise of Article VI of the NPT to the specific provisions of a Ban Treaty. One possibility is that the pressure it would generate

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would cause the NWS to make more rapid progress toward zero. If that were not possible, perhaps it would at least lead to a new look at supporting measures, such as greater transparency, no first use, de-alerting, more urgent attention to finding multilateral solutions to the verification problem that must be solved, the regional issues that fuel indigenous nuclear weapons programs and the perceived need for extended nuclear deterrence. On the other hand, the process of negotiating a Ban Treaty could also have the effect of widening and hardening the disputes between NWS and NNWS. It is clear that to be successful, the ban movement will have to understand and concede that nuclear weapons can only be eliminated through cooperation, not confrontation. Adopting a superior moral attitude or calling states that feel they need extended nuclear deterrence 'weasel states' has not moved the process in the desired direction.

At present, nuclear arms control in general is virtually frozen. Russia refuses to reduce strategic nuclear weapons beyond New START requirements or accept any constraints on tactical nuclear weapons. The United States refuses to accept any constraints on anti-ballistic missile systems. Pakistan blocks all attempts to negotiate a cut-off on the production of fissile materials for weapons. And the eight states whose ratification is needed for entry into force of the CTBT refuse to move forward. Thus, at least in the near future, the negotiation of a Ban Treaty, now gathering momentum, may be the only game in town.



Cleaning American B83 tactical air dropped nuclear weapons, 1996

Source: U.S. Air Force

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