

DECLINE or TRANSFORM

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beyond the NPT review process



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A Control Regime Trapped in Time

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How are humanitarian approaches relevant to
achieving progress on nuclear disarmament?

John Borrie and Tim Caughley

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These two essays are published by the Acronym Institute in advance of our forthcoming book on humanitarian disarmament. These essays are offered in this preview booklet to inform the 2012 NPT Preparatory Committee Meeting and act as a taster for the ideas that will be developed more fully in the book, due to be published later this year.

The Acronym Institute for Disarmament Diplomacy is a not-for-profit research organisation based in London, which works on international security and disarmament issues, conducts research and analysis, and through meetings, publications and outreach facilitates the fuller participation of civil society and nations in developing and implementing effective measures to eliminate nuclear and other weapons of mass destruction, demilitarise relations between states, promote human security and sustain a healthy environment.

The Acronym Institute is very grateful to the Norwegian Ministry of Foreign Affairs for funding this project, to the Swiss Ministry of Foreign Affairs for supporting the Glion workshops, and to the Joseph Rowntree Charitable Trust and the Polden-Puckham Charitable Foundation for supporting additional resources and research to make the Acronym Institute's work possible.

The NPT in 2010-2012: A Control Regime Trapped in Time

Rebecca Johnson

As states parties gather in Vienna in April 2012 for the first Preparatory Committee (PrepCom) meeting of the review cycle for the 2015 Review Conference of the parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), it is necessary to take stock and consider if the current regime is still fit for purpose – and what that purpose needs to be for global security in the 21st century.

In May 2010 in New York, 172 of the 189 states parties to the NPT joined consensus to adopt a final document with 64 action points on nuclear non-proliferation, disarmament, energy and the Middle East. But despite adopting an outcome document that could be hailed a success for NPT diplomacy, the Conference also exposed how traditional non-proliferation and arms control approaches are failing to address the major security concerns of the non-nuclear-weapon states, particularly regarding nuclear proliferation, recklessness, power projection and the risks of nuclear use, terrorism and accidents. The inability of the NPT machinery to strengthen its own verification and implementation processes and deal with noncompliance and treaty withdrawal, adds a strong security plank to the humanitarian case for pursuing the abolition of nuclear weapons. Whilst acknowledging the importance of the NPT in containing proliferation, the message from the 2010 Review Conference was that dealing with nuclear weapons dangers will require genuine progress towards establishing “the necessary framework to achieve and maintain a world without nuclear weapons”.¹

The 2010 Review Conference took place in one of the most constructively conducive international environments for addressing nuclear issues that governments could wish for. Yet its outcome – applauded as a success – actually shows the regime to be deeply fractured and incapable of dealing with the tough decisions. This is a regime that only once every five years gets a decision-making conference, where for the past two decades a similar list of complaints, concerns and demands have been raised and documents full of exhortations and commitments have either been adopted or not adopted. While the world turns, nuclear weapons are modernized and revalued in nine nuclear-armed states, causing a growing number of the non-nuclear-weapon countries reassess their options for security. The NPT, which entered into force in 1970, became the basis for a highly successful multilateral arms control regime, well suited to the Cold War. Notwithstanding its much heralded indefinite extension in 1995, the NPT has been in decline since 1990. That does not mean it's been useless or should be jettisoned. The NPT helped stabilize proliferation at low numbers for the past four decades. But the majority of states that have abided

by their non-proliferation obligations have seen their security eroded as new states have acquired nuclear weapons while the Cold War powers have continued to refine and modernize, even as some have cut their stockpile numbers.

From the vantage point of 2012, this essay considers what occurred at the 2010 Review Conference and evaluates the outcome and effectiveness of the non-proliferation regime in light of recent developments, threats and challenges. Having attended and reported on every NPT PrepCom and Conference since 1994, I am concerned that the review process has become a wheel-spinning exercise, with sound and fury but not much else. There are lots of documents and speeches full of facts or accusations, pledging this, that and the other, but some are still echoing demands and positions barely changed from the Cold War, which ceased to be meaningful a long time ago. When the NPT briefing books have been stowed away for another year, what has actually been achieved to lessen nuclear threats in the world outside the conference rooms?

In the final section I consider four potentially transformative factors that have begun to have an impact on non-proliferation and disarmament debates and prospects: the growing importance of international humanitarian law; new interest in the humanitarian consequences of nuclear weapons; declining faith in the efficacy and legitimacy of nuclear weapons for deterrence; and the development of partnerships among non-nuclear-weapon states and civil society to demystify, devalue and delegitimize nuclear weapons and create the conditions for them to be prohibited and verifiably eliminated. In critiquing the current paradigm and drawing out some of the differences between humanitarian disarmament approaches and traditional arms control, this and the accompanying essay by John Borrie hope to stimulate debate on future options by which governments can make progress to fulfil the core imperative of security from nuclear threats that was the NPT's original and necessary purpose. These ideas and their implications will be further elaborated in a forthcoming book by the Acronym Institute, due out later this year.

Non-Proliferation in Decline: the View from 2012

On April 30, 2012, NPT parties will again gather in Vienna for the first PrepCom of the 2015 review cycle. The danger is that many will expect to go through the motions once again, arguing over the agenda, holding two week PrepComs for the next three years, and then what? By 2015, don't we need to be developing a more substantively effective instrument than a review conference without teeth? Already the agreements adopted in 2010 seem a long way away. What, in reality, has the 2010 outcome contributed to the tools we need to deal with the serious challenges that led governments and analysts to warn of the non-proliferation regime being in "crisis"² and to work hard for a successful Review Conference in the hope that this would strengthen the regime?

On North Korea, for example, the death of Kim Jong-il in 2011 gave the Democratic People's Republic of Korea (DPRK) a young, untried leader – his son, Kim Jong-un – who commemorated the centenary of his grandfather Kim Il-sung in April 2012

with an attempted “satellite launch” doubling as a ballistic missile flight test, which provoked Japanese officials to warn that they might exercise their missile defence ‘rights’ to shoot it down. This caused acres of newsprint and rhetoric, and then the Taepodong 2 missile broke up within minutes after its launch and fell into the sea. That ignominious failure then prompted anxious debates about whether the young Kim Jong-un would need to stamp his authority on the DPRK leadership with some other military or explosive ‘event’, like another nuclear test for example, for “demonstration purposes”. Six Party Talks may be scheduled to resume in return for food aid or they may have been derailed by Kim’s military posturing. Meanwhile Japan and South Korea are determined not to let the United States reduce its nuclear deterrence posture and military commitments in the region, even as they are busy building up their own missile defence capabilities.

Iran seems to be weathering censoring reports and resolutions from the International Atomic Energy Agency (IAEA) and UN Security Council, as well as the Stuxnet computer virus and assassination of nuclear scientists. It has accelerated its uranium enrichment programme and appears to be well on the way to developing independent fuel cycle and missile technologies, all the while claiming that its nuclear programme is solely for energy and other “peaceful purposes” consistent with Article IV of the NPT. Though the 2010 Review Conference may have underscored Iran’s relative isolation on these issues, NPT parties singularly failed to put in place agreements and measures to offset the inadequacies in the IAEA’s inspections powers, as exposed by the nuclear programmes of Iraq, Iran, Syria and North Korea. In fact, once the endgame excitement faded, we’ve had to face up to the reality that NPT parties were unable to deal with compliance and implementation shortcomings, strengthen the regime institutionally, develop mechanisms to deter withdrawal from the Treaty, increase developing states’ uptake of the IAEA’s Additional Protocol and make it a verification standard or even a condition or supply, or take steps to devalue nuclear weapons and implement the disarmament steps the nuclear-weapon states committed themselves to at the 2000 Review Conference. As the following analysis of the 2010 NPT Review Conference shows, the debates were substantive but the text that was finally adopted was unable to go much beyond reaffirmations, exhortations and language agreed in 1995 or 2000 on disarmament, universality, strengthened safeguards, the additional protocol, export controls, nuclear safety and security.

The increasingly embedded status of three nuclear-armed states outside the Treaty have rendered NPT universality a pipe dream. Though their non-participation in NPT conferences meant that Israel, India and Pakistan did not disrupt the Conference directly, they continue to pose serious problems for the credibility and sustainability of the regime – not to mention regional security – in many other ways. India may be widely accepted as a de facto nuclear weapon state, as illustrated in the capitulation by the Nuclear Suppliers Group (NSG) to let the misguided exemptions for India go through and rubber stamp the Bush administration’s US-India nuclear cooperation agreement in 2008; however, New Delhi badly miscalculated India’s regional security, where it has now been pushed into an unwanted nuclear arms race with Pakistan, having lost the advantage of

its far larger conventional forces and industrialised population. Pakistan's nuclear arsenal continues to give rise to fears about nuclear security and safety, and though it is assumed that A. Q. Khan's house arrest ended his long-held role as a black-market proliferator of nuclear technologies, concerns remain about the weakness of Pakistan's proliferation barriers and dangers arising from its past and potentially ongoing black-market activities. Pakistan is continuing to produce fissile materials and increase the size of its arsenal and demand the same privileges as the US-India deal obtained for its neighbour, while its political and operational systems of nuclear control continue to cause concern. It was not by random hypothesis that scientists studying the effects of a limited regional nuclear war chose a nuclear conflict in South Asia as their research scenario, updating the 'nuclear winter' studies of the 1970s and 1980s that were premised on US and Soviet missiles raining destruction on each other.

The major news story of the Conference was the decision to hold a Conference on the Middle East, intended to open a process to free that troubled region of nuclear and all weapons of mass destruction. Yet despite the importance of this agreement in enabling a consensus final document to be adopted, it took over 15 months to agree on a host country (Finland) and Facilitator (Finnish diplomat Jaakko Laajava, now Under-Secretary of State for Foreign and Security Policy). No date has yet been decided, and there is speculation that to accommodate the different pressures of the US Presidential election and the seasonal holidays it may be necessary to hold the conference in early 2013, enabled (if necessary) by that time-honoured 'stop the clock' diplomatic manoeuvre. Both Israel and Iran are reluctant to participate but will have to weigh the political costs and benefits of not turning up or of sending only low level 'monitoring' delegations. Questions abound about what this Conference should – or could – do. In the mean time, Israel's government rattles sabres and threatens to attack Iran's nuclear facilities, whilst some Israeli citizens have started posting Facebook messages "Iranians we love you" and "Iranians we will never bomb your country". Amazingly, in defiance of the anti-Israeli ranting of President Mahmoud Ahmadinejad, significant numbers of Iranian civilians are responding on Facebook and U-tube "Israelis we love you". From early 2011, citizen-initiated rebellions against corrupt and despotic regimes have caused civil and political upheavals across the Middle East, toppling some governments and transforming the political landscape, with far-reaching but not necessarily predictable consequences for regional and international security, including potential impact on nuclear policies.

During the Review Conference there was assiduous marketing of a so-called "nuclear renaissance" by a handful of nuclear supplier countries, notably France, Russia, Japan and the UK, who appeared increasingly successful in promoting further nuclear expansion under the rubric of implementing the NPT. They fostered a growing interest by some states – especially in the Middle East and 'Global South' – in developing nuclear power and research programmes. The prospect of more countries acquiring nuclear energy programmes might have been welcomed by some industrial players, but it raised nuclear security, safety and proliferation anxieties among many more, particularly as proposals for

providing nuclear fuel cycle services through multinational, proliferation-resistant arrangements had been mired in years of inconclusive discussions, with no agreement even to minimize the use of plutonium and highly-enriched uranium (HEU) in civilian programmes. As more statements than before spoke of the need for nuclear energy because of the climate problems associated with fossil fuels, few apart from Austria raised concerns about the safety, economics, environmental problems and security risks associated with such expansion. Efforts were made by some NWS to present support for nuclear energy rather than disarmament as the new litmus test of NPT implementation, and NGOs who talked about the problems of nuclear energy, as well as its suitability in terms of developing states' electricity grids and infrastructure, tended to be sidelined, as if questioning nuclear energy would undermine the NPT.

Nine months later, the disaster that struck the Fukushima Daiichi nuclear power plant has reminded the world of some of the risks that widespread dissemination of these technologies would present for the world. On 11 March, 2011, Fukushima Daiichi was destroyed with explosions, fires and a partial meltdown after a magnitude 9 earthquake and huge 14 metre tsunami devastated the North-East coast of Japan. The tsunami knocked out the nuclear reactors' primary and back-up electrical supplies and cooling-system pumps causing "a compound disaster, with meltdowns of reactor cores at Units 1, 2 and 3" according to the report by the Independent Investigative Commission on the Fukushima Daiichi Nuclear Accident.³ As the fuel heated up and chemicals in its cladding reacted with steam to release volatile hydrogen gas, explosions blew the tops off two of the reactors and damaged a third. The explosions damaged concrete 'ponds' above the reactors, where irradiated spent fuel rods were stored under water. When the ponds leaked, the fuel rods were exposed and overheated, releasing significant quantities of radioactivity into the environment.

Thousands of people had to be evacuated from the towns and farms near Fukushima. A year later over 100,000 'radiation refugees' are still unable to return to their homes. Japan's continuing struggle to tackle the widespread radiation problem and manage the stricken reactors has added heavy additional burdens to its heroic efforts to recover from the tsunami. Previously regarded as one of nuclear energy's flagships, Japan suspended operations at all but two of its 54 nuclear reactors, and is now having to rethink its energy policies. While earthquakes and tsunami of the size that destroyed Fukushima Daiichi are relatively rare, other foreseeable natural and terrorist events could create similar chaos. Summarizing the Independent Investigative Commission's report for the *Bulletin of the Atomic Scientists* recently, Koichi Kitazawa, former Chair of Japan's Science and Technology Agency, and Yoichi Funabashi, former editor-in-chief of the *Asahi Shinbun*, noted: "Risks associated with the peaceful use of nuclear energy are certain to increase, in light of the surge in nuclear plant construction taking place in many emerging economies."⁴

It was also noticeable that more states and NGOs than at previous Review Conferences raised concerns in 2010 about "non-strategic nuclear weapons"

(NSNW) based in Europe under the auspices of the North Atlantic Treaty Organization (NATO), which still maintains “nuclear sharing” arrangements whereby around 180-200 US B-61 nuclear bombs are “hosted” by five states regarded as non-nuclear-weapon states under the NPT: Belgium, Germany, Italy, the Netherlands and Turkey. Reflecting the conflicts and contradictions in NATO itself over nuclear policy, the November 2010 Lisbon Summit of NATO heads of state and government stated: “The supreme guarantee of the security of the Allies is provided by the strategic nuclear forces of the Alliance, particularly those of the United States; the independent strategic nuclear forces of the United Kingdom and France, which have a deterrent role of their own, contribute to the overall deterrence and security of the Allies.” Lisbon mandated the North Atlantic Council to conduct a Defence and Deterrence Posture Review (DDPR) on “the range of NATO’s strategic capabilities required, including NATO’s nuclear posture, and missile defence and other means of strategic deterrence and defence”. Deliberately echoing the contradiction at the heart of President Obama’s “Prague Agenda”, the 2010 Strategic Concept “commits NATO to the goal of creating the conditions for a world without nuclear weapons” but reconfirms that, “as long as there are nuclear weapons in the world, NATO will remain a nuclear Alliance”. Formerly justified in terms of “transatlantic burden sharing” and “Alliance cohesion”, the removal of tactical nuclear weapons is on NATO’s agenda, with or without a fundamental shift to denuclearize NATO’s Security Concept.

NATO heads of state are scheduled to meet in Chicago on May 20-21, 2012, a week after the NPT PrepCom closes. The signs are that NATO remains divided: most, including the United States and weapons hosting countries, would like the weapons to be withdrawn, but NATO works by consensus and despite several years of wrangling on this issue, none is yet forthcoming. Bizarrely the most vociferous opponent to changing NATO’s nuclear policy is France, which despite rejoining NATO’s military command in 2009 still does not participate in its Nuclear Planning Group (NPG). In the absence of consensus to update NATO’s strategic concept, doctrine and nuclear sharing arrangements, there may be pressure to (at least) avoid locking down the out-dated nuclear doctrines and arrangements, and it may then be possible for the weapons to be quietly removed through bilateral agreements, as was done when US weapons were withdrawn from Greece ten years ago.

Before addressing what to do to resolve the disconnect between the conduct and outcome of the 2010 Review Conference and developments in the real world, it is necessary now to look in more detail at what actually transpired in May 2010, how and why.

The 2010 NPT Review Conference: Politics and Outcome

When the Conference President, Ambassador Libran Cabactulan of the Philippines, brought his gavel down at 3.40 pm on 28 May 2010 applause rippled through the UN General Assembly hall. This was not the enthusiastic acclaim accorded to a substantive success, but an expression of relief that deadlock and ignominious failure had been narrowly avoided. Much could have gone wrong, and the gathered

diplomats and civil society representatives were unsure if the delicate compromises would hold long enough for the Final Document to be adopted. Iran, facing censure over its nuclear programme in the UN Security Council the following week, was clearly unhappy and might still have balked. The US delegation had Washington's backing, but could not afford to look satisfied as they would have to sell the outcome to right-wing sceptics and explain why they'd agreed to a document that named Israel but not Iran. Egypt's diplomats were everywhere; smiling, shaking hands, full of nervous, anxious, excited energy. If the Final Document went through, this was their success – and might expunge the ignominy of 2005 when the Review Conference failure had been blamed on Egypt as well as Iran and the United States.

