

The proposal for a nuclear weapons convention

23 June 2011, revised 7 September 2011

Article 36

The primary barriers to adoption of the draft Nuclear Weapon Convention (NWC) are the nuclear armed states (NAS) and the proposed text. In particular, the “Phases for Implementation” written into the draft convention will inevitably present a barrier to that instrument’s adoption by NAS (they would provide the excuse for endless wrangling, deadlock etc). There are no doubt numerous other items of detail in the proposed text that could be used as a basis for deadlock also.

Furthermore, finalising such an instrument, including the Phases for Implementation, without the engagement in negotiations from the NAS or their adoption of the treaty, will forever be held up by these actors as a basis for their continued rejection of the convention in the future.

A strategically better approach is to develop an instrument that establishes a prohibition on use, production, transfer and stockpiling of nuclear weapons but keeps the terms of the latter components very loose and so provides an open framework for NAS regarding phased implementation. This could be done by allowing for deferrals of the obligations on [production and] destruction of stockpiles. However, the instrument should not identify NAS as a group or give them any special status – they would simply be states submitting requests for deferral of implementation of certain provisions.

Such an approach would therefore challenge NAS to adopt the instrument now. It sidesteps the difficulties of negotiating a stand-down – but it could serve to reframe the acceptance of NAS that has developed out of the NPT. It would provide a framework for discussions regarding phased stand down that was less accepting of nuclear weapon holding than the NPT.

Of course, even such a framework is likely to be rejected by many or all NAS – ostensibly on the basis that it is inconsistent of them to accept a treaty obligation against use whilst holding such weapons as part of a deterrence policy. Set against this, however, they would have the option to withdraw from the treaty in an emergency (e.g. MBT Art. 20).

Even without NAS participation, the treaty would affirm the moral position that use of nuclear weapons is incompatible with concepts of “humanity,” would build stigma against nuclear weapons, and reinforce customary rejection of their use. As a process, it would challenge assertions that NAS are working in good faith to see a world without such weapons.

The whole process has to be undertaken with confidence that even without NAS involvement or adoption the instrument will be of value. This does not mean that the process should be directly opposed to the engagement of those states, but that they will not be in a position to dictate the terms. Negotiated in a free-standing framework (without the barrier of consensus) such an agreement should be fairly straightforward. As noted above, the primary challenge is to articulate why such an instrument would be a positive step forward for humanity in general and the cause of disarmament in particular, even if its binding impact on NAS is likely to be very limited in the near term. A further challenge would be to develop the definitions and scope etc. in such a way that they couldn’t be used later as an excuse for rejection of the instrument by NAS that refuse to participate in negotiations.

It would be a challenge for some NAS to refuse to participate in negotiations, if the looseness of the implementation outcome were clear in advance. Arguments would likely be that the existing architecture must be preserved and this this was somehow a dangerous initiative. It should be possible to counter such arguments.