



# General Assembly

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## Open-ended Working Group taking forward multilateral nuclear disarmament negotiations<sup>1</sup>

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Taking forward multilateral nuclear disarmament negotiations

### Effective measures, legal norms and provisions on nuclear weapons: A hybrid approach towards nuclear disarmament

Submitted by Brazil

#### Introduction

1. Several options of effective measures to take forward nuclear disarmament have been presented and discussed in different international fora in recent years, including the Non-Proliferation Treaty Review Conferences, the Conference on Disarmament, the United Nations Assembly General Assembly and the Conferences on the Humanitarian Impacts of Nuclear Weapons. In its working paper A/AC.286/WP.10, Brazil recapitulated the most widely discussed options available to the international community (comprehensive convention, prohibition treaty, framework agreement and hybrid arrangement) and considered some of the pros and cons of each approach.

2. As the debate on those different options and its intrinsic characteristics has matured and evolved, Brazil believes it is time to take a further step towards concrete negotiations on one of them. To this end, an in-depth consideration of such options in relation to one another and to the current climate in the international nuclear disarmament debate is needed, so that the international community can make informed decisions on the matter. Brazil would therefore like to propose a non-exhaustive, but in our view essential, set of criteria for evaluating the feasibility and efficacy of each approach, and, stemming from its analysis, a specific course of action.

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

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### **Effectiveness, universality and political viability of a legally binding instrument on nuclear disarmament**

3. The consideration of the possible approaches for taking forward multilateral nuclear disarmament negotiations must take into account the degree to which each of them would contribute to the ultimate goal of ridding the world of nuclear weapons and how practical they are at this particular moment. Three categories stand out in this debate as inevitable: (a) effectiveness; (b) universality; and (c) political viability. These are interdependent and must be analyzed in relation to each other and to each of the possible approaches listed.

4. Any such endeavor should be effective in promoting steady progress towards a world free of nuclear weapons. The highest degree of effectiveness would be reaching a consensual timeframe and an agreed verification mechanism for the elimination of nuclear arsenals. All approaches should thus be judged on how close they would bring the international community towards this goal. A comprehensive convention would fulfil this condition, whereas a prohibition on nuclear weapons would set a firm political goal towards it and the framework approach would provide diffuse aspirations. It is clear from the outset, however, that this depends not only on the specific merits of each approach, but also on the adherence to it by States, most notably the nuclear-weapon States (NWS) and other States possessing nuclear weapons.

5. In light of the sheer destructive power of nuclear weapons, any treaty governing their legal status must be intended to be universal. Only a strong consensus in the international community, carried out energetically by all States, can truly settle the nuclear weapons issue and eliminate the risks of a nuclear tragedy. This has been the basis for the consensus approach dominant in the United Nations disarmament machinery. However, a more nuanced consideration on the issue of universality can show us that there is more than one avenue towards it. The NPT itself is a fine example of how universality can be a goal, rather than a premise, and still yield considerable results.

6. The Treaty was originally signed by 94 States, with important countries staying out of its framework for decades, including two of the NWS. It took the better part of almost 50 years to achieve the near universality the Treaty now enjoys. Still it is not enough, and the adherence of the remaining States outside the NPT framework continues to be one of the main goals of its review process. There is no denying, however, the importance of the Treaty today, nor has the recalcitrance of dozens of States to initially join the Treaty impeded its proponents from carrying it forward, in the hope that its political and legal impact would be such that it would eventually aggregate other actors.

7. Universality can therefore be either a precondition or an objective of any negotiating process. History shows that the latter is the most effective approach, at least in disarmament affairs. We can compare the successful implementation of the NPT with the CTBT, which demands unanimity within a specific group of States to enter into force. Surely, the more States adhere to any negotiating process, the more effective it will be, but it is a matter mostly of degree. The framework approach, or the successive negotiation of partial instruments, is the one most likely to draw the highest number of countries, but even in this case consensus has been elusive, as the status of the CTBT's entry into force and the stalemate surrounding a fissile material treaty show. Both the comprehensive convention and a prohibition of nuclear weapons would, at least at first, probably attract a smaller, albeit potentially still considerable, number of adhering countries. The main difference between the two with regard to the issue of universality is that the technical intricacies of a nuclear weapons convention would probably need the robust involvement of at least several States possessing nuclear weapons, whereas a treaty prohibiting nuclear weapons could be negotiated even without them, if necessary.

8. A legally binding instrument aimed at taking forward the nuclear disarmament agenda must therefore be effective and have sizable support, although it would not need to be universal at its first stages. Furthermore, as for any international legal instrument, the merits of a potential treaty or convention must be assessed in light of its political viability, and this refers back to the issues of universality and effectiveness dealt with above. A candid inquiry of the main factors behind the lack of progress in nuclear disarmament is therefore needed.

