



## BRIEFING PAPER

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# A Treaty on the Prohibition of Nuclear Weapons

By Claire Mills  
Lauren Culpin

## 1.1 Background – the Open Ended Working Group

Given the lack of progress on nuclear disarmament within the UN-mandated Conference on Disarmament, in December 2012 the UN General Assembly adopted a Resolution ([Resolution 67/56](#)) which established an Open Ended Working Group (OEWG) to “develop proposals to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons”.<sup>1</sup>

The OEWG met over the course of Spring/Summer 2013, but was boycotted by the P5 and other nuclear weapon states which dismissed the approach. In line with the Humanitarian Initiative<sup>2</sup> the OEWG was regarded as a shortcut to launching negotiation of a nuclear weapons convention or ban treaty.

The OEWG presented its [report](#) to the UN General Assembly and the Conference on Disarmament in October 2013, although nothing of substance emerged as a result.

In 2015, and in concert with the relative success of the Humanitarian Initiative, efforts were made to revive the OEWG concept. At the NPT Review Conference in May 2015 discussions were held on re-establishing the OEWG, although that forum ultimately failed to agree a final document.

The failure to adopt a new mandate for the OEWG led to the issue being revisited by the UN General Assembly at its autumn 2015 session. A Resolution was subsequently passed in December 2015 ([A/RES/70/33](#)) establishing an OEWG for 2016.<sup>3</sup> Under the terms of the resolution the OEWG was tasked with addressing the legal measures and provisions that will be required to attain, and maintain, a world without nuclear weapons; and examining other measures that could contribute to taking forward multilateral nuclear disarmament negotiations, including measures to increase awareness about the humanitarian and societal consequences of nuclear weapons use. Notably, the resolution also allowed the OEWG to operate according to the General Assembly’s normal rules of business, which do not require consensus.

Adopting this approach was regarded as an opportunity to move forward on disarmament issues. However, as with the 2013 OEWG, the nuclear weapon states refused to

<sup>1</sup> France, Russia, the UK and US voted against the resolution; while China, India, Israel and Pakistan abstained.

<sup>2</sup> This, along with other nuclear disarmament initiatives, is examined in greater detail in Library briefing paper CBP7634, [Nuclear weapons: disarmament and non-proliferation regimes](#), July 2016

<sup>3</sup> Again the nuclear weapon states either voted against the resolution, or abstained.

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participate in the talks labelling them “divisive” and lacking “the vital components that would guarantee both a meaningful collaboration and a productive outcome”.<sup>4</sup> The P5 did, however, suggest that they remained open to “an appropriately mandated” OEWG.<sup>5</sup>

The OEWG met in its first session in February 2016, followed by a second session in May of that year. According to media reports discussions focused on the commencement of negotiations on a legally binding agreement to prohibit nuclear weapons. However, participating States remained divided over the best way to approach this issue.<sup>6</sup> As Aleem Dattoo, writing on the BASIC blog, noted:

The OEWG is in danger of being lost in the disagreements between these camps, unable to find common ground.<sup>7</sup>

At a final session of the OEWG in August 2016, it adopted a [final report](#),<sup>8</sup> in which it recommended:

The convening, by the General Assembly, of a conference in 2017, open to all States, with the participation and contribution of international organizations and civil society, to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination...<sup>9</sup>

That report was subsequently presented to the 71<sup>st</sup> session of the UN General Assembly in the autumn 2016. Based on the recommendation of the OEWG the UNGA subsequently adopted a resolution in December 2016 ([A/RES/71/258](#)) which mandated the convening of a UN conference in 2017 to “to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination” (para.8).

### 1.2 UN negotiations on a nuclear weapons prohibition agreement

The [UN Conference](#) held a one-day organisational session on February 2017, during which they adopted a [draft agenda](#) and elected Costa Rican Ambassador Elayne Whyte Gómez as Conference President. The [first session of talks](#) was held in March and focused largely on a general exchange of views among participants, which included more than a hundred non-nuclear weapon states and a number of non-governmental organisations.

Several countries that voted against the UN General Assembly resolution in December 2016, including all of the P5 nuclear weapon states, declared their intention to boycott the conference or participate only in the planned second round of discussions. Among those nations were NATO allies,<sup>10</sup> and many countries which fall under regional US nuclear security guarantees.

The first round of negotiations immediately revealed several differences of opinion among treaty supporters about how comprehensive any agreement should be. The majority of states argued that the goal should be a short and simple treaty text that focused on a set of core prohibitions: acquisition, stockpiling, transfer and deployment. However, a number of states argued for a more comprehensive approach with extensive prohibitions which also cover the threat of use, testing and financing. They also argued that verification provisions should form part of the treaty text.

