

Nuclear Weapons Abolition: At the Crossroads of Crisis and Opportunity

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1. Introduction

Humanity is at the crossroads of nuclear crisis and opportunity. At the highest level, the elimination of nuclear weapons is increasingly seen as an urgent, desirable and feasible goal. Conversely, proliferation risks are increasing steadily, and with them the threat of nuclear weapons use, whether by accident, design or miscalculation. As U.S. President Barack Obama stated recently in Prague, *“In a strange turn of history, the threat of global nuclear war has gone down, but the risk of a nuclear attack has gone up.”*¹ Obama’s strong advocacy of nuclear weapons elimination has breathed new life and hope into the international disarmament movement. It has reignited bilateral disarmament progress between Russia and the U.S., encouraged multilateral efforts to advance the disarmament agenda, and provides a rare window of opportunity for principled advocates of the ‘zero option’ to push strongly for the abolition of nuclear weapons.

In 1998 the New Agenda Coalition (NAC) – then New Zealand’s primary vehicle for nuclear disarmament advocacy - declared that the achievement and maintenance of a nuclear weapons free world would require *“...the underpinnings of a universal and multilaterally negotiated legally binding instrument or a framework encompassing a mutually reinforcing set of instruments.”*²

Serious consideration must be given to what such a framework will look like if it is ever to be achieved. While it is essential to aim for the elimination of nuclear weapons,

¹ Barack Obama, *Remarks of President Barack Obama*, Prague, Czech Republic (5 April 2009). Available from <http://prague.usembassy.gov/obama.html>.

² New Agenda Coalition, *Towards a Nuclear Weapons Free World - the Need for a New Agenda*, (A/53/138), (9 June 1998). Available from <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N98/164/44/pdf/N9816444.pdf?OpenElement>

achieving this goal will be impossible without the establishment of a common prescriptive understanding that there is no legitimate reason to possess them. In order to create such an understanding, nuclear weapons will need to be outlawed. The concept of nuclear weapons abolition surpasses that of elimination in that it encompasses both the goal of elimination and a universal, legal prohibition on possession as a key, early step to achieving that goal. Given the current permissive environment for nuclear disarmament, it makes sense to start talking about abolition and considering potential frameworks for its achievement.

While New Zealand hesitates even to mention ‘abolition’ at present,³ the UN Secretary General has called explicitly for exploration of potential abolition frameworks and noted that the Model Nuclear Weapons Convention (NWC)⁴, which he has circulated to all UN Member States, is “*a good point of departure*” for such work.⁵ At a recent conference hosted by the National Consultative Committee on Disarmament in Wellington, the former conservative Prime Minister of Australia, Malcolm Fraser, called on New Zealand to take a lead in such deliberations:

“I would encourage New Zealand to continue to drive the disarmament agenda forward and not ‘rest on your laurels’. Your government could demonstrate further leadership by supporting the approach advocated by the UN Secretary-General, embracing and championing the comprehensive approach to nuclear non-proliferation and disarmament embodied in a nuclear weapons convention, and work with other like-minded states and civil society towards commencement of negotiations on such a convention... Australia and New Zealand should cooperate more closely, including with neighbouring Pacific island and Southeast Asian countries, to this end.”

Other international experts, such as George Perkovich, the Vice President for Studies at the Carnegie Endowment for International Peace,⁶ have also called for exploration of potential abolition frameworks. In a 2008 Adelphi Paper entitled *Abolishing Nuclear Weapons*, co-authors James Acton and Perkovich recommended that nuclear weapon states (NWS) and non-NWS should work to facilitate,

“...an international collaboration of government-affiliated and independent think tanks to explore the conditions necessary for the secure prohibition of nuclear weapons... Going further, governments could then invite participants in such a collaboration to present their conclusions to NPT [Non-Proliferation Treaty] review meetings,

³ None of the 24 official papers with New Zealand input presented to the 2007 and 2008 NPT PrepComs - including the NAC papers - mentions the word abolition.

⁴ The entire Model NWC is available as a stand-alone PDF, or with complimentary comments and criticism, from: <http://www.icanw.org/securing-our-survival>.

⁵ United Nations Department of Public Information, ‘Contagious’ Doctrine of Deterrence Has Made Non-proliferation More Difficult, Raised New Risks, Secretary General Says in Address to East-West Institute (24 October 2008). Available from <http://www.un.org/News/Press/docs/2008/sgsm11881.doc.htm>.

⁶ Perkovich is also a researcher for the Australia-Japan sponsored International Commission on Nuclear Non-Proliferation and Disarmament (ICNND).

*national governments, the Conference on Disarmament and the UN General Assembly.”*⁷

A NWC banning the development, testing, production, stockpiling, transfer, use or threat of use of nuclear weapons is the key abolition model advocated by the NGO community both in New Zealand and internationally. The concept of such a convention has been supported by New Zealand every year at the UN General Assembly since the introduction of the Model NWC to that forum in 1997. However, despite voting every year for the General Assembly resolution calling for the negotiation of a NWC,⁸ New Zealand has not actively promoted the NWC idea. The following is an examination of the political rationale behind New Zealand’s hesitancy to pursue an abolition treaty such as a NWC.

