

Proposal of a Framework Agreement on Nuclear Disarmament

February 2017

Peace Depot Working Team

Based on the UN resolution “Taking forward multilateral nuclear disarmament negotiations” (A/RES/71/258) adopted at the 71st session of the General Assembly on December 23, 2016, negotiations on a legal “instrument to prohibit nuclear weapons, leading towards their total elimination” will be starting on March 27, 2017. We at Peace Depot Inc., a Japan-based NGO conducting research on nuclear disarmament issues for 20 years, welcome this as a historic step forward and have high hopes for its outcome.

We see that Resolution 71/258 offers little elaboration on the content of the legal instrument which is to be negotiated. It appears that all the details of the legal instrument are to be formulated at the negotiation conference from scratch.

It is an undeniable fact that the total elimination of nuclear weapons requires the involvement of all states, including nuclear-armed states and their allies. Therefore, one can and should work towards a legal instrument that would meet the concerned states’ aspiration for an early prohibition of nuclear weapons, while enabling nuclear-armed states and states relying on extended nuclear deterrence (including Japan) to join the negotiations, become part of a larger framework for nuclear abolition, and participate in “prohibition” at a later stage.

Based on this idea, Peace Depot’s working team first examined the desirable elements and structure that could be contained in the legal instrument to be negotiated (hereafter simply “the Legal Instrument”) (I). Drawing on the outcomes of the examination, the team then focused on a “framework agreement” model and designed an outline of a “Framework Agreement on Nuclear Disarmament” (II). Those works are shown below.

I. Elements and Characteristics that should be contained in the Legal Instrument

Our proposal considers the substance of UNGA resolution 71/258 (hereinafter “the Resolution”), as well as the series of discussions preceding its adoption; discussions that took place at the First Committee meeting of the UN General Assembly’s 71st session, the 2016 Open-ended Working Group (OEWG), and at the three international conferences on the humanitarian impact of nuclear weapons. Our conclusion is that the Legal Instrument should be equipped with the following elements and characteristics, all underpinned by concerns about the “catastrophic humanitarian consequences” of nuclear weapons.

1. General prohibition of nuclear weapons

What is to be negotiated is a “legally binding instrument to prohibit nuclear weapons, leading

towards their total elimination” (Resolution OP8). It naturally follows that the foremost element the Legal Instrument must include is the general prohibition of nuclear weapons.

2. Setting legal obligations for the total elimination of nuclear weapons

OP8 of the Resolution requires that the prohibition of nuclear weapons “lead” to “their total elimination”. A possible argument might be that, as long as a legal instrument prohibits nuclear weapons, regardless of what form it takes, the prohibition in itself could contribute to the eventual total elimination. However, to meet the requirements under OP8 more clearly, it would be desirable to codify in the form of legal obligations, the political commitments listed in PP9 of the Resolution; commitments that have been made repeatedly in connection with the Nuclear Non-proliferation Treaty (NPT).

3. Pursuit of transparency and risk-reduction measures relating to existing nuclear weapons

Considering that the initiative to prohibit nuclear weapons originated from concerns about the “catastrophic humanitarian consequences” of the use or detonation of nuclear weapons, measures should be sought to reduce the risk of nuclear detonation, whether by accident or intent (see PP3 of the Resolution). As OP7 “recommends that States consider implementing” these measures “as appropriate”, it is in line with the spirit of the Resolution to put those measures on the negotiation table, along with “prohibition”.

4. Setting obligations on states to provide assistance to nuclear victims, and to educate the public and raise awareness on nuclear damage

OP7 of the Resolution recommends that States “consider implementing, as appropriate, the various measures suggested in the report of the (Open-ended) Working Group”. The OEWG Report (A/71/371) states that elements of a legally binding instrument to prohibit nuclear weapons could include the “recognition of the rights of victims of the use and testing of nuclear weapons” and “a commitment to provide assistance to victims and to environmental remediation” (para.35). It also emphasizes the importance of education and awareness-raising on the reality of nuclear damage and the catastrophic humanitarian consequences of nuclear weapons use (para. 59 and 60). Therefore, it would be in line with the spirit of the Resolution to put on the negotiation table, together with “prohibition”, the positive obligations states parties should bear – in relation to assisting victims of nuclear weapon activities including use, development and maintenance, to providing environmental remediation, and to promoting education and public awareness-raising on nuclear damage including those on the environment.

