

# Can the Necessary International Legal Framework to Achieve a Nuclear-Weapon-Free World Be Reached?

November 11, 2016

## A significant resolution

The answer to this question can, to a certain extent, be found in the significant resolution of the First Committee (Disarmament and International Security Committee), which was approved within the framework of the 71st Session of the UN General Assembly at the end of October this year. The title of Resolution A/C.1/71/L.41 calls for progress in multilateral negotiations (Taking Forward Multilateral Nuclear Disarmament Negotiations). Its significance, and we could also say its historically unprecedented character, lies in Article 8 of the operative part, which contains the decision *...to convene in 2017 a United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination*. The conference should take place in New York during two time periods (from 27 to 31 March and from 15 June to July 7) with the participation of UN member states, unspecified international organizations and civil society representatives. The mentioned article was added to the resolution based on a recommendation of the conclusion report of the *Open-ended Working Group (OEWG)*, which held talks in Geneva during the first half of 2016 on the evaluation of new legal measures and necessary norms to attain a nuclear-weapon-free world. To demonstrate their disagreement with the OEWG mandate, none of the nuclear-weapon states participated in the negotiations. Any disagreements were thus presented by representatives of allied or partner countries of the nuclear-weapon states (as the nuclear-weapon states provided the allied or partner countries with a so-called nuclear umbrella) which were taking part in the talks.

At the negotiations of the First Committee, Austria tabled a resolution which was sponsored by around 50 countries, led by Brazil, Ireland, Mexico, Nigeria and South Africa. It was passed by a majority of the votes on 27 October (123 in favor, 38 against, 16 abstentions). Out of nine nuclear-weapon states the DPRK surprisingly voted in favour of the resolution, the People's Republic of China, India and Pakistan abstained and the rest of the nuclear-weapon states (France, Israel, the Russian Federation, Great Britain and the USA) voted against it. The Netherlands set itself apart from the negative voting of the allied non-nuclear weapon states by abstaining.<sup>1</sup> Further voting on this and other resolutions by all six committees will take

place at a plenary meeting of the UN General Assembly at the end of this year. It can be expected that the voting result of the above mentioned resolution will not be significantly different from the previous one of the First Committee.

## Long-term stagnation in the main disarmament forums

If we look at the issue of nuclear disarmament from the point of view of the development of multilateral disarmament negotiations at the main forums of the disarmament apparatus (the Conference on Disarmament in Geneva, the UN Disarmament Commission, the First Committee of the UN General Assembly and the review process of the Treaty on the Non-Proliferation of Nuclear Weapons) the situation is rather dismal. Given the principle of consensus decision-making, including consensus decision-making on proposed agreements, which applies to all negotiation forums, with the exception of the First Committee and also given the lack of political will and unwillingness to reach a compromise in the results on the side of nuclear-weapon powers, the multilateral disarmament negotiations process of these bodies has stagnated for the past several years. At the Conference on Disarmament in Geneva, which is the most important body with a mandate for negotiating disarmament agreements, all action has been blocked for the last twenty years. In contrast to other types of weapons of mass destruction, that is chemical and biological weapons, which are banned by relevant conventions in the long-term, there is no similar international legal instrument for the much more destructive nuclear weapons. Yet, when they discuss the issue of nuclear weapons and disarmament, all of the representatives of both nuclear-weapon and non-nuclear-weapon states simultaneously support the creation of a nuclear-weapon-free world and, in this context, they sometimes recall the “Prague speech” of US President Barack Obama in April 2009, in which he unequivocally supported this goal.

## The main facts about the field of nuclear disarmament

There are nine countries in the world that possess nuclear weapons, out of which five, the so-called declared nuclear-weapons states (the USA, the Russian Federation, Great Britain, France and the People’s Republic of China) are, unlike the other states (India, Pakistan, Israel, and the DPRK) signatories of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and at the same time permanent members of the UN Security Council.