2. *A Nuclear Weapons Convention (NWC)*

Despite New Zealand’s support for a NWC in principle,⁹ politicians and officials supportive of the nuclear weapons elimination have seldom, if ever, engaged publicly with the NWC concept on its merits. According to non-proliferation expert Dr. Tanya Ogilvie-White, the reluctance of some non-NWS to unite behind the NWC is not based on its contents, which “*in principle are morally irreproachable,*” but on perceptions of the politics surrounding it.¹⁰

Senior government officials have given several reasons why New Zealand does not promote the NWC. First, they see it as an alternative to the NPT and therefore argue it will undermine that Treaty. Second, they argue that a NWC is unlikely ever to achieve universality, and as a result, will not bring about nuclear disarmament. Third, Ministers and officials assert that the time is not yet right to start discussions on a NWC. Finally, although not a position directly stated by Government officials, Ogilvie-White argues that voting behaviour at the UN General Assembly demonstrates that many Western nations, including New Zealand, believe India’s disarmament advocacy is duplicitous. According to this analysis, India’s attempts to associate itself with the NWC therefore undermine the Convention’s credibility as a disarmament framework.

3. *The NPT and a NWC*

“*The fundamental argument against the NWC,*” according to Geoff Randall, former Director of the Disarmament Division at the New Zealand Ministry of Foreign Affairs and Trade (MFAT), is that it would “*...confuse international law by appearing to supplant the*

⁷ James Acton and George Perkovich, *Abolishing Nuclear Weapons* (London: Routledge / International Institute for Strategic Studies; Adelphi Paper 396, 2008), 110-111. For a more concise exposition on this idea, see also George Perkovich, 'Taking Nuclear Disarmament Seriously', Paper presented at the conference, Achieving the Vision of a World Free of Nuclear Weapons, Oslo (26 - 27 February 2008).

⁸ For the most recent of these, see “*Follow-up to the Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons*”, A/RES/63/49 (02 December 2008).

⁹ Several senior New Zealand ministers, diplomats and MPs have supported or continue to support the further development of the NWC idea. These include former Prime Minister Jim Bolger (1990-1997), former Disarmament Ministers Matt Robson (1999-2002) and Marian Hobbs (2002-2005), ex-New Zealand Ambassador. Additionally, the New Zealand branch of the international network ‘Parliamentarians for Nuclear Non-Proliferation and Disarmament’ includes MPs from the Green, Labour, National and Progressive parties.

¹⁰ Tanya Ogilvie-White, "A Cloak for Proliferators? The Suspicions that Impede a Nuclear Weapons Convention," *Global Dialogue* 8 1-2, Special Issue "Nuclear Perils" (Winter/Spring 2006).

deficient NPT.” On this point, Caroline McDonald, the immediate past Director of the Disarmament Division, commented: “*Our weight has come down on the side of what can we achieve within the NPT rather than giving the impression of abandoning it and trying to find an alternative route. Like the NWC for example.*”¹¹

These comments demonstrate a key point that many policy makers and analysts either have yet to grasp or are ignoring. The lead authors of the Model NWC, as well as the countries that promote it, argue that the NWC is not designed to replace the NPT, but to strengthen and implement it.¹² Costa Rica, for example, which introduced the NWC to the UN General Assembly and NPT processes, argues that the Model NWC incorporates disarmament steps from the Final Documents of the 1995 and 2000 NPT Review Conferences (RevCons) and expands on them, “*...in order to explore the additional elements that would be required to achieve and maintain a nuclear-weapon-free world.*”¹³

The NPT is the foundation of the international legal regime that has thus far been relatively successful in preventing the spread of nuclear weapons. As noted by non-proliferation expert Dr. Maria Rost-Rublee, a lecturer in International Relations at Auckland University, despite the frequent warnings in the 1960s that the number of NWS could reach 20 within a few decades, “*...almost all states in the international system chose to forgo nuclear weapons, and in some cases, even gave them up.*”¹⁴ Rost-Rublee points out, however, that “*...containing “outlaw states” may become a lot more difficult if the NPT no longer exists to define what “outlaw state” means.*”¹⁵ Thus, while the NPT is an essential non-proliferation tool, the issue at stake is whether it is capable of facilitating complete nuclear disarmament. This paper contends that the NPT is not, in fact, capable of this task.

4. Universality of an Abolition Framework

Randall commented that a NWC would be unlikely to attract universal ratification, saying that even if most non-NWS agreed to it, some critical states (the NWS and those with the capacity to build nuclear weapons) might not and it would thus be flawed as “*...you can’t bind states to agreements to which they are not parties.*”¹⁶ This logic could equally be applied to the NPT. Without universal adherence, the NPT will never be a viable abolition framework. However, achieving universality of the NPT will be extremely unlikely, if not impossible.¹⁷

¹¹ Caroline McDonald and Geoff Randall, private interview with author. Wellington, 15 September 2006.

