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Final Paper
December 19, 2012

The Model Nuclear Weapons Convention:
A New Civil Society Paradigm to Meet the Challenges of Nuclear Disarmament

❖ Introduction

The Model Nuclear Weapons Convention (MNWC)—or the Convention on the Prohibition of the Development, Testing, Production, Stockpiling, Transfer, Use and Threat of Use of Nuclear Weapons and on Their Elimination—was prepared in April 1997 by a consortium of scientists, lawyers, disarmament experts, academics and officials as a discussion document to assist in deliberations and possible negotiations leading to the prohibition and elimination of nuclear weapons.¹ As noted by its framers, the MNWC outlines legal, technical, and political elements that can be utilized in an actual nuclear weapons convention or in a package/framework of agreements.² The MNWC first provides a forum for analyzing and addressing the requirements for coordinated nuclear disarmament.³ Second, the provisions demonstrate the feasibility of a comprehensive plan for elimination of nuclear

¹ The Lawyer's Guild on Nuclear Policy, available at <http://lcnp.org/mnwc/>

² Model Nuclear Weapons Convention, UN Doc. A/62/650, April 2007, Introduction Letter, 1-2.

³ *Id.*

weapons.⁴ Third, the MNWC is intended to stimulate governments to commence negotiations to achieve this end.⁵ The model's aim is to create a regime sufficiently restrictive to ensure the highest level of confidence in compliance, but also sufficiently permissive to allow states to join without jeopardizing their legitimate security interests and commercial activities.⁶ The drafters' commentary further explains that the document attempts to answer concerns policy makers may have regarding verification of the elimination of nuclear weapons, phases for implementation, prevention of clandestine production or acquisition of nuclear weapons, security in a non-nuclear weapon environment, and possible breakout or other non-compliance.⁷ Finally, the model is based in large part off of combining provisions found in the following existing conventions:⁸

- Chemical Weapons Convention
- Comprehensive Test Ban Treaty
- Statute of the International Atomic Energy Agency Safeguards System
- Agreements between International Atomic Energy Agency and States Parties to the Non Proliferation Treaty
- Treaty Between the U.S.A. and the U.S.S.R. on the Elimination of Their Intermediate- Range and Short-Range Missiles (INF Treaty)
- Treaty Between the U.S.A. and the U.S.S.R. on the Reduction and Limitation of Strategic Offensive Arms (START I Treaty)
- Treaty on the Non Proliferation of Nuclear Weapons
- Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelcolco)
- South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga)

⁴ *Id.*

⁵ Lawyer's Guild on Nuclear Policy, Commentary on Model Nuclear Weapons Convention, *Introduction*, available at www.lcnp.org/mnwc/mnwccomm.htm.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

- African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba)
- Missile Technology Control Regime
- Nuclear Suppliers Group Guidelines
- IAEA Plan for Verification of Iraq's Compliance with Security Council Resolutions 687 (1991) and 707 (1991)

The MNWC would build on these existing nuclear nonproliferation and disarmament regimes and verification and compliance arrangements. In some cases the MNWC may add to the functions and activities of such regimes and arrangements, and in other cases, the MNWC would establish additional complementary arrangements⁹. It's also worth noting at the outset that, as one commentator pointed out, the MNWC is similar in form to existing conventions outlawing biological weapons, chemical weapons, anti-personnel mines and certain types of cluster munitions.¹⁰

❖ Current State of Law

The principles of discrimination, necessity, and proportionality all intersect with the use, or threat of use, of nuclear weapons. The International Committee of the Red Cross states that, according to customary international law, the parties to a conflict must at all times distinguish between the civilian population and combatants [principle of discrimination]; neither the civilian population as a whole, nor individual civilians, may be attacked, and attacks may be made solely against

⁹ *Id.*

¹⁰ Tim Wright, *Negotiations for a Nuclear Weapons Convention: Distant Dream or Present Possibility?*, 10 *Melb. J. Int'l L.* 217, 220 (May 2009) [hereinafter *Present Possibility*].

military objectives.¹¹ Second, neither the parties to the conflict nor members of their armed forces have an unlimited right to choose methods and means of warfare [principle of necessity]; it is forbidden to use weapons or methods of warfare that are likely to cause unnecessary losses or excessive suffering.¹² Finally, parties to a conflict must strike a balance between two diverging interests, one dictated by considerations of military need and the other by requirements of humanity when the rights or prohibitions are not absolute [principle of proportionality].¹³

In the ICRC database of international customary law, several rules—based on the principles above—are relevant to the question of the legality of the use or threat of use of nuclear weapons. For example, Rule 14 states, “Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.”¹⁴ Rules 11 & 1 also mandate that, “[i]ndiscriminate attacks are prohibited,”¹⁵ and “[t]he parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.”¹⁶

¹¹ International Committee of the Red Cross, Resource Center, *available at* <http://www.icrc.org/eng/resources/documents/misc/5kzfju.htm>.

¹² *Id.*

¹³ *Id.*

¹⁴ International Committee of the Red Cross, Customary IHL, Rule 14, *available at* http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule14

¹⁵ International Committee of the Red Cross, Customary IHL, Rule 11, *available at* http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter3_rule11

¹⁶ International Committee of the Red Cross, Customary IHL, Rule 1, *available at* http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule1

Aside from customary law, are there any existing conventions that mandate a nuclear weapons ban? The Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which opened for signature in 1968 and entered into force in 1970, does contain provisions alluding to nuclear disarmament. In fact, Article VI of the NPT represents the only binding commitment in a multilateral treaty to the goal of such disarmament by nuclear states.¹⁷ The NPT's preamble contains a clause describing a “[d]esir[e] to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control.”¹⁸ And Article VI mandates that “[e]ach of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”¹⁹

In 1996, the International Court of Justice (ICJ) was asked to issue an advisory opinion answering the question, “Is the threat or use of nuclear weapons in any circumstance permitted under international law?”²⁰ The ICJ held that “the threat or

¹⁷ Treaty on the Non-Proliferation of Nuclear Weapons (NPT), July 1968, Art. VI.