◆ According to the *Stockholm International Peace Research Institute (SIPRI) 2016 Yearbook*, as of January 2016 there are 15 395 nuclear weapons in the world (the RF – 7 290, the USA – 7 000, Great Britain – 215, France – 300, the People’s Republic of China – 260, India – 100/120, Pakistan – 110/130, Israel – 80, the DPRK – 10). Out of the total number, approximately 4 120 nuclear weapons are in operational use, that is deployed on guided missiles or on bases together with operational forces. Approximately 1 800 of these weapons are in a state of high operational alert, meaning that they are ready to be launched in minutes. Among the so-called other nuclear warheads belong warheads in storages, those that are prepared for dismantling and other types.<sup>2</sup>

◆ In comparison to the approximately 70 000 nuclear weapons at the apex of the Cold War in the middle of the 1980s, the significantly reduced number of currently active weapons is certainly a positive state of affairs. This reduction took place predominantly due to bilateral agreements between the USA and the USSR/RF (the last bilateral agreement New START was signed in 2010 in Prague), or as a consequence of individual voluntary decisions of these countries. A multilateral nuclear disarmament negotiation has not yet taken place, however, allegedly due to the inequality in the amounts of owned nuclear weapons. At present, the ongoing modernization of these weapons and their delivery means (land-, air- and sea-based delivery systems in the countries that maintain a so-called nuclear triad) causes concern. Another potential security threat is the heightened risk of use of these weapons, especially as a consequence of the considered placement of nuclear warheads on delivery systems which can also deliver conventional warheads, for example, in the case of land-based long range cruise missiles; it is highly unlikely that their launch would be accompanied by an explanation for the target country of which kind of warhead is being used.

◆ Among the basic conditions of the concept of nuclear deterrence is the ability of the deterrent subject to fulfill the threats, their credibility and a comprehensible transmission of these threats to the challenger. To increase the weight of the deterrent, nuclear powers adopt relevant strategies, accept detailed operation plans, maintain certain nuclear weapons at a high level of alert so that they would be prepared to be launched, modernize nuclear warheads and their delivery systems, and sometimes undertake nuclear test explosions and missile delivery tests (e.g. the DPRK).

◆ The only global and nearly universally effective international legal instrument, in relations to nuclear weapons is *The Treaty on the Non-Proliferation of Nuclear Weapons (NPT)*, which, however, does not have a disarmament function. It is based on the so-called three pillars, which are related to nuclear non-proliferation, peaceful use of nuclear energy and a vague commitment, according to Article VI, of all the parties “... to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament“.

◆ *The Comprehensive Test Ban Treaty (CTBT)* was submitted for signing at the UN General Assembly in 1996; however, it has not become effective as yet. It is a case of an agreement that was first negotiated at the Conference on Disarmament in Geneva and then purposely sent (by Australia) from the consensus-based decision-making process valid in this negotiating forum, where it was under threat of being blocked, to the UN General Assembly. There it was also accepted by a majority vote in 1996. The first signatory was the then American President Bill Clinton; however, the US Congress did not subsequently ratify it as a result of Republican resistance to it. The entry into force of this significant agreement has been blocked due to 8 countries not ratifying it (the USA, the PRC, Israel, Pakistan, India, the DPRK, Iran and Egypt). In September 2016, the UN Security Council adopted Resolution no. 2310 (2016) with the goal of developing a stronger international-legal pressure on the legislative bodies of the aforementioned countries. The resolution calls predominantly for an early entry into force of this treaty and expresses support for declarations of voluntary moratoria on nuclear tests by nuclear-weapon states, even though they do not have the same permanent and legally binding effect as this legal instrument.<sup>3</sup> With the exception of the DPRK, which continues with its nuclear tests, all the other nuclear-weapon states maintain their moratoria (such as the USA which

maintained its moratorium from the beginning of the 1990s). Thus the only valid relevant treaty that remains in force is *the Partial Test Ban Treaty (PTBT)* from 1963, which prohibits tests in the atmosphere, in space, and under water, but not underground.