5. Elimination and verification not necessarily included

PP17 of the Resolution talks about “a legally binding instrument prohibiting nuclear weapons” while the next paragraph, PP18, talks about “additional measures (...) for the irreversible, verifiable and transparent destruction of nuclear weapons”. The fact that the Resolution takes up

“prohibition” and “destruction” separately seems to imply that this Legal Instrument does not necessarily need to contain provisions on “verification”, “destruction” or “elimination”.

Nevertheless, since the final goal is “total elimination” and “the legally binding instrument” should be “leading towards” it (OP8), it would be desirable for the Legal Instrument to contain commitments for the total elimination of nuclear weapons.

6. Enabling phased participation in “prohibition”

The Resolution also encourages all UN “Member States to participate in the conference (to negotiate the legal instrument)” (OP9). It is true that, in the end, a “world without nuclear weapons” cannot be achieved without the involvement of nuclear-armed states. However, the views of nuclear-armed and nuclear-reliant non-nuclear states expressed at the UN General Assembly upon the adoption of the Resolution, as well as their views expressed on other occasions in the past, offers little hope for those states to join a prohibition treaty from the very beginning.

One argument might be that, if a large number of concerned states negotiate and conclude a treaty simply posing a general ban on nuclear weapons, that itself would make it even more difficult to use nuclear weapons and in turn would prompt the nuclear armed states to reduce their nuclear arsenals.

Meanwhile, it would be of great significance to pursue the formulation of a legal instrument which would promote flexibility in the position of nuclear-armed states and nuclear-reliant non-nuclear states – especially the latter –, induce them to take part in the negotiations, and gradually gain their support and participation. This would constitute a concrete measure “leading towards the total elimination” of nuclear weapons.

7. Ensuring a complementary relationship with the NPT

In order to maintain as much as possible the cooperative relationship forged among nuclear-armed, non-nuclear and nuclear-reliant states in nuclear disarmament and non-proliferation efforts, it is of great importance to ensure that the NPT review process and the prohibition treaty’s forthcoming negotiation process do not conflict but complement with each other. From that perspective, it would be desirable for the Legal Instrument to be so designed as to allow for acknowledgement in future consensus documents adopted at NPT conferences. In this connection, OP6 of the Resolution states that the pursuit of legal measures needed to be concluded to attain and maintain a world without nuclear weapons “should complement and strengthen the nuclear disarmament and non-proliferation regime including the three pillars of the (Nuclear Non-Proliferation) Treaty”.

II. Draft outline of a Framework Agreement on Nuclear Disarmament

Based on the consideration above, we propose a “framework agreement” model, which is a form

of legal instrument ensuring the general prohibition of nuclear weapons, containing elements from legal obligations for total elimination to transparency and risk reduction measures, and allowing for the optional and phased participation of states.

The 2016 OEWG Report describes a “framework agreement” as a legal instrument “which would comprise either a set of mutually reinforcing instruments dealing progressively with various aspects of the nuclear disarmament process, or a chapeau agreement followed by subsidiary agreements or protocols that would lead gradually to a nuclear-weapon-free world” (para. 38). The Framework Agreement we propose here comes under the latter category in the OEWG Report’s description. It is a form of a legal instrument in which a “chapeau agreement” (the main body) sets out the broad framework and is supplemented with subsidiary instruments such as protocols, whereby concrete aims and measures are specified.

One example of this would be the UN Framework Convention on Climate Change. The initial convention was adopted in 1992. This was followed by subsidiary agreements to the convention, such as the Kyoto Protocol (adopted 1997) and the Paris Agreement (adopted 2016). Each subsequent agreement provided further steps in implementing the general obligations adopted in the convention. In the disarmament field there is the Convention on Certain Conventional Weapons (CCW) (adopted 1980) and its five Protocols, each covering a different type of weapon. Three of the Protocols were opened for signatures simultaneously with the Convention. Other Protocols were negotiated later. The CCW has a structure whereby states parties are allowed to ratify the Protocols in an optional and phased manner.