¹⁸ *Id.* at Preamble.

¹⁹ *Id.* at Art. VI.

²⁰ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 6, International Court of Justice (ICJ), 8 July 1996, available at: <http://www.unhcr.org/refworld/docid/4b2913d62.html> [accessed 20 December 2012]

use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law,” but it was unable to reach a definitive answer on the legality of the use of nuclear weapons by a state in an extreme circumstance of ‘legitimate’ self-defense.²¹ The Court also unanimously recognized, based off of the NPT Article VI language, the existence of “an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects.”²²

While the ICJ recognized the importance of the language of Article VI, no time frame has been established as to this obligation. All treaty obligations must be performed in ‘good faith,’ and as part of the good faith requirement, treaty obligations must be performed within a reasonable time.²³ Yet it has now been 42 years since the NPT entered into force, and the complete elimination of nuclear weapons remains elusive.²⁴ Former United Nations Secretary-General Kofi Annan has described the current state of play as one of “mutually assured paralysis,” where nuclear-armed states argue that the global environment is not conducive to disarmament because the risk of proliferation is too high, and states without nuclear

²¹ See generally *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, International Court of Justice (ICJ), 8 July 1996, available at: <http://www.unhcr.org/refworld/docid/4b2913d62.html> [accessed 20 December 2012]

²² See *Present Possibility* at 218.

²³ *Id.* at 218 and note 3 (citing e.g. Charter of the United Nations art 2(2); Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 26 (‘Vienna Convention’); Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, GARes2625(XXV), UNGAOR, 25th sess, 1883rd plenmtg, SuppNo28,UNDocA/RES/2625 (XXV) (24 October 1970)).

²⁴ *Id.*

weapons refuse to support nonproliferation measures because the nuclear-weapon states have been unwilling to sacrifice them.²⁵

❖ Comparative Framework Example: The 1997 Mine Ban Treaty

Banning a weapon is not a new phenomenon. One particularly relevant comparative example is the 1997 Mine Ban Treaty. In the late 1980's and early 1990's, the world began to take notice as landmine casualty rates around the world began to drastically rise and eventually reached crisis levels. Precursors of antipersonnel mines are believed to have been first used in the American Civil War in the 1800's, but they were first used on a much broader scale in World War II.²⁶ Since then, they have been used in many international conflicts, including in the Vietnam War, the Korean War, and the first Gulf War.²⁷ They have also been deployed in a multitude of internal conflicts, sometimes even being used intentionally to terrorize communities, deny access to farming land, and restrict population movement.²⁸ One key problem with landmines is that they remain continually in the ground once implanted. Landmines used during the World War II, for example, are still causing death and destruction in parts of Europe and North Africa.²⁹ The effect of the persistence of landmines is that civilians continue to be maimed and killed long after a conflict has ended. As a consequence, by 1992

²⁵ *Id.*

²⁶ International Campaign to Ban Landmines, History of Landmines, *available at* <http://www.icbl.org/index.php/icbl/Problem/Landmines/History-of-Landmines>

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

reports were emerging that 97% of casualties were civilians, and each new year was yielding an additional 20-25,000 new victims.³⁰

In reaction to this humanitarian disaster, non-governmental organizations (NGOs) and individuals from civil society banded together to create what was then—and is still—called the International Campaign to Ban Landmines (ICBL).³¹ The ICBL pushed governments to address the crisis and to create a treaty that would prohibit the production, use, transfer, and stockpile of these weapons. After extensive lobbying, the campaign was ultimately successful and the Ottawa Convention—or Mine Ban Treaty—was signed on December 3, 1997, and entered into force on March 1, 1999.³²

As discussed previously, international customary law and international humanitarian law (IHL) impose certain restrictions on how combatants operate. Antipersonnel mines cannot distinguish between a soldier and a child, as a landmine is triggered by its *victim*. Because of this, use of the weapon violates the principle of discrimination. Landmines also disproportionately affect civilians—even today civilians comprise 85-97% of annual casualty rates. Because of this disparity, use of the weapon also violates the principle of proportionality.

The United States was one of the first governments to call for the elimination of landmines in the mid-1990s, but when the Mine Ban Treaty opened for signature, President Clinton postponed joining the convention until 2006. President Bush then reversed the U.S. policy stance in 2004, declaring that the U.S. would not accede.

³⁰ United Nations Association of the USA, Adopt-A-Minefield, available at <http://www.unausa.org/programs/former-programs/adopt-a-minefield>

³¹ *Id.*

³² *Id.*

However, after extensive lobbying by civil society organizations, President Obama announced in December 2009 that his administration had initiated a comprehensive review of its U.S. landmine policy to determine whether the U.S. will join the Mine Ban Treaty. Since the policy review began, the administration has received letters of support for the Mine Ban Treaty from 68 Senators, NGO leaders, key NATO allies, 16 Nobel Peace Prize Laureates, victims of U.S. landmines, and countless U.S. citizens and global campaigners.

At the Twelfth Meeting of States Parties (12MSP) to the Mine Ban Treaty, the United States observer delegation stated that the U.S. will be announcing the outcome of its three year review of its landmine policy—and whether or not it will join the treaty—“soon.” In the statement, Steve Costner, deputy director of Weapons Removal and Abatement at the U.S. Department of State, said, “We have not made a decision on United States accession to the Convention. Our review has identified operational issues related to accession that require careful consideration. This consideration is ongoing, and we expect to be able to announce a decision soon.”³³ In response, the U.S. Campaign to Ban Landmines (USCBL) held a briefing to discuss the statement and the status of the review. Speaking as a member of the panel, Costner indicated that “soon” meant—at the least—that an announcement of the decision of the review would take place no later than the next Meeting of States Parties in November 2013. At the briefing, Costner also stated, in response to questions about the “operational issues” cited in the statement, “We’ve made real

³³ U.S. Campaign to Ban Landmines, *available at* www.uscbl.org.

progress. We've identified the issues. Our homework is done. Now it's about looking at the options and going forward."