◆ *The Fissile Material Cut-Off Treaty (FCMT)* has been on the agenda of negotiations of the Conference on Disarmament in Geneva for several years. It predominantly concerns the prohibition of the production of highly enriched uranium and plutonium, which are indispensable for the production of nuclear weapons. Western states, led by the USA, have long proposed a preferential negotiation of this treaty at the expense of the other main three points of the agenda of this forum, which are nuclear disarmament, negative security assurances by nuclear-weapon states for non-nuclear-weapon states and *the Prevention of an Arms Race in Outer Space (PAROS)*. Among the main causes of the blocking of the negotiations on the FCMT are the advanced proposal that counts on the expected prohibition of only the future storing of fissile materials and a lack of agreement on the working agenda, though the requirement to reach such an agreement is a necessary procedural rule.

## Frequent arguments of opponents and supporters of the resolution

The main objections made by opponents of the resolution, which are mostly the nuclear-weapon states, and their allies and partners, which are provided with nuclear protection by the nuclear-weapon states, predominantly highlight that the proposed procedure:

- ◆ does not take into account the global strategic and regional security context and favors a humanitarian approach, i.e. it prioritizes an emphasis on the catastrophic consequences of a nuclear explosion.
- ◆ depreciates the consensual nature of adopting decisions.
- ◆ is in conflict with the existing, apparently effective and realistic, *progressive step-by-step approach*.
- ◆ stigmatizes nuclear weapons as well as their security role in nuclear deterrence, which justifies the ownership of these weapons by nuclear-weapon states. This situation de facto excludes them from participation on the said process.
- ◆ will not lead to further decreasing of nuclear weapons as a consequence of the lack of participation of nuclear-weapon states. It will thus be ineffective and destabilizing for security.
- ◆ will undermine existing non-proliferation and disarmament regimes.
- ◆ eliminates the possibility of reaching a consensual agreement on the final document of the 10th NPT Review Conference in 2020.

In contrast, the majority of non-nuclear-weapon states and non-governmental organizations point out that:

◆ the long-term stagnation at various disarmament forums has lasted for far too long (as evidenced by, among others, the twenty-years slowdown at the Conference on Disarmament in Geneva, the failure of the 9th NPT Review Conference in 2015, the delay of the entry into force of the CTBT, etc.). The continuing modernization of nuclear warheads and delivery systems, which is in conflict with the aim of Article VI of the NPT also does not signify a real interest on the part of nuclear powers in nuclear disarmament.

◆ the possibility of an accidental, unauthorized or deliberate launch of a nuclear weapon is increasing as a result of the worsening of international security. Three conferences on the humanitarian impact of nuclear weapons held in 2013 and 2014 (those in Oslo, Nayarit and Vienna) pointed out the catastrophic impacts and risks related to a nuclear explosion.

◆ negotiations of a treaty prohibiting nuclear weapons will represent a filling of a legal gap in the NPT existing due to a vague disarmament commitment contained in Article VI, proclaiming the prohibition and elimination of these weapons. By accepting the aforementioned treaty, the mentioned Article will be implemented and balance in the present unequal fulfillment of treaty duties will be restored.

◆ nuclear deterrence is an unproven concept and serves primarily as a justification for the ownership of nuclear weapons and correspondingly demonstrating one's prestige and power status. Claims about the indispensability of guaranteeing national security through the ownership of nuclear weapons in the framework of this concept do not help nuclear disarmament and non-proliferation because the same demand could be raised by non-nuclear-weapon states. Moreover, it is unlikely that the main nuclear powers will accept certain proposed confidence building measures leading to an increase in trust (such as reducing high-alert nuclear weapons or eliminating their significance in military doctrines) because it would oppose the substance of the concept.

◆ the demand for respect of consensual decision-making was breached by the nuclear-weapon states themselves in the past, for example in the case of the adopting of the *CTBT* and the *Arms Trade Treaty (ATT)*.

## Further estimated development

Based on the phrasing of similar existing conventions banning biological (1972) and chemical weapons (1993), as well as agreements creating nuclear weapon free zones, it is expected that a new international legal instrument would prohibit the development, production, modernization, tests, acquisition, storing, transfers, operational distribution, stationing, threat and/or use of nuclear weapons. The ban would most likely also include provision of assistance in, and financing, encouragement and instigation of the listed activities. The text would probably also include statements focusing on help for victims of nuclear explosions and on the creation of an agency tasked with the implementation of said duties. A new treaty should not replace the NPT but should supplement and strengthen it.