Concerning nuclear disarmament, a general agreement does exist among states on the ultimate goal to “attain and maintain a world without nuclear weapons”. However, as for the specific measures and timeframe to achieve the goal, a large gap lies in their views and positions, thus hindering progress toward the achievement of the goals. The “framework agreement” model seems to serve as an effective solution to this reality.

We have therefore prepared a suggested draft outline of a Framework Agreement on Nuclear Disarmament, consisting of the Main Body which establishes the “chapeau agreement”, and a number of Protocols.

1. Main body of the Framework Agreement

This part constitutes a “chapeau agreement” codifying the scope, legal obligations for the total elimination of nuclear weapons, the relationship between the main body and protocols, and arrangements regarding the Conference of the Parties and other operational matters.

(1) The provision on the objectives might be as follows: “With a view to averting the catastrophic devastation that would be unleashed upon all humanity and the environment by nuclear war, as well as to avert the risk of such war occurring, the objective of this Framework Agreement would be to eliminate national armaments of atomic weapons and thus achieve a world without nuclear weapons.”

In the paragraph above we drew upon the expressions in the Preamble of the NPT and the first UN Resolution (A/RES/ (1)). We did so in the belief that stipulating goals on which

there is already a universal agreement would lower the hurdle for states to accept the Main Body.

(2) States parties shall undertake the following legal obligations:

- i) To make special efforts to establish the necessary framework to achieve and maintain a world without nuclear weapons¹;
- ii) To pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control²;
- iii) To pursue policies that are fully compatible with the objective of achieving a world without nuclear weapons³;
- iv) An unequivocal undertaking by nuclear armed states to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament⁴; and
- v) To rapidly move towards an overall reduction in the global stockpile of all types of nuclear weapons, and to further diminish the role and significance of nuclear weapons in all military and security concepts, doctrines and policies⁵.

As the footnotes show, the above-mentioned obligations reflect either a unanimous recommendation made by the International Court of Justice (ICJ), or the universal agreements made through nuclear disarmament and non-proliferation negotiations. Consequently, the Main Body must be acceptable to both the nuclear-armed states and their allied nuclear-reliant non-nuclear states.

(3) The Main Body shall also stipulate: the relationship between itself and the Protocols, technical matters relating to the Conference of the Parties and operating agencies, and conditions for entry-into-force. As for the entry-into-force conditions, it would be important to allow for flexibility, so as to enable phased participation depending on the situation of each state party.

2. Protocols

The Conference of the Parties shall negotiate and conclude Protocols, which would give shape to the objectives and legal obligations mentioned in 1 (1) and 1 (2). The negotiation and conclusion of some of the Protocols shall take place in parallel with those of the Main Body.

¹ “Conclusions and recommendations for follow-on actions” B-iii in the Final Document of the 2010 NPT Review Conference (adopted May 28, 2010); NPT/CONF.2010/50 (Vol. I)

² Paragraph 105 (2) F in the Advisory Opinion of the International Court of Justice (ICJ) (adopted July 8, 1996), and Article VI of the NPT

³ Action 1 in “Conclusions and recommendations for follow-on actions” of the 2010 NPT Review Conference Final Document (May 28, 2010); NPT/CONF.2010/50 (Vol. I)

⁴ Page 14, Paragraph 15-6, “Article VI and eighth to twelfth preambular paragraphs”, Part I in the 2000 NPT Review Conference Final Report (May 19, 2000; NPT/CONF.2000/28)

⁵ Action 5 in “Conclusions and recommendations for follow-on actions” of the 2010 NPT Review Conference Final Document (May 28, 2010); NPT/CONF.2010/50 (Vol. I)

States Parties to the Main Body are allowed to become parties, optionally and in a phased manner, if necessary, to the Protocols exemplified below. Each of the Protocols, as well as the Main Body itself, shall set up their own individual Conference of the Parties. Different Protocols can have different conditions for effectuation. The provisions of each Protocol can be reviewed and revised at the relevant Conference of the Parties if necessary, as long as the amendment is consistent with the objectives and obligations in the Main Body.

A. Protocol on the general prohibition of nuclear weapons

This protocol shall prohibit the possession, development, production, testing, acquisition, stockpiling, transfer, deployment, use and threat of use of nuclear weapons, as well as the assisting, financing, encouraging and inducing of these acts.