What have been the effects of the Mine Ban Treaty? First, a total of 4,286 new casualties from landmines and explosive remnants of war were recorded in 2011—down from 20-25,000 new casualties each year in the late 1980s and early 1990s.³⁴ Second, 161 countries have now joined the convention, and by doing so have vowed never to use landmines again and are currently destroying their stockpiles; to date States Parties have officially declared completion of stockpile destruction, collectively destroying more than 46 million stockpiled antipersonnel mines.³⁵ Third, an Implementation Support Unit (ISU) was established through the treaty to assist States Parties in their achievement of convention objectives—stockpile destruction, clearance, and survivor assistance. Forth, an independent monitoring mechanism—the Landmine Monitor—was created and is managed by NGOs and researchers worldwide; when allegations of use or any other violation of treaty provisions occur, Monitor staff investigate and report on these compliance issues. Finally, the momentum of the convention and its universalization have created an international norm—a stigmatization—against the weapon. At the December 2012 MSP, 17 states not party to the treaty [out of 36] participated in the conference as observers, including China, Lao People's Democratic Republic, Lebanon, Libya, Myanmar, Oman, Saudi Arabia, Singapore, the United Arab Emirates, United States,

³⁴ Landmine Monitor 2012, Executive Summary Overview, p. 1, available at http://www.the-monitor.org/lm/2012/resources/Landmine_Monitor_2012.pdf

³⁵ *Id.*

and Vietnam³⁶—many of whom have used/produced landmines in the past and retain the right to produce and use landmines in the present.

What has been the effect on the position of non-States Parties like the United States? The U.S. reportedly retains some 10.4 million stockpiled antipersonnel mines for potential future use. With Poland's imminent ratification of the treaty, also announced at this conference, the U.S. is now one of only 36 countries in the world that have not joined the Mine Ban Treaty—and is the only member of NATO that is not a States Party, and the only country in the Western Hemisphere, aside from Cuba, that has not joined. Does this create pressure for that impacts U.S. behavior? Certainly. The U.S. has not used antipersonnel landmines since 1991, has not exported them since 1992 and has not produced them since 1997. And the U.S. is itself aware of the impact of the universalization of the treaty and creation of this norm. In dialogue with multiple NGOs and States Parties during roundtables conducted as part of the current landmine policy review, officials from the National Security Council and the Departments of State and Defense inquired about the effects of U.S. ratification of the treaty on accession possibilities by other non-States Parties. Even though landmine use has been significantly reduced worldwide, a few countries refuse to join—and even continue to use landmines—under the cover that they will not join if the U.S. has not joined. The administration understands that its reputation as the world's largest donor to mine action is undercut by the asymmetry of its landmine policy—and an advantage to joining is both escaping that tarnish

³⁶ See ICBL Press Release, December 7, 2012, available at <http://www.icbl.org/index.php/icbl/Library/News-Articles/12MSP-Closing-press-release>

and removing the cover that potential landmine users employ to try and avoid scrutiny.

❖ Model Nuclear Weapons Convention Provisions & Structure

A. Preamble: Alluding to Promises of Humanitarian Disarmament

In its preamble, the Model Nuclear Weapons Convention references various aspirational goals that have a distinctly humanitarian undertone. Among the most pronounced are the following clauses³⁷—

We the people of the Earth, through the States Parties to this Convention:

- Convinced that the existence of nuclear weapons poses a threat to all humanity and that their use would have catastrophic consequences for all the creatures of this Earth—;
- Noting that the destructive effects of nuclear weapons upon life on earth are uncontrollable whether in time or space—;
- Aware that amongst weapons of mass destruction, the abolition of which is recognized as being in the collective security interest of all people and States, nuclear weapons are unprecedented and unequalled in destructive potential—; and
- Affirming that the inherent dignity and equal and inalienable rights of all members of the human family include the right to life, liberty, peace and the security of person—.

The Preamble also directly references other conventions and principles related to nuclear weapons (i.e. the NPT); key parallel humanitarian disarmament conventions (i.e. the Mine Ban Treaty), the International Criminal Court, rules of customary

³⁷ Model Nuclear Weapons Convention, UN Doc. A/62/650, April 2007, Preamble, 10.

international law, U.N. resolutions calling for a ban on nuclear weapons, the work of the U.N. General Assembly First Committee on Disarmament and language from the ICJ advisory opinion on nuclear weapons³⁸:

- Mindful of the solemn obligations of States made in Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons to end the nuclear arms race at an early date and achieve nuclear disarmament, and to further commitments on specific steps to achieve nuclear disarmament in the “Principles and Objectives for Nuclear Non-Proliferation and Disarmament” agreed in 1995, and the “Practical steps for the systematic and progressive efforts to implement Article VI of the Treaty on the Non- Proliferation of Nuclear Weapons” agreed in 2000—;
- Welcoming the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, as an indication of progress towards the prohibition and elimination of weapons which are indiscriminate and cause unnecessary suffering—;
- Welcoming also the Rome Statute of the International Criminal Court, in particular the recognition of individual responsibility for crimes involved in employing weapons which cause unnecessary suffering or which are inherently indiscriminate—;
- Believing that the threat and use of nuclear weapons is incompatible with civilized norms, standards of morality and humanitarian law which prohibit the use of inhumane weapons and those with indiscriminate effects—;
- Recalling Resolution 1(I), adopted unanimously on January 24, 1946 at the First Session of the General Assembly of the United Nations, and the many subsequent resolutions of the United Nations which call for the elimination of atomic weapons—;
- Recalling also the Final Document of the United Nations First Special Session of the General Assembly on Disarmament 1978, which calls for the elimination of nuclear weapons—; and
- Welcoming the advisory opinion of the International Court of Justice of July 8, 1996, which concluded “that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law”, and concluded unanimously that “There exists an obligation to pursue in good

³⁸ *Id.*

faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control”;

B. Structure of the Model Nuclear Weapons Convention

The Model Nuclear Weapons Convention prohibits development, testing, production, stockpiling, transfer, use and threat of use of nuclear weapons. States possessing nuclear weapons are also required to destroy their arsenals according to a series of phases. The Convention also prohibits the production of weapons usable fissile material and requires delivery vehicles to be destroyed or converted to make them non-nuclear capable.³⁹

