

# Banning nuclear weapons: responses to ten criticisms

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The following document sets out some responses to ten criticisms of the notion that negotiations could be commenced, without delay, on a new international treaty to prohibit nuclear weapons, even without the participation of nuclear-armed states. It aims to promote discussion on this proposed approach, including how it may work with other initiatives and form the basis for collective work by civil society, international organisations and states committed to overcoming the current impasse in work on nuclear weapons.

In the context of this paper, the idea of a ban on nuclear weapons refers to an international treaty establishing a comprehensive prohibition on the use, possession, stockpiling, production, development, deployment and transfer of nuclear weapons as well as a prohibition on assistance with these acts. Such a treaty could also require the elimination of nuclear weapons within a specified timeframe, for those states with nuclear weapons that join. The process for negotiations should be open and inclusive, seeking common agreement by all negotiating states, but the treaty can and should be negotiated without the nuclear-armed states if they decide not to participate or attempt to thwart agreement.

A window of opportunity to ban nuclear weapons has opened. Signs of this include the unprecedented level of engagement of the Red Cross and Red Crescent Movement, a renewed enthusiasm within civil society characterised by the International Campaign to Abolish Nuclear Weapons (ICAN) and an increasing willingness amongst non-nuclear-armed states to consider alternatives to the status quo of international discussions dominated by nuclear-armed states. This is coupled with growing recognition of the full range of consequences of use of nuclear weapons, and of the spectrum of ways in which this could occur – whether intentionally or unintentionally. Taken together, there is a sense of renewed urgency in many quarters for progress on nuclear disarmament. We may not have such an opportunity for action again once this window of opportunity closes.

## 1. Talk of humanitarian impact and a ban treaty are a distraction from existing work.

When they announced their decision not to participate in the Oslo Conference on the humanitarian impact of nuclear weapons, the Nuclear Non-Proliferation Treaty (NPT) nuclear-armed states said that such discussions risked distracting from the important work that is already going on. The question is, from what exactly are we being distracted? These states, and some of their nuclear-dependent counterparts, claim that the “practical step-by-step approach” is the most effective way to reduce nuclear dangers and increase stability, and ultimately to achieve nuclear disarmament. However, there are serious challenges associated with this approach, as will be shown in section 2 below. More broadly, the assertion that addressing humanitarian consequences or taking new approaches to prevent them is a distraction is inconsistent with the legitimate interest, agency, and obligation that all states have to achieve nuclear disarmament.

Addressing the humanitarian consequences of nuclear weapons is fully consistent with the NPT and its 2010 action plan<sup>1</sup>

- × The humanitarian concern to prohibit nuclear weapons is embedded in the NPT itself, the preamble of which calls for “every effort

to avert the danger” of nuclear war and to “safeguard the security of peoples”.

- × In 2010, all states parties agreed to an outcome document that recognised the catastrophic humanitarian concerns of any use of nuclear weapons.

Considering the humanitarian consequences of nuclear weapons is only a distraction if you want to keep nuclear weapons

- × Those states feeling ‘distracted’ might be concerned that a focus on the humanitarian consequences and a push for a treaty banning nuclear weapons, even without their participation, will put them under pressure to take concrete steps and to move away from a blinding dependence on nuclear weapons.
- × The more opposition such states put up to the humanitarian initiative to ban nuclear weapons, the more they validate the approach as something they acknowledge will have a meaningful impact on their behaviour.
- × Ultimately, arguing that banning nuclear weapons is a ‘distraction’ is simply a rhetorical device used by states that are scared that their current practice will be exposed as illegitimate.
- × The question states should ask themselves is whether or not they wish to endorse the possible use of nuclear weapons, either by themselves or on their behalf.

Current efforts on nuclear disarmament are insufficient

- × Existing work on nuclear weapons is dominated by the nuclear-armed states who behave in a way that, in practice, helps to maintain the status quo rather than promote change in the direction of elimination.
- × The limited reductions that have taken place have largely been about “retiring” warheads (many of which are not released for dismantlement) and are being undermined by the ongoing efforts to upgrade and modernise nuclear arsenals.
- × The pursuit of further arsenal reductions has been undermined by the development of ballistic missile defence systems and Prompt Global Strike capabilities.
- × Against this background it would seem unreasonable to suggest that there is no room for different approaches or new strategies in pursuit of nuclear disarmament.

## 2. We should focus on the step-by-step process that is more realistic and practical.

The idea of a step-by-step process towards the elimination of nuclear weapons is not a problem per se. Indeed the idea of negotiating a treaty banning nuclear weapons, even without the nuclear-armed states should be seen as one step in a process. Elimination will require further steps at the national and international levels.

