



General Assembly

Distr.: General
3 May 2016

English only

Open-ended Working Group taking forward multilateral nuclear disarmament negotiations¹

Geneva 2016

Item 5 (a) of the agenda

**Taking forward multilateral nuclear disarmament negotiations
concrete effective legal measures, legal provisions and norms
that will need to be concluded to attain and maintain a world
without nuclear weapons**

Measures for States relying on, but not possessing nuclear weapons, to take forward multilateral nuclear disarmament negotiations

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Introduction

1. The majority of States do not have nuclear weapons so negotiating, concluding and implementing a new legal instrument that would prohibit its parties, their nationals, and any other individual subject to its jurisdiction from engaging in the development, production, testing, acquisition, possession, stockpiling, transfer, deployment, threat of use, or use of nuclear weapons, as well as assistance, financing, encouragement, or inducement of these prohibited acts would be fairly straightforward. It would reinforce and strengthen the existing nuclear weapons free legal architecture. There is, however, a small group of States that do not possess nuclear weapons, but still include the nuclear weapons of others in their security strategies and doctrines. This small group can contribute other measures now, to take forward multilateral nuclear disarmament negotiations.
2. Progress has been sorely lacking when it comes to reducing reliance on nuclear weapons in security strategies and doctrines. While security realities are used as a reason to delay, even during times of extensive positive cooperation, nuclear weapon reliance has not changed. For the small number of States engaged in extended nuclear deterrence to facilitate the creation and maintenance of a world without nuclear weapons some adjustment in policies and practices would be required. This paper seeks to elaborate what

¹ Established pursuant to resolution 70/33 of the General Assembly of the United Nations.



this small group can do in the near-term to contribute positively to taking forward multilateral nuclear disarmament negotiations.

Not all Non Nuclear Weapon States are the same

3. States relying on the nuclear weapons of others can be classified into one of three groups: (a) States [allegedly] hosting forward deployed nuclear weapons of others; (b) States participating in multilateral military alliances that collectively employ nuclear weapons in their security doctrines, and (c) Other States with existing or perceived bilateral arrangements with nuclear armed states in which nuclear weapons may be used on their behalf. All of these States are party to the nuclear Non Proliferation Treaty.

4. These Non-Nuclear Weapons States relying on nuclear weapons (nuclear dependency States) should demonstrate commitment to their legal obligation 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" in the near term, by ending their reliance on nuclear weapons. This is necessary as a way to strengthen the NPT regime as well as take forward multilateral nuclear disarmament negotiations.

5. All nuclear dependent States could establish and announce commissions to conduct national assessments for a nuclear weapon free security strategy. These commissions could include a broad coalition of parliamentarians, defence personnel, civil society and academia to develop nuclear weapons free security strategies. These commissions could be tasked to develop security plans that do not risk any violation of International Humanitarian Law and disarmament law and do not envisage the use of nuclear weapons under any circumstances. These assessments would need to be conducted in the process of outlawing and eliminating nuclear weapons, no matter what nationally favoured approach is agreed. It would be prudent for these national assessments to examine what requirements – on a national level – would be necessary for inter alia future military training, procurements, and policies, to meet a nuclear weapons free security strategy.

6. All nuclear dependent States should recognise the inextricable link between nuclear weapons modernisation and nuclear proliferation, and should demonstrate good faith to their disarmament obligations by refusing to participate, implicitly or explicitly, in the modernisation programmes of nuclear armed States.

7. All States that claim reliance on nuclear weapons in their own security strategies, could take a positive step by issuing national declarations that their security arrangements do not include a nuclear option, and publicly recognise that any nuclear use has the potential to cause environmental destruction leading to global famine.² These umbrella countries can also state publicly that they do not link their national security to nuclear weapons, thereby contributing to the reduced reliance on nuclear weapons in all security strategies.

8. NATO or States participating in multilateral military alliances that collectively employ nuclear weapons in their security doctrines

9. NATO is the only military alliance in the world that refers to itself as a nuclear alliance, and as such, its members bear special responsibility for taking forward multilateral nuclear disarmament negotiations. NATO remains comprised of individual member States, each of which has sovereign rights and responsibilities informed by, but not beholden to, the alliance as a whole. NATO membership does not require adherence to any specific

² Mr. Ira Helfand, Nuclear Famine: climate effects of regional nuclear war, April 2012, found at: <http://www.ippnw.org/nuclear-famine.html>

nuclear weapons policy and according to research by the International Law and Policy Institute³, there exist significant variations in national legislation and policies. Member States like Denmark, Iceland, Lithuania, Norway and Spain should make their national policies better known, and other NATO members can and should enact national changes supporting a shift away from nuclear weapons associated security strategies.