The Convention prohibits the production of any fissionable or fusionable material which can be used directly to make a nuclear weapon, including plutonium (other than that in spent fuel) and highly enriched uranium. Low enriched uranium would be permitted for nuclear energy purposes. While not prohibiting the use of nuclear energy for peaceful purposes, an optional protocol would establish a program of energy assistance for States parties choosing not to develop nuclear energy or to phase out existing nuclear energy programs.⁴⁰

The section in the Convention outlining definitions is extensive—ten pages from 15-24. A “Nuclear Weapon” is defined as “[a]ny device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes; [a]ny nuclear explosive device; [a]ny radiological weapon; or [a]ny weapon which is designed to include a nuclear explosive device as a trigger or other component. The MNWC definition of nuclear

³⁹ *Id.* at 8.

⁴⁰ *Id.*

weapons is more comprehensive than the definitions in other nuclear disarmament treaties in that it includes, in subparagraphs 6.b and 6.c, radiological weapons and weapons with nuclear triggers such as particle beam and high energy laser weapons.⁴¹ “Nuclear Weapon Component” includes any constituent part of a nuclear weapon [excluding the special nuclear material when separated from other components]. And “Nuclear Weapons Delivery Vehicle” means any vehicle designed for or capable of delivering a nuclear weapon; any nuclear weapons delivery vehicle that has been constructed, developed, flight-tested or deployed for weapon delivery shall be considered a nuclear weapons delivery vehicle.⁴²

Essentially, the MNWC mandates both negative and positive States Party obligations. In terms of negative obligations, each State Party must undertake never under any circumstances⁴³:

- To use or threaten to use nuclear weapons;
- To engage in any military or other preparations to use nuclear weapons;
- To develop, test, produce, otherwise acquire, deploy, stockpile, maintain, retain, or transfer nuclear weapons except as specified under paragraph 4 of this Article;
- To develop, test, produce, otherwise acquire, stockpile, retain, transfer or use proscribed nuclear material except as specified under paragraph 4 of this Article;
- To develop, test, produce, otherwise acquire, deploy, stockpile, maintain, retain, or transfer nuclear weapons delivery vehicles;
- To develop, test, produce, otherwise acquire, stockpile, maintain, retain, or transfer nuclear weapon components or equipment as specified in this Convention;
- To fund [or conduct] nuclear weapons research, with the exception of nuclear disarmament research; or
- To assist, encourage, induce or permit, in any way, directly or indirectly, anyone to engage in any activity prohibited under this Convention.

⁴¹ Commentary

⁴² *Id.* at 15-24.

⁴³ *Id.* at 13-14.

On the other hand, states are required to take the following affirmative steps⁴⁴:

- To destroy all nuclear weapons it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention;
- To destroy all nuclear weapons it abandoned on the territory of another State, in accordance with the provisions of this Convention;
- To submit all nuclear facilities to preventive controls;
- To destroy all nuclear weapons facilities it owns or possesses, or that are located in any place under its jurisdiction or control, or to convert such facilities to weapons destruction facilities or other facilities not prohibited by this Convention;
- [To disable or destroy all facilities, systems or sub-systems designed or used in the command or control of nuclear weapons, or convert such facilities, systems or sub- systems to purposes not prohibited under this Convention;]
- To destroy or convert for purposes not prohibited under this Convention all nuclear weapons delivery vehicles and nuclear weapon components;
- To place all special nuclear material under preventive controls as specified in this Convention;
- To participate in good faith in activities aimed at the promotion of transparency with respect to nuclear weapons and related technologies and the promotion of education for the purposes of detecting and preventing activities prohibited under this Convention;
- To report violations of this Convention to the Agency [and to cooperate to the fullest with the Agency's investigative, monitoring and verification functions;] [and to provide to the Agency all information requested by the Agency for the purposes of implementing this Convention, except such information as may be with-held for legitimate international or national security or trade secret concerns;]
- To enact all domestic legislation necessary for the implementation of this Convention.

From the start, the Convention mandates that States Parties would be required to declare all nuclear weapons, nuclear material, nuclear facilities and nuclear weapons delivery vehicles they possess or control (including locations). Not later than [60] days after this Convention enters into force for that State Party, it must

⁴⁴ *Id.*

declare an inventory of all special nuclear material it owns or possesses or that is located within its jurisdiction or control, whether intended for civilian or military use.⁴⁵ Not later than [90] days after this Convention enters into force for it, the States Party must declare an inventory of all other nuclear material it owns or possesses or that is located within its jurisdiction or control, whether intended for civilian or military use. And finally, not later than [120] days after this Convention enters into force for it, the States Party must submit a report on the availability of data with respect to nuclear material produced in the past, including estimates regarding missing data and extent of uncertainty, and its plans for the reconstruction of such data.

Then the Convention outlines a series of five phases for the elimination of nuclear weapons beginning with taking nuclear weapons off alert, removing weapons from deployment, removing nuclear warheads from their delivery vehicles, disabling the warheads, removing and disfiguring the “pits,” and placing the fissile material under international control. In the initial phases the U.S. and Russia are required to make the deepest cuts in their nuclear arsenals. In any case, not later than 15 years after entry into force of the Convention, all nuclear weapons shall be destroyed.

Verification would include declarations and reports from States, routine inspections, challenge inspections, on-site sensors, satellite photography,

⁴⁵ “Special Nuclear Material” is a term used by the Nuclear Regulatory Commission of the United States (NRC) to classify fissile materials; the NRC divides special nuclear material into three main categories, according to the risk and potential for its direct use in a clandestine nuclear weapon or for its use in the production of nuclear material for use in a nuclear weapon.

radionuclide sampling and other remote sensors, information sharing with other organizations, and citizen reporting. Persons reporting suspected violations of the convention would be provided protection through the Convention including the right of asylum. An International Monitoring System would also be established under the Convention to gather information, and would make most of this information available through a registry; information that could jeopardize commercial secrets or national security would be kept confidential.