As for the “use and threat of use”, a significant distinction lies between those acts and the acts of “possession” or “stockpiling”. They are acts that directly cause the catastrophic humanitarian consequences of nuclear detonation, and the user (or the one who threatens to use) has a clear intention to generate those “consequences”, while neither “possession” nor “stockpiling” causes such damages. It was because of this distinction that the 1996 ICJ Advisory Opinion focused primarily on the legality of “the threat and use of nuclear weapons”.

Bearing this in mind, concluding a separate protocol prohibiting the “**use and threat of use**” may also be an option. Indeed, nuclear-armed and reliant states may become ready to sign a protocol prohibiting threat or use before they are ready to join a comprehensive prohibition that also bans possession.

B. Protocol on positive obligations

This protocol shall set the obligations of states to assist the victims of nuclear weapon activities including use, development and maintenance, to remedy environmental damage, and to promote education and public awareness-raising on the reality of nuclear damage.

C. Protocol on transparency measures relating to nuclear weapons

This is a protocol to enhance transparency on nuclear weapons, which is vital for their total elimination. The protocol could, for example, oblige nuclear-armed states to disclose, by standardized format, information regarding their nuclear arsenals and delivery vehicles – the types, distinction between deployed and non-deployed, alert status, and so on. Also there could be provisions for the establishment of a committee to consider and develop schemes to monitor and improve transparency measures.

D. Protocol on measures to reduce the role and risk of nuclear weapons (including a protocol on no-first-use)

States parties to this protocol shall undertake to further reduce the role and significance of nuclear weapons in all military and security concepts, doctrines and policies, with a view to decreasing the possibility of nuclear weapon use, including accidental or mistaken ones. Reduction measures shall include: consultations on nuclear weapon use, unilateral measures such as de-alerting the launch on warning and high operational alert of strategic nuclear weapons, pluri-lateral measures between nuclear armed states, and agreements within extended nuclear deterrence regimes involving non-nuclear states relying on nuclear weapons.

Moreover, in the context of developing role- and risk-reduction measures, it would be worth considering an independent **no-first-use protocol**. Some of the nuclear-armed states should be able to join it.

Furthermore, a reduction committee could be established to monitor and improve measures reducing the role and risk of nuclear weapons.

E. Protocol on the preparation of a Comprehensive Nuclear Weapon Convention (CNWC)

It would be worth considering a Protocol on a preparatory process for a CNWC aiming at the total elimination of nuclear weapons backed by a verification system, if the situation allows the Protocol's formulation in parallel with the Main Body.

Meanwhile, we would like to emphasize the necessity to put priority on the early conclusion of the Main Body and at least some of the protocols listed above, under A through D.

3. The significance of providing an independent entry-into-force process for each Protocol

States parties to the Main Body of the Framework Agreement are allowed to become parties to any of the above-mentioned Protocols at any time. A Protocol shall enter into force according to certain conditions specifically provided in that protocol.

Concerned non-nuclear states, which have been promoting the commencement of negotiations for a treaty to prohibit nuclear weapons, are likely to join all the protocols from the outset. Meanwhile, non-nuclear armed states relying on nuclear weapons might accede only to the Main Body at first. However, they might go on to join Protocol B, C or D; and hopefully more and more states might gradually become parties to Protocol A as they fix their own conditions. Nuclear armed states should also be ready to approve the Main Body, and can further develop themselves to join Protocol B, C and D (in particular a "no-first-use protocol").

The accession to and entry-into-force of the Framework Agreement (both the Main Body and Protocols) may gain momentum, if promoted in parallel with unilateral, bilateral or multilateral nuclear disarmament negotiations, or with regional efforts such as the establishment of a new nuclear-weapon-free zone accompanied by negotiations and other actions. A need for a new protocol may arise as a result of those efforts, in which case the Conference of the Parties

of the Main Body can negotiate and conclude one. Such flexibility is also an advantage of a “framework agreement”.

Peace Depot Working Team:

Kazuhiko Tamaki, Setsuko Arai, and Hiromichi Umebayashi

Hiyoshi Gruene 1st Floor, 1-30-27-4 Hiyoshi Hon-cho, Kohoku-ku,
Yokohama 223-0062 Japan

Tel: +81-(0)45-563-5101 Fax: +81-(0)45-563-9907

Contact person:

Setsuko Arai (e-mail: sarai@peacedepot.org)