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<sup>4</sup> “UN creates new disarmament group”, *Arms Control Today*, December 2015

<sup>5</sup> “UN creates new disarmament group”, *Arms Control Today*, December 2015

<sup>6</sup> “Momentum builds for nuclear ban treaty”, *Arms Control Today*, June 2016

<sup>7</sup> Aleem Dattoo, [“Moving the OEWG forward”](#), *BASIC Blog*, 20 June 2016

<sup>8</sup> With 68 countries in favour, 22 against and 13 abstentions

<sup>9</sup> UN General Assembly, *A/71/371*, 1 September 2016, para.67

<sup>10</sup> With the exception of The Netherlands, which was the sole NATO ally in attendance.

## Agreement of a draft treaty text

A further, more substantial, round of discussions was held 15 June - 7 July 2017. 124 UN Member States were present at the conference, with none of the nine countries known or believed to possess nuclear weapons, in attendance.

Under discussion was a [draft treaty text](#) circulated a few weeks before. In line with other weapons prohibition treaties, the original draft text expressly prohibited States from using, testing, developing, producing, manufacturing, acquiring, possessing, stockpiling, transferring, or receiving control over nuclear weapons. It also prevented them from assisting, encouraging, or inducing others in any of those activities. States Party would also be required to prohibit and prevent the stationing, installation, or deployment of nuclear weapons on their territory or any other place under its jurisdiction or control. Under the original text 40 States would need to sign and ratify the Convention in order for it to become binding international law.

### Summary of discussions

At the beginning of the conference several delegates shared their concerns over the draft as well as their suggestions for improvements. The representative for Brazil began by stating that the treaty could be “the missing piece in the puzzle” of nuclear disarmament; while Cuba recognised that various sections could be “strengthened”, although provided no detail. South Africa’s representative highlighted the importance of delegitimising and stigmatising the use of nuclear weapons as well as underlining that no additional obligations must be imposed on the non-nuclear weapon states, thereby allowing these states to use nuclear energy within their territories. The Netherlands reaffirmed that any convention must be compatible with their obligations as a member of NATO.

Proposed revisions to the first draft included a change to the title with many States arguing that it should be classified as a ‘treaty’, rather than a ‘convention’ in order to better reflect its intended scope as a simple prohibition. Proposals were also put forward to strengthen the preamble by including international humanitarian law, the aim of the eventual elimination of nuclear weapons and the role of women in disarmament.

A [second draft text](#) was subsequently released by President Gómez on 27 June 2017, which adopted many of those proposals. The most significant revisions were made to articles 2-5 on declarations, safeguards and the elimination of nuclear arsenals. Specifically, a “join and destroy” option for nuclear armed states was introduced into Article 4, meaning nuclear weapon states that join the treaty must remove all nuclear weapons from operational status and submit “no later than sixty days after the submission of its declaration, a time-bound plan for the verified and irreversible destruction of its nuclear weapons programme to be negotiated with the States Parties”. The number of states required to ratify the treaty in order for it to enter fore (Article 16) was also increased from 40 to 50 states.

A [third, and final draft](#) was introduced on 3 July. The preamble remained untouched; while Article 1 was altered with a prohibition on the ‘threat of use’ being included in the text. This addition was welcomed by a number of countries, including Brazil and Algeria, who had been pushing for its inclusion from the start of the talks. Article 4 was also revised to include an obligation on States Parties to remove “as soon as possible” any nuclear weapons, or any other nuclear explosive device stationed on its territory. An additional paragraph which charges States Parties with designating an international authority to negotiate and verify the dismantlement of nuclear weapons, was also included. The final draft also extended the withdrawal period from the treaty (Article 16) from 3 months to 12.

### A positive outcome

Despite the short negotiating time, a [Treaty on the Prohibition of Nuclear Weapons](#) was subsequently adopted on 7 July 2017. It is the first multilateral, legally-binding, instrument for nuclear disarmament to have been negotiated in 20 years.

In short, the treaty prohibits States Parties from developing, testing, producing, manufacturing, acquiring, possessing, stockpiling, transferring or receiving control over nuclear weapons or other nuclear explosive devices. It also prohibits them from using, or threatening to use such weapons. States Parties are also required to prohibit and prevent the stationing, installation, or deployment of nuclear weapons on their territory or any other place under its jurisdiction or control. This latter provision has implications for those countries which have US nuclear weapons based on their territories: Belgium, Germany, Italy, the Netherlands and Turkey.

122 countries voted in favour of the treaty; while The Netherlands, as a member of the NATO alliance, voted against and Singapore abstained.<sup>11</sup>

Many critics have questioned, however, what such a treaty will achieve if the nine states that possess nuclear weapons do not participate.<sup>12</sup> Without signing and ratifying the treaty, none of these states would be legally bound by its provisions.