In terms of enforcement, the Convention provides for a series of graduated responses for non-compliance beginning with consultation and clarification, negotiation, and, if required, sanctions or recourse to the U.N. General Assembly and Security Council for action.

An agency would be established to implement the Convention. Its responsibilities would include for verification, ensuring compliance, and decision-making. Its composition would consist of a Conference of States Parties, an Executive Council, and a Technical Secretariat. The Executive Council, in particular, would assume a politically sensitive administrative role. To maintain its legitimacy and authority, the MNWC mandates that the Executive Council be comprised of 44 members, and that each State Party have the right, in accordance with the principle of rotation, to serve on the Council. The members of the Executive Council shall be elected by the Conference for a term of four years. In order to ensure the effective functioning of this Convention, due regard being paid to equitable geographic distribution, to representation by nuclear-capable states and to the interests of all

states to be free from the threat of nuclear devastation, the Executive Council shall be composed as follows:

- All Nuclear Weapons States Parties;
- Six States Parties from the Middle East and South Asia;
- Seven States Parties from Latin America and the Caribbean;
- Six States Parties from Eastern Europe;
- Seven States Parties from Africa;
- Six States Parties from among North America and Western Europe;
- Six States Parties from South East Asia, the Pacific and the Far East;
- Up to two additional States Parties that have special interest or expertise in implementing the aims of this Convention to be elected if required.

Provisions are also included for consultation, cooperation and fact-finding to clarify and resolve questions of interpretation with respect to compliance and other matters. A legal dispute may be referred to the International Court of Justice by mutual consent of States Parties. The Agency may also recommend to the United Nations General Assembly to request an advisory opinion from the ICJ on a legal dispute.

After accession, States Parties would be required to establish a national authority to be responsible for national tasks in implementation and to adopt necessary legislative measures to implement their obligations under the Convention to provide for prosecution of persons committing crimes and protection for persons reporting violations of the Convention. Nuclear weapon states are obliged to cover the costs of the elimination of their nuclear arsenals. However, an international fund will be established to assist states that may have financial difficulties in meeting their obligations.

The Convention also applies rights and obligations to individuals and legal entities as well as States. Individuals have an obligation to report violations of the Convention and the right to protection if they do so. Procedures for the apprehension and fair trial of individuals accused of committing crimes under the treaty are provided. The text explicitly notes that the fact that the Convention provides criminal responsibility for individuals does not affect the responsibility of States Parties under international law.

Finally, the Convention proposes that entry into force will occur [180] days after the date on which the following conditions are met:

- [All] Nuclear Weapons States have deposited their instruments of ratification; and
- All Nuclear Capable States have deposited their instruments of ratification; and
- At least [65] States in total have deposited instruments of ratification [including at least [40] States from Annex IV: List of Countries with Nuclear Power Reactors], [or] [including at least [40] States from Annex V: List of Countries with Nuclear Power Reactors or Nuclear Research Reactors].

C. Subsequent Attention to the Model Nuclear Weapons Convention

The working group released the MNWC in April 1997 and, at the request of Costa Rica, it became UN Document A/C.1/52/7.⁴⁶ The proposal generated calls for the enactment of a nuclear weapons convention from government and military officials (mostly retired), diplomats, academics, Nobel laureates, mayors, parliamentarians, and civil society organizations.⁴⁷ UN Secretary-General Ban Ki-

⁴⁶ Peter Weiss, *Taking the Law Seriously: The Imperative Need for a Nuclear Weapons Convention*, 34 *Fordham Int'l L.J.* 776, 778-779 (April 2011).

⁴⁷ *Id.* at 779.

moon endorsed the MNWC in 2008.⁴⁸ At the quinquennial NPT Review Conference in May 2010, twenty-eight countries specifically referred to a nuclear weapons convention, and the Non-Aligned Movement, representing 116 countries, strongly supported a time-bound framework for abolition, including a convention.⁴⁹ Altogether, more than 130 states supported a convention at the conference. In December 2009, 124 governments, including China, India, and Pakistan, voted for a resolution in the United Nations General Assembly calling on states to immediately commence “multilateral negotiations leading to an early conclusion of a nuclear weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination.”⁵⁰ A revised version of the MNWC was issued in 2007. The two sponsoring countries—Costa Rica and Malaysia—announced that the new model took into account “relevant technical, legal, and political developments since 1997.”⁵¹

❖ **Feasibility of the Model Nuclear Weapons Convention as a New Paradigm**

A. Verification & Enforcement Issues

The MNWC does include provisions for both verification and enforcement. As noted previously, verification measures would include declarations and reports from States, routine inspections, challenge inspections, on-site sensors, satellite photography, radionuclide sampling and other remote sensors, information sharing

⁴⁸ Id. at 779-80.

⁴⁹ Id. at 780.

⁵⁰ Id.

⁵¹ Id. at 780-81.

with other organizations, and citizen reporting. An International Monitoring System would also gather information and maintain a registry. And the Convention provides for a series of graduated responses for non-compliance beginning with consultation and clarification, negotiation, and, if required, sanctions or recourse to the U.N. General Assembly and Security Council for action.

However, it could be easily argued that the measures in the MNWC are not strong enough to actually ensure compliance. It could even be argued that it is not possible to create *any* system of verification and enforcement that could satisfactorily ensure compliance or notice of breach of compliance. If that is in fact the case, the corollary might be that no nuclear state would be willing to eliminate its nuclear arsenal if it would be unable to actually verify that all other States Parties have done the same. As regards enforcement measures, if no enforcement mechanism is strong enough in its own right to deter a States Party from non-compliance, then there is actually no stick in the desired carrot/stick balance.