¹² For an excellent discussion of this point and of the politics surrounding the NPT/NWC relationship, see Alyn Ware, *A Nuclear Weapons Convention and the NPT: Is it a Diversion or an Enabler?* Aotearoa Lawyers for Peace (August, 2008). Available from http://www.disarmsecure.org/publications/papers/papers_by_author.html#papers_alyn

¹³ Costa Rica, *Model Nuclear Weapons Convention (NPT/CONF.2010/PC.I/WP.17)*, working paper presented to the NPT Preparatory Committee (1 May 2007). Available from <http://daccessdds.un.org/doc/UNDOC/GEN/N07/327/68/PDF/N0732768.pdf?OpenElement>.

¹⁴ Maria Rost-Rublee, "Taking Stock of the Nuclear Nonproliferation Regime: Using Social Psychology to Understand Regime Effectiveness," *International Studies Review* 10 (2008), 421.

¹⁵ Maria Rost-Rublee, "Taking Stock of the Nuclear Nonproliferation Regime", 445.

¹⁶ Caroline McDonald and Geoff Randall, private interview with author. Wellington (15 September 2006).

¹⁷ Conversely, some international legal scholars argue that, due to the precepts of customary international law, the near universal adherence to the NPT creates a universal obligation among the community of states to the commitments made under the NPT.

Crucially, the four states which are not members of the NPT at present¹⁸ all possess nuclear weapons. There are only two options to facilitate these states' ratification of the NPT and thus achieve its universality. The first is that all four states disarm unilaterally and accede to the NPT as non-NWS. The likelihood of this is virtually zero. At present, these non-NPT NWS are merely mimicking the policies of the original five NWS,¹⁹ whose strategic thinkers insist that nuclear weapons provide unique security benefits and are therefore 'essential' as a deterrent to would-be attackers. Therefore, as long as the original five NWS show no signs of a genuine, good faith commitment to a multilateral disarmament process aimed explicitly at the elimination of nuclear weapons, unilateral disarmament by the four non-NPT members will not occur.

The second option for achieving universality is to amend the NPT to recognise the four additional NWS and include them in its disarmament obligations and negotiations. Again, the likelihood of this is basically zero. The original NWS have veto rights on amendments to the treaty (as do all Members of the IAEA Board of Governors) and the non-NWS members of the NPT would vehemently oppose any further recognition of the new NWS based on their nuclear weapons capabilities. Furthermore, the recent U.S.-India nuclear deal has destroyed any possible incentive for India or Pakistan to join the NPT. India has vigorously opposed the NPT for decades on the grounds that it is a discriminatory document. Now, India has access to the most advanced civilian nuclear technologies in the world – a key 'carrot' of NPT membership – without having to accept any of the disarmament commitments imposed on NWS under the NPT.²⁰ Likewise, in response to the U.S.-India deal, Pakistan has recently concluded a nuclear cooperation agreement under which China will aid Pakistan in the construction of two new nuclear power plants.²¹ Again, this points to the conclusion that the NPT will never secure universal adherence from states.

Randall argues that for all its deficiencies, the NPT does bind the NWS to rules that they are obliged to meet and can be held accountable to. While the former is true, the latter is not. The NPT is incredibly vague about its disarmament commitments. Examination of the text of the Treaty reveals that its sections dealing with non-proliferation are eleven times longer than the brief section on disarmament. While the Treaty does bind the NWS to a generalised commitment to eliminate their nuclear weapons, it says *nothing* about mechanisms, processes or timeframes for achieving disarmament. As a result, there is nothing to hold the NWS accountable to in NPT meetings.²² Nevertheless, as Perkovich and Acton state, it is abundantly clear that the vast majority of the world's states believed that, in ratifying the NPT, they were achieving a sincere commitment by the NWS to eliminate nuclear weapons.²³ This perspective was affirmed in the unanimously-agreed section of the 1996 International Court of Justice (ICJ) Advisory Opinion, which stated, "*There exists an obligation to pursue in good faith and bring to a conclusion negotiations*

¹⁸ India, Israel, North Korea and Pakistan.

¹⁹ China, France, Russia, the U.K. and the U.S.

²⁰ Following the U.S. lead, France and Russia have quickly completed their own nuclear cooperation deals with India

²¹ See: Associated Press, *China to Help Build 2 Pakistan Nuclear Plants*, International Herald Tribune (18 October 2008). Available from <http://www.iht.com/articles/ap/2008/10/18/asia/AS-Pakistan-China-Nuclear.php>

²² The Bush Administration's response to commitments made at the 1995 and 2000 RevCons showed that, laudable though these commitments and the work done to achieve them were, they are all too easily dismissed as political, and not legally-binding, agreements.

²³ Acton and Perkovich, *Abolishing Nuclear Weapons*, 109.

