

Time to Fill the Legal Gap

A Briefing Paper on the NPT Review Conference 2015

The Non-Proliferation Treaty (NPT) has been largely successful in preventing the spread of nuclear weapons, but the implementation of its disarmament obligation is sorely lacking, and the treaty does not establish an explicit and general prohibition on the possession, production, or use of nuclear weapons. States must work now to fill this unacceptable “legal gap” – and implement fully article VI of the NPT – by launching a diplomatic process in 2015 to negotiate a complementary nuclear weapon ban treaty.

About the Review Conference

The ninth review conference of parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) will take place in New York from 27 April to 22 May 2015. No meaningful progress has been made towards implementation of the disarmament action plan agreed at the last review conference, held in 2010. The five nuclear-armed states that are parties to the treaty – the US, Russia, China, France and the UK – are all investing heavily in upgrades to their nuclear arsenals, with plans to retain them for decades to come. This has prompted many non-nuclear states to devise new pathways to the prohibition and elimination of nuclear weapons that cannot be held hostage by the nuclear-armed states.

Humanitarian Consequences

The 2010 NPT review conference expressed its deep concern at the “catastrophic humanitarian consequences of any use of nuclear weapons”. Since then, a major reframing of the nuclear weapons debate in international forums has taken place, with the focus shifting from abstract notions of “strategic stability” to the weapons’ fundamental inhumanity. Three diplomatic conferences have been convened to examine the unacceptable risks and consequences of any use of nuclear weapons. One hundred and

fifty-eight states attended the most recent such conference, held in Vienna in December 2014, which concluded with a Pledge to “fill the legal gap for the prohibition and elimination of nuclear weapons”. Many states have since endorsed this Pledge, and more will do so ahead of and during the NPT review conference. It is a firm commitment by these states to take bold and urgent action to stigmatize, ban and eliminate nuclear weapons.

GOVERNMENTS SHOULD:

- Endorse the **Pledge** issued at the Vienna Conference on the Humanitarian Impact of Nuclear Weapons (8–9 December 2014) to **fill the legal gap for the prohibition and elimination of nuclear weapons**.
- In the general debate at the NPT review conference, announce their endorsement of the Pledge and their support for the start of **a diplomatic process in 2015 to negotiate a treaty banning nuclear weapons**.
- Encourage **other states** to endorse the Pledge and the call for negotiations to begin on a ban treaty, and promote the Pledge and a ban treaty in **regional joint statements** delivered at the NPT review conference and in other forums.

Read the Pledge at hinw14vienna.at

Suggested Points for Governments

Lack of Implementation of Article VI

- Express deep concern at the lack of progress made by the nuclear-armed states towards fulfilling the disarmament action plan agreed at the 2010 NPT review conference.
- Emphasize that modernization of nuclear warheads and their delivery systems, with plans to retain them for many decades to come, is incompatible with the requirement under article VI of the NPT to pursue nuclear disarmament.

The Humanitarian Framing

- Welcome the recent focus on the humanitarian impact of nuclear weapons, which has brought much-needed energy and impetus to discussions on nuclear disarmament.
- Welcome the three major diplomatic conferences convened on this topic in Oslo in March 2013, Nayarit in February 2014 and Vienna in December 2014.
- Highlight that it is in the interest of the very survival of humanity that nuclear weapons are never used again, under any circumstances, and elimination is the only guarantee against use.
- Stress that the humanitarian impact of nuclear weapons must remain the essence of all efforts towards nuclear disarmament, and encourage further initiatives in this area.

Pledging to ‘Fill the Legal Gap’

- Endorse and highlight the Pledge issued at the Vienna conference in December 2014 “to fill the legal gap for the prohibition and elimination of nuclear weapons”.
- Argue that filling the legal gap requires the negotiation of a treaty that clearly prohibits nuclear weapons based on their catastrophic humanitarian consequences.

- Emphasize that it is unacceptable that nuclear weapons are the only weapons of mass destruction not yet comprehensively prohibited, and we must rectify this legal anomaly *now*.
- Note that, in the past, weapons have been eliminated after they have been prohibited through a global treaty, and this is the path to achieve a world without nuclear weapons.
- Note that all states have expressed their support for a nuclear-weapon-free world, and prohibiting nuclear weapons is a necessary part of the process to achieve that universal goal.
- Argue that a treaty prohibiting nuclear weapons will complement the NPT and other related treaties, and constitute an effective measure for nuclear disarmament as stipulated by article VI.
- Welcome the examination of specific proposals for legal instruments to implement article VI, such as those set out by the New Agenda Coalition in its NPT working papers.

A Diplomatic Process in 2015

- Signal a readiness to join a diplomatic process in 2015 to negotiate a treaty prohibiting nuclear weapons, which will represent a significant step towards their complete elimination.
 - Call for a negotiating process that is inclusive, democratic, and involves civil society, and argue that no single state or group of states should have the power to block the negotiations.
 - Argue that a treaty prohibiting nuclear weapons should be negotiated by those states ready to do so, even if states with nuclear weapons oppose it and decide not to participate.
 - Support the conclusion in the Nayarit chair’s summary that the 70th anniversary of the atomic bombings of Hiroshima and Nagasaki, to be marked in August 2015, is “an appropriate milestone” by which to initiate a diplomatic process to ban nuclear weapons.
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