Gathering at the United Nations a month earlier on 3 May, no-one knew how the 2010 NPT Review Conference would end. Most diplomats and analysts agreed that the non-proliferation regime was “in crisis” and that the Review Conference needed to demonstrate that the NPT was still credible. This was an overarching objective for many governments, not only because the 2005 Review Conference had floundered, but because the regime seemed incapable of dealing with the hard issues. The nuclear programmes of North Korea, which withdrew from the NPT in 2003, and Iran, which stayed, were (if anything) accelerating. India and Pakistan were now locked in a regional arms race following their nuclear tests in 1998. Nuclear-armed Israel clung to its nuclear “opacity”, surrounded by neighbours that were NPT parties demanding disarmament while also using the Treaty to pursue nuclear technologies. There was little confidence in the inadequate compliance and safeguards tools with or without the Additional Protocol, and the Conference on Disarmament (CD) had been practically paralysed since completing the Comprehensive Test Ban Treaty (CTBT) in 1996. There was also a debilitating cynicism about the persistent failure of the nuclear-weapon states (NWS) to deliver on the NPT's essential nuclear disarmament requirements. Leaving it to the NWS to determine the time, depth and pace of disarmament action has proved disappointing. Though the last twenty years have seen the overkill capacities of the largest Cold War arsenals significantly reduced, mindsets of nuclear value and reliance have fuelled modernization programmes and undermined non-proliferation efforts.

The 2005 Review Conference failure was easily blamed on the toxic international context and cavalier attitude of the George W. Bush administration towards multilateral agreements. Though true to a point, that is over simplistic. Bush administration policies fed into a joint enterprise by the United States, France and Russia to negate nuclear disarmament commitments they had adopted at the 2000 NPT Review Conference, which caused agenda delays and exacerbated tensions with the non-nuclear-weapon states (NNWS), while Egypt became wrong-footed and blamed for trying to get the 1995 and 2000 decisions recognized as the basis for measuring the Treaty's effectiveness and progress.⁵ Although states seemed to shrug at the time, the roll back strategies of some NWS and lack of substantive agreements in 2005 weakened the non-proliferation regime and let Iran, North Korea and the nuclear-armed proliferators off the hook.

The 2010 Review Conference benefitted from more propitious international relations, mainly due to the election of US President Barack Obama, but many considered that the nuclear challenges had continued to worsen. In addition to the unchecked nuclear programmes of Iran and North Korea, these included weapons modernization programmes in eight nuclear-armed states and thirteen years of deadlock in the CD, where linkage tactics and conflicting national strategies had made it impossible even to get a basic fissile materials cut-off treaty (FMCT) off the ground. The 2010 Conference could not be expected to resolve such real-world problems, but many feared that another high profile failure might erode the NPT's credibility beyond a point of no return. The result was a pragmatic attitude that lowered expectations and sought to find compromises to paper over the largest cracks.

Procedural issues such as the agenda, chairs and division of work among the three Main Committees and three Subsidiary Bodies were agreed early on, enabling the Conference to devote most of its time to discussing substantive issues. Even so, the outcome hung in the balance until the last day, as Iran struggled to avoid being isolated or blamed in the hope that the United States would refuse to accept a text on the Middle East that mentioned Israel. The defining issue for 2010 was achieving the decision to convene a regional conference in 2012 to start a process towards a Middle East zone free of weapons of mass destruction. Deals were brokered on the details, and all looked set after the United States agreed not to name Iran as being in non-compliance with the NPT, and to accept language relating to Israel that had been previously adopted by President Bill Clinton's administration in 2000.⁶ For the sake of consensus, non-nuclear states were leaned on to accept weakened commitments on disarmament, and efforts to mention treaty withdrawal (Article X) or have the IAEA's Additional Protocol recognized as a verification standard or condition of supply had to be dropped. With Washington and the other nuclear-weapon states on board, Iran had a stark dilemma: change its national position and join the consensus or be blamed by Egypt and other key states in the Non-Aligned Movement (NAM) for blocking an outcome in which they had invested high political stakes. In the final days, taken to the brink with hours of high tension, Iran's diplomats (and key NAM leaders in late-night and early-morning phone calls) persuaded Tehran of the wisdom of joining consensus.

Having stepped away from blocking adoption of the Final Document, Iran's Ambassador Ali Soltanieh made a dignified closing statement, a complete contrast from President Ahmadinejad's intemperate rant on the first day.⁷ Noting the dangers attached to the existence of nuclear weapons and the catastrophic consequences of their possible use, Soltanieh argued for an end to the notion that nuclear weapons confer political clout and capability to shape and influence world events: "Holding on and modernizing nuclear arsenals should be condemned rather than condoned or tolerated." Iran critiqued the outcome, noting that majority calls for commitments from the NWS – for example, to halt modernisation and qualitative development, reduce operational status, diminish the role of nuclear weapons in doctrines and policies, and withdraw and eliminate nuclear weapons from the territories of non-nuclear countries – had been portrayed merely as

“legitimate interests”, aspirations or “questions” for discussion. Iran directly criticized France and the United States for blocking any possible agreement to further limit or prohibit the use or threat of use of nuclear weapons, and objected that there was no commitment on the “most important request” of non-nuclear-weapon states, including the NAM, namely “a legal framework with specified timeline for the total elimination of nuclear weapons, including a Nuclear Weapons Convention by 2025”. This, “after more than 40 years living under the shadow of nuclear weapons”, had been watered down to acknowledging that “a majority of States parties believe” an agreed legal framework should include specified timelines. Iran also complained that the final document had not said enough to criticize Israel or the other states remaining outside the NPT and any NPT members that engage in supplying them with nuclear materials or technologies. Notwithstanding the outcome document’s limitations, Soltanieh said that Iran “joined consensus to show our respect for the views of the others and our political and good will”, especially viewing the proposals and commitments to vigorously pursue nuclear abolition as “a real source of pride and inspiration in our future endeavours”. This speech conveyed a great deal about the 2010 dynamics, with Soltanieh having to put a brave face on the fact that a number of key states from different political groupings had negotiated a weak outcome, but one in which they had enough of a vested interest to collaborate on a strategy of engaging and defanging Iran (and any other potential defector).

Among states parties, the United States and Egypt contributed the most in terms of political, personal and strategic input to constructing the positive context and conditions for the 2010 Review Conference to adopt a final document. After taking office in 2009, Barack Obama’s administration made non-proliferation, nuclear security and nuclear arms reductions a policy priority and fielded a committed, knowledgeable and talented team who worked hard to deliver the necessary elements to reinvigorate non-proliferation and disarmament optimism. High profile initiatives were undertaken, such as President Obama’s speech in Prague, April 5, 2009, his chairing of a high level UN Security Council meeting on nuclear non-proliferation and disarmament on September 24, 2009, and the Washington Summit on nuclear security in April 2010, as well as serious efforts to conclude the New START Treaty with Russia and reduce the role of nuclear weapons through changes incorporated in the 2010 US Nuclear Posture Review, among other policy developments. With widespread support for these constructive initiatives, Obama’s team found they had willing negotiating partners at the Review Conference, as Egypt marshalled the Arab States and NAM to push for the UN to convene a regional conference and process to implement the 1995 Resolution on the Middle East.

Egypt’s Ministry of Foreign Affairs started planning for the 2010 Review Conference after digesting the lessons it learned from the debacle of 2005, where Egypt’s delegation was divided, wrong-footed in its efforts to overcome the negative strategies of the US, France and Iran, and let down by the lack of anticipated support from the New Agenda Coalition and NAM. Determined to avoid any repeat of that debilitating experience, Egyptian diplomats undertook early discussions

with the League of Arab States, civil society and other governments to develop a more effective and coherent strategy for the 2010 Review Conference. This paid off, as Egypt – holding the rotating leadership of both the NAM and the New Agenda Coalition, managed to pilot through a practical proposal for making progress towards their long-standing goal of a nuclear-weapons-free zone (NWFZ) in the Middle East. Fear that this long-held national and regional objective was being sidelined had underpinned Egypt's failed efforts at the 2005 Review Conference, not least because there was a lot at stake nationally and regionally, since Egypt was politically identified with the 1995 Resolution on the Middle East, as well as persuading additional Arab states to accede to the Treaty. Without that resolution and the decisions on principles and objectives for nuclear disarmament and non-proliferation and on strengthening the review process, the 1995 Review and Extension Conference could not have adopted the decision to extend the NPT indefinitely without a messy process of voting.⁸

Egypt, which had coordinated the NAM since 2009, also assumed the rotating coordination of the symbolically important (if now rather marginal) New Agenda Coalition (comprising Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden). Wearing multiple hats – including its position in the League of Arab States – enabled Egypt to deploy its skilled diplomats across the whole conference, where they developed and carried out a strong, coherent strategy and flexible, effective tactics, marshalling all available relationships and resources. Though its role as NAM coordinator was key to this success, Egypt also found the NAC tactically useful for mobilizing support for the Middle East Conference across different political groupings. While it looked to many that NAC positions on disarmament were deprioritized as a consequence, the fact is that by 2010 the NAC was a pale shadow of the cross-regional group that had played such an innovative leadership role on nuclear disarmament from 1998-2000, culminating in directly negotiating with the NWS at the 2000 NPT Review Conference to finalise the “13 Steps” programme of action on nuclear disarmament and non-proliferation.⁹

The 2010 Conference outcome was also made possible by the flexible creativity of the NPT President's team, drawn from both the Philippines Ministry of Foreign Affairs, which kept Cabactulan going through exhaustion and a bad cold, and a highly experienced, hard-working team from the UN Office for Disarmament Affairs, led by Tom Markram. These advisory insiders worked closely with the President, crunched textual options and thought through and prepared for different scenarios for the endgame. In the last few days, Cabactulan also called on Norway's Ambassador Steffen Kongstad to chair intensive negotiations and achieve as much consensus as possible among a small “Focus Group” of around 16-25 major delegations, chosen to provide political, geographic and substantive representation and interests. At its core, this included all the nuclear-weapon states, Spain (representing the European Union), Germany, Japan, Indonesia, Mexico, Egypt, Norway, Cuba, Iran, Brazil, and South Africa. Additionally, some of the Chairs from the Main Committees (MC), Subsidiary Bodies (SB) and coordinators on special issues such as export controls and safeguards, as well as diplomats from specific regions were involved in some but not all of the finalizing negotiations –

from Zimbabwe (Boniface Chidyausiku, MC1 on disarmament); Austria (Alexander Marschik, SB1 on practical disarmament); Ukraine (Volodymyr Yelchenko, MCII on non-proliferation, NWFZ); Ireland (Alison Kelly, SB2 on Middle East, regional issues); Japan (Takeshi Nakane, MCIII on nuclear energy); Uruguay (José Luis Cancela, SB3 on institutional deficits, treaty withdrawal); and New Zealand (Jennifer MacMillan, appointed for safeguards, the Additional Protocol, and export controls). These were the key diplomats tasked with brokering language that could be agreed by nuclear and non-nuclear states – a tough job in view of the perceived and political interests and intransigence of some governments.

With these teams, Cabactulan was able to get agreement for a final document in two halves: “Conclusions and recommendations for follow-on actions”, which was a forward looking consensus-endorsed document containing agreed actions and understandings; and a lengthier Review of the Treaty’s operations, drawing from the negotiations in the various Committees and Subsidiary Bodies, which was adopted with the footnoted understanding that this was “the responsibility of the President and reflects to the best of his knowledge what transpired at the Review Conference with regard to matters under review”.¹⁰

2010 Final Document: Achievements and Disappointments

The agreed “Conclusions and recommendations for follow-on actions” in the second half of Part I contained framing principles and objectives and 64 specific actions covering nuclear disarmament, non-proliferation, nuclear energy for “peaceful” (i.e. non-military) purposes, and a hard-fought section on the Middle East, in which the UN Secretary-General and co-sponsors of the 1995 Resolution “in consultation with the states of the region, will convene a conference in 2012, to be attended by all states of the Middle East, on the establishment of a Middle East zone free of nuclear weapons and all other weapons of mass destruction, on the basis of arrangements freely arrived at by the states of the region, and with the full support and engagement of the nuclear-weapon states”. Almost all the objectives and commitments negotiated in the Focus Group had been discussed in the Main Committees and Subsidiary Bodies without reaching consensus. Inevitably these included the most important and contentious of the non-proliferation, disarmament and regional challenges facing the NPT regime. Through all night sessions and with time running out, Cabactulan and Kongstad achieved consensus on a core set of recommendations and forward-looking actions, but some important issues got dropped or downgraded in order to make adoption of the overall package possible.

The first part of the document’s Part I covered the “Review of the Operation of the Treaty”. These issues had been debated in the Main Committees and Subsidiary Bodies, but though there was broad convergence on most, the committees and, where relevant, Focus Group, had found it difficult to reach consensus, with time running out. An assessment of developments relating to all the Treaty’s articles, the Review was supposed to cover the period from at least 2000, since no agreements had been possible in 2005, though some delegations wanted to restrict it to the last five years. Getting consensus on the Review was particularly difficult because some

governments – notably Iran and the nuclear-weapon states – were determined to avoid being criticized, and there had been heated debates in the committees over how to welcome recent efforts such as the US-Russian New START treaty, while also acknowledging the way in which past agreements had been reneged on during what one diplomat dubbed the “decade of deadlock”. Near unanimity or levels of support in the Review section were reflected in the way that some paragraphs indicated a “Conference” view, while others described differences of perceptions and positions among states parties, with reference to “many”, “some” or “a few” states parties.

A Middle East Conference for 2012

The most talked about outcome of the Conference was the agreement to convene a conference of all states in the Middle East to take forward the objective of a zone free of nuclear and other weapons of mass destruction in the region, as contained in the 1995 Resolution on the Middle East. Ideas for implementing the 1995 Resolution – and to appoint what was then described as a “Special Coordinator” to make sure that a conference would not be just a one-off meeting but would contribute towards a constructive regional process – originated in civil society and diplomatic discussions following the failure of the the 2005 Review Conference. Initially proposed for 2011 in Russian and Arab League proposals to preparatory committee (PrepCom) meetings, the ideas were fleshed out in Arab League and NAM working papers and then reflected in three drafts of recommendations circulated by the Chair of the 2009 PrepCom, Ambassador Boniface Chidyausiku of Zimbabwe. Egypt worked closely with the Arab League and coordinated a highly effective strategy, ensuring the support not only of the 116 non-aligned NPT parties, but of the NAC and significant members of the European Union and other groups.

With plenty of warning that the fate of the 2010 Review Conference would likely depend on how the Middle East proposals fared, US administration officials strategized in Washington and consulted with Egypt and other major protagonists, including Israel. Calculated by foreign sources as possessing a nuclear arsenal of between 60 and 180 weapons, Israel is the only state in the Middle East not party to the NPT. US and other officials, including from some Middle East countries, also hoped that a process to implement the 1995 Resolution on the Middle East would create another pressure point on Iran, which since 2005 had accelerated its uranium enrichment programme despite lacking nuclear power plants capable of using the nuclear fuel. Tehran was also suspected of developing other nuclear technologies in defiance of critical resolutions from the IAEA and UN Security Council, which accused Iran of not fulfilling its safeguards obligations and failing to provide convincing reassurances that its nuclear programme was solely for peaceful purposes.

Iran, for its part, was wary. It could not afford to alienate Egypt and the NAM, but was concerned that a regional conference could put its own nuclear programme as well as Israel’s into an uncomfortable spotlight. Ahmadinejad had gone on the offensive on Day One of the NPT Conference, using his speech to castigate the nuclear weapon states and accuse Israel of stockpiling “hundreds of warheads”, threatening others and imposing “various kinds of pressures on the members of the

IAEA on the false pretext of probable diversions in their peaceful nuclear activities without providing even a single credible proof to substantiate their allegation". As the US and several EU delegations staged a "walkout" in protest at his inflammatory references to "the Zionist regime", Ahmadinejad called nuclear weapons "a fire against humanity rather than a weapon for defence" and countered accusations about Iran's nuclear programme by saying that "the possession of nuclear bombs is not a source of pride; it is rather disgusting and shameful"... with the risk they would be used and would "annihilate all living beings and destroy the environment, and its radiation would affect the coming generations and its negative impacts would continue for centuries".¹¹

Apart from Ahmadinejad's first day rhetoric, the Iranian delegation's engagement was generally pragmatic, with little of the confrontational drama that had characterized its role in recent IAEA meetings and some of the earlier PrepComs, most notably in 2007.¹² There were fears half way into the Conference that Iran would decide to become obstructive again when on May 18 the P5 +1 (the Permanent members of the Security Council – Britain, China, France, Russia and the United States – plus Germany) tabled a resolution to impose sanctions on Iran in the UN Security Council. The timing of this was maladroit, as it followed Tehran's apparent acceptance of a confidence-building nuclear fuel exchange brokered by two significant non-permanent members of the Security Council, Brazil and Turkey, which Washington summarily castigated although it was based on a similar EU offer that the Obama administration had been willing to endorse the previous year. Though prematurely declared, the resolution was not acted on until after the Review Conference ended. To the surprise of many, the Iranian delegation decided to play it cool and the US backed away from outright confrontation, and so the resolution did not have the negative impact on the NPT dynamics that many had feared.

