

PROCESSES, CONDITIONS AND STAGES FOR A HUMANITARIAN APPROACH TO
ACHIEVE AND MAINTAIN A WORLD FREE OF NUCLEAR WEAPONS

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Ways and Means to Prohibit and Eliminate Nuclear Weapons
Using a Humanitarian-centered Approach

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Humanitarianism and Nuclear Abolition

The experience of the 1997 Ottawa Land-Mine Ban Treaty suggests that framing the argument for nuclear-weapon abolition as a humanitarian imperative, with its attendant normative, moral, and legal considerations, may enable progress towards the goal of nuclear disarmament where traditional arguments based on national security have failed.¹ This approach may offer in particular a new way forward in South Asia where Pakistan and India currently show no discernible interest in nuclear restraint or meaningful arms control agreements. A humanitarian approach to nuclear weapon abolition offers no obvious new path to ending the continued production and stockpiling of fissile materials, the key ingredients in nuclear weapons. A two-track approach may be required in which humanitarian arguments are used to promote a verifiable prohibition of nuclear weapon use while a fissile material treaty or convention is advanced to verifiably end production of weapon-useable materials and to reduce and eliminate existing stockpiles of these materials. These two tracks may be usefully integrated as part of a movement towards a nuclear-weapons convention or as an agreed framework of more focused inter-linked conventions.

Confronting the Status Quo

An early and critical task for any humanitarian approach to nuclear disarmament will be to confront the role of arms control as the dominant mode of argument about how to reduce the threat from nuclear weapons. It is often forgotten today that arms control was “designed to preserve a nuclear striking power,” as Thomas Schelling observed in 1960, and that from an arms control perspective it was “an open question whether we ought to be negotiating with our enemies for more arms, less arms, different kinds of arms, or arrangements superimposed on existing armaments.”² Given this ethos, it is perhaps no surprise fifty years of nuclear arms control efforts have failed to move the world noticeably closer to nuclear abolition.

Humanitarian arguments for nuclear abolition need to highlight the fundamental perversity of nuclear arms control. A recent example of a perverse outcome is President Obama’s effort to achieve the New-START agreement with Russia, which required buying off U.S. domestic pro-nuclear political opponents and some hawkish supporters with a massive investment in modernizing the U.S. nuclear weapons complex and development of next generation delivery systems.

A second problem is that arguments for nuclear reductions and abolition conflict with long-standing official narratives of national security that have served to justify a role for nuclear weapons. As a result, the pursuit of disarmament is tied to the search for reassurance through technological, strategic, and political substitutes for nuclear weapons. The 2010 U.S. nuclear posture review highlights this problem very clearly. The posture review offers “Prompt Global Strike” systems as a means to fill the nuclear-weapon-shaped hole that would result from the reduction in numbers and roles and eventual abolition of nuclear weapons. This may placate U.S.

¹ The Ottawa Land-Mine Ban Treaty is the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.

² Thomas C. Schelling, “Reciprocal measures for arms stabilization,” *Daedalus*, vol. 89. no.4 (Special Issue: Arms Control), Fall 1960, p. 893-894.

opponents and bring along U.S. allies but it makes it more difficult for states that feel threatened by U.S. military capabilities to consider reducing their reliance on nuclear weapons.

Finally, there is a problem of decision-making and audiences. At present, policy makers and activists in nuclear-armed states seeking a path to abolition by nuclear weapons reductions and arms control treaties end up with conflicting and at times self-defeating arguments as they struggle to reconcile what may work in internal bureaucratic policy debates with the need to build support in domestic public audiences and to manage opinion both in rival states and allies, as well as the broader international community.

Humanitarian arguments have the benefit of being about people and not being about “enemies.” These arguments are universal in application and available equally to all states and all audiences. They can be used consistently both at home and abroad. They also serve both to expand the elite policy process and to mobilize domestic constituencies for a policy of abolition that can help counter opposition from the nuclear complex. Finally, these arguments serve to strengthen a way of thinking, a set of values, and national self-images that can create a particular kind of community that would help restrain states from building nuclear weapons and taking other kinds of hostile action, including resorting to war.

Humanitarian arguments may have particular traction in the United States, United Kingdom and France for reasons of national identity and national political culture. It is worth recalling that in his 2009 Prague speech calling for a nuclear weapon world President Obama accepted that “as the only nuclear power to have used a nuclear weapon, the United States has a moral responsibility to act.” More significantly perhaps, the United States, U.K. and France increasingly justify their military capacities and their interventions in other countries in terms of humanitarian intervention and are vulnerable to challenge on the grounds of the pursuit of laudable humanitarian policy goals while maintaining inhumanitarian means.