10. The 28 NATO member states are in a unique position with three nuclear armed member states, five States hosting USA nuclear weapons, at least 15 States actively involved in exercises preparing to use nuclear weapons and 27 States planning nuclear weapons use. All 28 share responsibility for policy documents describing the intention to keep the ability to threaten others with nuclear weapons as long as nuclear weapons exist. As a whole, NATO sets a bad example.

11. NATO nuclear sharing practices are not enshrined in legal agreements (there is no reference to nuclear weapons in NATO's founding document, the Washington Treaty) so a change in alliance reliance on nuclear weapons requires no new legal agreement. NATO members remain sovereign States with the right to implement national policies and practices in the best interest of their citizen's security.

12. The nuclear armed NATO members undertook an obligation at the 2010 NPT Review Conference to reduce the role of nuclear weapons in their security strategy and doctrines. NATO continues to assert "Arms control, disarmament, and non-proliferation continue to play an important role in the achievement of the Alliance's security objectives. Both the success and failure of these efforts can have a direct impact on the threat environment of NATO."⁴ At the same time, the alliance reaffirms, "As long as nuclear weapons exist, NATO will remain a nuclear alliance." Politically a series of discussions inside of NATO must take place to facilitate a transition away from the current nuclear weapons reliance policies.

13. To take forward multilateral nuclear disarmament negotiations NATO members need to clarify at both national and alliance level, a shared public understanding of what exactly a nuclear alliance is, and under what circumstances that includes the use of nuclear weapons. There is also a need to bring greater international attention to and pressure on NATO nuclear sharing practices as contradicting norms (for example against use) on nuclear weapons. A number of NATO allies submitted a working paper to the first session of the Working Group (A/AC.286/WP.9) calling for efforts, not limited only to the Nuclear Weapons States, to reduce the role of nuclear weapons in security doctrines (paragraph 10d). This suggests a broader recognition of the need for national action on the part of alliance members.

14. If NATO member states really want to promote the ultimate aim of security for their citizens, then efforts to shift language in the alliance's political outcome documents to reduce the role of nuclear weapons is necessary. As the International Law and Policy Institute argues: "concerns about the political implications for NATO ignore historical variations in member state military policy and underestimate the value of a ban on nuclear weapons for promoting NATO's ultimate aim: the security of its member states."⁵ Individual members should examine their specific roles, and provide a transition timeframe. Additionally, the Alliance as a whole (or its Nuclear Planning Group) could develop

³ See, for example, A ban on nuclear weapons: what's in it for NATO?, ILPI, found at: <http://nwp.ilpi.org/?p=2296>

⁴ NATO - Wales Summit Declaration issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Wales. NATO. Available at: http://www.nato.int/cps/en/natolive/official_texts_112964.htm [Accessed September 11, 2014].

⁵ Stein-Ivar Lothe Eide, A Ban on Nuclear Weapons: What's in it for NATO? ILPI Weapons of Mass Destruction Project. Available at: <http://nwp.ilpi.org/?p=2296> [Accessed October 3, 2014].

alternative nuclear weapons free exercise scenarios and new policy language that reduces the role of nuclear weapons for the alliance.

15. For most, this would require little more than a declaratory change in policy. Some States might also choose not to participate in the NATO Planning Group, to further distance themselves from any planning for the use of nuclear weapons.

[Alleged] Nuclear Host States

16. There are five States (Belgium, Germany, Italy, Netherlands and Turkey) that neither confirm nor deny the presence of USA nuclear weapons on their territories, even though independent investigation has shown the existence of necessary infrastructure, training and personnel in these [alleged] nuclear host nations.

17. There are many proposals to increase transparency, which if applied to all countries equally would end the public secret keeping on locations and numbers of forward deployed NATO nuclear weapons, and would build confidence towards future reductions and negotiated disarmament. Increasing transparency on these issues could also mean sharing information on budgets, bilateral agreements, safety and emergency response planning, security measures and more.