As high level consultations continued under the auspices of Egyptian and US officials, including Under-Secretary of State Ellen Tauscher, Alison Kelly the Irish diplomat appointed by Cabactulan to chair Subsidiary Body 2 on regional issues, primed and prodded the main players towards as high an achievable outcome as US-Israeli sensitivities and regional relations (and Iran) would allow. When Kelly produced her draft text at the end of the third week, it was greeted with relief (and private accolades) from both the US and Egyptian delegations, even as they publicly pointed to further compromises that they wanted the other side to make. As the draft then went back and forth to demonstrate that all political avenues had been exhausted, US Vice President Joe Biden hosted a bevy of Arab ambassadors in Washington, and Ambassador Maged Abdelaziz hosted lunches and dinners at the Egyptian Mission in New York. In consultation with the main protagonists, Kelly and her team continued to tweak the language, turning an earlier draft's "Special Coordinator" into a "Facilitator", avoiding direct reference to Iran's nuclear programme in order to provide no excuse for Tehran to derail agreement, and unearthing a precedent agreed by the 2000 review conference to get round US opposition to calling on Israel to join the NPT.

Agreement began to emerge for convening a regional conference in 2012 under the auspices of the UN Secretary-General and the co-sponsors of the 1995 Resolution (Russia, the United Kingdom and the United States, who are the depositary states for the NPT), with the objective of kick-starting a process leading to a Middle East zone free of all weapons of mass destruction (MEWMDZF). In accordance with the finalized text, the Secretary-General and three co-sponsors would also appoint a “facilitator” to consult with all states in the region regarding preparations for the conference and follow-on steps, and designate a “host government” for the conference. Most negotiators assumed the facilitator and host government would be from different countries and not themselves from the Middle East, though this was not spelled out. It is no exaggeration to say that without commitment to this regional process and conference the 2010 Review Conference would have failed to obtain consensus on any outcome document. It was particularly necessary for Egypt and the Arab states, and paved the way for the Conference to adopt all the other action plans.

Nuclear Disarmament: Not Where We Should Be

Commenting that after 40 years of the NPT “we cannot claim that we are where we should be”, Steffen Kongstad articulated the mixture of commitment and frustration that characterized the interventions of many participants in the 2010 Review Conference. President Obama’s Prague endorsement of the goal of nuclear-weapons-free security had played an important part in creating the constructive political context for the Review Conference, but the feel-good atmospherics were belied by the resistance tactics and “red-lines” employed by some if not all the nuclear-weapon states to remove or water down the most substantial and well-supported disarmament proposals put forward and endorsed by the non-nuclear-weapon states parties to the Treaty, which outnumbered the NWS by 184 to 5.

Subsidiary Body 1, chaired by Austria’s Alexander Marschik, was tasked with negotiating proposals for practical disarmament steps, in collaboration with Chidyausiku, formerly chair of the 2009 PrepCom, who was responsible for the overall disarmament review in Main Committee I. Marschik’s first disarmament action plan, following several meetings, captured the concrete proposals drawn from the most widely-supported statements and working papers, but it provoked vociferous opposition from France and Russia, particularly over references to a nuclear weapons convention, legal frameworks and “specified timelines”. The United Kingdom, whose general election on May 6 had delivered an inconclusive result, kept a low profile until a new government (Conservative-led coalition with the Liberal Democrats) was formed. While core policies were not affected by the transition, the change in political leadership was soon apparent as the UK delegation moved away from its constructive, low-key positioning close to the Obama-influenced US delegation and began more forcefully to echo French and Russian opposition to disarmament proposals from the NNWS, even when these came from NATO and EU partners such as Norway and Austria.

With its policy firmly sighted on getting a successful Review Conference (while lowering expectations of what that might mean), the US delegation’s priority

was the Middle East proposals. Following President Obama's speech in Prague, the US was determined to present itself as pro-disarmament.¹³ It maintained a constructively open approach in most of the disarmament debates, but this was seen to change in the final week. As the new UK government moved to support the harder line French and Russian opposition to anything that went beyond existing agreements like the CTBT, FMCT and New START bilateral arms reduction process, this seemed to shift the dynamic among the P5, influencing (or enabling?) the US position to harden against more comprehensive and integrated disarmament proposals. From then on, attention was mainly directed at getting approval for ongoing work on incremental arms control and reductions, which most of the P5 continued to advocate. China, as usual, was a relatively quiet presence in open debates, but clung tenaciously to its core positions in the Focus Group negotiations. Generally avoiding outright opposition to NAM proposals, China reserved its strongest resistance to calls from Western delegations and the other NWS for transparency, and also blocked references to a moratorium on the production of plutonium and highly enriched uranium (HEU) for weapons purposes, to which the other four NWS have already committed.

Below I highlight some of the important, new or 'time has come' issues that were raised in the 2010 disarmament negotiations.¹⁴ To a far greater extent than in 2000 or 2005, there were heated debates regarding various proposals for nuclear weapons to be further devalued, marginalized and eliminated from military and security doctrines. While some NAM papers continued to want the NWS to provide legally binding security assurances against the use or threat of use of nuclear weapons, others were now going further and demanding action to "prevent the use of nuclear weapons", including the "risks of accidental use of nuclear weapons". Instead of just reiterating the traditional NAM demand for a time-bound framework for nuclear disarmament, Egypt on behalf of the NAM proposed an international conference in 2014 to begin talks on eliminating nuclear weapons "within a specified time-frame" and put forward 2025 as a desirable and realizable target date for consolidating a nuclear-weapons-free world. Significant non-NAM states amplified NAM members' calls for comprehensive disarmament action. Many explicitly cited UN Secretary-General Ban Ki-Moon's October 2008 Five Point Proposal¹⁵ and the need for negotiations on a comprehensive "nuclear weapons convention" that would engage states outside the NPT and provide a verifiable framework and timelines for the necessary steps to eliminate the weapons and create confidence and security in a nuclear-weapons-free world.

In addition to welcoming reductions in the arsenals of some of the nuclear-armed states, such as the US-Russian New START process and unilateral reductions undertaken by Britain and France, there was far more debate than previously on the need to prevent new developments and qualitative improvements to nuclear weapons systems pending their total abolition. The New Agenda Coalition issued some interesting proposals, including for a moratorium on upgrading and developing new types of nuclear weapons and on developing new missions for nuclear weapons. With Sweden moving closer to the NATO camp and Ireland being publicly attacked by France if it went beyond the bland EU positions on

disarmament issues, it was left to Brazil, New Zealand and South Africa to give voice to NAC arguments on de-alerting, modernization and other disarmament proposals. South Africa notably made clear that upgrading and developing delivery systems, such as the planned UK procurement of new submarines to carry updated Trident missiles, were incompatible with disarmament commitments and that such modernization should be precluded.

Non-strategic nuclear weapons (NSNW) were challenged from all sides, though it was pointed out that this Cold War term was a misnomer since any actual use of nuclear weapons would of course be strategic, with intended (and perhaps unintended) strategic consequences. With this caveat, it is convenient to employ the common abbreviation NSNW for such short-range nuclear armaments, regardless of their delivery means, which may also be described as tactical, pre-strategic or sub-strategic. Following a brief mention by the European Union of the need for NSNW to be reduced and eliminated, Germany led nine other countries (Austria, Belgium, Finland, Ireland, Luxembourg, the Netherlands, Norway, Slovenia and Sweden) in a call for increased transparency and the inclusion of NSNW in the bilateral US-Russian talks as well as broader multilateral arms control and disarmament processes. Supporting this, Norway and Poland went even further, jointly arguing for the step-wise elimination of such weapons, noting that “the goal of a world without nuclear weapons, which we all share, cannot be met without addressing that issue head on.” The NAM criticized the deployment of NSNW in Europe under the auspices of NATO and called on the nuclear-weapon states to commit to “refrain from nuclear weapon sharing, with other states under any kind of security arrangements, including in the framework of military alliances.” Switzerland agreed, arguing that NSNW “no longer have a place in today’s Europe”.

Russia had a different take on the issue. Since it deploys some 2000 short-range nuclear weapons to America’s 500, Russia was determined to avoid any specific mention of tactical or non-strategic nuclear forces in the final document. Instead, echoing a familiar theme, Russia homed in on the 180-200 US nuclear weapons on five NATO members’ territories in Europe, claiming that the first, priority step needed to be the “repatriation” of all nuclear systems and termination of nuclear-sharing “infrastructures”, a demand with which China and the NAM also agreed. In the tough Focus Group negotiations on this issue, the United States, Britain and France managed to get rid of proposals opposing NATO’s nuclear sharing, while Russia dug its heels in to keep out explicit references to NSNW. Even so, it was agreed in Action 3 that “in implementing the unequivocal undertaking by the nuclear-weapon states to accomplish the total elimination of their nuclear arsenals, the nuclear-weapon states commit to undertake further efforts to reduce and ultimately eliminate all types of nuclear weapons, deployed and non-deployed, including through unilateral, bilateral, regional and multilateral measures.”

In another disappointment, despite reaffirming “the urgent necessity of negotiating and bringing to a conclusion a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons and other nuclear explosive devices” the four Actions (15-18)

in the Conclusions and Recommendations stopped short of calling for a moratorium, due to China's opposition, and could not get beyond the fundamental differences of view about the need to address existing stocks of fissile materials, which (combined with the travails of the Geneva Conference on Disarmament) have weakened international interest in having just an FMCT be the next focus for multilateral negotiations.

On the positive side, as well as widely welcoming the reinvigoration of US-Russian negotiations on strategic arsenal reductions (New START), the Conference applauded work by the UK Ministry of Defence and Atomic Weapons Establishment (AWE) Aldermaston with Norway and VERTIC on disarmament verification, and the nuclear-weapon states agreed to place under IAEA safeguards or other relevant international verification all fissile material designated by each of them as no longer required for military purposes, to ensure that such material remains permanently outside military programmes. Though US ratification of the Comprehensive Test Ban Treaty (CTBT) still hung in the balance 14 years after the CTBT was signed by the nuclear weapons states, it was possible to include several strong paragraphs supporting the CTBT's implementing organisation and verification system and urging "early" entry into force.

For the first time in an NPT Review Conference, the concept of nuclear deterrence, with its doctrines of continuous deployment, second strike survivability, and threatened uses of nuclear weapons, came under heavy criticism. Arguing that "it is high time that the lure of nuclear weapons is ended", Indonesia's Foreign Minister Marty Natalegawa challenged such doctrines in his opening statement on behalf of the NAM, and called for negotiations on a comprehensive multilateral treaty to ban nuclear weapons and provide for their elimination in accordance with an action plan with benchmarks and timeframe. Switzerland, which organized a side-bar meeting with the Monterey Institute to publish a new study on delegitimizing nuclear weapons, questioned whether any use of nuclear arms could ever be regarded as legitimate, and called for the "humanitarian considerations" to be put at the heart of the nuclear debate, a point endorsed by others in later debates. Brazil referred to the problem that nuclear weapons have "a more basic meaning – enhancing power and a sense of dominance" for their possessors, which constitutes "a serious obstacle to the democratization of international relations... [and] international peace and security."

Though many NGOs continued to put forward proposals based around traditional arms control objectives and implementation of the "13 Steps", a growing number coalesced around the strategy of a new civil society network, the International Campaign to Abolish Nuclear Weapons (ICAN). This aimed to bring into the mainstream of NPT and international discourse the objective and concept of a treaty-based ban on nuclear weapons, with humanitarian facts and arguments to transform debates around nuclear use and possession, including new research on climate disruption, environmental destruction and nuclear famine. With that purpose, ICAN worked behind the scenes to get as many states as possible to include in speeches and working papers concerns relating to nuclear use, the

humanitarian consequences and risks of nuclear weapons, and the need to start a process to ban nuclear weapons as biological and chemical weapons have been banned.¹⁶ The hope was that even if these proposals did not make it into the final document – a recognized long shot – bringing them into the mainstream of NPT debates would make it harder for them to be dismissed as “premature” or “undermining the NPT”, as the NWS and many middle power governments still tended to do. Instead of separating disarmament aspirations off from non-proliferation and nuclear security, as the NPT is structured to do, ICAN and others argued that 21st century security requires a more integrated approach to deal with the whole range of regional, global, state and non-state nuclear threats.

Looking at the machinery and processes of arms control and abolition for specific weapons systems, there is a growing body of opinion that long-held objectives like non-proliferation universality, nuclear security, safety, effective safeguards/verification and stronger legal and technical barriers to the production and use of fissile materials for weapons are not going to be achieved with the current tools and attitudes. But they could become more practicable and achievable if states took the initiative to start a multilateral process to negotiate a comprehensive treaty that would ban the use, production and deployment of nuclear weapons and establish the tools and framework to verify non-proliferation, ensure the secure and verified dismantlement and elimination of existing arsenals and disposition of weapons-usable materials. Though various models for nuclear weapons conventions¹⁷ have been around for many years, offering different kinds of technical, legal and political options, none of these is a direct objective. The point is not to advocate a particular form of treaty as the solution, but to open minds to the possibility that a concerted process aimed at banning rather than just managing nuclear weapons will transform the security landscape. Frustration with the declining effectiveness of the NPT regime since 2000 and a growing awareness that shared non-proliferation, security and disarmament objectives have been made “impossible” by the problems, deficits and contradictions of current ‘business as usual’ approaches, resulted in “unusually strong and vocal support” for a treaty process to outlaw the development, production, possession and use of nuclear weapons.¹⁸ Counting individual interventions as well as group statements, around 135-140 national delegations voiced their support in 2010 for initiating a multilateral process leading to negotiations on some form of nuclear weapons convention, treaty or legal framework. Not to compete with the NPT, but to put in place the non-discriminatory prohibitions and tools that the NPT, as a Cold War treaty dominated by nuclear-armed states, lacks.

Despite being reflected in Marschik’s first and subsequent action plans, opposition from at least some of the NWS resulted in most of the proposals relating to comprehensive treaty negotiations, devaluing nuclear weapons, nuclear doctrines and use, nuclear sharing, and eliminating tactical nuclear weapons getting watered down or taken out of the specific action points by the President’s Focus Group in the final days of negotiations. Though Marschik, Chidyausiku, Cabactulan and Kongstad did their best to get highest achievable agreements on these issues rather than the lowest common denominator, their task was made more difficult when the US and

UK delegations joined France and Russia in striking out disarmament language that they would have been prepared to accept a week earlier. They appeared emboldened to block these proposals by their assessment that if Egypt obtained its objectives on the Middle East Conference, as looked increasingly likely, the NAM would compromise on everything else to facilitate adoption of the Middle East decision in an NPT Final Document. This proved to be largely true. The NWS were willing to accept weakly worded commitments to “undertake further efforts to reduce and ultimately eliminate all types of nuclear weapons”, move “towards an overall reduction in the global stockpile” and “further diminish the role and significance” of their nuclear weapons”. But behind the closed doors of the Focus Group late night negotiations the NWS fought hard to protect their interests in maintaining nuclear arsenals and avoiding any further or binding disarmament undertakings.

While some proposals were kept visible by means of language adopted by the 2000 NPT Review Conference (despite having been reneged on or barely addressed for most of the past decade), pressure from France and Russia (in particular) pushed others even further back than what had been achieved in 2000. With the NWS intransigent and time running out, the only way to save many of these proposals was to make them appear as an aspirational introduction for the disarmament actions, for example with “principles and objectives” drawing on the 2000 Review Conference’s “unequivocal undertaking of the nuclear-weapon states to accomplish the total elimination of their nuclear weapons” and President Obama’s call to “achieve the peace and security of a world free of nuclear weapons”, which had also been endorsed in September 2009’s UN Security Council Resolution 1887. This worked up to a point, but it is significant that the most compelling of these introductory framers was this statement on nuclear weapons use:

“The Conference expresses its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons and reaffirms the need for all States at all times to comply with applicable international law, including international humanitarian law.”¹⁹

Following this, the first consensus actions (1 and 2) enshrined commitments to “pursue policies that are fully compatible with the Treaty and the objective of achieving a world without nuclear weapons” and “to apply the principles of irreversibility, verifiability, and transparency in relation to the implementation of their treaty obligations”.