*leading to nuclear disarmament in all its aspects under strict and effective international control.*²⁴

The fundamental argument in favour of a NWC, then, is that the NPT *is* deficient. If the goal of the NPT was to reach the heights of nuclear weapons elimination, its designers should have made realistic allowances for how this was to be achieved, including a mechanism for outlawing nuclear weapons. However, the NPT was not intended by its most powerful signatories to fulfil this purpose, as its name aptly testifies. Trying to force it into that role now is illogical and ineffective, as proven by 40 years of NWS opposition to, and effective obfuscation of, their disarmament commitments in the NPT review process. Without an accompanying, verifiable and irreversible abolition framework, the NPT will not, in and of itself, be capable of facilitating the elimination of nuclear weapons. Without good faith efforts by the NWS to move urgently towards nuclear weapons elimination, there is no motivation for the non-NWS to uphold their portion of the NPT bargain. In other words, without disarmament, the non-proliferation pillar of the Treaty will also fail. Multilateral discussions on an abolition treaty or corresponding set of mutually reinforcing agreements – including a universal prohibition mechanism - are the only way to approach the elimination of nuclear weapons effectively.

5. Incremental vs. Comprehensive Disarmament

The step-by-step ('incremental') approach to disarmament favoured by the NWS is unlikely ever to achieve nuclear weapons elimination. Due to the diverse range of nuclear capabilities and strategic concerns among the international community, any individual step towards nuclear disarmament will inevitably be perceived as favouring the interests of one or more NWS over the others, or over the non-NWS.²⁵ The inherent asymmetry of a step-by-step approach to disarmament therefore indicates there will never be universal political will for any single step, unless it is conducted within a comprehensive framework whereby the states disadvantaged by the current step have a legally-binding commitment that the imbalance it creates will be corrected in a subsequent step. It is for this reason, for example, that non-NPT NWS are very unlikely ever to ratify the CTBT as a stand-alone document. Such a move would necessarily disadvantage these states in comparison to the original NWS, as the testing programmes of the non-NPT NWS have not yet been sufficiently developed to allow for computer-simulated testing. This was one of the key technical reasons that France refused to sign the CTBT until after its final Pacific nuclear test series in the mid-1990s. Most probably, the newer NWS will only ratify the CTBT if it is linked to a comprehensive set of legally-binding disarmament commitments from the original NWS, to offset the perceived disadvantage that it imposes on the non-NPT NWS. This was the Indian position during negotiation of the CTBT. India's early promotion of the CTBT included proposals for both arms control and disarmament measures, as promoted by successive Indian Prime Ministers in the 1980s. The original NWS joined negotiations late in the piece after developing other forms of non-explosive testing (such as sub-critical tests, fusion experiments, high-density laser tests and super-computer simulations). After initially encouraging a ban on non-explosive as well as explosive testing methods, India eventually accepted compromise language on

²⁴ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, 8 July 1996. Available from <http://www.icj-cij.org/icjwww/i/decisions/isummaries/iunanaummary960708.htm>.

²⁵ For more detailed discussion of this point, see Alyn Ware, *A Nuclear Weapons Convention and the NPT*.

the issue due to the NWS' intransigence on the idea of banning 'all forms of testing'.²⁶ However, India finally baulked at the NWS' refusal to agree to a commitment to commencing disarmament negotiations following completion of the CTBT. When the Treaty was pushed through by the NWS without any language on disarmament commitments, India withdrew from negotiations, despairing of achieving any disarmament action from the NWS. Two years later it tested nuclear weapons.

A further danger associated with an incremental approach to nuclear disarmament is that disarmament progress under such a regime can be easily subverted or reversed at the whim of any NWS. The refusal of the Bush Administration at the 2005 NPT RevCon to recognise the disarmament commitments made at the 1995 and 2000 Conferences demonstrates this point. Good faith is not enough – it can become bad faith with a change of government. Any process that does not aim explicitly for universal abolition will inevitably revert to an unsustainable incremental approach to disarmament. Such an approach has been championed by the NWS for 40 years, and has led to no serious consideration of elimination, thus allowing them the 'wiggle room'²⁷ to continue claiming they have the right to possess nuclear weapons. The only means of ensuring sustainable, permanent progress in disarmament is to promote universal adherence to a legally binding, irreversible, verifiable abolition treaty or framework.

6. *India and the Model NWC*

According to Ogilvie-White, some Western states (she does not clarify which ones) that are genuinely committed to the idea of nuclear weapons elimination claim the NWC idea is undermined by its being too closely associated with Indian (and more recently, Iranian) nuclear diplomacy.²⁸ Ogilvie-White argues that such Western states believe the NWC is being used as a 'moral shield' by India, to minimise international political pressure, allowing it greater scope to develop nuclear weapons unhindered. If such an analysis is correct, it would appear remarkable that India's 'duplicity' has not stopped France, Russia or the U.S., who are all usually highly sensitive to proliferation issues, from rewarding it with sales of advanced nuclear technology. Furthermore, it seems likely that if India were in fact loudly championing the cause of a NWC, the Bush Administration, with its allergy to the word disarmament, would not have favoured India with privileged nuclear trading partner.