Starting with a Prohibition and Moving to Ending Production and Stockpiling

The Ottawa process shows that a ban on the use of a weapon can create an obvious foundation for ending the production, stockpiling and deployment of the weapon. Article 1 of the Land-mine treaty has as its first obligation to never use land-mines, and the second obligation is a ban on developing, production, acquisition, and stockpiling and transfer of the weapons. A similar logic can be applied to nuclear weapons.

The Ottawa Land-mine Treaty is rooted in concerns about the consequences of the use of the weapons that it seeks to prohibit. The treaty begins by declaring the determination of signatories to “put an end to the suffering and casualties caused by anti-personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement.”³

The treaty cites its basis as “the principle of international humanitarian law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, on the principle that prohibits the employment in armed conflicts of weapons, projectiles and materials

³ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.

and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and on the principle that a distinction must be made between civilians and combatants.”

This suggests a next step for a humanitarian approach to nuclear abolition may be to confront the issue of the use of such weapons. One option is a reiteration and strengthening of U.N. General Assembly resolution 1653 from 24 November 1961 that declared “any state using nuclear and thermonuclear weapons is to be considered as violating the Charter of the United Nations, as acting contrary to the laws of humanity and as committing a crime against mankind and civilization.”⁴

An international campaign highlighting the fiftieth anniversary of Resolution 1653 could offer a means to firmly establish the humanitarian argument against nuclear weapons in the public mind. It could lay a very significant foundation for future progress towards abolition.⁵

Making the case that the use of nuclear weapons would be intrinsically a crime against humanity – and should be seen and treated as immoral, illegal, and illegitimate – offers a normative and political clarity that would put the onus on any nuclear-armed state wishing to keep its weapons to explain why its security interests or those of its allies require the capability and intention to commit a crime against humanity.

A new General Assembly recalling the 1961 resolution and similar subsequent resolutions declaring the use of nuclear weapons to be a crime against humanity could include declaring the use of nuclear weapon also to be a war crime, and provide the basis for a legal strategy building on this humanitarian approach. The new resolution could call on all states to support adding the use of nuclear weapons to the mandate of the International Criminal Court, since the Court already has responsibility for investigating and punishing crimes against humanity, crimes of genocide, and war crimes.⁶

Sustaining a world where the use of nuclear weapons, and their production and stockpiling, is banned will require a high degree of legitimacy for the institutions responsible for managing such a prohibition. Giving the International Criminal Court jurisdiction over issues of compliance and the need for possible enforcement and punishment of violations of a prohibition on nuclear weapons would create a process that may be seen as carrying more legitimacy than the United Nations Security Council. As of mid-2011, the Court has 115 states that have accepted its jurisdiction.⁷

A Way Forward in South Asia

A campaign for a prohibition on the use of nuclear weapons based on humanitarian precepts may create new opportunities in South Asia and be very timely.

India has historically used humanitarian arguments in its diplomacy against nuclear weapons. In 1995 India cited humanitarian arguments (including UNGA resolution 1653) as part of its submission to the International Court of Justice on why the use of nuclear weapons should be

⁴ UNGA Resolution 1653, 24 November 1961, www.reachingcriticalwill.org/political/1com/1653.pdf.

⁵ As part of such campaign, it would be worth recalling that in his 2009 Prague speech President Obama accepted that “as the only nuclear power to have used a nuclear weapon, the United States has a moral responsibility to act.”

⁶ Rome Statute of the International Criminal Court, www.icc-cpi.int/NR/rdonlyres/0D8024D3-87EA-4E6A-8A27-05B987C38689/0/RomeStatuteEng.pdf

⁷ Among the nuclear-armed states, only the United Kingdom and France are parties to the International Criminal Court. The United States, China, and Israel voted against the Rome Statute establishing the court.

found to be illegal and why a ban on use should be the first step in moving towards abolition.⁸ A ban on use is part of an Indian argument against nuclear weapons that goes back to 1978 and has been articulated in recurring Indian-sponsored UNGA resolutions, most recently in October 2010.⁹

Pakistan, however, has long insisted on the importance of its threat of use of nuclear weapons in a conflict with India. This posture has hardened in recent years as India has rapidly increased its military spending and the technological capabilities of its military forces, creating a growing perception of conventional military imbalance with Pakistan. India also has been operationalizing a “Cold Start” strategy for rapid mobilization of its conventional forces to mount a decisive attack on Pakistan. Pakistan has responded by threatening battlefield use of nuclear weapons; in 2011, Pakistan tested a 60 km range nuclear-capable missile stated to be for battlefield use.¹⁰ A preliminary analysis suggests that Pakistan may exhaust most of its arsenal of up to 100 weapons in an effort to destroy a significant proportion of an invading Indian armored force.¹¹ International efforts to explain the risks and possible human and environmental consequences of the use of large numbers of nuclear weapons as part of land-battles on the India-Pakistan border may help both countries seek alternative policies.