Though heavy opposition from France and Russia – backed in the endgame by the United States and Britain – meant that no specific commitments or actions to negotiate a nuclear weapons convention made it through the final Focus Group negotiations, majority support for moving towards this objective prevented the weapons states getting it all their own way. Two references to a comprehensive treaty, negotiated framework or nuclear weapons convention were retained as important signposts, in the review section and also in the consensus conclusions and recommendations, in which the conference:

“Calls on all nuclear-weapon States to undertake concrete disarmament efforts and affirms that all States need to make special efforts to establish the necessary framework to achieve and maintain a world without nuclear weapons. The Conference notes the five-point proposal for nuclear disarmament of the Secretary-General of the United Nations, which proposes, inter alia, consideration of negotiations on a nuclear weapons convention or agreement on a framework of separate mutually reinforcing instruments, backed by a strong system of verification.”²⁰

This strong reference introduced and framed Actions 3, 4, 5 and 6, which exhorted the NWS to pursue further reductions: “and ultimately eliminate all types of nuclear weapons, deployed and non-deployed, including through unilateral, bilateral, regional and multilateral measures”; to implement the New START reductions and undertake follow on measures and deeper reductions; to “further diminish the role and significance of nuclear weapons in all military and security concepts, doctrines and policies”; to “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 of nuclear weapons”; reduce risks of “accidental use” and “further enhance transparency and increase mutual confidence”. Action 6 perhaps represented the triumph of hope over experience, since it stated that the Conference on Disarmament “should immediately establish a subsidiary body to deal with nuclear disarmament, within the context of an agreed, comprehensive and balanced programme of work”.²¹

Non-proliferation and Security: Losing the Hard Challenges

Confusions about where to discuss cross-sectoral issues like nuclear safety, security, transfers of nuclear technologies and materials and even safeguards were more in evidence at the 2010 Review Conference and Final Document than for previous meetings. Duplications and contradictions abounded as different diplomats addressed these issues in different ways in Main Committee II, chaired by Volodymyr Yelchenko of Ukraine, and Main Committee III, chaired by Takeshi Nakane of Japan. By the fourth week, Cabactulan appointed Jennifer Macmillan of New Zealand to try to broker consensus language on export controls, safeguards and the Additional Protocol. By contrast with nuclear disarmament, where commitments were generally weaker than what had been agreed in 2000, the 2010 Conference displayed a gung ho attitude and complacency in promoting nuclear energy. Memories of the Chernobyl nuclear catastrophe had faded after 24 years. It had in any case been blamed on poor Soviet construction and safety standards. This made it easy for nuclear supplier states to market a “nuclear renaissance” and push NPT parties to go further than any previous NPT conferences in their efforts to foster nuclear energy development. The agreements on fostering nuclear energy were not matched by strengthened commitments on safeguards, multinational fuel cycle mechanisms or measures to reduce other security and environmental dangers associated with nuclear technologies, materials and waste, including accidents and radiation leaks.

Non-proliferation was given 24 action points, many of which echoed UN Security Council resolutions 1540 (2004) and 1887 (2009) and other treaties and resolutions

related to physical security and protection, trafficking and non-state actors. On the key aspects of strengthening safeguards and export controls, it had proved impossible to move beyond what had been previously agreed. There was even some rolling back from positions adopted in 2000. Not only was it impossible to make the Additional Protocol the verification standard or a condition of supply, but it also proved impossible to reiterate the 2000 Review Conference view that it was an integral part of the IAEA safeguards system. States were, however, encouraged to “bring into force additional protocols” and to “consider whether a recipient state has brought into force IAEA safeguards obligations” and “make use of multilaterally negotiated and agreed guidelines and understandings” in their own national export controls and decisions.²²

Pushing back against nuclear cooperation with states that are not party to the NPT, NAM states supported the implementation of the 1995 and 2000 Review Conference agreements that new supply arrangements should require full-scope IAEA safeguards (by which they mean the so-called comprehensive safeguards and not necessarily the Additional Protocol). While neither the NAM nor the Final Document explicitly named the US-India nuclear cooperation agreement, the NAM referred to it indirectly and heavily criticized the exemption granted by the Nuclear Suppliers Group (NSG) in 2008 to allow unrestricted nuclear commerce with India. These criticisms left the Obama administration in the uncomfortable position of defending the US-India deal and the NSG exemption for India, despite their own misgivings, since many of them actually shared the widespread concerns that the Bush administration had undermined NPT arrangements with this deal. The main concern, especially for the Arab states, is to avoid any possibility of a similar arrangement being made for Israel. Action 50 in the ‘nuclear energy’ section, made an oblique reference, recommending that NPT parties should “give preferential treatment to the non-nuclear-weapon states parties to the Treaty, taking the needs of developing countries, in particular, into account”.²³

Fostering Nuclear Energy: what price safety and liability?

Debates in Main Committee III reflected the increased push in some quarters to market nuclear energy as the solution to reducing fossil fuel emissions and climate chaos. A small number of nuclear power producers (with the blessing of key governments, including France, Russia, Japan and the United Kingdom) and some developing states (led by Iran) have been at pains to turn Article IV into a litmus test of NPT loyalty. These two developments led to an unprecedented 18 action points framed by affirmation that “the Treaty fosters the development of the peaceful uses of nuclear energy”, which even featured a US-sponsored injunction encouraging states to “raise \$100 million dollars over the next five years”²⁴ to support IAEA activities, with the implication that this is for technical cooperation with states seeking nuclear energy.

The politically-driven tactics of NAM members like Iran, which elevated Article IV into a requirement to support, facilitate and encourage one form of energy generation over all others, also fed into the interests of the nuclear power lobby. This was not what was intended in 1968. Article IV was included as part of the

NPT's incentive structure, to ensure that states renouncing nuclear weapons would not be impeded from acquiring nuclear energy for peaceful purposes, provided that certain conditions (non-proliferation and safeguards) were met. Article IV was not supposed to confer a right to get – or an obligation to provide – nuclear technologies for energy. It was incorporated into the NPT in 1968 to reassure governments that an existing “inalienable right” – that of sovereign governments to develop whatever peaceful or energy technologies they deem appropriate for their peoples' needs, including nuclear if that is their choice – could not be arbitrarily taken away when, in the interests of global and collective security, those states gave up the right and option to acquire nuclear weapons. By the 1970s, nuclear research reactors were already supplying isotopes for medical, agricultural and other uses, and nuclear power appeared to have the potential to become a useful, safe, clean and cheap source of energy to fuel industrial development. In this context it was necessary for the NPT to contain provisions that reassured states that renouncing the option to make nuclear weapons did not mean losing the right to develop nuclear technologies for peaceful purposes. To this was added the incentive that joining the NPT as a non-nuclear-weapon party would make it more rather than less possible for those states to “participate in the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful purposes of nuclear energy”.²⁵

In 2010, Article IV was evoked to justify nuclear programmes that do not meet the needs of people in developing – or, for that matter, developed – economies for cheap, safe, clean and self-managing energy resources. Though the overall thrust supported nuclear energy developments, some of the recommendations did address safety, protection and liability, and there was a reference to encouraging states voluntarily to “minimize highly enriched uranium in civilian stocks and use”, though this was qualified by the phrase “where technically and economically feasible” and there was no mention of plutonium production through reprocessing. Meanwhile military stocks of highly-enriched uranium (HEU) and plutonium continue to remain outside international monitoring or accountability. Since the former IAEA Director-General Mohammed ElBaradei advanced the concept of multinational or multilateral approaches to the nuclear fuel cycle and assurances of nuclear fuel supply for states that do not develop their own uranium or plutonium fuel, there have been years of inconclusive discussions. While expressing interest in such ideas, NAM states are wary of accepting further barriers that could push them into technological dependence on developed states who could control and halt supplies at whim. Despite – or perhaps because of – lack of progress, confusion and doubts surrounding the purpose and practicality of such approaches, Action 58 calls on NPT Parties to “discuss” these issues “further”.

The major driver for such initiatives, as illustrated by the frequent coupling of debates about multinationalizing aspects of the fuel cycle with concerns about stopping Iran from developing an independent fuel cycle, is that most nuclear weapons programmes, including North Korea's recent example, started out as real or ostensible nuclear energy programmes. As long as acquiring or maintaining nuclear weapons options appears prudent or valuable, this will continue to feed into

national rationales for developing nuclear energy technologies (whether admitted or not), so the well meaning proposals for multinational fuel cycle arrangements are largely missing their mark. The NPT's inadequacies in dealing with the hard proliferation challenges stem in part from the contradictions inherent in its dual role in which it is required to prevent proliferation while fostering nuclear energy. As the Fukushima disaster reminded people, when nuclear technologies go wrong – for whatever reason, be it a natural event, terrorist attack, technical incompetence or human error – the consequences can be catastrophic, far outweighing any hoped-for benefits.

Institutional Deficits: Too Little Too Late

In the wake of North Korea's withdrawal from the NPT in 2003, and subsequent nuclear tests and declarations that it has nuclear weapons, an important Review Conference objective for the United States and European Union, among others, was to get agreement on measures that would build on the substantive discussions at the 2005 Review Conference on increasing – or at least clarifying – the political, financial and technological costs of withdrawing from the NPT. Subsidiary Body 3, chaired by Uruguayan diplomat José Luis Cancela spent most of its time debating the Treaty's withdrawal provision, Article X. Although no-one seriously suggested trying to amend the terms under which a state party could pull out of the Treaty, many wanted states to agree on measures to dissuade a would-be defector and increase the financial and political costs and risks of withdrawing. Several NAM delegations and states from the Middle East, including Iran, Syria and Egypt, opposed any language that might tighten up the interpretation of the NPT's Article X withdrawal provision. Despite much debate therefore, no text was sufficiently agreed for this issue to be included in the consensus conclusions and recommendations.

Four paragraphs in the review section of the final document referred to the debates, reaffirming that a party shall have the right to withdraw from the NPT “if it decides that extraordinary events related to the subject matter of the Treaty have jeopardized its supreme interests”. It also notes that many states “underscore that under international law a withdrawing party is still responsible for violations of the Treaty committed prior to its withdrawal”. Some argued that a withdrawing state should be obliged to return or dismantle materials, facilities or technologies obtained through Article IV when it was party to the Treaty. Though this was opposed, the review noted that “numerous states acknowledge that nuclear supplying states can consider incorporating dismantling and/or return clauses in the event of withdrawal...”²⁶

The Imperative to Transform Nuclear Security

It has been in the interests of nuclear-armed states and proliferators to characterize nuclear weapons in terms of security, deterrence and prudent insurance against unforeseeable future threats, even seeking to embed these questionable associations by labelling nuclear weapons “the deterrent”. Such terms are misleading, as deterrence is a relationship between potential adversaries and not an attribute of

any single weapon. Far from being driven by security calculations or the seductive voodoo of guaranteed deterrence, nuclear weapons are generally acquired, kept and (on occasion) renounced as a consequence of domestic changes or pressures, not external security calculations.²⁷ Notions of national identity and masculinity also play an under-acknowledged part in nuclear decision-making. UK advocates of Trident renewal often speak of nuclear weapons enabling Britain to “punch above our weight”. Such macho associations were also embedded in India’s explanation following its May 1998 nuclear tests that they ‘had to prove that we are not eunuchs’.²⁸ The pressure imposed on certain governments that try to circumvent the NPT and acquire nuclear weapons nowadays may be considerable, but it is important to look beyond this and recognize that the possession – that is to say, the *successful* acquisition – of nuclear weapons has become associated with an exclusive club, and with national pride, independence and power projection. These significant (but often denied) political and psychological incentives and justifications for acquiring nuclear weapons lie at the heart of proliferation calculations and are reflected in the non-proliferation regime’s deep contradictions. In order to make deep and irreversible progress on nuclear disarmament we have to stop obsessing about the numbers and start paying attention to the value attached to nuclear weapons and all that they represent to their possessors and admirers. As things currently stand, the NWS have invested far too much in their nuclear weapons systems, status and infrastructure to pursue genuine disarmament (progressive, irreversible reductions without any accompanying modernization or renewal of remaining weapons). The structure and assumptions that underpin the NPT regime mask this reality, perpetually letting the nuclear-armed states off the hook.

The current disarmament paradigm developed around arms control and non-proliferation and presupposes that the weapons have high value and desirability as well as high risks and dangers. The possession of nuclear weapons, whether recognized under the NPT or not, has long been associated with special treatment (international political attention, responsibilities, privileges or bargaining power, for example). The “coincidence” of the first five nuclear-armed states being the P5 permanent members of the UN Security Council illustrates the trap, which is played out across troubled regions and reflected in behaviour ranging from the US-India nuclear deal to international anxiety about North Korea, Pakistan and potential proliferators like Iran. The way in which nuclear weapons are treated as changing the political and military status of governments makes it harder to reduce arsenals and prevent proliferation. Under this mindset, any disarmament step is seen by possessors as “giving up” something of political and/or military value and use, even ‘need’. This attitude means that governments have to reassure those they regard as “stakeholders” (i.e. some sectors of military, nuclear laboratories, politicians and publics frightened by the idea of losing ‘the deterrent’). This domestic requirement too often results in increased financial commitments to keeping and modernizing remaining nuclear weapons and capabilities, thereby undermining the international non-proliferation impact of any reductions in arsenal numbers.

Arms control processes consequently have the perverse and counterproductive effect of increasing the value attached to nuclear weapons, not only for domestic

stakeholders, but for military rivals and future proliferators as well. As long as arms control is preeminently perceived as ‘giving up’ or making others give up something special on which their security or status relies, opponents will be able to undermine its objectives and conduct, amplify the technical, legal and political hurdles, and project disarmament as impossible to achieve. In other words, NWS may manipulate the vision of a world free of nuclear weapons for public diplomacy, while falling back on “realist sense” that “we can’t put the genie back into the bottle” to justify keeping and modernizing their arsenals from one generation to the next. By dint of constant repetition of “truisms” like this, they foster the belief that nuclear disarmament is impossible.

Even as the use, production, transfers and stockpiling of biological and chemical weapons were being prohibited, on grounds that their use would be “repugnant to the conscience of mankind,”²⁹ the non-proliferation approach to controlling nuclear weapons has exempted – in effect, if not intention – the most mass destructive and inhumane weapons of all from international efforts to outlaw their use, production and deployment. An interesting revelation from the disarmament debates in the 2010 Review Conference is that the nuclear-armed and non-nuclear-armed states are engaging in quite different discourses, talking past each other. NATO’s “non-nuclear-weapon-states”, five of which host nuclear weapons on their soil, and other nuclear allies like Japan and South Korea have trapped themselves in the middle; they mouth disarmament rhetoric for domestic consumption, but status quo retention arguments (chiefly deterrence and insurance) are still pulling the main political levers in defence establishments. They may not physically possess nuclear weapons, but they believe they depend on them in myriad psychological, political and relational ways. For the genuinely non-nuclear countries, many of which are members of nuclear-weapons-free zones – which cover the whole Southern Hemisphere but only enclaves in the north – the reliance on doctrines of nuclear deterrence look irrelevant at best; at worst they look threatening. Not the simple kind of threat represented by a direct nuclear attack, protection from which was the Cold War reason for requesting (but never receiving) legally binding unconditional security assurances from the nuclear-weapon states. Non-nuclear-armed states have a more complex understanding of nuclear insecurity, which includes risks from limited nuclear “exchanges” or accidents caused by foolish, dangerous, incompetent or uncontrolled people in charge of nuclear armaments.

A different, humanitarian-centred approach has begun to reframe nuclear debates, and looks likely to transform the non-proliferation and disarmament landscape in the next decade. Four significant inter-related factors have contributed to the recent changes in disarmament discourse and strategy:

- the growing importance accorded to international humanitarian law in relations among states;
- a growing awareness, driven by scientists, physicians and other epistemic actors from civil society, of the humanitarian consequences of unleashing nuclear weapons, informed by a new generation of studies on the impact of even limited uses of nuclear weapons on the global environment, climate, agricultural and food resources;³⁰

- a weakening of faith in the efficacy of nuclear deterrence combined with the recognition that nuclear weapons are likely to be detonated if proliferation continues at the current pace, with potentially catastrophic consequences; and
- a gradual realization by civil society and non-nuclear-weapon states that they have rights, responsibilities and high security stakes in nuclear decision-making, and that they must take the lead to transform the nuclear security calculus and achieve a ban on nuclear weapons.