Based on the historical facts related to the development and promotion of the NWC idea, it is difficult to see a rational basis for the NWC's purported association with India or Iran. Neither state coined the term '*nuclear weapons convention*', nor developed the concept of a comprehensive convention outlawing the development, testing, production, stockpiling, transfer, use and threat of use of nuclear weapons. Likewise, neither country was involved in the creation of the Model NWC, nor its introduction to the UN or NPT forums.²⁹ The UN resolution which has set the framework for a NWC was first submitted

²⁶ Practically speaking, at any rate, a ban on non-explosive testing is very difficult to verify.

²⁷ Vaughn P. Shannon, "Norms Are What States Make of Them: the Political Psychology of Norm Violation," *International Studies Quarterly* 44 (2000), 293-294.

²⁸ Tanya Ogilvie-White, "A Cloak for Proliferators? The Suspicions that Impede a Nuclear Weapons Convention," *Global Dialogue* 8, 1-2, Special Issue: "Nuclear Perils" (Winter/Spring 2006).

²⁹ In 1988, India submitted to the UN the Rajiv Gandhi Plan for the Abolition of Nuclear Weapons and the Achievement of a Non-Violent World Order. This included general provisions for nuclear disarmament and development of a security system not reliant on nuclear deterrence. India also submitted a more

by Malaysia in 1996 in order to respond to and implement the 1996 ICJ Advisory Opinion, which is a core of New Zealand and NAC disarmament advocacy. This resolution has been adopted by the UNGA every year since then and is co-sponsored by a range of countries including many of those that participated in the ICJ case from the Non-Aligned Movement (NAM), the Pacific, the West and Latin American countries. As Ware points out, “Yes, [India and Iran] vote in favour [of the Malaysian resolution], but so do 123 other countries.”³⁰

Malaysia’s 1996 resolution was followed in 1997 by a Model NWC, drafted by international NGO experts and introduced to the UNGA by Costa Rica. A revised version was jointly submitted to the NPT and UNGA in 2007 by Costa Rica and Malaysia. Nevertheless, Ogilvie-White insists that India has claimed to be the father of the NWC concept since the mid-1990s.³¹ Conversely, after 17 consecutive years of attendance at the UNGA, Ware states: “I have never seen India arguing at the UN that they are the father of the NWC.”³²

Regardless of these facts, Ogilvie-White writes, “Consequently, the concept of an NWC, which in principle is irreproachable and should be held up as a moral beacon, has become tainted by its association with states that have a reputation for diplomatic duplicity.”³³ This is reflected in patterns of support for the NWC among the NAC. Although all NAC members support the NWC in principle and vote for the yearly Malaysian UNGA resolution calling for negotiations on a NWC, the Western NAC states (plus South Africa, a latecomer to the NAM in 1994) have blocked its promotion by the Coalition and do not co-sponsor the Malaysian resolution. Conversely, the NAM members of the NAC do co-sponsor the NWC resolution.

Seemingly then, the New Zealand Government resists promoting the NWC idea due to the perception that such promotion would mean associating itself with India’s policy line. Such an assessment is supported by the fact that New Zealand votes against the yearly resolution introduced by India entitled ‘Convention on the Prohibition of the Use of Nuclear Weapons’, which calls for the outlawing of the use or threat of use of nuclear weapons, drawing precedence from the Final Document of the 1st Special Session of the UN General Assembly devoted to disarmament. Yet India’s self-interested behaviour in disarmament negotiations merely reflects that of the NWS, whose duplicitous diplomacy has been deeply detrimental in many disarmament forums over many decades. As Lange once said, “The world of international diplomacy is founded on hypocrisy and deeply rooted in deceit, and there are none better at practising it than India and the U.S.”³⁴

specific resolution to the UN proclaiming the illegality of the threat or use of nuclear weapons and attached a draft treaty on the prohibition of use. While these were significant initiatives, they were not the basis for the subsequent development or promotion of a NWC by international civil society or the UN. The most obvious connection between India, Iran and the term ‘convention’ is the yearly resolution introduced by India and sponsored by Iran calling for negotiation of a convention banning the threat or use of nuclear weapons, which draws precedent from the Final Document of the Second Special Session on Disarmament of the General Assembly in 1978. See for example “*Convention on the Prohibition of the Use of Nuclear Weapons*”: A/RES/63/75 (2 December 2008). This resolution, however, leaves aside the issue of outlawing the development, testing, production, stockpiling or transfer of nuclear weapons.

³⁰ Alyn Ware, private correspondence with author (9 November 2008).

³¹ Ogilvie-White, "A Cloak for Proliferators."

³² Alyn Ware, Private correspondence with author (9 November 2008).

³³ Ogilvie-White, "A Cloak for Proliferators."

³⁴ Hank Schouten, 'India’s Nuclear Tests Inevitable, Says Lange,' *Evening Post*, Wellington (18 May 1998).