Yet other disarmament treaties—and all treaties for that matter—have faced similar issues. Turning to the Mine Ban Treaty, a verification system has been created through the interrelated work of the Implementation Support Unit and the Landmine Monitor structure. Researchers through the world are coordinated through participating NGOs to monitor compliance with treaty provisions. Suspicions/allegations are submitted to these bodies by both civil society and states. Despite a lack of true enforcement mechanisms, the stigmatization of the weapon by the treaty and the name-and-shaming techniques of ICBL campaigners and States Parties alike have reduced the number of suspected states using landmines from 15

in the years just before the treaty entered into force to just one—Syria, a non-States Party—suspected to have used in 2012. In fact, no confirmed use of landmines by a States Party has ever been confirmed, although recently serious allegations against Turkey are being investigated.

Finally, some commentators have argued that it is actually through the process of negotiating the treaty that more effective verification and enforcement mechanisms will be created—in a similar way that the negotiations for the Comprehensive Test Ban Treaty created the impetus for developing a global monitoring and verification system.

B. Is There Any Real Public Civil Society Momentum Supporting a Ban Movement?

Most would agree that it is unlikely that negotiations for the Mine Ban Treaty would have taken place when they did had it not been for the effective lobbying coordinated by the International Campaign to Ban Landmines. Likewise, it is worth considering the potential influence of civil society forces in bringing about negotiations on an NWC. One major initiative aimed at promoting support for an NWC is the recently initiated International Campaign to Abolish Nuclear Weapons ('ICAN'), which models itself on the landmines campaign. ICAN is a global campaign coalition working to mobilize people in all countries to inspire, persuade and pressure their governments to initiate and support negotiations for a treaty banning nuclear weapons. They are calling on states, international organizations, civil society organizations, and other actors to:

- Acknowledge that any use of nuclear weapons would cause catastrophic humanitarian and environmental harm.

- Acknowledge that there is a universal humanitarian imperative to ban nuclear weapons, even for states that do not possess them.
- Acknowledge that the nuclear-armed states have an obligation to eliminate their nuclear weapons completely.
- Take immediate action to support a multilateral process of negotiations for a treaty banning nuclear weapons.

Mayors for Peace, another major network whose membership comprises over 2926 mayors in 134 countries, has adopted the idea of an NWC as part of its vision to eliminate nuclear weapons by 2020. Global Zero, another international movement for the elimination of all nuclear weapons, was launched in December 2008 and has grown to include 300 eminent world leaders and more than 400,000 citizens worldwide; they have developed a step-by-step plan to eliminate nuclear weapons, built an international student movement with more than 100 campus chapters in ten countries, and produced the acclaimed documentary film, *Countdown to Zero*. And members of many national parliaments, as well as the European Parliament, have introduced resolutions calling for the negotiation of a NWC. All of these civil society initiatives reflect widespread public support for a NWC.

In 2007, The Simons Foundation in Canada also commissioned an opinion poll which asked 1,000 adults in each of six countries—Britain, France, Italy, Germany, the United States, and Israel—whether they would support or oppose “eliminating all nuclear weapons in the world through an enforceable agreement.” No country had more than 15 percent of respondents moderately or strongly oppose the idea. More recently, Global Zero released a poll of 21 countries, including every nuclear-armed nation except North Korea, which also found that global public opinion overwhelmingly favors the negotiation of a time-bound international

agreement for the elimination of nuclear weapons—77 per cent in the U.S. alone and 69 per cent in Russia.

C. Is This Really a Humanitarian Disarmament Issue?

The Blix Commission argued in its report, *Weapons of Terror: Freeing the World of Nuclear, Biological and Chemical Arms*, that, “A key challenge is to dispel the perception that outlawing nuclear weapons is a utopian goal. A nuclear disarmament treaty is achievable and can be reached through careful, sensible and practical measures. Benchmarks should be set; definitions agreed; timetables drawn up and agreed upon; and transparency requirements agreed.” Jody Williams, who won the Nobel Peace Prize in 1997 along with the ICBL for leading the successful campaign to ban antipersonnel landmines, remarked at the launch of ICAN in Vienna in 2007, “We are told by some governments that a nuclear weapons convention is premature and unlikely -- don't believe it -- we were told the same thing about a mine ban treaty.”

True, there are differences between nuclear weapons and landmines/cluster bombs. In the landmine and cluster bomb movement, there were victims, and the survivors became a major advocacy focal point. The treaties not only acknowledged the victims, but also ensured that programming would be established and maintained for physical rehabilitation, economic reintegration, and psychosocial support for landmine survivors. Promises were made and momentum built on a mine-free world and no new victims. Nuclear weapons run a somewhat different course. Yes, there are victims, but the last non-test use of a nuclear weapon was in

1945; very few survivors remain. A NWC would not contain provisions to cater to survivors—because there is not a global community of survivors, undetonated nuclear weapons from conflicts past do not lie waiting underfoot, and the vast majority of any potential future use victims would be fatalities. So a NWC would be more of a prophylactic convention. However, this does not mean that this takes the convention out of the realm of humanitarian disarmament. Like biological and chemical weapons—and like the target of a new emerging campaign against “killer [autonomous] robot” technology, it simply means this is a treaty to prevent casualties and does not contain victim assistance provisions.

The landmine and cluster bomb campaigns were also largely based on the indiscriminate effects of the weapon. One cannot aim a landmine at a soldier; the landmine is laid and is triggered by the victim—whomever that might be. When a civilian triggers the landmine, typically no combatant is also affected. Not so with a nuclear bomb. The problem here is not that the weapon cannot be aimed at a military target; the problem is that the impacted area is so large that there is inevitably a tremendous amount of civilian collateral damage. The other problem is the radiation effect which remains long after the incident itself. In other words, there are violations of principles of proportionality and necessity. However, moving away from an argument based primarily on the principle of discrimination does not shift the discussion away from humanitarian disarmament.