International humanitarian law, as acknowledged in the 1996 Advisory Opinion of the International Court of Justice (ICJ), recognizes that the methods and means of warfare are not unlimited. The International Committee of the Red Cross played an important role in achieving such protocols. It went even further in the 1990s and 2000s, providing legal and technical support for civil society's efforts to stigmatize and ban two important classes of weapons – anti-personnel landmines and cluster munitions. Recently the Red Cross has again turned its attention to nuclear weapons, after saying little for over 25 years. In a ground-breaking statement to the 'Geneva Diplomatic Corps' on April 20, 2010, just before the 2010 NPT Review Conference, the President of the ICRC, Jakob Kellenberger, made a direct appeal for nuclear weapons never to be used again:

Nuclear weapons are unique in their destructive power, in the unspeakable human suffering they cause, in the impossibility of controlling their effects in space and time, in the risks of escalation they create, and in the threat they pose to the environment, to future generations, and indeed to the survival of humanity. The ICRC therefore appeals today to all States to ensure that such weapons are never used again, regardless of their views on the legality of such use.³¹

Kellenberger's statement was both a symptom and a framer of the new, humanitarian-centred ways of thinking about nuclear weapons that were increasingly put forward in the 2010 Review Conference, even as opposition from the nuclear-armed states resulted in related proposals being downgraded or deleted from the final document. His statement also opened the way for further initiatives on nuclear weapons after the NPT Conference, starting with national Red Cross affiliates. These led to a resolution on "Working towards the elimination of nuclear weapons" being adopted by the Council of Delegates of the International Red Cross and Red Crescent Movement on 26 November 2011. Echoing many of the points made by Kellenberger, the resolution referred to the "serious implications of any use of nuclear weapons for humanitarian assistance activities and food production over wide areas of the world" and stated that "the existence of nuclear weapons raises profound questions about the extent of suffering that humans are willing to inflict, or to permit, in warfare". Operative paragraph 1 speaks of "incalculable human suffering" and the "absolute imperative to prevent such use". Paragraph 2 "finds it difficult to envisage how any use of nuclear weapons could be compatible with the rules of international humanitarian law, in particular the rules of distinction, precaution and proportionality".³²

In its operative paragraph 3, the resolution “appeals to all States:

- to ensure that nuclear weapons are never again used, regardless of their views on the legality of such weapons
- to pursue in good faith and conclude with urgency and determination negotiations to prohibit the use of and completely eliminate nuclear weapons through a legally binding international agreement, based on existing commitments and international obligations.”³³

The Red Cross initiative was undertaken partly in light of a growing body of new research by climate scientists, physicians and others on the effects of “limited” uses of nuclear weapons, considered more realistic nowadays than all out nuclear war involving the still-massive arsenals of Russia and the United States. Refining the studies on “nuclear winter” developed by US and Soviet scientists during the 1960s and 1970s, Rutgers University scientist Alan Robock and climate researchers have developed models of regional nuclear conflict involving the detonation of only a fraction of today’s current arsenals. Taking as their baseline the detonation of 100 Hiroshima-sized bombs (small by today’s standards and only 0.03 percent of the explosive yield of the current global nuclear arsenal) detonated primarily on cities in a sub-tropical zone (e.g. South Asia), Robock’s team have concluded that in addition to producing “direct fatalities comparable to all of those worldwide in World War II”, the “indirect effects” would be globally catastrophic. Agricultural collapse would follow abrupt global cooling caused by the circulation of irradiated smoke, ash and debris in the mid and upper stratosphere. Severe reductions in the planet’s protective ozone layer would be likely. According to recent analyses revisiting research on nuclear weapons effects and “nuclear winter”, even limited regional nuclear explosions could cause global agricultural collapse, persisting for at least ten years (a conservative estimate, depending on the size, number and location of the nuclear bomb detonations). These studies indicate that in addition to the suffering of people living close to the nuclear explosions, peoples far away from the zone of combat would suffer widespread famine, economic collapse and deaths in the millions, with more than a billion people at risk.³⁴

It remains to be seen whether delegitimizing deterrence and reframing nuclear security in humanitarian rather than military terms can drive progress towards the NPT-mandated objective of achieving and maintaining a world without nuclear weapons more rapidly and effectively than has proved possible with the traditional approaches and machinery of arms control and non-proliferation. With the non-proliferation regime in decline, maintaining a status quo based on 8 or 9 (or even 5) nuclear-armed states is not a viable option. We presumably want to avoid ending up with any of the profoundly worrying proliferation and limited-use scenarios now being bandied. Yet we continue to let the disarmament agenda be dictated by self-styled “realists” with vested interests in upholding the mantra that nuclear disarmament is too difficult to achieve in our lifetimes. We should not be fooled by their current power into believing that their analyses and actions are right or useful. If we allow for the transformative potential of “changing the game” through the pursuit of a multilateral process to ban nuclear weapons, we may find that long-standing obstacles can turn into realizable steps. In view of the high stakes

and counter-productive games being played by various of the nuclear-armed states and proliferators as they draw the world closer to the next “unforeseen” nuclear disaster, is it not worth trying a different route and seeing if pursuing a more comprehensive approach could yield constructive results? Lessons learned from other treaty-making experiences suggest that embarking on a multilateral process – even if not all the stakeholders are on board from the beginning – can change the normative and political environment and get some of the most intractable logs rolling in the right direction. The alternative rests on a deadlocked CD and wheel-spinning NPT review process, with nuclear explosions a foreseeable threat as proliferation is perpetuated.

I conclude with a table contrasting the premises and assumptions of traditional arms control/non-proliferation with a humanitarian-centred and IHL approach to nuclear disarmament. These ideas are a work in progress, and the Acronym Institute welcomes further debate as we continue to analyse the opportunities, conditions, pros, cons and strategies for making progress towards the necessary security goal of banning and eliminating all nuclear weapons.

ARMS CONTROL AND NON-PROLIFERATION APPROACH	HUMANITARIAN DISARMAMENT APPROACH
Regulating a high value, important and desirable weapon.	Abolishing an inhumane, unusable weapon that is contrary to humanity's interests.
Focus on stabilizing status quo among nuclear “haves” and counter-proliferation to prevent nuclear weapons being acquired by new or “bad” actors.	Focus on creating security without nuclear weapons, and on delegitimizing and stigmatizing use and doctrines of threatened use (inc. nuclear deterrence).
Emphasis on reducing numbers of largest arsenals.	Emphasis on banning use, deployment and production for all nuclear-armed states as well as reducing arsenals.
Maintain strategic stability, especially among NWS.	Enhance global and human security and prevent harm to potential victims.
Maintain (and if necessary adapt) nuclear deterrence.	“Nuclear deterrence” myths and postures are part of the problem.
Primary actors: nuclear weapons states, military and technical experts.	Initiating drivers: non-nuclear weapon states, humanitarian NGOs, and all sectors of civil society... NWS invited to participate but not empowered to block.

ARMS CONTROL AND NON-PROLIFERATION PREMISES	HUMANITARIAN DISARMAMENT PREMISES
<p>Proliferation is bad but can be managed.</p> <p>Stem proliferation by tightening controls on others.</p>	<p>Proliferation is bad and isn't being safely managed.</p> <p>Roll back acquisition, modernization and spread of NW by making NW unusable, unattractive and pariah.</p>
<p>NW have security value for deterrence but dangerous in the wrong hands.</p>	<p>Nuclear deterrence is a dangerously misguided belief system, and doctrines of use and deployment create more threats, risks and instabilities.</p>
<p>Status quo possession is stabilizing and disarmament is risky.</p>	<p>The high value accorded to possessing NW is a salient proliferation driver.</p>
<p>Nuclear weapons are by definition deterrents.</p>	<p>Nuclear deterrence is a problem. If it works, every state should have the right to it; if it doesn't work the consequences are likely to be catastrophic. The illusion leads NWS to think they can 'punch above their weight', which is dangerous and destabilizing.</p>
<p>Nuclear deterrence is necessary for "us" and must be maintained (but possible to do so with lower numbers).</p>	<p>Deterrence is a complex, multifaceted relationship not a property of a particular weapon.</p>
<p>Nuclear deterrence is not necessary for NNWS, unless they are in alliance with NWS.</p> <p>Nuclear deterrence requires credible scenarios and operations for nuclear use.</p>	<p>The role of nuclear weapons in deterrence is unproven and unprovable.</p> <p>If nuclear deterrence fails, the consequences could be catastrophic.</p>

ARMS CONTROL AND NON-PROLIFERATION PROCESS	HUMANITARIAN DISARMAMENT PROCESS
Step by step reductions while maintaining infrastructure and options for modernizing and rearming.	Delegitimize and devalue all NW, ban (or at least stigmatize) their use and deployment, then undertake progressive steps to reduce and eliminate.
Objective: do enough to appease NNWS in NPT and keep NPT going.	Objective: verified elimination of all NW codified through some kind of comprehensive nuclear ban or abolition treaty (sometimes dubbed a 'Nuclear Weapons Convention').
The NWS determine the pace and terms; the biggest must reduce first.	Because of vested interests, NWS will fail to disarm without leadership from NNWS.
<ul style="list-style-type: none"> ● Bilateral (US-Russia) ● voluntary unilateral ● P5/N5 as numbers near parity? 	Multilateral, including non-NPT nuclear weapon possessors.
VERIFICATION MAXIM: IT'S EASIER TO VERIFY A TOTAL PROHIBITION THAN A PARTIAL LIMITATION	
The NPT regime relies on materials accounting and IAEA safeguards, bolstered by export controls and UNSC action.	A nuclear abolition regime would require much tighter controls on materials and NW technologies, increased barriers to prevent diversion from civilian uses.
Arms control currently requires complicated counting rules, and protection of military-nuclear interests, with anxieties about relative advantage or disadvantage at low levels.	With human security at the centre, and any deployment and use of NW banned, verification of nuclear abolition would call on a range of political, legal, civil society and technical tools not available to arms control.

Endnotes

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- 3 Yoichi Funabashi and Kay Kitazawa, "Fukushima in Review: A complex disaster, a disastrous response", *Bulletin of the Atomic Scientists*, March 2012, <http://bos.sagepub.com/content/68/2/9>
- 4 Yoichi Funabashi and Kay Kitazawa, "Fukushima in Review: A complex disaster, a disastrous response", *Bulletin of the Atomic Scientists*, March 2012, <http://bos.sagepub.com/content/68/2/9>
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- 7 For contemporaneous accounts of this and other speeches and developments throughout the 2010 NPT Review Conference, see my blogs on the Acronym Institute website www.acronym.org.uk and articles for openDemocracy in 2010.
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- 10 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Volume 1, Footnote to Part I.
- 11 See our blogs and reports on the Acronym Institute website www.acronym.org.uk.
- 12 Rebecca Johnson, 'Back from the Brink? The 2007 NPT PrepCom Report', *Disarmament Diplomacy* 85 (Summer 2007), pp 3-24.
- 13 Prior to the 2010 Review Conference, the US Department of State published an inviting journal titled "A World Free of Nuclear Weapons", comprising articles from US officials and civil society, including one from me, titled "Beyond existing treaties", which argued that the 2010 Conference should lay the groundwork for a treaty abolishing nuclear weapons. During the first two weeks of the Review Conference hundreds of copies of this publication were freely available in and around the meeting rooms, but it had disappeared from view by the last week. See *eJournalUSA*, "A World Free of Nuclear Weapons", US Department of State, Washington DC, Vol 15, number 2, February 2010.
- 14 It is of course not possible to do justice to the many proposals, working papers and debates on disarmament, which have been discussed more fully in contemporaneous blogs from the Conference posted on the Acronym Institute website (2010) and in the daily 'News in Review' and documentation published by Reaching Critical Will. Reaching Critical Will is a project of the Women's International League for Peace and Freedom (WILPF), which monitors UN, NPT and Conference on Disarmament meetings on behalf of NGOs, posting analyses and relevant governmental and civil society statements and documents at <http://www.reachingcriticalwill.org/disarmament-fora/npt>.
- 15 Ban Ki-Moon, "The United Nations and Security in a Nuclear-Weapon-Free World", October 24, 2008. <http://www.un.org/disarmament/WMD/Nuclear/sg5point.shtml>

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- 17 The text of an NGO-drafted *Model Convention on the Prohibition of the Development, Testing, Production, Stockpiling, Transfer, Use and Threat of Nuclear Weapons and on their Elimination* was submitted by Costa Rica to the UN General Assembly and issued in the UN languages as A/C.1/52/7. Previously published as 'Security and Survival: The case for a Nuclear Weapon Convention', by the International Association of Lawyers Against Nuclear Arms (IALANA), International Network of Engineers and Scientists Against Proliferation (INESAP), and the International Physicians for the Prevention of Nuclear War (IPPNW) in 1997, this was updated and reissued in 2007 as 'Securing Our Survival (SOS): The Case for a Nuclear Weapons Convention'.
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- 23 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Volume I, Part I, Section III Action 50.
- 24 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Volume I, Part I, Section III Action 55.
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- 26 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Volume I, Part I, Article X, paras 118-121.
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How are humanitarian approaches relevant to achieving progress on nuclear disarmament?

John Borrie and Tim Caughley

“There are of course some critical differences between the nuclear disarmament agenda and the agenda that led to the ban on land mines and cluster munitions. But at the same time, there are some key, shared lessons to be learned. For example, experience from humanitarian disarmament should guide us on how to pursue and negotiate disarmament issues in general.”¹

JONAS GAHR STØRE, NORWEGIAN FOREIGN MINISTER

Successful multilateral initiatives to ban anti-personnel landmines (“Ottawa”) and cluster munitions (“Oslo”) have inspired consideration of the relevance and application of efforts to eliminate other armaments, including nuclear weapons, based on addressing these weapons’ *effects*. Such an effects-based approach could, we argue, help to re-frame the discourse on contemporary nuclear arms control, which hinges on the purported military utility of nuclear arms, including deterrence. Critical questioning of these weapons’ *acceptability* in view of their effects on human beings is not merely an issue of semantics. Particularly in the context of cluster munitions, the notion of unacceptable harm was used to place the burden on to possessors and producers to prove the continued legitimacy of these weapons, and to increase leverage toward a categorical ban. Leading up to the ban, unacceptable harm was an idea that resonated with publics in many countries, and contributed to stigmatizing cluster munitions.

Definitions

First, however, we offer some definitions. By arms control we mean the exercise of restraint in the acquisition, deployment and use of military capabilities, including armaments, by means of international agreements among states. The term was coined in the 1950s in the context of the arms race between the United States and the Soviet Union. Arms control was developed as a method to manage arms competition, rather than reverse it.² Thus, an important assumption of arms control is that weapons are a continuing and persistent feature of international relations. Since then, the meaning of the term ‘arms control’ has often been equated with disarmament.

Our use of the term disarmament, however, describes a project of greater breadth than arms control. Disarmament is both a process and an end state. As a process,

disarmament entails agreements among states to reduce, remove or eliminate weapon systems.³ (Arenas for negotiation of agreements dealing with landmines, cluster munitions and nuclear weapons will be mentioned later.) As an end state, disarmament involves eventually establishing a disarmed world. This disarmament goal remains controversial. Policy strategists in nuclear-armed states have sometimes accused those advocating disarmament of utopianism, while using that goal as a precondition to be met before giving up their nuclear 'deterrents'.⁴

Security thinking in the context of multilateral arms control and disarmament has often, but not always, been preoccupied with external threats to states, particularly threats posed by other states. The state has been the referent point for achieving and reaping security benefits.⁵ In recent decades, and sometimes associated with the concept of human security, the view has emerged that individuals and their communities are legitimate reference points for security as well.⁶ Armed violence of various kinds can pose threats to this security, including in certain cases inflicted by weapons wielded by the state itself in ways that contradict commonly held norms of behaviour. In the cases of anti-personnel mines and cluster munitions, the view eventually emerged amongst the international community that these weapons were persistent and comparatively severe sources of harm to civilians, and so should be outlawed. Thus, in those instances, the harm these weapons cause was the predominant basis for pushing for their prohibition, rather than considerations of national strategic stability. That these treaties are not yet universal is less relevant, we argue, than the fact that these understandings about what is acceptable emerged at all, and are growing in normative influence in the international arena in general.

There is no general agreement on what 'humanitarian disarmament' or 'humanitarian arms control' mean as terms although multilateral practitioners and academics increasingly use them (often interchangeably), especially since the Oslo process concluded.⁷ Nevertheless, the discussion above allows us to provide a working description of these terms for this article: they are activities to regulate or prohibit armaments motivated and guided by concern to protect civilians from particular and persistent harm, or combatants from superfluous injury and unnecessary suffering, due to the weapons' characteristics. The association here with both disarmament and international humanitarian law (IHL) is clear.

It is also important to note that the influence of humanitarian principles on disarmament negotiations is not a new development, and dates back to the nineteenth century,⁸ although usually subordinated in negotiations to narrower concerns of state security such as balanced arms reductions, verification of compliance and risk of loss of national security or other sensitive information. Mathews and McCormack, writing in 1999, argued that the Ottawa process constitutes a significant exception: "In this case, the community of States was subjected to an unprecedented level of influence from humanitarian concerns in the initiation of the negotiation process, and humanitarian concerns remained the major motivating force throughout the negotiation of the treaty."⁹ The same was true of the subsequent Oslo process on cluster munitions.¹⁰

To us, “humanitarian disarmament” is not synonymous with the variously defined notion of “human security”. The former, while compatible with human security, is analytically distinct from it. It is easily possible to envisage support for the banning of a weapon based on the harm it causes for civilians without necessitating human security as an accepted basis. Indeed few governments ever established that link in their statements during the Oslo process. Nor is human security mentioned in the Oslo Declaration, the February 2008 Wellington Declaration, or in the Convention on Cluster Munitions.

It could be argued that both the Ottawa and the Oslo processes were ‘IHL-based disarmament’. However, the distinction is not necessarily a useful analytical one, and this article will avoid the phrase, as it is difficult to demonstrate that these processes had a particular IHL basis as opposed to the established forum for these matters, the UN Convention on Certain Conventional Weapons (CCW) (sometimes known as the Inhumane Weapons Convention).¹¹ The CCW was an explicitly IHL-based disarmament process – and it made little progress in addressing cluster munitions because it was locked in a circular technical and legal discourse that discounted the real world effects of these weapons. The same was true of CCW work in the mid-1990s to revise Protocol II on mines and booby traps. In that sense, it was the IHL basis for discourse that was precisely the problem because it caused the wood to be lost for the trees. Instead, the real point of distinction is that a humanitarian basis for curbing weapons goes *beyond* the legal to encompass moral and political imperatives as well, and is founded upon concern about the *effects* of the weapons (for instance, on civilians, or superfluous and unnecessary suffering to combatants). *Together*, these are what constitute the humanitarian imperative.

