

The Non-Proliferation Treaty 40 Years On: Paving the Way to Abolition
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THE NPT: PROBLEMS AND SOLUTIONS

A central problem with the nuclear weapons regime is its incoherent compliance structure. The contrast with the regime for chemical weapons is instructive.

For chemical weapons, there is a global convention requiring their prohibition and elimination. It establishes an implementing agency, the Organisation for the Prohibition of Chemical Weapons (OPCW), which carries out monitoring and verification tasks. An Executive Council of States Parties, based on reports, makes determinations concerning compliance. The Conference of States Parties is empowered to take collective enforcement measures, e.g. economic sanctions. In cases of particular gravity, the Conference is required to refer the matter to the UN General Assembly and Security Council.

In contrast, NPT states parties have very restricted means and practices for ensuring compliance. The real action regarding non-proliferation takes place in the IAEA and its Board of Governors and in the Security Council. As to disarmament, there is nothing in place at all except for an important forum – the review conferences and their PrepComs - for securing commitments and for very general discussion of implementation.

Another problem relates to universality. While the NPT has very wide adherence, those few states outside it have nuclear weapons. That exerts considerable strain on some of the states inside the NPT barred from acquiring nuclear weapons.

The two-tier system within the NPT is also problematic. It is contrary to the essence of law, that the same rules apply to all. In its 1996 advisory opinion, the International Court of Justice explained the debilitating effect. The Court said:

In the long run, international law, and with it the stability of the international order which it is intended to govern, are bound to suffer from the continuing difference of views with regard to the legal status of weapons as deadly as nuclear weapons. It is consequently important to put an end to this state of affairs: the long-promised complete nuclear disarmament appears to be the most appropriate means of achieving that result.

One symptom of this instability has been experienced since the ICJ opinion. That is the past reality and future specter of war to prevent proliferation.

To have a coherent non-proliferation/disarmament regime, and to achieve the nuclear-weapon-free world promised by Article VI, the framework for governance needs to be revised. There are proposals from Canada, Ireland and other governments to establish a standing body, annual meetings, and a small secretariat. I have heard Jayantha Dhanapala propose amending the NPT to strengthen both Article III and Article VI.

But today I want to focus on the most obvious path. That is to create for nuclear weapons a new, universal regime similar to that now in place for chemical weapons. And an obvious difficulty is that while the climate of discussion has changed dramatically, states with nuclear arsenals for the most part do not seem ready to embark on this path. In response, civil society increasingly is advocating that at least a preparatory process begin.

A paper by Alyn Ware available here outlines what a preparatory process could do. It could be launched by an NPT Review Conference or the General Assembly, or it could be undertaken by like-minded states.

At the January consultation of governments and NGOs in preparation for the Review Conference, the Middle Powers Initiative recommended in the briefing paper I prepared, also available here, that governments “support an NPT commitment to commence preparatory work, deliberations and negotiations on a convention or framework of instruments for the sustainable, verifiable and enforceable global elimination of nuclear weapons.”

The Nuclear Weapons Convention certainly is getting much more attention. As you know, the Secretary-General has referred to the model Nuclear Weapons Convention he circulated to UN member states at the request of Costa Rica and Malaysia as a “good starting point” for negotiations. More than a decade ago, my organization and its international body drafted with others a model Convention, and also a book explaining it, *Securing Our Survival*, both updated in 2007. Partners in that effort included the International Physicians for the Prevention of Nuclear War and the International Network of Engineers and Scientists Against Nuclear Proliferation.

I am glad to say that recently other books and studies are joining the discussion: the annual reports of the International Panel on Fissile Materials; *Abolishing Nuclear Weapons* by George Perkovich and James Acton, and a companion book of essays; *Designing Denuclearization* by Bruce Larkin; *Elements of a Nuclear Disarmament Treaty*, edited by Barry Blechman and Alexander Bollfrass.

Blechman wrote an excellent op-ed in the February 19 New York Times arguing that after the START replacement treaty should come negotiations on a global disarmament agreement. He said: "Piecemeal agreements between two nuclear powers to reduce, but not eliminate, their atomic inventories are insufficient; as the United States and Russia leisurely reduce their stocks, other states are building up arsenals, and still others are gaining the technical skills to advance their own programs."

A convention process does not mean that other measures would be neglected. Over the lengthy period of negotiation of the Chemical Weapons Convention, the United States and Russia also bilaterally negotiated concerning their large stockpiles.

Preparation for, and negotiation of, a convention can proceed in parallel with, and inform and stimulate, negotiation and implementation of other measures.

The New Agenda resolution was adopted by the General Assembly in 2000 with very wide support, including from the United States and Russia. It stated an inescapable truth: "a nuclear-weapon-free world will ultimately require the underpinnings of a universal and multilaterally negotiated legally binding instrument or a framework encompassing a mutually reinforcing set of instruments."

And the annual resolution welcoming the ICJ declaration of the obligation to bring to a conclusion negotiations on nuclear disarmament calls for commencement of negotiations leading to a convention prohibiting and eliminating nuclear weapons.

The truth recognized by the ICJ and the General Assembly is that a comprehensive approach is needed. We are now nearly twenty years after the disintegration of the Soviet Union and the claimed end of the Cold War, 15 years after the NPT extension, 14 years after the ICJ opinion, and 10 years since the Practical Steps were adopted. It is not too early to act on that truth and start actively preparing for the realization of a world free of nuclear weapons.