The U.S., for example, has yet to ratify the CTBT and continues to conduct ‘sub-critical’ and simulated nuclear weapons tests. Despite insisting vehemently in January 2000 that its National Missile Defence programme posed no threat to the Anti-Ballistic Missile Treaty,³⁵ the U.S. withdrew from the Treaty in 2002, demonstrating a lack of good faith or credibility.³⁶ It has consistently undermined international disarmament negotiations, as evidenced by its withdrawal from negotiations on a biological weapons convention inspection protocol after six and a half years of negotiations;³⁷ its obstructive behaviour during the multilateral review of the Millennium Development Goals in 2005;³⁸ its reservation to the Chemical Weapons Convention (CWC) refusing to allow international verification of chemical samples taken on U.S. soil, along with its undermining of the independence of the CWC secretariat;³⁹ and its refusal to sign the anti personnel and cluster munitions conventions. For its part, the UK’s duplicitous statements regarding its illegal plans for its Trident nuclear force also show a lack of good faith in nuclear matters. Meanwhile, in contravention of their international legal obligations, France, Russia and the U.S. have expanded their nuclear-use policies, and China is expanding its nuclear arsenal. Moreover, the NWS have shown equally disingenuous behaviour regarding conventional weapons, citing their proliferation as supposed justification for the lack of progress on nuclear disarmament. This is both illogical and duplicitous; in 2007, the top five conventional arms exporters in the world were all NWS; the U.S., Russia, France, the UK and Israel.⁴⁰

If responses to duplicitous disarmament diplomacy were even-handed, it would not be possible to collaborate with any of the NWS on an abolition framework. If France, the UK or the U.S., for example, were to begin discussing the feasibility of a NWC, should disarmament advocates then say that they could not explore the idea with them? Clearly, the answer is no. Similarly, neither should they reject discussion with India. The reality is that India is now a NWS. Thus, while genuine disarmament advocates wish to avoid reinforcing perceptions about the value of nuclear weapons by conferring additional status on India because of its nuclear arsenal, Indian cooperation will be essential in the development and implementation of any plan for nuclear abolition. Accordingly, creative ways of incorporating India into abolition discussions *must* be found. Conversely, freezing it out of abolition talks is counterproductive and again, plays into the hands of the NWS.

7. *The Right Time for a Nuclear Abolition Treaty?*

It is erroneous and counterproductive to suggest that there will ‘one day’ be a better time to explore an abolition framework. In 1997, then-New Zealand Foreign Minister, Don

³⁵ Middle Powers Initiative, *Report from the Atlanta Consultation on the Future of the Non-Proliferation Treaty* Atlanta, Georgia: Carter Center / Middle Powers Initiative (26-27 January 2000).

³⁶ BBC, *America Withdraws from ABM Treaty* (13 December 2001). Available from <http://news.bbc.co.uk/1/hi/world/americas/1707812.stm>.

³⁷ Jonathan B. Tucker, "Strengthening the BWC: A Way Forward," *Disarmament Diplomacy*, 78 (July/August 2004).

³⁸ Julian Borger, 'US Cannot Deter Nuclear Upstarts' *The Guardian Weekly*, London (18 October 2006)

³⁹ Bob Rigg, *The Evisceration of a Disarmament Body* (27 April 2007). Available from http://www.opendemocracy.net/globalization-wmd/multilateral_disarmament_4567.jsp

⁴⁰ This is measured in US dollar value of exports. See: Paul Holtom, Mark Bromley, and Pieter D Wezeman, 'International Arms Transfers,' in *SIPRI Yearbook 2008: Armaments, Disarmament and International Security: Summary* (Stockholm International Peace Research Institute, 2008), 15.

McKinnon, wrote that the government did not favour pressing for a NWC “*at this stage*”, as it “*would inevitably produce a stalemate....The last thing we want in the NPT context is a paralysis like that afflicting the CD.*”⁴¹ Despite the collapse of the 2005 NPT RevCon and the failure of the NWS to fulfil the great majority of disarmament commitments made at the 1995 and 2000 RevCons, politicians and officials are still using this same logic more than a decade later.⁴² Proliferation risks are increasing and will continue to do so without immediate progress towards nuclear abolition. As proliferation risks increase, they progressively magnify the complexity of any potential abolition framework. Action must be taken now to begin to institutionalise a legally-binding abolition framework while it is still possible.

If humanity is to achieve its stated goal of eliminating nuclear weapons, the assumed security and political value of these weapons must be reconsidered; military and political leaders must come to see them as a security liability, rather than an asset. Given the strategic irrelevance of nuclear weapons in a contemporary environment characterised by non-traditional and non-state security threats such as climate change, human rights crises and international terrorism, such a paradigm shift is entirely possible. Encouragingly, there has been much positive movement in this direction recently.

A new wave of international momentum is building around the issue of nuclear disarmament. The relative success of the 2009 NPT PrepCom meeting reflected this fact; delegates agreed to an agenda for the 2010 RevCon only three days into the PrepCom. In contrast, substantive discussions at the failed 2005 NPT RevCon did not begin until three-quarters of the month-long Conference was over, in large part due to lack of agreement on an agenda. More positive news came in late April, with the announcement of a Programme of Action for the U.N. Conference on Disarmament, following almost 13 years of stalemate due to disagreement over an agenda.