However, advocates, such as the International Campaign to Abolish Nuclear Weapons, argue that:

Through its normative force, the treaty will affect the behaviour of nuclear-armed states even if they refuse to join it. It will also affect the behaviour of many of their allies that currently claim protection from their nuclear weapons, including those that host nuclear weapons on their territory.<sup>13</sup>

The organisation Reaching Critical Will has commented:

This treaty is an incredible new piece of international law, achieved despite the opposition of the most militarised and powerful countries in the world. It marks a turning point in the struggle against these genocidal weapons, in which the vast majority of governments and civil society have united to create law that can change policies and practices of nuclear deterrence and help facilitate nuclear disarmament.<sup>14</sup>

### Signatories

The treaty opened for signatures from any UN member state, regardless of their participation in the conference, on 20 September 2017. The treaty will come into force 90 days after 50 countries have ratified it.

To date the [treaty has 69 signatories](#), including 19 States Parties, three of which signed and ratified the treaty on the first day.<sup>15</sup> As such, the treaty has yet to enter into force.

Three notable absentees from the list of signatories are Sweden, Switzerland and the Marshall Islands, who all voted in support of the treaty in July 2017. The US was reported to have warned Sweden that signing the treaty could damage US-Swedish military cooperation.<sup>16</sup> A statement issued by NATO's North Atlantic Council also called "on our partners and all countries who are considering supporting this treaty to seriously reflect on

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<sup>11</sup> [A/CONF.229/2017/L.3/Rev.1, Draft treaty on the prohibition of nuclear weapons](#)

<sup>12</sup> Library briefing paper [CBP7566, Nuclear weapons – country comparisons](#), sets out the assets and capabilities of each of those nine states.

<sup>13</sup> [International Campaign to Abolish Nuclear Weapons](#)

<sup>14</sup> Reaching Critical Will, [News Release](#), 7 July 2016

<sup>15</sup> Guyana, Holy See and Thailand

<sup>16</sup> "Fifty states sign nuclear weapons ban", *Arms Control Today*, October 2017.

its implications for international peace and security, including on the NPT".<sup>17</sup> Sweden is a member of NATO's Partnership for Peace programme and in September 2017 conducted one of its largest military exercises in over two decades (*Aurora 17*) with the participation of the US and a number of NATO allies.

While supportive of the treaty the Marshall Islands is considered unlikely to sign and ratify the treaty in the longer term due to the implications it would have for its Compact of Free Association agreement with the United States. Under that agreement the US retains full responsibility for the defence and security of the Marshall Islands; while it, in turn, cannot take any action which is deemed by the US to be incompatible with that provision.<sup>18</sup>

After conducting a comprehensive review of the treaty text and its possible consequences for Swiss security, the Swiss Federal Council [announced](#) in August 2018 that it would not sign the Treaty on the Prohibition of Nuclear Weapons, at the present time. While reiterating that Switzerland remained committed to nuclear arms control and disarmament, and that it would continue to work towards the goal of a world without nuclear weapons, it concluded that, for Switzerland, the arguments against accession outweigh the potential benefits. However, the Federal Council also stated that Switzerland would participate as an observer in the Conferences of States Parties to the treaty and instructed that a further report on developments related to the treaty be prepared in time for the first review conference, to allow a re-examination of Switzerland's position if necessary.<sup>19</sup>

#### Box 1: Recommended reading

- Shannon Kile, "Treaty on the Prohibition of Nuclear Weapons", *SIPRI Yearbook 2018*
- Emil Dall, "Sweden's choice: NATO or the nuclear ban", *RUSI Commentary*, 22 September 2017
- William Potter, "Disarmament diplomacy and the nuclear ban treaty", *Survival*, August-September 2017
- "How a UN treaty on nuclear weapons makes international security policy more inclusive", *Brookings Institution*, 12 July 2017
- "The ban treaty arrives", *Strategic Comments*, July 2017

Progress of the talks was reported by the Arms Control Association, and Reaching Critical Will, among others, in their daily blogs:

- <https://www.armscontrol.org/blog/2017-03/banning-the-bomb>
- <http://www.reachingcriticalwill.org/disarmament-fora/nuclear-weapon-ban/reports>

### 1.3 Position of the British Government

The British Government set out its views on participation in the initial 2015 OEWG in answer to a Parliamentary Question in March 2016:

The UK is not attending the Open Ended Working Group (OEWG) on nuclear disarmament in Geneva. The UK, along with the four other Non-Proliferation Treaty Nuclear Weapons States, voted against the resolution establishing the OEWG at the UN General Assembly First Committee. The Government works with international

<sup>17</sup> North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons, 20 September 2017

<sup>18</sup> [Compact of Free Association, as amended April 2003, Title Three](#)

<sup>19</sup> Statement of the Federal Council, 15 August 2018

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partners and various organisations to ensure that UK experience and expertise helps to tackle the threat of weapons proliferation but believes that productive results can only be ensured through a consensus-based approach that takes into account the wider global security environment.<sup>20</sup>

Addressing the UK's non-participation in the talks in March 2017, the UK Permanent Representative to the UN, Ambassador Matthew Rycroft, stated:

The UK is not attending the negotiations on a treaty to prohibit nuclear weapons because we do not believe that those negotiations will lead to effective progress on global nuclear disarmament. They cannot and will not work.