Insistence on a step-by-step process as the only way forward can create blockages

- × The step-by-step approach becomes problematic when it is used by states to prevent progress. Different states have a preference for different steps. Requiring agreement on this step-by-step approach before anything can get started is precisely what has caused over a decade and a half of deadlock and inaction.

- × Article VI of the NPT, currently the only legally-binding commitment for negotiation on nuclear disarmament, does not specify a step-by-step approach. NPT outcome documents from 1995, 2000, and 2010 outline a variety of steps but as the principles and objectives outlined in 1995 make clear, these are not necessarily exhaustive or sequential lists.<sup>2</sup>
- × Most steps that have been agreed to over the past twenty years have not been implemented and the actions of some nuclear-armed states have actually resulted in steps backwards.
- × Rather than repeating the same approach to try to force a grand, comprehensive step-by-step solution, it would seem reasonable to try some new approaches, including the idea of self-selecting groups embarking on negotiations in areas where they believe progress can be made.

A ban treaty can work alongside and support other efforts

- × Even if one were to accept that existing efforts are on the right track, efforts to negotiate a ban treaty should be seen as complementary, not contradictory.
- × Embarking on a process to develop a treaty banning nuclear weapons would not preclude work continuing on other aspects of the established disarmament and arms control agenda such as a fissile material ban treaty or work on the prevention of an arms race in outer space.
- × Indeed, negotiations on a treaty banning nuclear weapons could even help to unlock some of the impasses that have appeared so intractable in the recent past by motivating states to take action and demonstrating that progress is in fact possible.
- × A ban treaty could facilitate disarmament in a domestic political context, by helping political leaders keen on elimination to overcome pressures from industrial and commercial interests that are heavily invested in nuclear weapons.
- × The New Agenda Coalition, among others, has talked about the need to establish a set of mutually reinforcing instruments.
- × In the non-proliferation arena, nuclear-armed and other states have undertaken several initiatives parallel to the NPT without suggesting that these initiatives undermine the Treaty or the implementation of the action plan.

## 3. Such a ban treaty would be impossible to achieve.

Why let nuclear-armed (or dependent) states block a ban treaty?

- × Such a treaty would only be impossible if states insist that the nuclear-armed states be allowed to block it.
- × If states wish to agree on a treaty to establish a clear and comprehensive legal prohibition on nuclear weapons, they can do so. Many international agreements have been initiated in this way by a group of like-minded states. The Arms Trade Treaty was considered impossible when first proposed in the 1990s, but has won support from the majority of nations, including major arms exporters.

Prohibitions already exist in the Nuclear Weapon Free Zones (NWFZs), so there’s a basis for a ban

- × If it is seen as coalescing the prohibitions set out in the various NWFZs, such a treaty is not hard to envisage at all. Already 115

states have prohibited nuclear weapons in their regions, even if in slightly different ways.

- × The treaties establishing the nuclear weapon free zones, while distinct in their specific formulations and provisions, share an ambition to extend the prohibition of nuclear weapons beyond their own regions.
- × Negotiations on a ban treaty would not need to be long and drawn out; a prohibition treaty could be relatively straightforward. What's required are political leadership and a confidence that such a treaty would be a meaningful addition to the tapestry of international law.

#### 4. A ban treaty would be meaningless without the nuclear-armed states.

International agreements are what states make of them

- × The meaning of international agreements is constructed by the states that participate in them and the way that other states react and modify their behaviour even if they remain formally outside them.
- × It is impossible to predict precisely how certain states will modify their behaviour in relation to a new treaty banning nuclear weapons. Past experience in the creation of new international norms, though, strongly suggests a ban treaty would affect the behaviour even of states not joining the treaty, for reasons explained below.
- × In terms of influencing the elimination of nuclear weapons, which will need to be taken forward by the nuclear-armed states, the ban treaty should be conceived as creating the conditions for disarmament, not solely as an end in itself.

The power of a new legal standard

- × A clear legal standard rejecting nuclear weapons would be a significant addition to the body of international law on weapons.
- × It would require governments to decide whether they want to continue to support nuclear weapons or reject them entirely. The existence of an international treaty that asks this question would make a significant difference in international and national debates.
- × It would likely require states to meet on a regular basis, providing a forum for states parties and observers to review progress on implementing and promoting the provisions and norms that the ban treaty seeks to establish.

A ban would affect states and civil society

- × In this way, a ban treaty would provide a very powerful tool for civil society, parliaments and media to put pressure on governments' policies on nuclear weapons.
- × A ban treaty would also have an impact on military cooperation and commercial activities, making nuclear weapons an unwanted complication, rather than a desirable element of national security.
- × In the end, if a group of states believes that a ban treaty is the right action to pursue, this group should not be held back by a small group of states.