18. Each of these five host countries could increase transparency around nuclear weapons by providing information on existing nuclear deployment capacities, even in unarmed states, can reduce tensions and increase stability. This is something that could be done in the near term and could be an extremely useful way to reduce tensions amongst nuclear capable States.

19. To support nuclear disarmament negotiations States could make changes to the infrastructure currently in place to maintain forward deployment capacities. This could, as a practical measure, include the return of the current 180 or so forward deployed B61 nuclear bombs to the USA. They could also physically dismantle existing bunkers capable of storing nuclear weapons, and halt the trainings that some air forces undergo to handle (and attack with) nuclear weapons. It could also require the reassignment of infrastructure and some personnel.

20. In some situations, additional bilateral negotiations might need to be undertaken on the Agreements for Cooperation for Mutual Defence Purposes related to deployment and transfer arrangements of the aforementioned nuclear bombs.⁶

21. In several States, decisions about next generation Dual Capable Aircraft provide a good moment to end their nuclear tasks. They could also choose not to order and/or pay for modifications necessary for the next generation of planes to be able to use nuclear weapons (as called for by some parliamentary resolutions) as a tangible commitment to nuclear disarmament goals and objectives and a practical measure to reduce the risk of use.

22. The NPT explicitly requires states “not to receive the transfer from any transfer or whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly”. Questions have been raised about potential NATO member noncompliance with this article for decades, specifically in relation to the forward deployment by the United States of nuclear weapons on the territory of (now) five NATO members, and the training of their military personnel to use those weapons. In strict interpretation of the Article, handing over control of these weapons

⁶ Turkey is a bit of an outlier as it is commonly understood that the Turkish Air Force does not train to accept transfer of US nuclear weapons, as opposed to the Belgian, German, Italian and Dutch Air Forces.

would mean the USA would violate Article I of the NPT, and the recipient State would violate Article II. The 1985 NPT Review Conference agreed as part of its Final Document that the Treaty remains in force "under any circumstances", with the intention of halting any NATO nuclear sharing. However, these countries continue to undergo preparations (through, inter alia, joint exercises) to accept control over these nuclear weapons. Halting those preparations would contribute greatly to eliminating nuclear risk.

23. Citizens in NATO countries have long called for the removal of these weapons and this has been reinforced by repeated resolutions in national parliaments. The removal of the forward deployed weapons also recognises how ongoing retention of these weapons increases the likelihood that the area they are stored is targeted with similar capabilities. This could have grave cross-border implications, as modelled by Mr. Matthew McKinzie, et al.⁷ Some have argued that removing the forward deployed weapons increases the likelihood of a Russian nuclear attack on NATO soil, yet NATO itself does not list these weapons as part of its nuclear alliance guarantee, instead citing the strategic arsenal of the United States of America (and the United Kingdom to a lesser extent). Removal of forward deployed weapons means removing the incentive to target these 'second strike capabilities'. A nuclear strike at any of the six bases where the US currently deploys nuclear bombs would have a devastating impact on the health and well being of the people living in the region (not only the immediate area). Some have argued that changing basing arrangements must be made in full consultation with all allies, but historically (e.g. in Greece, Canada and the United Kingdom) basing decisions have been made bilaterally and then communicated afterwards to the alliance. Belgium, Germany, Italy, Netherlands and Turkey all have the opportunity and obligation to protect their citizens by engaging in bilateral discussion with the United States of America to remove forward deployed nuclear weapons from their territories.

24. The most difficult to achieve would perhaps be to find the political capital within NATO to renegotiate the NATO Strategic Concept to meet the requirement to reduce the role of nuclear weapons in security strategies and doctrines. This is something that NATO members will have to do eventually anyway. Beginning those discussions now would demonstrate sincerity and good faith to find a way forward to balance security considerations in a nuclear weapons free world.

Conclusion

25. There are many measures that can contribute to taking forward multilateral nuclear disarmament negotiations which would enhance security, reduce risk of any use of nuclear weapons and increase transparency. Some of these measures require coordinated international discussions, others are bilateral adjustments, and still more can be undertaken unilaterally at an early date.

26. With increased understanding of the risk of use as well as the devastating impact of any use, all actions contributing to reduction of reliance on nuclear weapons, their abolition and total elimination should be welcomed.

⁷ A presentation of these results was given during the Vienna Conference on the Humanitarian Impact of Nuclear Weapons and can be found here:
http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/Presentations/HINW14_S1_Presentation_NRDC_ZAMG.pdf