As one commentator noted, “The 1997 Nobel Peace Prize Committee acknowledged [the effect of civil society on international law] by awarding the prize to a grassroots activist, Jody Williams, who led the campaign to ban anti-personnel

landmines, a process that produced what has been aptly called ‘a ‘people's treaty’ to ban landmines.’ Admittedly banning landmines is far less challenging to the geopolitical mentality than the effort to prohibit and eliminate nuclear weaponry. However, the jurisprudential point is, if anything, clearer: it is no longer satisfactory to conceive of international law on the basis of classical ‘sources of law’ and ‘enforcement.’ A global law of peoples is emerging, and it is past time for jurists to provide a suitable framework for its comprehension and assessment.”⁵²

D. Is There Any Real Political Consensus at the State Level That a Ban Is Appropriate?

Many states and most civil society groups campaigning for a ban on nuclear weapons now see negotiations for an NWC in the near future as politically feasible and indeed necessary. UN Secretary-General Ban Ki-moon urged states in October 2009 to consider such a treaty as a possible path forward, describing the model NWC drafted by civil society as “a good point of departure” for negotiations.⁵³ The calls for negotiations for a complete ban have increased in the aftermath of the Nuclear Weapons Advisory Opinion and the failure of the 2005 NPT Review Conference. Several other events indicating that the step-by-step approach is not working have also occurred—including the nuclear tests carried out by India and Pakistan in 1998; clandestine exchanges in nuclear weapons technology involving

⁵² The Nuclear Weapons Advisory Opinion and the New Jurisprudence of Global Civil Society 353

⁵³ Present Possibility 220-21.

Pakistani scientist Abdul Qadeer Khan; and the withdrawal of North Korea from the NPT and its subsequent nuclear test.

While commentators note that most states already support the idea of an NWC in principle, few have actively championed the cause. It should be noted, however, that some groups have chosen to use different terms for what is essentially a NWC. For example, the Weapons of Mass Destruction Commission ('Blix Commission') used the term 'nuclear disarmament treaty': Weapons of Terror: Freeing the World of Nuclear, Biological and Chemical Arms (Weapons of Mass Destruction Commission Final Report, 1 June 2006) and the Compact to Eliminate Nuclear Weapons uses the term 'treaty for zero nuclear weapons.'⁵⁴

Several major initiatives supportive of an NWC have also taken place outside the regular disarmament forums. The Middle Powers Initiative, a program of the Global Security Institute, has brought together supportive states to explore ways to begin negotiations on disarmament steps leading to an NWC. The Non-Aligned Movement, a group of more than 100 states which consider themselves not to be formally aligned with or against any major power bloc, held a high-level summit in 2004 during which participating states "emphasized the necessity to start negotiations on a phased programme for the complete elimination of nuclear weapons"—including an NWC. In 1998, the foreign ministers of all eight states comprising the New Agenda Coalition—Brazil, Brazil, Egypt, Ireland, Mexico, New Zealand, Slovenia, South Africa and Sweden--released a joint statement affirming "that a nuclear-weapon-free world will ultimately require the underpinnings of a

⁵⁴ Present Possibilities 222 and n34 and 20.

universal and multilaterally negotiated legally binding instrument or a framework encompassing a mutually reinforcing set of instruments.”⁵⁵

At the Review Conference of the NPT in 2005, Malaysia, Costa Rica, Bolivia, Timor-Leste, Nicaragua and Yemen submitted a working paper describing the relationship between the NPT and the MNWC. In the paper, they argued that the conclusion of an NWC—or alternatively, a framework of mutually reinforcing instruments—would be a way of fulfilling the disarmament obligations under Article VI and making good on the “unequivocal undertaking” by nuclear-weapon states in 2000 to accomplish the total elimination of their arsenals. The paper noted that the MNWC includes disarmament steps agreed upon by states parties in 1995, such as a prohibition on nuclear testing and an end to the production of fissile materials for military purposes, and steps agreed upon in 2000, such as measures to reduce the operational status of nuclear weapons systems and adherence to the “principle of irreversibility” in respect of nuclear disarmament.⁵⁶

Finally, on March 3-4, 2013, the government of Norway will host an international conference on the humanitarian consequences of nuclear weapons. This type of a conference focused on humanitarian consequences is the first of its kind and will draw on lessons learned from the Mine Ban Treaty and Convention on Cluster Munitions processes. In its October 12 statement at during First Committee, Norway’s delegation said:

“Throughout the history of the United Nations, we have seen the humanitarian perspective gain strength in international politics and in

⁵⁵ Id. 223-224

⁵⁶ Id. at 235-36.

relation to arms control. However, nuclear weapons have rarely been seen in this light. This may be about to change. In March 2013, Norway will hold a conference in Oslo focusing on the impact of nuclear detonations, whatever their cause. The Conference will create an arena to discuss immediate humanitarian effects, longer term impact and consequences, and the actual state of preparedness to provide adequate humanitarian response in case of a nuclear detonation. We look forward to welcoming all states and relevant humanitarian actors that recognise the need to discuss the humanitarian impact of nuclear weapons to Oslo in March next year.”

E. Universalization Issues

What impact would a NWC really have if nuclear states remained outside the treaty?

First, negotiations for an NWC would help to strengthen the global norm against the possession of nuclear weapons and help create the political environment that would move remaining states to join. As Alyn Ware has argued, the very fact of commencing negotiations would put considerable pressure on reluctant nuclear-armed states to join, in much the same way that the Ottawa process for the Mine Ban Treaty put pressure on key landmine users to join and, more recently, the Oslo process for the Cluster Munitions Convention put pressure on the United Kingdom to join.⁵⁷

The NPT was concluded without the involvement of two nuclear- weapon states, China and France; there is no reason why negotiations for an NWC could not at least commence without the support of all nuclear-armed states.⁵⁸ Besides, four of the nine nuclear-armed states—China, India, Pakistan and North Korea—already support the commencement of negotiations for a NWC. And while the U.S. position has been markedly less consistent, President Obama's did make a declaration in

⁵⁷ Present Possibility at 242.

⁵⁸ Id.