Anti-Personnel Mines and Cluster Munitions

It pays to be circumspect when considering whether efforts to curb one weapon carry over to another. Progress on nuclear disarmament, if founded upon humanitarian perspectives, will differ in significant respects from the Ottawa and Oslo processes that culminated in the 1997 Anti-Personnel Mine Ban Convention (or ‘Mine Ban Treaty’)¹² and the 2008 Convention on Cluster Munitions. This is not merely for reasons of historical path dependency. The challenges involved in abolishing nuclear weapons are also different from those posed by cluster munitions and mines.

Moreover, it should be noted that while a number of similarities exist between the international campaigns on landmines and cluster munitions they contrast in substantial ways. For instance, the weapons in question played differing roles in the military doctrines of states and had contrasting technical characteristics; the political and diplomatic contexts for their de-legitimization and prohibition were not the same, and the Oslo process ran concurrently with CCW efforts instead of following them as in the case of landmines. In addition, the set of countries possessing cluster munitions differed from the set of those states holding stocks of anti-personnel mines. This withstanding, it is reasonable to try to identify factors in such processes that appear to be likely building blocks for effective progress on other contemporary challenges.

Anti-personnel landmines attracted widespread opprobrium in the 1990s because these “victim-activated” devices were seen as incapable of discriminating between combatants and civilians and were a major risk to the latter, particularly in post-conflict environments. A decade later, cluster munitions also came to be viewed as particularly hazardous to civilian populations.¹³ Cluster munitions posed danger to civilians by being prone to indiscriminate effect both at time of use since their many submunitions saturate wide areas with explosive force, and post-conflict due to the hazardous residue of unexploded bomblets. To some extent, concern also arose about the further proliferation of cluster munitions, including use by non-state armed groups with little regard for IHL – use of anti-personnel mines by such groups having provided a forewarning of serious humanitarian consequences.

The rules or principles of international humanitarian law invoked in the Ottawa and Oslo processes are clearly enunciated in the respective Conventions they produced.¹⁴ Both instruments stress “the role of the public conscience in furthering the principles of humanity” and base themselves on key principles of international humanitarian law.¹⁵ The Preambles of the two treaties contain similar paragraphs citing these tenets of IHL:

- the principle that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited;
- the rules that:
 - the parties to a conflict must at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly direct their operations against military objectives only;
 - in the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects; and
 - the civilian population and individual civilians enjoy general protection against dangers arising from military operations.

Humanitarian partnership

The processes culminating in the Mine Ban Treaty and the Convention on Cluster Munitions (CCM) were essentially steered in each case by a core group of like-minded states. Those states were responsive to humanitarian considerations – the human impact of landmines and cluster munitions respectively – to which forceful attention was drawn by civil society, the International Committee of the Red Cross (ICRC) and various agencies of the United Nations. The importance of this leadership in terms both of its partnership and the humanitarian cause round which it coalesced cannot be overstated, although it should be noted that by the time of actual negotiations on the mine and cluster munition treaties each core group played a secondary role to those hosting and presiding over the diplomatic conferences, and core group members each pursued their own national interests more nakedly, which in certain aspects conflicted.¹⁶

Both the Ottawa and Oslo processes were politically and geographically diverse initiatives. As well as middle and small sized developed countries, these processes

involved many states in the developing world not necessarily active in, or belonging to, the CCW. Perhaps in part because of the challenges in maintaining momentum in the face of such diversity, the goals of both initiatives were succinct: in the Ottawa process, it was to ban landmines; and in the Oslo process to ban those cluster munitions that cause unacceptable harm to civilians. In each case, major producers and users of the weapons chose to shun the process citing various objections, especially that since these efforts failed to include all of the major users and producers an outcome could not possibly be of real or lasting humanitarian value. These objections failed to de-rail either the Ottawa and Oslo initiatives (although they helped to sustain talks in the CCW on the respective weapons systems).

This focus on the human impact of the armaments marks a trend away from the initial treatment of anti-personnel mines and cluster munitions by the parties to the CCW and the members of the Conference on Disarmament (CD) (in the case of landmines) as questions of arms regulation or control. In contrast, both the Ottawa and Oslo processes were framed in concepts and terminology that fit a humanitarian discourse.¹⁷ Such a discourse drew attention to the impact of these weapons and, in the course of doing so, questioned their military utility both by forcing consideration of the unintended consequences of the weapons' use that altered the utility calculus, and by publicly scrutinizing manufacturer and user claims about the functions and benefits of these arms. In the two processes, by focusing on the effects of landmines and cluster munitions on civilians during and after an armed conflict and on the human cost of past and future use or effects of these armaments, a direct link was established between the weapons and their impact on human beings.

As a consequence of viewing anti-personnel mines and cluster munitions through a humanitarian lens, the presumption that these devices were legitimate weapons became increasingly challenged in the Ottawa and Oslo processes. A key element in these challenges was evidence of the effects of these weapons (largely collected by civil society) to support arguments that landmines – and later cluster munitions – were of special humanitarian hazard. In the course of reframing approaches to their utility, the burden of proof concerning each weapon was reversed: those militaries wishing to continue to use them had to make a convincing case for their acceptability in humanitarian terms, regardless of their purported military advantage.¹⁸

An important point is that formal agreement of the Mine Ban Treaty and CCM corresponded to the receding legitimacy of these weapons as perceived by much of the international community due to the respective international campaigns against the weapons preceding them, and that each represents a stage in a normative process of stigmatization that continues. Indeed, such was the strength and breadth of these campaigns that anti-personnel mines and cluster munitions were becoming stigmatized even before treaty norms were agreed.¹⁹ The growth in membership of the CCM²⁰ since its agreement in 2008 is continues to strengthen the stigmatization of those weapons akin to that which occurred with anti-personnel mines. Meanwhile, the CCW's own parallel efforts until late 2011 to develop much

weaker restrictions on cluster munitions ultimately failed to make headway in the face of concerted opposition based on concern not to water down humanitarian standards embodied in the CCM.

This points to another common factor characterizing the Ottawa and Oslo processes: the crucial roles played by civil society. Besides collecting and presenting evidence of the harm landmines and cluster munitions caused, Non-Governmental Organizations (NGOs) mobilised grass-root public support and media interest, which contributed to pressure on governments to participate in the international processes to ban these weapons, even when it was at odds in some cases with the preferences of major allies such as the US. In both processes, civil society campaigns framed the issues as humanitarian problems and worked in close partnership with the core group of governments and intergovernmental organizations. In both processes, NGOs operated as moral entrepreneurs, and were involved not only in framing problems associated with the weapons in question, but in helping state representatives craft specific responses including persuading the reluctant and downright cautious that such solutions were feasible.²¹

Failure of other negotiating forums

The perceived failure of other forums to address the humanitarian effects of landmines and cluster munitions adequately and urgently enough, such as the CCW's work, was also a factor in the emergence of both the Ottawa and Oslo initiatives. However, it is important to note here historical differences in how the two weapons became the subject of freestanding international humanitarian initiatives. In the case of landmines, calls from civil society for the humanitarian problems associated with this weapon to be addressed led to a negotiation in the CCW in the mid-1990s to revise its existing instrument dealing with mines and booby traps, Protocol II. Disappointment with the Amended Protocol II outcome in 1996, and in particular its failure to prohibit anti-personnel mines despite abundant humanitarian evidence of their deleterious effects, soon led to the emergence of the free-standing Ottawa initiative toward a ban treaty. During the Ottawa process, and even in the years following agreement of the Mine Ban Treaty in Oslo in September 1997, there were proposals in another multilateral body, the Conference on Disarmament, to negotiate restrictions on landmines. Ottawa participant (and other) states resisted these, as such proposals were widely considered to be tactics intended to undermine the Mine Ban Treaty.

The Ottawa process emerged *after* the CCW had fully run its course with Amended Protocol II negotiations. The Oslo process was different. Here, the problem for those states wishing to address the humanitarian impacts of cluster munitions was that the CCW's consensus rule prevented agreement on commencing negotiations. The hazards to civilians from cluster munition use were relatively well known in the CCW due to its work on the 2003 protocol on explosive remnants of war,²² and the 2006 summer conflict between Israel and Lebanese Hizbullah, which strongly underlined these problems.²³ When the CCW's five-yearly review conference in late 2006 failed to reach agreement to commence negotiations on cluster munitions,

Norway announced it would host an international conference the following February in Oslo to tackle the humanitarian problems created by the weapon, which led to the Oslo Declaration and ensuing Oslo process. This galvanized those states in the CCW shunning the Oslo process to agree to a negotiating mandate on cluster munitions – albeit a much less ambitious one – the following November.

Thus, the Oslo process and the CCW constituted parallel processes on dealing with cluster munitions, with very different dynamics though many of the same countries participated in both. The CCM was agreed in May 2008. Meanwhile, despite the CCW's mandate's call to "urgently address" the humanitarian problems of cluster munitions, negotiations there dragged on until late November 2011 when in the absence of an agreed outcome the negotiating mandate expired. It is difficult to escape the conclusion that, like the proposals for negotiations in the CD on landmines, the parallel CCW process was in part intended to undermine momentum for the new international treaty outlawing the weapon.

Meetings of States Parties of the CCW and the CD take decisions only by consensus. That is, concrete outcomes depend on there being no objection to their adoption. In practice, negotiations towards a universally acceptable outcome are often tortuous and slow, factors that would not be so consequential if the ultimate product was other than the lowest common denominator. Seen in arms control terms, with strategic stability, confidence building and consolidating an air of restraint as priorities, this might be justifiable.

However, believing that any outcome of negotiations in the CCW or other existing multilateral forums would fall short of their humanitarian goals, the core groups driving the Ottawa and Oslo processes pursued these objectives by alternative means.²⁴ In this regard, it is worth noting that, based on their experience in the CCW and the CD, many participants in the Ottawa and Oslo processes believed that consensus should not be sought at all costs. Accordingly, the rules of procedure laid down for the conferences that culminated in the landmine and cluster munition treaties²⁵ each provided for voting (and were based on general UN standards, rather than arms control practice).²⁶ In the case of the CCM negotiations, this meant that in the culminating phase it would be difficult for a small minority to secure any significant weakening of the draft text developed at prior conferences during the Oslo process coordinated by the core group without winning the support of significant number of other states. Such an approach helped to exert pressure on states to reach an agreement voluntarily, while ensuring that, in extremis, a minority could not block the efforts of advocates for adoption of a stronger humanitarian standard.

This is not to say that those states in the Oslo and Ottawa processes did not prefer an outcome that was acceptable to all delegations without recourse to voting: there is ample indication that in each case they did. Clearly, the greater degree of convergence on the final product amongst its negotiators, the broader would be the extent of acceptability of that product in the international community. By the same token, the greater the degree of international adherence to the outcome, the

stronger the impact of the stigmatization of the weapon-system in question would be on those states outside these initiatives.

The trade-off, in reality, was on the one hand between a weak regime which encompassed the totality of the manufacturing and using states, and on the other a stronger humanitarian benchmark including just some of them (and which included many stockpilers of the weapon), which would become the fulcrum for influencing those same states, over time, to modify their approach to the relevant weapon-systems even if, as non-parties, they were not legally bound to do so. In any event, the success of the Mine Ban Treaty, which was negotiated by 91 States but which now binds 159, was certainly an important source of inspiration for pursuing a cluster munition ban treaty outside the CCW.²⁷

Explicit use in the 2007 Oslo Declaration of the notion of banning those cluster munitions that cause unacceptable harm as both a political target to pull towards, and a benchmark for defining which weapons were to be banned, was a significant innovation. While the Ottawa process was guided by virtually the same principle, unacceptable harm (to our knowledge) was not articulated so explicitly to guide definitional criteria in the final treaty, nor is the phrase used in the text.

Nuclear Weapons

It is, of course, possible to contest the validity of comparisons between the campaigns to achieve international treaties to ban anti-personnel mines and cluster munitions and contemporary campaigning on nuclear weapon elimination. After all, the difference in purpose and effect between these weapons appears vast. For instance, if it is presupposed that nuclear weapons are an intrinsic part of ensuring strategic equilibrium – that their purpose is primarily as an ultimate deterrent rather than for military use – then it seems obvious that cluster munitions and mines are not in the same category. But if it is believed that, far from ensuring international stability, the existence of nuclear weapons jeopardizes it, the equation is different. Those who hold the latter view are surely entitled to assume that assertions by the nuclear-weapons possessing states of their intention to eliminate their nuclear arsenals are based on the calculation that the world will be a safer, more secure place than is currently the case. In other words, states possessing nuclear weapons also recognize the great humanitarian threat these armaments pose, and that these cannot remain intrinsic to maintaining strategic stability because of the hazard their very existence poses.

Certainly, this was the notion expounded by US President Obama in Prague on 5 April 2009 when he said: “I state clearly and with conviction America’s commitment to seek the peace and security of a world without nuclear weapons. ... One nuclear weapon exploded in one city – be it New York or Moscow, Islamabad or Mumbai, Tokyo or Tel Aviv, Paris or Prague – could kill hundreds of thousands of people. And no matter where it happens, there is no end to what the consequences might be – for our global safety, our security, our society, our economy, to our ultimate survival”.

In this regard, it is salutary to recall UN General Assembly resolution 1653, which declared the use of nuclear weapons “a crime against mankind and civilization”. That resolution, which has been endorsed by 29 subsequent resolutions,²⁸ declared that the “use of nuclear ... weapons would exceed even the scope of war and cause indiscriminate suffering and destruction to mankind”. The resolution also declared that such use would be contrary to the rules of international law and to the Charter of the United Nations as an act “contrary to the laws of humanity and as committing a crime against mankind and civilization”.

The ICRC, whose mission is to promote respect for international humanitarian law, has made it clear that “the principles of distinction and proportionality and the prohibition on causing superfluous injury or unnecessary suffering, apply to the use of nuclear weapons”.²⁹ In view of the unique characteristics of nuclear weapons, the ICRC has called on all States not to use such armaments, irrespective of whether they consider them legal or not, to take measures to limit the risk of proliferation and to pursue negotiations on a complete ban on nuclear weapons and their elimination. And, the principle of avoiding unnecessary suffering and unacceptable harm of an equally abhorrent nature has already led to bans on two categories of weapons of mass destruction, biological and chemical weapons under the Biological Weapons (BWC) and Chemical Weapons Conventions (CWC) respectively.

It should also be recalled that in July 1996 the International Court of Justice unanimously reached the conclusion that a “threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons”.³⁰

Such statements suggest that, like the Ottawa and Oslo processes, the *human* impact of nuclear weapons would be an inevitable element of efforts toward a treaty (or treaties) dealing with their elimination, both in order to instigate a process and in order to orient states with otherwise divergent interests, irrespective of its specific details. It is, for example, easy to imagine the formation of a core group of states to pursue the argument that the use of a nuclear weapon would cause unacceptable harm to humans and the environment and that, like landmines and cluster munitions, the deleterious impact of nuclear weapons continues long afterwards. The formation of such a core group could even be catalyzed by the NPT Review Conference’s recent expression of universal concern about the catastrophic humanitarian consequences of any use of nuclear weapons,³¹ a sentiment shared recently by the Council of Delegates of the International Red Cross and Red Crescent Movement. It also emphasized “the lack of any adequate humanitarian response capacity” to the use of a nuclear weapon.³²

Consistent with the experience of the Ottawa and Oslo processes, the banner of unacceptable harm resulting from the use of nuclear weapons might also, in particular, be a rallying point for close cooperation among the core group of states with civil society and intergovernmental bodies such as the ICRC and agencies of

the United Nations. Stigmatization of nuclear weapons would be the objective of this cooperation in order to create pressure on possessor states – including pressure from their own populations – for elimination of their atomic arsenals. (The stigmatization of landmines, as well as biological and chemical weapons, arose essentially because these weapons were and remain widely regarded as inhumane irrespective of whether the victim is a combatant or a civilian.)

It has already been observed that as a consequence of viewing landmines and cluster munitions through a humanitarian lens, the presumption that these armaments were acceptable weapons became increasingly challenged, resulting in the reversal of the burden of proof concerning each weapon. Militaries that wanted to continue to use them had to make a convincing case for their acceptability in humanitarian terms, regardless of their purported military advantage. While the role nuclear weapons are regarded as playing is to deter aggression through the *threat* of use rather than actual detonation, it is clear from the ICJ Advisory Opinion³³ that even the threat of use of such armaments would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law. Nevertheless, “problematizing” – rather than assuming – the status of nuclear weapons as deterrents³⁴ has yet to transform into a groundswell of international opinion challenging the acceptability of their continued retention, as seen on anti-personnel mines and cluster munitions.

It is not the purpose of this chapter to analyse IHL in relation to nuclear weapons, but it should be noted that the successes of the Ottawa and Oslo treaties stem from a growing undercurrent in international affairs in recent years concerning the norms governing the conduct of war. International campaigning against cluster munitions came at a time when a number of governments were waging war on behalf of what they said were humanitarian (or democratic) values in parts of the world such as Kosovo, Afghanistan and Iraq. The use of cluster munitions that saturate entire areas with explosive force by virtue of their design – and leave many unexploded remnants to pose hazard post-conflict due to their failure to work as designed – raises questions of compatibility with such values. It created dissonance between some state policymakers’ conceptions of their national moral identity and the real consequences of their states’ use, or readiness to use, cluster munitions.