9. A quick look at the developments (or lack thereof) within the nuclear disarmament agenda in the last two decades immediately highlights the ambiguous role played in this discussion by States possessing nuclear weapons, as well as other States which rely on them for their security. Although we welcome arsenal reductions and other partial initiatives which have taken place since the end of the Cold War, those have not been conducive to substantive negotiations on transparent, verifiable and irreversible nuclear disarmament. Neither have they signaled any changes in the reliance those States have on nuclear weapons and old ways of thinking inherited from the Cold War days and doctrines of "Mutually Assured Destruction". Multilateral initiatives such as the CTBT and negotiations on a fissile material treaty, on their part, are completely stalled.

10. The inability of States possessing nuclear weapons to genuinely engage with non-nuclear-weapon States (NNWS) in more ambitious initiatives on nuclear disarmament is mostly a product of their inability to go beyond a confrontational security mindset and instead support a collective approach to security, predicated on cooperation and dialogue.

11. This points to the wider gap between the majority of States which see nuclear weapons as a threat to international security and those who believe such weapons increase their security, and, more worryingly, that such a state of affairs can be relied upon indefinitely. This gap, which transcends geopolitical rivalries, reveals a cognitive gap, a deep seated difference in the understanding of nuclear weapons, and has been the most powerful obstacle to moving forward with the disarmament agenda.

12. The key to unlocking this impasse lies therefore in identifying the approach which will either allow the vast majority of the international community to bridge this gap with the States possessing nuclear weapons and immediately engage with them in a meaningful way or to proceed at first without their necessary involvement and in fact pave the way for their future adherence.

13. To bridge this gap, in the past and now, has been a difficult task, which is better exemplified by the stance of several States not to take part in this Open Ended Working Group, which was established by the United Nations General Assembly, the most representative organ of global governance, with overwhelming support. The political viability of immediate progress in nuclear disarmament seems to lie, therefore, in the capacity of NNWS to lead the way in this regard, but in a way that will instigate and enable further progress. Under such circumstances, a treaty prohibiting nuclear weapons would be the most viable, whereas a comprehensive convention and the framework approach present clear technical and political difficulties.

14. A renewed protagonism on nuclear disarmament by the NNWS may seem to be a bold innovation, but it is in fact coherent with their leading role in proposing initiatives in this domain over the last 70 years, first and foremost through the establishment of nuclear-weapon-free zones (NWFZ), and several other proposals and ideas aiming at the prohibition and elimination of nuclear weapons. The sovereign decision taken by 185 States to adhere to the NPT as NNWS is in itself the single greatest contribution to the nuclear disarmament and non-proliferation regime, and must be recognized as such. The legitimacy of the NNWS to spearhead the nuclear disarmament debate cannot thus be contested. As the

major contributors to non-proliferation, they have in fact a historic responsibility to set the tone for the future of nuclear disarmament.

### **A hybrid approach: maximizing the gains and paving the way for the future**

15. All approaches outlined above have advantages and disadvantages and should not be taken as mutually exclusive, but as prototypes, from which we can borrow the main strengths and try to minimize the weaknesses.

16. The most viable option for immediate action seems to be the negotiation of a treaty prohibiting nuclear weapons, establishing general interdictions and obligations, and an unambiguous political commitment to completely eliminate nuclear weapons.

17. Such a treaty should benefit from further developments. It could be complemented by protocols on national declarations, national implementation, verification and phases of destruction, assistance and technical cooperation, and the non-discriminatory verification regime to be implemented after the dismantlement of all nuclear weapons. Such a perspective would provide a framework for the progressive inclusion of all States initially resistant to join in, thus reflecting the inclusiveness afforded by the framework approach.

18. The completion of such a process would provide for the same effectiveness of a nuclear weapons convention, in fact establishing a comprehensive system for the achievement and maintenance of a world free of nuclear weapons. The main difference between the two approaches is that the hybrid option would avoid preconditions which could stall the beginning of negotiations indefinitely.

### **Conclusions and recommendations for follow-up actions**

19. In face of the mounting evidence on the danger posed by the existence of nuclear weapons, the current stalemate on nuclear disarmament negotiations must not continue unchallenged. While the NWS continue to hesitate and falter, it is the responsibility of the NNWS to take the lead in reigniting the nuclear disarmament agenda. A prohibition on nuclear weapons followed by the negotiation of protocols on elimination and other relevant issues would be the best possible option available, and could be immediately pursued.

20. Such an initiative would give expression to the commitment of the international community to the objective of a world free of nuclear weapons, enshrined in the NPT, the NWFZ Treaties, the CTBT and other existing instruments governing nuclear weapons. It would thus not contradict in any way those other treaties and the obligations they have set.

21. In light of the above, Brazil would like that the final report of the Open-ended Working Group to the General Assembly of the United Nations at its seventy-first session recommends the immediate commencement of negotiations on a treaty for the prohibition of nuclear weapons, which would establish the main prohibitions and obligations associated with that goal, as well as the general provisions regarding future steps aimed at the complete elimination of nuclear weapons, the verification thereof and other relevant aspects pertaining to an all-encompassing nuclear disarmament framework, and urge all States to take part in it.