Given the political power of the Pakistan army, any restriction on the threat and use of nuclear weapons by Pakistan will confront demands for establishing a conventional military balance, and a system of security assurances, including perhaps a non-aggression or no-war pact, as well as resolution of the Kashmir dispute and a formal dispute resolution mechanism for other potential conflicts. A means to meet Pakistan’s demands may be to work in parallel on an India-Pakistan no-war pact and a ban on nuclear weapons use.

The proposal for an India-Pakistan no-war pact has a long history in South Asia. In 1949, India offered a no-war declaration to Pakistan and in 1950 Prime Minister Jawaharlal Nehru offered Pakistan a no-war pact. The offer was accepted by Prime Minister Liaquat Ali Khan provided there was a timetable for settling all outstanding disputes. More recently, in 1981, General Zia offered a no-war pact to India, which was refused. Mrs. Gandhi subsequently declared that even without a no-war pact, India would not attack Pakistan first. General Musharraf repeated the offer at the United Nations Millennium Summit in September 2000.

Pakistan has not however offered a clear definition of what it considers as an act of war. One proposal by independent Pakistani and India analysts first made in 2001 would commit both sides to not wage war against the other, and defines violations of this obligation to include military incursions across the border, support for cross-border militancy, blockades, and

⁸ Statement by Government of India to the World Court, 1995.

⁹ UN GA Resolution A/C.1/65/L.26, “Convention on the Prohibition of the Use of Nuclear Weapons,” First Committee. 15 October 2010. <http://www.reachingcriticalwill.org/political/1com/1com10/res/L26.pdf>

¹⁰ “N-capable ballistic missile tested,” *Dawn*, 20 April 2011, www.dawn.com/2011/04/20/n-capable-ballistic-missile-tested.html

¹¹ A.H Nayar and Zia Mian, “The limited military utility of Pakistan’s battle-field use of nuclear weapons in response to large-scale Indian conventional attack,” Pakistan Security Research Unit Brief No. 61, Department of Peace Studies, University of Bradford, November 2010.

disruption of river waters, among other things.¹² This suggestion has started to attract new interest recently from former and current parliamentarians from the two countries in Track-II dialogues.¹³

Fissile Materials

A ban on the use of nuclear weapons, and even on their production and stockpiling, would not necessarily affect the very large stockpiles of fissile materials, the highly enriched uranium and plutonium that are the key ingredients in nuclear weapons, or the continued production of these materials for non-weapon purposes. The long sought after fissile material cutoff treaty (FMCT) is intended to ban the production of fissile materials for weapon purposes. There is no agreement on including as part of the treaty an obligation to reduce and eliminate existing stocks or to end civilian production and use of fissile materials.¹⁴

A fissile material treaty or convention that was designed to foster the goal of a sustainable nuclear weapon free world would require a scope and verification requirements that go beyond those currently considered for the FMCT. It would have to include a verifiable ban on the production and use both of highly enriched uranium and plutonium for any purpose since these are weapon-useable materials. It also would require that all nuclear fuel cycle facilities be under international or multinational ownership and management. Finally, such a treaty or convention would mandate that existing stockpiles of fissile materials not in nuclear weapons be placed under safeguards and that as warheads are taken off deployment and dismantled the fissile materials be placed under safeguards and be disposed of verifiably within a prescribed time.

To achieve such complex set of goals, a way forward could be a fissile material framework convention that, either alone or as part of a larger framework of agreements that would amount to a nuclear weapons convention, would:¹⁵

1. Recognize the problem of production, stockpiling and use of weapon-useable fissile materials both in military and civilian programs;
2. Commit parties to end production and eliminate all of stocks these materials as soon as practicably possible;
3. Provide a mechanism to tackle these issues in a step by step manner through a scheduled negotiating process.

These requirements are very similar to the kinds of structures found in international conventions dealing with environmental problems such the 1988 Vienna Convention for the Protection of the Ozone Layer and its 1989 Montreal Protocol and the 1994 UN Framework Convention on Climate Change.

¹² Zia Mian, A. H. Nayyar, Sandeep Pandey and M V Ramana, "What they can agree on," *The Hindu*, 10 July 2001, <http://hindu.com/thehindu/2001/07/10/stories/05102523.htm>, and "Some things to agree on," *Daily Times* 1 January 2004, www.dailytimes.com.pk/default.asp?page=story_1-1-2004_pg3_4.

¹³ Amir Waseem, India, "Pakistan activists seek no war pact," *Dawn*, 22 March 2011, www.dawn.com/2011/03/22/india-pakistan-activists-seek-no-war-pact.html.

¹⁴ Draft texts for an FMCT have been proposed by Greenpeace (2004) and by IPFM (2009) among others. These are all available at www.fissilematerials.org/ipfm/pages_us_en/documents/treaties/treaties.php.

¹⁵ Zia Mian, "A proposal for an International Framework Convention on Fissile Materials," Program on Science and Global Security, Princeton University, April 2000, www.ipfmlibrary.org/mian00.pdf.