Needless to say, non-nuclear-weapon states cannot eliminate nuclear weapons because they do not own any. However, they can accomplish their international ban and an inclusion of this ban into national legislations even without any potential participation of nuclear-weapon states. The supporters of the resolution proceed from the premise that the agreed resolution will signify the first important step to banning these weapons. However, provisions related to their irreversible and transparent elimination, including effective verification measures, such as those put into effect during the dismantling of stored nuclear weapons and others, could be negotiated subsequently in the next and presumably longer phase. However, its course could already be implemented only if the owners of nuclear weapons participate and if they express a political will to do so.

Aside from stigmatizing nuclear weapons themselves, a new treaty could help stigmatize their modernization programmes as well as their delivery systems. The treaty could also have an impact on the participation of non-nuclear-weapon states in NATO nuclear planning, and on the continuing advanced placement of American tactical nuclear weapons in the shape of gravity bombs in five European countries, as well as the related NATO concept of nuclear sharing (*nuclear sharing arrangements*) with the participation of non-nuclear-weapon states. The treaty could also have a positive influence on arrangements of a convention to ban the production of fissile materials for military use and refusing to perform subcritical nuclear tests, as the CTBT does not include any provisions pertaining to these issues.

Nuclear-weapon states and their allies will continue to put pressure on supporters of the resolution in order to reduce the amount of votes in favor of the resolution ahead of the voting at the plenary meeting of the 71st session of the UN General Assembly in December. In case of its adoption, and especially in case of the adoption of the treaty banning nuclear weapons, it cannot be ruled out that nuclear-weapon states and their allies and partners may, by continuing their support for ownership of nuclear weapons and the concept of a nuclear deterrent, gradually face various challenges. The effects of the treaty may be demonstrated in, for example, normative, legal, economic and social fields. It can also be expected that there will be increased pressure from the side of parliaments on the governments of said countries to adapt to the new situation in the context of efforts to create a new security order, this time without a privileged position of nuclear-weapon states and threats of use of nuclear weapons. It should be based on dialogue, equal respect for the security interests of all countries, transparency, adoption of confidence building measures, and other principles. It is important to take into account that on 27 October 2016 the European Parliament approved the resolution (415 were in favor of it, 124 against, and 74 abstained), which, among other things, invited the union member states to a “constructive participation” on the planned conference negotiations in 2017.<sup>4</sup>

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<sup>1</sup> Acheson, Ray: *Editorial: Revolt*. First Committee Monitor 2016, No.5, Reaching Critical Will.

*UN Votes to Outlaw Nuclear Weapons in 2017*. ICAN (International Campaign to Abolish Nuclear Weapons) , October 27, 2016. On-line: <http://www.icanw.org/campaign-news/un-votes-to-outlaw-nu...>

<sup>2</sup> *Global Nuclear Weapons: Downsizing but Modernizing*. Stockholm International Peace Research Institute (SIPRI) , 13 June 2016. On-line: <http://www.sipri.org/media/pressreleases/2016/global-nuclear-weapons-downsizing-modernizing>

<sup>3</sup> *Adopting Resolution 2310 (2016), Security Council Calls for Early Entry into Force of Nuclear-Test-Ban Treaty, Ratification by Eight Annex 2 Hold-Out States*. On-line: <http://www.un.org/press/en/2016/sc12530.doc.htm>

*Adoption of UN Security Council Resolution 2310*. U.S. Department of State, Office of the Spokesperson , Washington, DC, September 23, 2016. On-line: <http://www.state.gov/r/pa/prs/ps/2016/09/262343.htm>

<sup>4</sup> *European Parliament Votes in Favour of a Ban*. ICAN (International Campaign to Abolish Nuclear Weapons), October 27, 2016. On-line: <http://www.icanw.org/campaign-news/european-parliament-c>