
United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination

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English only

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Topic 2: Core Prohibitions

Submitted by Arms Control Association

1. Our organization welcomes the commencement of multilateral negotiations on a new “legally-binding instrument to prohibit nuclear weapons, leading towards their total elimination” as an important new contribution that can further delegitimize nuclear weapons as instruments of international power and strengthen the legal and political norms against their use.
2. This effort is consistent with the pursuit of a world without nuclear weapons and the obligations established by Article VI of the Nuclear Non-Proliferation Treaty (NPT), as well as Action 5 (c) and (d)¹ that were agreed to by all states parties at the 2010 NPT Review Conference.
3. At the same time, we note that this new instrument to prohibit nuclear weapons is not an all-in-one solution to address today’s growing array of nuclear weapons-related dangers. To address these dangers, we call upon all states to exert stronger leadership and provide the necessary political will to advance effective nuclear disarmament measures, including the key steps outlined in the Action Plan agreed to by consensus at the 2010 NPT Review Conference.
4. We hope that this negotiation will arrive upon a formula that is meaningful but also draws the widest possible support from states participating in the negotiation, and potentially others who have chosen not to participate at this time.
5. We have listened to the statements and interventions over the course the opening week of negotiations very carefully.
6. To ensure that the new instrument is sound and constitutes a net contribution, I would respectfully offer the following observations and recommendations:
7. **In deciding upon the core prohibitions of the new treaty it is important to consider how and whether these prohibitions can be effectively verified**, even if this

¹ Which call for progress “to further diminish the role and significance of nuclear weapons in all military and security concepts, doctrines and policies” and “discuss policies that could prevent the use of nuclear weapons and eventually lead to their elimination, lessen the danger of nuclear war and contribute to the non-proliferation and disarmament to nuclear weapons.”

instrument does not elaborate the detailed monitoring regime that would be necessary to verify compliance.

8. It is important to recognize that certain nuclear weapons-related activities, such as nuclear explosive testing, are already prohibited and a verification regime to monitor compliance have been established; certain other nuclear weapons-related activities are not yet prohibited.

9. Furthermore, some activities related to fissile material production and nuclear-weapons research and development have civilian applications recognized by the NPT and some of them would, if prohibited, pose future verification challenges.

10. With this in mind, the manner in which the new instrument addresses “research and development” and “nuclear testing” is especially important and requires careful consideration.

11. **Recommendation:** With respect to nuclear weapons testing, it is *not* necessary to include a prohibition on nuclear explosive testing in the new instrument, given that nuclear explosive testing is already prohibited by the 1996 CTBT, and a robust global monitoring system to verify compliance is already in place and operating.

12. Although the CTBT has not yet formally entered into force, the non-testing norm is well established. The 183 states that have, so far, signed the treaty are all obliged by Article XVIII of the Law of Treaties not to take actions that would defeat the object and purpose of the treaty. UNSC resolution 2310 recognizes the [September 15, 2017 statement](#) from the permanent five members of the council reaffirming their legal commitment as CTBT signatories not to take any action that would “defeat the object or purpose of the treaty,” which is to halt “any nuclear weapon test explosion and any other nuclear test explosion” regardless of yield.

13. Furthermore, detection of a nuclear test explosion would immediately indicate the “possession” a nuclear device/weapon, which would clearly violate other core provisions of the new instrument being negotiated at this conference.

14. Some delegations this week have suggested the new instrument should prohibit “other forms of testing, such as subcritical nuclear experiments” (which are not nuclear explosions). In my view, this is not a productive or necessary course of action, as it could reopen the issue of CTBT scope, and/or create a conflict with the CTBT.

15. With respect to nuclear weapons development there are several nuclear weapons development activities, if pursued together or in part, that can contribute to nuclear weapons research and development.

16. In addition to certain nuclear fuel cycle activities, technical experts commonly identify at least eight types of activities relevant to nuclear weapons development:

- Detonators;
- High explosives;
- Plutonium/uranium shells;
- Neutron generators;
- Tritium technology;
- Hydrodynamic codes coupled with neutron transport calculation;

- Hydrodynamic experiments;
- Weaponization (preparation of a physics package for systems integration).

17. As a new Carnegie Endowment for International Peace study, *Toward A Nuclear Firewall*, notes: “These eight areas comprise a range of activities and the equipment or technology necessary to carry them out, including on a simulated basis. R&D activity is obviously only one indicator of a nuclear weapons program, and no single activity in this domain clearly delineates a peaceful program from a non-peaceful one.” But the report notes, “countries working on activities in all eight weapons R&D areas should invite much more scrutiny than countries working in only one or two.”²

18. **Ideally, the new instrument might provide for pathways by which states that now possess nuclear weapons, or are part of alliances with nuclear-armed states and/or which “host” nuclear weapons, can support the new nuclear weapons prohibition treaty before they become a full-fledged member of new instrument.**

19. **Recommendation:** Given that that any new treaty prohibiting nuclear weapons will not immediately eliminate all nuclear weapons, and given that the threat of use by nuclear-armed states will continue to pose a threat to themselves and to the nonnuclear weapon states party to the NPT and the new prohibition treaty, the new instrument should recognize existing negative security assurances made in the context of the NPT by the five original nuclear weapon states.

20. To strengthen the norm against non-use and to advance the goals set out in the 2010 NPT Review Conference Final Document on Security Assurances, including Action (7) and (8),³ the new instrument could also include *a legally-binding protocol* associated with the main text that nuclear-weapons possessor states could adopt, which would:

“Prohibit any state armed with nuclear weapons or with nuclear weapons on its territory from threatening or using nuclear weapons against a non-nuclear weapon state.”

21. If included, such a protocol would help strengthen the NPT and increase the value of the nuclear weapons prohibition treaty effort.

22. We will look forward to reviewing all of the statements and contributions from this conference and will provide more detailed comments regarding the prohibition treaty in the weeks ahead.

Thank you for your consideration.

² *Toward a Nuclear Firewall: Bridging the NPT's Three Pillars*, Toby Dalton, et al, March 2017, p. 17.

³ The 2010 NPT Conference “reaffirms and recognizes that the total elimination of nuclear weapons is the only absolute guarantee against the use or threat of use of nuclear weapons and the legitimate interest of non-nuclear weapon States in receiving unequivocal and legally binding security assurances from nuclear-weapon States which could strengthen the nuclear non-proliferation regime.” Action (6) and (7) call for “... effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons,” and for “All nuclear-weapon States [to] commit to fully respect their existing commitments with regard to security assurances. Those nuclear-weapon States that have not yet done so are encouraged to extend security assurances to non-nuclear-weapon states parties to the Treaty.”