#### 5. Simply banning nuclear weapons ignores the security concerns of certain states.

Security can be constructed without relying on nuclear weapons

- × Different states have different security situations and concerns and perceive security in different ways. Some have tense and even violent relations with their neighbours, while others are surrounded by allies.
- × The vast majority of states, including some that consider themselves to be in precarious security situations, reject the idea that nuclear weapons make them or anyone else safer.
- × States in military alliances with nuclear-armed states will need to confront the ways in which their obligations under the alliance can be reconciled with the ban treaty. Such processes should support efforts to reduce and eventually eliminate the role of nuclear weapons within such military alliances, something that is already a priority for states such as Norway.
- × Human history is replete with instances of misjudgement, miscalculation and misunderstanding. Against this background it is at best naïve and at worst reckless to consider that a security doctrine based on threatening the use of weapons of mass destruction can operate perfectly indefinitely – as it would have to in order to avoid catastrophic humanitarian consequences from deliberate or inadvertent detonation of nuclear weapons.

Eliminating nuclear weapons would make everyone safer

- × In an increasingly interdependent world, the security of people in one country is often bound up with the security of people in other countries and of international security more broadly.
- × Eliminating nuclear weapons is the only way to ensure they are never used. Even the most powerful nuclear-armed state, the US, has acknowledged that until nuclear weapons have been eliminated the world will never be truly safe.
- × The prohibition of nuclear weapons will reduce their perceived political value and set up an additional barrier, politically and legally, to their acquisition by other states, thereby strengthening non-proliferation.

A ban would move us away from a notion of security based on nuclear weapons

- × A ban treaty would orient the world in the direction of elimination and in this way it would be contributing to a safer world for all, not simply those states who continue to perceive a security benefit from the potential use of weapons of mass destruction.
- × A ban treaty could also acknowledge the challenges in moving from a nuclear-dependent status to a nuclear weapons free status. For example states joining the treaty could be required to set out a plan for removing any role for nuclear weapons in their security doctrine within a set timeframe.
- × The military utility of nuclear weapons is increasingly questionable for practical as well as moral reasons. For most states, the most important perceived security threats are not likely to be mitigated by the threat of use or use of nuclear weapons.

## 6. Pursuing a ban without the nuclear-armed states would let them off the hook.

The nuclear-armed and dependent states recognise the power of a ban

- × Many nuclear-armed states, as well as other nuclear-dependent states are critical of the ban treaty approach because they recognise the stigmatising impact it would have. Ultimately, a legal ban is going to affect their national policies and how they are seen internationally, so they perceive an interest in stopping it.
- × This suggests that such a treaty would not be letting those states off the hook. On the contrary, it would increase pressure on the nuclear-armed and nuclear-dependent states and provide them with more questions to answer if they choose to remain outside the international legal norm prohibiting nuclear weapons.

A ban would increase, not decrease pressure on nuclear-armed states

- × Banning nuclear weapons would add pressure, incentives, and guidance for nuclear-armed states' compliance with article VI of the NPT. It would do so principally by stigmatizing nuclear weapons, facilitating financial divestment from nuclear weapons production, and creating a framework for the pursuit of elimination.
- × Very importantly, a ban treaty would not release any state from its existing obligations, including those under the NPT, or indeed those established within customary international law.
- × Recognising that consultations amongst nuclear-armed states are likely to take place anyway, a ban treaty should be presented as a way to move forward transparently and inclusively.

## 7. We should focus our efforts on the Model Nuclear Weapon Convention.

The ban treaty pursues the same goals in a different way

- × The Model Nuclear Weapon Convention introduced to the UN General Assembly by Costa Rica and Malaysia is an important document that shows how it is possible to overcome the complex challenges involved in multilateral nuclear disarmament.
- × Recognising that some governmental calls for negotiations on a nuclear weapon convention have envisaged such negotiations within the Conference on Disarmament (CD), there could be significant benefits to negotiating a ban treaty in another forum, either existing or ad hoc, because of long-standing deadlock in the CD.
- × In any case, the work that has been done to draft the Model Nuclear Weapon Convention will be useful once nuclear-armed states reach the point where they begin elimination of their weapons in earnest.
- × At the same time, a ban treaty could precede this elimination work, in the same way as the prohibition of other weapons (chemical, biological, landmines, cluster munitions) preceded their elimination.

Prohibition often precedes elimination

- × This is not to say that dealing with nuclear weapons will be the same as dealing with other weapons, whose eventual prohibition

treaties also included provisions on elimination. However, the principle of prohibition preceding elimination remains valid. Past precedent includes chemical weapons with the 1925 Geneva Protocol establishing the prohibition while the 1993 treaty set out the process for elimination.