Developments in the US have been crucial to this turn-around in events. Following 8 years of resistance to disarmament under the Bush administration, President Barack Obama’s has made good on his election promise of making the elimination of nuclear weapons a key foreign policy goal for the U.S. This strong push from the U.S. President has opened a rare window of opportunity for principled advocates such as New Zealand to push hard for exploration of new, creative nuclear disarmament initiatives.

8. Policy Recommendations

Three policy initiatives are recommended through which New Zealand could best utilise its moral authority in the realm of nuclear politics to advance nuclear disarmament. First, it should initiate a project to engage governmental, academic, military, and NGO experts from like minded states in track II exploration of an abolition framework to compliment the NPT, using the NWC as a starting point for the task. As a means of signalling its intent, New Zealand could move to sponsor the yearly Malaysian resolution calling for negotiations on a NWC. Second, New Zealand should publicly express support for the U.N. Secretary General’s 5-Point Plan for Nuclear Disarmament, announced in October 2008. Third, New Zealand should increase its promotion of NWFZs by promulgating the New Zealand Nuclear Free Zone Act as a model for ‘full-scope’ national legislation

⁴¹ Don McKinnon, private correspondence with Susanne Menzies-Culling (2 April 1997).

⁴² McDonald, for example, said, “*We felt that there was some danger in holding up plan b before plan A was exhausted. And despite the outcome, we’re still not convinced that plan A [the NPT] is exhausted.*” Caroline McDonald and Geoff Randall, private interview with author. Wellington (15 September 2006).

banning nuclear weapons, and by helping to establish a South Pacific Nuclear Free Zone Secretariat mandated to facilitate greater collaboration between regional NWFZ.

Track II Exploration of a NWC

If ever there was a time for New Zealand to push for a nuclear weapons abolition treaty, that time is now. The most common reason cited by opponents of such a policy is that it would hinder New Zealand's chances of securing a free-trade deal with the U.S. Yet the U.S. is currently driving strongly for the elimination of nuclear weapons. Promotion or exploration of a potential framework for achieving that goal is therefore in line with U.S. national security interests, as viewed by the White House. New Zealand should demonstrate its strong desire to push the disarmament agenda forward by moving to sponsor the yearly Malaysian resolution calling for negotiations on a NWC.

New Zealand should take a leading role in convening a study group of political, military, scientific and NGO experts to explore the possibilities for an abolition process, based on the Model NWC as a starting point for discussions. It is in the interests of all involved to include NGO experts in such an undertaking. Having drafted, then promoted the Model NWC for over a decade, many already have extensive experience in considering practical abolition issues. Their inclusion in such an undertaking is supported by Perkovich's recommendations and would address an omission in the makeup of the Australia-Japan sponsored International Commission on Nuclear Non-Proliferation and Disarmament (ICNND). Such a bold move would allow genuinely committed diplomats and politicians to develop a sense of ownership of the abolition process, which in turn would increase their personal motivation and their likelihood of committing personal time, energy and political capital to it.

Collaboration partners could most effectively be sought from a range of sources: firstly, countries that, alongside New Zealand, took a stance of principled opposition to the recent U.S.-India nuclear deal (such as Ireland, Norway or Austria, *inter alia*). Secondly, the NAC and 7NI groupings present a potentially fruitful source of collaborators. The membership of South Africa in both coalitions would help to facilitate such a venture. 7NI member Norway may also be supportive given its work with the UK and UK-based NGO *VERTIC* on disarmament verification. Finally, those states who co-sponsored the 2007 and 2008 nuclear-weapons-deal-terminating resolutions with New Zealand in the UNGA might be supportive of NWC discussions. In terms of building political will within potential collaborator states, the international network of Parliamentarians for Nuclear Non-proliferation and Disarmament (PNND)⁴³ is a good place to start, where chapters of PNND exist in any of the aforementioned countries. In addition, the newly-created Aotearoa-New Zealand Peace and Conflict Studies Centre at Otago University could be approached to host such a meeting or be involved in related research.⁴⁴

While discussions on a NWC framework would likely be opposed by the NWS at first, the idea that this undermines the value of the undertaking is unfounded. Merely

⁴³ See www.pnnd.org for details.

⁴⁴ The Director of the Centre is Kevin Clements, author of a comprehensive history of New Zealand's path to nuclear freedom and Director of the Australian Centre for Peace and Conflict Studies at the University of Queensland from 2003-2008. Clements also authored a comprehensive book covering New Zealand's journey to nuclear freedom. See: Kevin P. Clements, *Back from the Brink: the Creation of a Nuclear-Free New Zealand* (Wellington: Allen & Unwin/Port Nicholson Press, 1988).

discussing an abolition framework is a powerful catalyst for change, forcing the NWS to defend their indefensible policies in public once more.⁴⁵ In 1984, New Zealand's nuclear free policy did almost nothing to change the international balance of power. New Zealand was criticised by international leaders, who argued the policy "*...has not reduced by one the number of nuclear weapons in the world.*"⁴⁶ Nevertheless, despite leaving the entire Western nuclear deterrent intact, from one day to the next New Zealand was said to have drastically altered the international strategic balance. Such is the power of ideas.