The British government firmly believes that the best way to achieve the goal of global nuclear disarmament is through gradual multilateral disarmament, negotiated using a step-by-step approach and within existing international frameworks.

A step-by-step approach to global nuclear disarmament is what we need to build trust and confidence. It will provide for tangible steps towards a safer and a more stable world where countries with nuclear weapons feel able to relinquish them.

Finally... a ban on nuclear weapons will not in itself improve the international security environment, or increase trust and transparency between nuclear weapon possessor states and it will also not address the technical and procedural challenges of nuclear disarmament verification.<sup>21</sup>

Following agreement of a prohibition treaty on 7 July 2017 the UK, US and France issued this statement:

France, the United Kingdom and the United States have not taken part in the negotiation of the treaty on the prohibition of nuclear weapons. We do not intend to sign, ratify or ever become party to it. Therefore, there will be no change in the legal obligations on our countries with respect to nuclear weapons. For example, we would not accept any claim that this treaty reflects or in any way contributes to the development of customary international law. Importantly, other states possessing nuclear weapons and almost all other states relying on nuclear deterrence have also not taken part in the negotiations.

This initiative clearly disregards the realities of the international security environment. Accession to the ban treaty is incompatible with the policy of nuclear deterrence, which has been essential to keeping the peace in Europe and North Asia for over 70 years. A purported ban on nuclear weapons that does not address the security concerns that continue to make nuclear deterrence necessary cannot result in the elimination of a single nuclear weapon and will not enhance any country's security, nor international peace and security. It will do the exact opposite by creating even more divisions at a time when the world needs to remain united in the face of growing threats, including those from the DPRK's ongoing proliferation efforts. This treaty offers no solution to the grave threat posed by North Korea's nuclear program, nor does it address other security challenges that make nuclear deterrence necessary. A ban treaty also risks undermining the existing international security architecture which contributes to the maintenance of international peace and security.

We reiterate in this regard our continued commitment to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and reaffirm our determination to safeguard and further promote its authority, universality and effectiveness. Working towards the shared goal of nuclear disarmament and general and complete disarmament must be done in a way that promotes international peace and security, and strategic stability, based on the principle of increased and undiminished security for all.

We all share a common responsibility to protect and strengthen our collective security system in order to further promote international peace, stability and security.<sup>22</sup>

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<sup>20</sup> PQ HL6335, *Nuclear disarmament*, 2 March 2016

<sup>21</sup> Foreign and Commonwealth Office press release, 27 March 2017

<sup>22</sup> [Joint Press Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption of a Treaty Banning Nuclear Weapons](#), 7 July 2017

This position was also set out in a [statement by the Foreign and Commonwealth Office](#).

In a debate in the House of Lords in February 2018, Baroness Goldie discussed the Government's approach to nuclear non-proliferation and set out three reasons for the UK's opposition to the prohibition treaty, saying that it "stands in stark contrast to the proven effectiveness of the nuclear non-proliferation Treaty":

First, rather than building the necessary trust and consensus between states, it is seeking quick fixes. Secondly, the ban treaty offers no solutions to the complex security environment that we all face, nor to the technical challenges of verifying nuclear disarmament. Thirdly, its attempt to create a rival legal framework for disarmament is flawed. Its safeguard standards are inadequate and its restrictions on nuclear test explosions lack the rigour of those imposed by the Comprehensive Nuclear Test-Ban Treaty.

She added "the Treaty on the Prohibition of Nuclear Weapons fails to offer a realistic path to disarmament and risks undermining the effective non-proliferation and disarmament architecture that we already have in place."

She reaffirmed the UK's commitment to "full multilateral nuclear disarmament under strict and effective international control" and "it is our firm belief that the best way to achieve this is through verified, step-by-step, gradual multilateral disarmament." These involve a number of steps including: "first, the entry into force of the Comprehensive Nuclear Test Ban Treaty; secondly, starting and successfully concluding negotiation of a fissile material cut-off treaty in the conference on disarmament; and, thirdly, the global adoption of the nuclear non-proliferation treaty."<sup>23</sup>

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<sup>23</sup> [HL Deb 20 February 2018 c114-118](#)

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