- × A ban treaty would not need to pre-determine the exact mechanisms and provisions by which the nuclear-armed states would undertake the process of elimination. This could be left to them to set out transparently as part of their accession to the treaty.

## 8. A ban treaty would undermine the NPT.

The NPT is already under threat because of the behaviour of the nuclear-armed states

- × The way that the so-called nuclear weapon states within the NPT have dominated proceedings in recent history has undermined the NPT. The lopsided focus on strengthening non-proliferation mechanisms rather than disarmament, and the lack of implementation of disarmament commitments from 1995, 2000, and 2010, has eroded the credibility of the NPT 'nuclear weapon states'.
- × A perception that the treaty establishes a regime of nuclear weapons 'haves and have nots' has also hampered progress on the elimination of nuclear weapons.

The NPT should be strengthened and a ban would help

- × The NPT provides a number of benefits in terms of non-proliferation, safeguards and so on. In the face of its many challenges, the NPT needs to be strengthened not undermined.
- × Rather than working counter to the NPT, a ban treaty would help achieve the NPT's objectives of nuclear weapons elimination.
- × The ban treaty would also strengthen non-proliferation by further challenging the legal, political and moral basis for possessing nuclear weapons.
- × To join the ban treaty states would need to adopt the highest level of international standards on nuclear weapons, moving beyond the obligations set out in the NPT, not backwards from them.
- × The non-nuclear-armed states, often marginalised in the NPT context, can take responsibility and make a significant contribution by banning nuclear weapons through a new treaty without great cost to themselves. Such a treaty would be a contribution to the implementation of Article VI of the NPT, which calls for all states to engage in good faith multilateral negotiations to achieve a cessation of the arms race and nuclear disarmament.

## 9. It would be better to pursue a ban on use of nuclear weapons.

A ban on use would be no easier than a comprehensive ban

- × It has been suggested that a ban on the use of nuclear weapons would be more achievable than a comprehensive ban treaty because it would not affect possession of the weapons and would focus on the key IHL concern, which is the impact of use.
- × But such a ban might not be that much easier to achieve than a comprehensive ban. It is likely to face strong opposition from the nuclear-armed states as well as nuclear-dependent states for

whom ‘deterrence’ requires a credible threat of use.

- × This was made clear by nuclear-armed states during the 1996 case on nuclear weapons at the International Court of Justice.

A ban on use would have less power than a comprehensive ban

- × In the longer term, a treaty banning use would provide less leverage and stigmatising power than a comprehensive ban treaty establishing a clear legal standard.
- × If we accept it is illegal to use a weapon then we should also accept that the production and stockpiling of such weapons, amongst other acts, is also illegal - and so a comprehensive set of prohibitions is more logically coherent. Indeed, possession of nuclear weapons constitutes the threat of use of nuclear weapons.
- × A ban solely on use would be counter-productive: it would create a dead end in which momentum for further progress would be very hard to achieve once nuclear-armed states had promised not to use nukes.

## 10. It’s not clear what is meant by a ‘treaty banning nuclear weapons’

Some say proponents of a ban treaty have not made it sufficiently clear what such a treaty would look like. Some suggest that, like the Model Nuclear Weapons Convention, a draft ban treaty should be produced by NGOs / experts and published.

A treaty banning nuclear weapons is straightforward

- × The principle of a treaty prohibiting nuclear weapons is straightforward: states parties would agree to a comprehensive prohibition on the use, development, production, possession, stockpiling, deployment and transfer of nuclear weapons as well as a prohibition on assistance with these acts.
- × There should also be a commitment for states parties with nuclear weapons to eliminate them within a set timeframe, although this would depend on the mechanism by which states with nuclear weapons might join the treaty (see below).
- × States could also adopt through this treaty the highest possible existing standards on nuclear weapons, including, for example, the enhanced safeguards established by the IAEA.

Certain provisions will need discussion, but this should be done with states

- × Of course, some provisions will require substantial discussion and careful negotiation. For example the timeframes that would apply to states with nuclear weapons, or which have a role for nuclear weapons in their security doctrine, on their joining the treaty. One approach would be to require such states to submit a time-bound plan under which they will eliminate nuclear weapons, either physically or from their security doctrines. Alternatively, such states may be required to complete elimination before joining.
- × Rather than seek to pre-determine outcomes for these questions, it might be preferable to allow states, with input from others, to develop answers through a collaborative process of consultation and negotiation. In this way, producing a draft ban treaty might prove unhelpful.

## END NOTES

1 See ‘Preventing Collapse: the NPT and a ban on nuclear weapons’, Ray Acheson and Beatrice Fihn, *Reaching Critical Will*, 2013.

2 See “After Oslo: Humanitarian Perspectives and the Changing Nuclear Weapons Discourse,” John Borrie and Tim Caughley, UNIDIR, 2013.

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