The conditionality applied to all negotiations in the CD – in effect, a trade off of interests among the NWS - has stymied any discussion nuclear weapons abolition in that forum. The only viable means of commencing discussions on the abolition of nuclear weapons is to circumvent the obstructive behaviour of the NWS and the consensus rule of the CD by beginning discussions on an abolition framework outside of the CD. Such an approach has proved successful in completing Conventions banning landmines and cluster munitions.

Support for the UN Secretary General's 5-Point Plan for Nuclear Disarmament

The Secretary General's strong advocacy of nuclear disarmament can only be maintained if sufficient political will is shown to support it. His 5-Point Plan is aligned with New Zealand's current positions on nuclear disarmament and non-proliferation. The New Zealand Government should write to the Secretary General to congratulate him on his progressive advocacy of nuclear disarmament and express its support of his plan for nuclear disarmament.

Creation of a Secretariat for the South Pacific Nuclear Free Zone

In 1980s New Zealand, the creation of local-area NWFZ was an essential means of establishing and entrenching the norm of nuclear disarmament. They were a symbolic way of quantifying and publicising the widespread opposition to nuclear weapons. As in New Zealand, at the international level, the significance of NWFZ is not just in the strategic limitations they place on NWS, it is in their symbolic rejection of nuclear weapons, a point reaffirmed at the 1995 NPT RevCon and repeatedly by the NAC.⁴⁷ As Reitzig notes, New Zealand's nuclear free law "*...was designed not only to keep nuclear arms and nuclear propulsion reactors away from New Zealand but also to make a contribution to the international nuclear disarmament agenda.*"⁴⁸ Two specific actions are recommended with regard to the promotion of NWFZs.

⁴⁵ This point was clearly evident in the ICJ Nuclear Weapons Advisory Case. The NWS knew a strong statement of illegality would deeply undermine the purported legitimacy of their nuclear arsenal and policies. As a result, despite not recognising the jurisdiction of the ICJ, both France and the US, among other NWS, felt obliged to participate by presenting evidence to the Court. The same logic applies to the NWC and is why the NWS are so opposed to it.

⁴⁶ David Lange, 'Nuclear Weapons Are Immoral.' Case presented at the Oxford Union Debate, Oxford University (1 March 1985).

⁴⁷ Non-Proliferation Treaty Review and Extension Conference, *Final Document Part I: Organization and Work of the Conference (NPT/CONF.1995/32 (Part I))*, 10.; New Agenda Coalition, *Towards a Nuclear Weapons Free World: the Need for a New Agenda*, (A/53/138). See:

⁴⁸ Andrea Reitzig, "In Defiance of Nuclear Deterrence: Anti-Nuclear New Zealand after Two Decades," *Medicine, Conflict and Survival* 22, 2 (April – June 2006), 136.

First, New Zealand should promote the 1987 Nuclear Free Zone Act as a model for ‘full-scope’ nuclear disarmament and arms control laws. This would interest nations looking to embed their regional NWFZ treaty obligations in national legislation, or to develop single-state NWFZ to strengthen the international norm against nuclear weapons, as Mongolia has done.⁴⁹ Second, New Zealand should pool resources with other States Parties to the South Pacific Nuclear Free Zone Treaty⁵⁰ and create a small, permanent secretariat, mandated to develop and enhance ties with other NWFZ. This would compliment the work of the analogous Latin American Secretariat based in Mexico,⁵¹ support the ongoing efforts of NWFZ States Parties to create a powerful coalition of states in support of a progressive nuclear disarmament agenda, and facilitate achievement of New Zealand’s long term goal of a Southern Hemisphere NWFZ.

9. Conclusion

Humanity stands at the crossroads of crisis and opportunity. The choices we make in the next few years will determine the fate of humanity for many generations to come. On the one hand, we are blessed with an unparalleled opportunity to move decisively towards the peace and security of a world free of nuclear weapons. On the other hand, if urgent action is not taken on a comprehensive disarmament programme, we face a wave of proliferation which will almost inevitably result in nuclear catastrophe. All disarmament advocates, be they governmental, scientific, military, academic, or non-governmental, must come together to demand immediate action for nuclear weapons abolition. We must act now, before this brief window of opportunity closes.

⁴⁹ Practical action to support this idea could be as simple as posting a PDF copy of the Nuclear Free Zone Act on the MFAT Disarmament Division website and advertising the fact in track I and II diplomatic meetings.

⁵⁰ Australia, Cook Islands, Fiji, Kiribati, Nauru, New Zealand, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

⁵¹ The *Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean* (OPANAL). <http://www.opanal.org/index-i.html>