This trend to recognize the rights of civilians, victims and to try to prevent (or at least ameliorate) humanitarian tragedy is also reflected in an increasingly enlightened approach by the UN Security Council. In recent years, there has been a discernible increase in focus on the responsibility to protect civilians – a clear stimulus for recent Council resolutions on Libya, Syria and Cote d’Ivoire, among others. Although differences exist amongst the permanent members over what constitutes an internal matter and what constitutes a threat to international peace and security when violence against civilians is being committed, it has been concluded by one well-placed observer that

“over the past two decades, that threshold for most states has moved significantly in favour of action to protect civilians. The divergence of views now seems to be much more over which tools should be used and how to ensure compliance with the normative framework”.³⁵

Initiating a negotiating process

In its Report launched on 15 December 2009, the International Commission on Nonproliferation and Nuclear Disarmament (ICNND) expressed doubt about whether a “NWC” (nuclear weapons convention) could be of “much immediate utility as a ‘campaign treaty’ on the model of the Ottawa and Oslo processes”. In the Commission’s view, the “primary difficulty is that the issues it addresses are simply too complicated and too controversial – certainly for all the existing nuclear-armed states, but for many others as well – to be able to command the immediate broad-based support from governments that has been characteristic of the other vehicles mentioned and made them so practically useful”.³⁶

The “NWC” to which the ICNND was referring is the model treaty originally prepared in 1997 in response to the ICJ’s Advisory Opinion and subsequently tabled in the UN General Assembly by Costa Rica and Malaysia³⁷ as a discussion paper. It takes a very comprehensive approach requiring the elimination of all nuclear weapons within a series of phases under a tight timetable. The Commission is not dismissive of the NWC but clearly regards it as ambitious: “A comprehensive legal regime of this kind will be necessary ... to accompany the final move to elimination, and it is important that support be **progressively** built for it”³⁸ (emphasis added).

It can be concluded that the ICNND’s comments about “complicated” and “controversial” reflect its sense of the comparative difficulty – in temporal terms – of generating the “immediate broad-based support” against nuclear weapons that burgeoned in the case of the Ottawa and Oslo processes. While we recognize the great difficulties in moving toward any new international legal agreement(s) for eliminating nuclear weapons, we suggest that the ICNND and others may have drawn the wrong lessons from the Ottawa and Oslo processes. As we have already observed, these initiatives did not simply emerge with “immediate broad-based support”, but each had to be actively constituted following failed or disappointing efforts to regulate or prohibit the weapons concerned.

To us, the question is not whether these processes form a ‘model’ for international disarmament efforts, but how unproductive environments were made more propitious. Key in both cases were re-framings of previously held – and often previously unchallenged – assumptions about the versatility, acceptability and utility of anti-personnel landmines and cluster munitions based on resonant humanitarian arguments and evidence (see further below) of their actual human costs. These were processes of reframing that began initially on the margins of inter-state discourse in existing multilateral forums, and with some difficulty.³⁹ States, but especially civil society actors, played dynamic, entrepreneurial roles. In other words, initiating a negotiation process came after the process of reframing

on the basis of eliminating categories of weapons causing unacceptable harm (however eventually defined) was well underway and was the consequence of reframing and greater stigmatization, not the cause of it.

As new argumentation developed and became more sophisticated and robust in the face of existing, unproductive multilateral discourse it attracted adherents among states, which in turn lent these arguments greater profile, credibility, thus further increasing their effectiveness. The emergence of international initiatives banning anti-personnel landmines and cluster munitions were reflections of how mutually constituting this had all become. The nature and extent of these re-framings in humanitarian terms resulted in ‘treaty campaigns’ because they altered actor identities, assumptions and interests about what was hitherto “simply too complicated and too controversial” for weapon possessor and non-weapons states alike.

This is not to overlook or underestimate, however, those challenges referred to earlier of overcoming some complex and deeply held beliefs. These include perceptions of strategic balance based on the theory that possession of nuclear arsenals deters acts of aggression against possessors, thereby preserving the status quo, albeit one that leaves a sense of insecurity among non-possessors that might serve as a stimulus towards proliferation. The reality that the negotiation of a treaty on nuclear weapons will thus be far more time-consuming than those on landmines and cluster munitions – and probably also those on biological and chemical weapons – does not, of course, invalidate the premise of unacceptable harm around which the core group and civil society could coalesce.

Underpinnings for a nuclear weapons negotiation

Having assembled various ingredients of the Ottawa and Oslo processes that might feature in nuclear weapon negotiations, let us look at a key problem to be overcome to get such negotiations cooking. While it is feasible that like-minded states could drive a process for banning a conventional weapon that did not include the United States, Russia, China, India and Pakistan, would it be realistic to initiate the negotiation of an instrument on nuclear weapons if the states possessing nuclear weapons were not part of the process? In other words, there is a valid question whether the Ottawa or Oslo approach could be replicated in relation to weapons of far greater potency than landmines and cluster munitions.

Answers to this question involve several considerations. First, it should not be concluded that the nuclear-weapon-possessing states would be insensitive to public pressures to participate in negotiations potentially having an impact on their nuclear arsenals. Indeed, verifiable reductions of those arsenals might actually serve their respective national interests – for example, strong verification mechanisms accompanying a ban on the production of fissile material might help alleviate certain tensions between Pakistan and India.

Secondly, even if the nuclear-weapon-possessing states opted out of negotiations, for instance, of a first-use or a nuclear-weapons abolition treaty, that is not to say

that domestic pressures on several of them would be readily deflected. Some, if not all, nuclear-weapon-possessing states would be sensitive to the aura of stigmatization that, in the case of landmines and cluster munitions grew out of the Ottawa and Oslo processes.

There is, of course, a difference between attracting the participation of major producers and possessors of certain weapon systems in an *ad hoc* process addressing those weapons, and in securing the eventual accession of those states to a resulting treaty. But we should not leap hastily to conclusions, as political and strategic contexts are malleable. The United States participated in the Ottawa process, but has to date not acceded to the Mine Ban Treaty. Yet, it no longer produces or exports anti-personnel landmines.⁴⁰ Moreover, it has contributed \$1.5 billion in mine action in almost 50 countries since 1993. The point is that, whether or not major producers and possessors of weapons that become the subject of an *ad hoc* negotiating process participate in those negotiations, their approach to those armaments may ultimately be modified by the outcome. There should be no *a priori* assumption that the absence of key players from such processes dooms them to failure, even if they fail to come aboard quickly (or at all) if it adjusts their behaviour to reflect declining legitimacy of the weapon.

And despite resistance by the nuclear weapon states during the eighth NPT Review Conference of May 2010, the final document did include mention of a nuclear weapons convention. As that document underlines, getting rid of nuclear threats requires not only concrete disarmament steps but also the establishment of “the necessary framework to achieve and maintain a world without nuclear weapons”.⁴¹ Moreover, as noted earlier, the 2010 NPT Review Conference expressed in its Action Plan for Nuclear Disarmament (the NPT parties’ consensual outcome document) its concern about the “catastrophic humanitarian consequences” of *any* use of nuclear weapons⁴² (emphasis added). Non-nuclear weapon possessors have obvious roles to play, not least in voicing their concerns with a view to building political momentum for practical nuclear disarmament steps, and in contributing to the international architecture for achieving this through their own behaviour and influence over others.

Challenging the legitimacy of nuclear weapons though a humanitarian discourse

The reference to humanitarian law by the NPT Review Conference was undoubtedly a positive development.⁴³ But, as mentioned earlier, the law may not be enough by itself: a humanitarian basis for curbing weapons goes beyond the legal parameters to encompass moral and political imperatives as well, and it is founded upon concern about the effects of the weapons on civilians, or superfluous and unnecessary suffering to combatants. Together, these are what constitute the humanitarian imperative. It is not solely the law – it is the moral and political imperatives that are most likely to engage widespread momentum toward nuclear disarmament, if at all.

A humanitarian approach to nuclear disarmament also allows recognition that there are other methods to change behaviour beside the letter of the law, such as de-legitimization and stigmatization. Iterative de-legitimization of cluster munitions is what the Oslo process managed to capitalize upon, amplify, and then crystallize into a new legal benchmark in the form of the CCM. This is something the Oslo process has in common with the Ottawa process under which the norm of non-use has become strong enough that even most non-parties to the mine ban treaty refrain from new use or transfer of anti-personnel mines.⁴⁴ It is reasonable to believe – given that 111 states have signed the CCM of which 67 had become legally bound by it as of January 2012 – that the cluster munitions ban ‘norm’ will also eventually have a stigmatizing effect globally. All of it began with critical questioning of the claims of users of the weapons in existing disarmament forums, which were at odds with evidence from the real world about the weapons’ effects and costs. Such effects and costs are not limited to direct death and injury, but also extend to the developmental and environmental externalities of the weapons’ possession, developing (including testing) and safe disposal.

An issue that arose in the negotiations on landmines and cluster munitions of relevance to corresponding efforts to address nuclear weapons is the military utility of the weapon system in question. Militaries and national security establishments are adept at rationalizing the continued retention of armaments. The landmine and cluster munition processes demonstrate the power of a humanitarian discourse to bypass circular discourses amongst states about the purported military utility of weapons in question that block progress toward elimination.

A twist in the case of nuclear weapons, as we have seen, is that nuclear strategists are prone to argue that such weapons have a military utility as a deterrent – without ever needing to be exploded. The problem with engaging this argument on its own terms is that it bogs down those seeking to demonstrate the diminished utility of nuclear weapons in the concepts and terminology developed (and often favouring) those seeking retention. It is pertinent in this regard that the CCM’s categorical ban on cluster munitions was adopted not because there was consensus among those participating in the Dublin negotiation that the weapon had no usefulness on the battlefield, although the utility of cluster munitions independent of humanitarian consequences stemming from their use was also increasingly being questioned. Rather, cluster munitions were banned because the consequences of the weapon (for civilians), based on field evidence and greater awareness of the likely results of continued use, were taken into account. Once those factors were registered, the claims of manufacturers and possessors, and presumptions about the weapon’s accuracy and reliability that formed the basis for legitimacy claims, were found to be sorely wanting.

Effective arguments and evidence are needed in order to undermine the assumptions underpinning continued retention of nuclear weapons based on their purported utility. But we believe they are unlikely to gain wide currency without a change in discourse toward users having to try to justify the acceptability

of nuclear weapons in terms of their humanitarian effects, not just based on contingent, hypothetical military scenarios.

Another feature of military utility-centred arguments about cluster munitions is that, in effect, “if you don’t let us use this weapon, we’ll be forced to use something worse”. Although admittedly it is difficult to conceive of many things worse than use of nuclear weapons, this is a claim heard repeatedly over decades in opposition to restrictions on virtually any weapon system. It overlooks the fact that international humanitarian law rules still apply whatever weapons are used; rules such as that of distinction, the rule against indiscriminate attack, the rule of proportionality and the rule on feasible precautions.⁴⁵ Humanitarian law rules apply to the use – and indeed the development⁴⁶ – of all weapons. Governments are meant to balance military and humanitarian requirements. To pretend that the humanitarian side of the balance does not exist in the choice and use of weapons is actually counter-productive to promoting adherence to these rules. Can it be doubted that use of a nuclear weapon in a populated area (in self-defence or otherwise) would inflict anything less than unacceptable harm?

Nuclear weapons and unacceptable harm

How does the notion of unacceptable harm to civilians help in thinking about addressing nuclear weapons? At a basic level it serves to put the humanitarian impulse front and centre. Even if the precise nature of what is ‘unacceptable’ is viewed as ambiguous, it inevitably opens a conversation: what would ‘acceptable’ use of nuclear weapons be? Such a discussion in public might sensitize more people to the moral perversity of nuclear weapons use and the doctrine of deterrence. It starts from the basis that there are at least some of the class of weapon that cause unacceptable harm to civilians. This is in contrast with the notion (as seen in the CCW’s fruitless work on a cluster munitions draft protocol) of ‘balancing military and humanitarian requirements’ – a sure path, historically, back to a military utility-centred discourse, to the status quo.

One problem with elite discourses involving concepts such as ‘IHL-based disarmament’ or ‘human security’ is that it is not necessarily apparent what they mean. The notion of unacceptable harm does not require a lot of explanation for people on the street to get the basic idea. Since public pressure on governments will likely be necessary for nuclear abolition efforts to eventually succeed as it was in the case of landmines and cluster munitions, this consideration is highly pertinent.

There is a third way in which the notion of unacceptable harm might be helpful. Assessments of weapons from the perspective of the harm caused by their use allow scope for a wider range of evidence and intellectual investment than is sometimes the case in international security processes in which agenda setting is otherwise dominated by states. In the case of the failed CCW negotiations, governments preferred to talk about hypothetical and contingent scenarios in line with – and further justifying – the perceived importance of cluster munitions⁴⁷

rather than empirical evidence of the actual effects of cluster munitions that might be at odds with this. In fact, historically states did not go to much effort to check that their cluster munitions were not of particular harm to civilians. The comfort that possessor states derived from having cluster weapons in their arsenals promoted reluctance to discussing limits on their possession or use.

By collecting and presenting evidence of harm, non-state actors such as the ICRC, UN and NGOs under the rubric of the Cluster Munition Coalition (CMC) prompted some states to re-assess their views on cluster munitions.⁴⁸ As explained above, evidence of actual effect rather than intended effect was key in both the Ottawa and Oslo processes, and was also helpful in the less-controversial negotiations in the CCW on explosive remnants of war from 2001 to 2003, in terms of engaging civil society.

A fourth way in which the notion of unacceptable harm could help is in thinking about the 'specialness' of nuclear weapons. For example, the historian Michael D. Gordin has shown that rather than being an absolute property of the use of nuclear weapons, perceptions of special 'shock and awe' about the nature of the first atomic bombs – both in occupied Japan in World War II's aftermath and among fledgling American nuclear policy makers – were socially constructed through a variety of factors that were contingent rather than inevitable. This shock and awe at the specialness of nuclear weapons may have contributed to inhibiting policymakers from using these arms in anger again, but it has also contributed to the hold the weapons have as 'ultimate' deterrents on nuclear strategists and the public in some countries. This should give pause for thought. In order to function (i.e., to be believed), nuclear deterrence requires willingness to follow through with use, regardless of how unacceptable the effects will be. Even nearly seventy years later, as Gordin observed, "Humanity has been given too few opportunities to evaluate its relationship with these terrible devices, which carry with them – especially in their present quantity – so much peril...If ever there was a time to actually reflect on the status of these destructive weapons, to think about them critically without an international nuclear standoff urgently dictating the course of our thinking, this is the moment."⁴⁹

Of course, advocates for nuclear elimination rightly point to the 'special' radiation effects of nuclear weapons as something that makes these especially terrible and indiscriminate. Containing nuclear fall-out even from a nuclear weapon of small yield deployed in a remote region would be immensely difficult if not impossible, while the use of such a weapon near populated areas would dwarf even the spread of radioactivity witnessed in accidents and natural disasters affecting civilian reactors such as Chernobyl and Fukushima. Without detracting from these points, consider for a moment that the blast and (secondary and tertiary) fragmentation effects of nuclear weapons are also highly indiscriminate within their areas of effect, which are larger than any conventional explosive weapon. In other words, the contention that nuclear weapons are indiscriminate because of their radiation effects strengthens the overall argument that these arms are unacceptable, but the argument does not depend upon it.

This point is salient because continuing to set aside nuclear weapons as a ‘special’ category could serve to insulate these from growing international disapproval of military attacks that are indiscriminate in effect. Such trends are not limited to banning anti-personnel mines and cluster munitions, but extend to how targets are chosen under humanitarian law rules and the means by which they are attacked using any weapons.⁵⁰ As part of this, the view is strengthening that use of explosive weapons in populated areas, particularly more destructive weapons like heavy artillery and rockets, causes unacceptable harm due to evidence across a range of contexts showing the difficulties in targeting such weapons in a discriminate manner to avoid civilian casualties.⁵¹ Nuclear weapons are explosive weapons too. It begs the question: why is it that state policy makers can consider the explosion of nuclear weapons as legitimate for use against targets like cities in which there is no possibility of discrimination between military objectives and civilian populations, when they are growing increasingly sensitive to the risks of conventional explosive weapons in similar contexts?

Conclusions

Clearly, there are marked differences between nuclear weapons on the one hand, and landmines and cluster munitions on the other. These distinctions do not stem merely from their comparative levels of destructiveness, but extend to the purposes for which these weapons are or might be deployed, the set of their possessors, and the contexts in which the discourse about their utility, legitimacy and continued existence have occurred. Nonetheless, the Ottawa and Oslo processes succeeded in reframing international discourses from those in which arguments over these weapons’ intended uses were paramount to situations in which their actual effects received focus. It is not simplistic to conclude that there is much to learn from these initiatives and adapt to nuclear disarmament efforts because (as in the Ottawa and Oslo processes) real movement toward abolition will likely only occur when enough policymakers and publics are persuaded that a situation in which the weapons continue to exist indefinitely is not acceptable, their purported legitimacy⁵² can no longer be tolerated and that a concrete process (or processes) for their abolition must be pursued without further delay.