April 2012 that his administration, unlike those of his predecessors, is firmly committed to “a world without nuclear weapons.”⁵⁹

Some states and commentators have argued that there would be no point in commencing negotiations for an NWC unless all of the nuclear-armed states, or at least the United States and Russia, were willing to participate, for none of them have indicated a willingness to disarm unless it is in concert with the others.⁶⁰ But as Ware suggested about the Mine Ban Treaty and Convention on Cluster Munitions, it is often the process itself which drives further universalization. The Mine Ban Treaty process has demonstrated that even a civil society-driven movement can create pressure for change as a norm is created and a weapon is stigmatized. While the U.S. has not yet joined the landmine convention, it has responded in almost complete compliance with its provisions. Aside from its maintenance of a stockpile of 10.4 million weapons, it has modified its behavior in accordance with all other treaty requirements: it has not used landmines since 1991, exported them since 1992, and not produced them since 1996. It is now in a minority of states not party, and the Obama administration has undertaken a review of U.S. policy and is seriously considering submitting the treaty to the Senate for ratification. While banning nuclear weapons may be a much more drastic step—especially when the U.S. is clearly not close to joining even the Convention on Cluster Munitions, the

⁵⁹ Barack Obama, ‘Remarks by President Barack Obama’ (Speech delivered at Hradcany Square, Prague, Czech Republic, 5 April 2009) <http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered>.

⁶⁰ PP 241-42.

process of negotiating and universalizing a treaty forces the U.S. to consider its own policies in light of a changing global viewpoint.

F. Does this Conflict with Other Legal Obligations & Are There Any Legal Obligations to Ban?

As noted previously, under Article VI of the NPT, States Parties commit “to pursue negotiations in good faith on effective measures relating to ... nuclear disarmament.” The ICJ argued in its advisory opinion that “[t]he legal import of that obligation goes beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result—nuclear disarmament in all its aspects—by adopting a particular course of conduct.”

A common criticism of the Court's interpretation of Article VI is that those who drafted the article never intended that the disarmament obligation should involve the achievement of any specific result, as is evident in records of the negotiating history and the text of the NPT itself. However, international case law supports a strong interpretation, as does the strategic bargain underlying the NPT—namely “forswearing [the] acquisition of nuclear weapons in the expectation that states possessing them would eliminate them.”

However, the Court did not provide much insight on how or when nuclear disarmament could be achieved. If the successful negotiation of such a treaty were the only realistic way of achieving nuclear disarmament, then it would be logical to conclude that states are required to negotiate an NWC. However, not all states supportive of abolition regard the ‘single treaty’ approach as the most likely to

succeed—much less the only approach with any reasonable chance of succeeding. Indeed, some states have warned that, by focusing political attention on an NWC, we would detract from intermediate measures that are more likely to succeed, while other states envision nuclear disarmament as being achieved through a “framework encompassing a mutually reinforcing set of instruments.” However, the U.N. General Assembly, in its follow-up resolution on the ICJ advisory opinion, considers an NWC to be a logical way of implementing the nuclear disarmament obligation articulated by the ICJ.

It is true that some tens of thousands of nuclear weapons have been destroyed since the end of the Cold War, and the time required to fulfill any treaty obligation will vary. But after 42 years of minimalist steps and the stalling of negotiations, one could argue that states have failed to carry out their nuclear disarmament obligations “in good faith.”⁶¹

Alyn Ware, a leading proponent and drafter of the MNWC, has likened the relationship between the NPT and an NWC to that between the Geneva Gas Protocol and the Chemical Weapons Convention. The former treaty, negotiated in 1925, prohibited the use of chemical weapons but provided no mechanism for implementing that prohibition; the latter, negotiated in 1993, established those mechanisms—without the Chemical Weapons Convention, chemical weapons would have remained in the stockpiles and military doctrines of a number of countries for many years. Similarly, Article VI of the NPT is not ‘self-implementing’ and will

⁶¹ Present Possibility at 220.

require the negotiation of a clear prohibition on the possession of nuclear weapons, as well as mechanisms for verified compliance.⁶²

Furthermore, the NPT grants the five original nuclear-weapon states—China, France, Russia, the United Kingdom, and the United States—certain benefits that are not available to the other nuclear-armed states were they to accede to the treaty—for example, they may possess nuclear weapons (although not indefinitely) and are not required to accept International Atomic Energy Agency safeguards on all of their nuclear facilities. Under the terms of the NPT, only states which tested nuclear weapons *before 1970* could join as ‘nuclear-weapon States.’ Because of this, there is little incentive for the so-called *de facto* nuclear-weapon states—Israel, Israel, India, Pakistan and North Korea—to join. In contrast, the general obligations under a NWC could apply equally to all states parties.⁶³

According to Global Zero, proclaiming the goal of elimination as a far-off vision though not pursuing it until or unless a series of sequenced arms control measures have all been achieved is not a politically feasible strategy for eliminating nuclear weapons and carries significant risks that could undermine progress even on incremental measures and current non-proliferation efforts.⁶⁴

G. Is a Treaty the Most Effective Avenue?

Finally, recent momentum has developed around regulation of the use of explosive weapons in populated areas. Some civil society actors are hesitant to push states to initiate negotiations for a comprehensive convention banning such use. The

⁶² Present Possibility at 236.

⁶³ *Id.* at 236-37.

⁶⁴ *Id.* at 238.

fear is that by proposing a convention, states may be able to skirt the prohibitions already established under existing convention and customary law. The Geneva Conventions have several stipulations protecting civilians during times of conflict, and the general rules established by customary law of proportionality, necessity, and discrimination also prevent states from targeting—specifically or recklessly—civilian populations.

The alternative approach is to encourage the use of more specific language in Protection of Civilians (PoC) debates at the Security Council and among U.N. agency groups such as the Office for the Coordination of Humanitarian Affairs (OCHA). The strategy is to develop common definitions and insist that international humanitarian law and international human rights law *already* prohibits the use of explosive weapons in populated areas. In other words, states should not be able to claim they are exempt from these prohibitions because they are already subject to them through customary law and through IHL/IHRL. The next step could be the creation of a political declaration framing these concepts as understood definitions. A separate convention may never be the best strategic approach in this case.

In contrast, nothing in the world of nuclear weapons is new vocabulary. There is no pretense that agreement has already been reached. And the current processes have stalled for more than four decades. It seems that a comprehensive convention banning the weapon—especially in light of the ICJ advisory opinion—is the most logical avenue to pursue.