It is helpful that humanitarian reasoning is readily explicable to the public. But the perceived strategic value attached by many to nuclear deterrence, an ingredient largely absent in the case of cluster munitions and landmines, would seem to complicate reframing the nuclear disarmament discourse. Unlike landmines and cluster munitions, the view of nuclear weapons as ‘peace enforcers’ is widespread among nuclear strategists, a (mistaken) view that has also trickled into the public consciousness in many countries.⁵³

Moreover, there is a certain perversity to overcome: many who so fear the use of a nuclear weapon by a “rogue state” (e.g. North Korea), rather than embracing the abolition of all nuclear weapons, take comfort in being under the umbrella of other possessors of nuclear arsenals. However, circular arguments about the utility of nuclear deterrence conveniently evade fundamental questions of the actual human

costs of these weapons that belie such a wishful calculus. Their hold can and should be broken, and the high ground that nuclear policy makers have claimed for themselves as pragmatic realists will need to be taken from them through real-world humanitarian evidence and argument. For instance, there is much about the ingrained skepticism of such strategic cultures that has rooted itself in wishful thinking about the actual utility of nuclear weapons, or their ability to avert catastrophic nuclear accident⁵⁴ or species-ending belligerent misunderstanding so long as nuclear arsenals endure.

Nuclear strategists maintain that the mere existence of nuclear weapons' is sufficient for their protective purpose, and that they will never be used. Yet, to be credible, the threat of use logically entails actual use *in extremis*. If not, why do nuclear weapon states continually upgrade and modernize their nuclear arsenals? The notion, then, that a commander-in-chief may unleash a nuclear weapon despite its appalling consequences is not unthinkable. The responsibility for giving the order to use these weapons, and the unacceptable harm that will result, needs to be fully exposed.

For efforts to ban a particular weapon system to succeed, past initiatives have shown that it is necessary not only to highlight concerns about the weapon but also to persuade enough actors that there are credible and practical ways of pursuing those concerns to achieve a concrete resolution of them. The movements to ban landmines and cluster munitions may not have ranked high in terms of global causes, but they had demonstrable and palpable purposes, and were considered 'do-able' by those involved in pursuing them.

High profile voices are emerging in support of the elimination of nuclear weapons.⁵⁵ Their perspectives are various. There are those, for instance, whose considerations are essentially pragmatic; whose fear of proliferation by Iran and others leads them to the view that the only safe solution lies in extending the notion of self-denial inherent in virtually all parties to the NPT to the remaining members of the international community within and outside the NPT. Pragmatism is a factor, also, behind the arguments of former military personnel for whom the existence of nuclear weapons in their arsenal is a mixed blessing. They surmise that it is a weapon that is rendered unusable (ironically) by its catastrophically destructive properties. The security that necessarily surrounds nuclear weapons, let alone the infrastructure required to produce and maintain them, consumes huge resources they would prefer to be deployed on more usable armaments and military equipment not to mention the achievement of social and economic goals. Such views should be welcomed and those arguments used. But the point should not be lost that elimination of nuclear weapons is necessary because of their lack of acceptability – a matter on which everyone is entitled to be heard, not only military strategists.

Perhaps one of the most salient lessons offered by recent initiatives to eliminate anti-personnel mines and cluster munitions is that, by cooperating toward a common humanitarian objective, coalitions of like-minded actors can achieve

normative progress at the international level. These coalitions included those affected by the weapons, as well as those possessing them, which imparted urgency and legitimacy. As the Norwegian Foreign Minister quoted at the beginning of this chapter argued:

“if we are to achieve results within a reasonable timeframe, we cannot allow those who want [elimination of nuclear weapons] the least to set the pace. ... We cannot leave it to the nuclear weapon states alone to decide when it is time for them to do away with these weapons. Their destructive power would affect us all if put to use – and their threat continues to affect us all – therefore they are everyone’s business. So, taking a comprehensive and innovative disarmament approach means that we do not allow ourselves to be at the mercy of an unwilling – and often small – minority.”⁵⁶

Endnotes

- 1 Disarmament – reframing the challenge. The Norwegian Atlantic Committee, the 45th Annual Conference (Leangkollen Conference). Oslo, 1 February 2010.
- 2 Mathews, R. J. and T. L. H. McCormack (1999). “The influence of humanitarian principles in the negotiation of arms control treaties.” *International Review of the Red Cross* 81(834): 331-352. Online: <<http://www.icrc.org/eng/resources/documents/misc/57jpty.htm>>. [Accessed 11 August 2011].
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- 4 Cooper, N. (2006). “Putting disarmament back in the frame.” *Review of International Studies* 32(2): 353-376.
- 5 Borrie, J. (2005). Rethinking multilateral negotiations: disarmament as humanitarian action. *Alternative Approaches in Multilateral Decision Making: Disarmament as Humanitarian Action*. J. Borrie and V. Martin Randin. Geneva, United Nations Institute for Disarmament Research. 1: 7-37.
- 6 The concept of human security can be traced to UNDP’s Human Development Report of 1994. See UNDP (1994) *New dimensions of human security*. In: *UNDP Human Development Report 1994*. New York: UN Development Programme, pp. 22-35.
- 7 See note 1 above.
- 8 Rutherford, K. R. (1999) “The Hague and Ottawa Conventions: A Model for Future Weapon Ban Regimes?” *Non Proliferation Review*, (Spring-Summer), 36-50.
- 9 Mathews, R. J. and T. L. H. McCormack (1999). “The influence of humanitarian principles in the negotiation of arms control treaties.” *International Review of the Red Cross* 81(834): 331-352.
- 10 Nystuen, G. (2009) *A New Treaty Banning Cluster Munitions: The Interplay Between Disarmament Diplomacy and Humanitarian Requirements*. In: BAILLIET, C. M. (Ed.) *Security: A Multidisciplinary Normative Approach*. (International Humanitarian Law Series) Martinus Nijhoff / Brill Academic.
- 11 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, as amended on 21 December 2001.
- 12 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.
- 13 Borrie, J. and R. Cave (2006). “The Humanitarian Effects of Cluster Munitions: Why Should We Worry?” *Disarmament Forum*(4): 5-13.

- 14 See Maslen, S. (2004). *Commentaries on Arms Control Treaties: The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*. Oxford, Oxford University Press, and Nystuen, G. and S. Casey-Maslen, Eds. (2010). *The Convention on Cluster Munitions: A Commentary*. Oxford Commentaries on International Law. Oxford, Oxford University Press.
- 15 Convention on Cluster Munitions, preambular paragraph 17.
- 16 For example, Canada (which had catalyzed the Ottawa process, and along with Norway and South Africa been at the forefront of the landmine campaign core group of states) infamously sought compromises in the Mine Ban Treaty's negotiation that entailed a nine-year deferral period for compliance in ending the use of anti-personnel mines, an exemption for mixed munition systems and the possibility for a state to withdraw from the treaty during and armed conflict under national pressure from the U.S. in the Oslo negotiations in September 2007. See Maslen (2004), pp. 42-43. In the Dublin negotiations on cluster munitions New Zealand and Norway supported proposals for text in Article 21 paragraph 3 (on military interoperability) at odds with the views of other members of the Oslo core group such as Austria and Mexico. See Borrie (2009), Chapter 10.
- 17 Atwood, D., J. Borrie, M. Brehm and S. Cattaneo (2009). "Learn, adapt, succeed: potential lessons from the Ottawa and Oslo processes for other disarmament and arms control challenges." *Disarmament Forum* (1 and 2): 19-25. Online: <http://www.unidir.org/pdf/articles/pdf-art2860.pdf>.
- 18 See, for instance, Rappert, B. and R. Moyes, "The Prohibition of Cluster Munitions: Setting International Precedents for Defining Inhumanity" *Non Proliferation Review*, 2009. 16(2): p. 237-256.
- 19 Atwood, D., J. Borrie, M. Brehm and S. Cattaneo (2009). "Learn, adapt, succeed: potential lessons from the Ottawa and Oslo processes for other disarmament and arms control challenges." *Disarmament Forum* (1 and 2): 19-25. Online: <http://www.unidir.org/pdf/articles/pdf-art2860.pdf>.
- 20 67 state parties as at the time of writing (10 January 2012).
- 21 For discussion of how this occurred in the Ottawa process, see Hubert, D., "Humanitarian Advocacy Campaigns: Lessons on Government Civil-Society Collaboration", in *Joint Action for Prevention: Civil Society and Government Cooperation on Conflict Prevention and Peace Building*, P. van Tongeren and C. van Empel, Editors. 2007, Global Partnership for the Prevention of Armed Conflict: The Hague. p. 79-86, and Rutherford, K.R., *Disarming States: The International Movement to Ban Landmines*. 2011, Santa Barbara, California: Praeger Security International. For the Oslo process, see Borrie J. (2009) *op cit*.
- 22 See Maresca, L., "A new protocol on explosive remnants of war: The history and negotiation of Protocol V to the 1980 Convention on Certain Conventional Weapons". *International Review of the Red Cross*, 2004. 86(856): p. 815-835.
- 23 See Nash, T., *Foreseeable Harm: The Use and Impact of Cluster Munitions in Lebanon*: 2006. 2006, Landmine Action.
- 24 See Borrie, J. (2009). *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions Was Won*. Geneva, Switzerland, United Nations Institute for Disarmament Research, pp. 29-35.
- 25 Dublin Diplomatic Conference for the Adoption of a Cluster Munitions Convention, "Rules of Procedure," rule 38(1).
- 26 See Nystuen, G. and S. Casey-Maslen, Eds. (2010). *The Convention on Cluster Munitions: A Commentary*. Oxford Commentaries on International Law. Oxford, Oxford University Press, pp. 28-29.
- 27 See for instance: Goose, S.D., "Cluster Munitions in the Crosshairs: In Pursuit of a Prohibition", in *Banning Landmines: Disarmament, Citizen Diplomacy and Human Security*, J. Williams, S. D. Goose, and M. Wareham, Editors. 2008, Rowman & Littlefield: Lanham. p. 217-239, and Bolton, M. and T. Nash, "The Role of Middle Power – NGO Coalitions in Global Policy: The Case of the Cluster Munitions Ban", *Global Policy*, 2010. 1(2): p. 172-184.

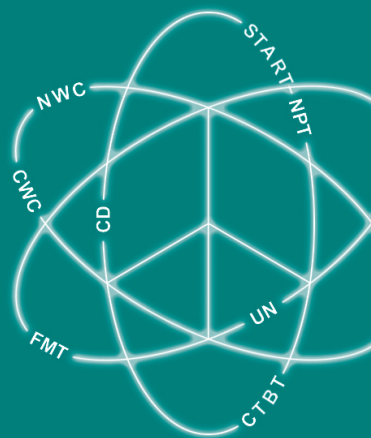
- 28 Randy Rydell, "Bringing Democracy And The Rule Of Law To Disarmament", paper presented to a Conference co-hosted by The Simons Foundation and the International Association of Lawyers Against Nuclear Arms (IALANA), Vancouver, 10 February 2011.
- 29 <http://www.icrc.org/eng/war-and-law/weapons/nuclear-weapons/overview-nuclear-weapons.htm>.
- 30 See the Advisory Opinion from the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons in response to a request from the UN General Assembly made at its 90th meeting held on 15 December 1994, under its agenda item 62 entitled "General and Complete Disarmament: Report of the First Committee" (A/49/699).
- 31 "The Conference expresses its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons, and reaffirms the need for all states at all times to comply with applicable international law, including international humanitarian law" NPT/CONF.2010/50 (Vol. I) Nuclear Disarmament, paragraph I A.v
- 32 Resolution CD/11/4.1 "Working towards the elimination of nuclear weapons", 26 November 2011
- 33 loc cit.
- 34 See Price, R. and N. Tannenwald (1996). Norms and Deterrence: The Nuclear and Chemical Weapons Taboos. *The Culture of National Security: Norms and Identity in World Politics*. P. J. Katzenstein. New York, Columbia University Press: 114-152.
- 35 Security Council Report, Cross-Cutting Report No. 2 Protection Of Civilians 20 July 2011, http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.7566867/k.D247/CrossCutting_Report_No_2brProtection_of_Civiliansbr20_July_2011.htm.
- 36 "Eliminating Nuclear Threats" ICNND Report, paragraph 20.41.
- 37 A/C.1/52/7.
- 38 Eliminating Nuclear Threats" ICNND Report, paragraph 20.40.
- 39 See, for instance Matthew, R. A. and Rutherford, K. R. (2003) The evolutionary dynamics of the movement to ban landmines. *Alternatives*, 28 (1), 29-56 and Wiebe, V. (2003) Cluster bombs and explosive remnants of war: Cooperation and conflict between non-governmental organizations and middle power states. In: Rutherford, K. R, et al. (Eds.) *Reframing the Agenda: The impact of NGO and middle power cooperation in international security policy*. Westport, Connecticut London: Praeger, pp. 91-112.
- 40 See Landmine Monitor 2010's country profile for the United States. Online: http://www.the-monitor.org/index.php/cp/display/region_profiles/theme/312. (Accessed 20 October 2011).
- 41 Final Document of the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, UN document NPT/CONF.2010/50 (Vol. I), 2010, para. I.B.iii., p. 20.
- 42 Op cit.
- 43 Burroughs, J. (2010). The humanitarian imperative for nuclear disarmament: Briefing paper for the Middle Powers Initiative/Swiss Federal Department of Foreign Affairs Conference – 'From aspiration to reality: Nuclear disarmament after the NPT Review' (Geneva, Switzerland, September 14-15 2010). Middle Powers Initiative Briefing Paper: 20. See also, Moxley, C., Burroughs, J. Granoff, J. "Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty." (Vol. 34 No.4) (April 2011) *Fordham International Law Journal*, p.70.
- 44 Rutherford, K. R. (2011). *Disarming States: The International Movement to Ban Landmines*. Santa Barbara, California, Praeger Security International, p. 130.
- 45 L. Maresca, "Cluster Munitions: moving toward specific regulation", *Disarmament Forum* (2006 no.4), pp. 27-34.
- 46 Article 36, Part III: *Methods and means of warfare, Protocol I Additional to the Geneva Conventions of 1949*.
- 47 B. Rappert, *A Convention Beyond the Convention: Stigma, Humanitarian Standards and the Oslo Process*, (Landmine Action: London, 2008).

- 48 And, in certain cases, it led them to take a closer, harder look at the effects of their weapons. For example, Norway tested the reliability of its state-of-the-art cluster munition stockpile in 2006 and publicly released the results. See King, C., et al. (2007) *M85: An Analysis of Reliability*. Oslo: Norwegian People's Aid.
- 49 Gordin, M. D. (2007) *Five Days in August: How World War II Became a Nuclear War*. Princeton: Princeton University Press, pp.139-140. See also Wilson, W. (2007) The Winning Weapon? Rethinking Nuclear Weapons in Light of Hiroshima. *International Security*, 31(4), 162–179.
- 50 See Borrie, J. and M. Brehm (2010). *Explosive Weapons: Framing the Problem. Background Papers of the Discourse on Explosive Weapons Project*. Geneva, United Nations Institute for Disarmament Research. 1: 8.
- 51 An international campaign to enhance civilian protection from explosive weapons use in populated areas recently formed. See the website of the International Network on Explosive Weapons: <http://www.inew.org>.
- 52 See also Lewis, P. (2009) "A New Approach to Nuclear Disarmament: Learning from International Humanitarian Law Success." International Commission on Nuclear Non-proliferation and Disarmament Papers 13, 20. Online: <http://www.icnnd.org>.
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- 54 Rebecca Johnson, "After Fukushima, lessons to reduce nuclear terror". Online: <http://www.acronym.org.uk/docs/1103/doc01.htm>.
- 55 For instance, see George P. Shultz, Henry Kissinger, William J. Perry, and Sam Nunn (two former US secretaries of state, a former US secretary of defense, and a former chairman of the Senate Armed Services Committee), op-ed in *The Wall Street Journal*, 4 January 2007.
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The 2010 Non-Proliferation Treaty Review Conference was presented as a success, but it did little to tackle the real world problems of nuclear proliferation, insecurity and modernizing arsenals. In advance of the Acronym Institute's forthcoming book on humanitarian approaches to achieve and maintain a world free of nuclear weapons, this publication offers two articles that explore recent developments, with particular relevance for the 2015 NPT review cycle.

Rebecca Johnson, director of the Acronym Institute for Disarmament Diplomacy, analyzes the 2010 outcome and subsequent developments, and considers new approaches for overcoming the NPT's failing role in non-proliferation and disarmament.

Tim Caughley and John Borrie, former UN and New Zealand diplomats with knowledge and experience from different disarmament processes, analyze the humanitarian approaches used to delegitimize and ban landmines and cluster munitions and consider what lessons are relevant for achieving more sustainable progress on nuclear disarmament.



“There are of course some critical differences between the nuclear disarmament agenda and the agenda that led to the ban on land mines and cluster munitions. But at the same time, there are some key, shared lessons to be learned. For example, experience from humanitarian disarmament should guide us on how to pursue and negotiate disarmament issues in general.”

JONAS GAHR STØRE, NORWEGIAN FOREIGN MINISTER