



States divided on nuclear disarmament initiative

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After years of deadlock in the UN's nuclear disarmament forum, a new course of multilateral negotiations is being launched. *Paul Meyer* examines the diplomatic stalemate over global nuclear disarmament and the outlook for further progress in 2017.

Key Points

- For the first time since the Nuclear Non-Proliferation Treaty (NPT) was concluded in 1970, a new multilateral nuclear disarmament negotiation is set to commence in 2017 with the aim of prohibiting all nuclear weapons.
- A High-Level Preparatory Group is also being formed under the authority of the UN General Assembly to produce recommendations for a proposed treaty prohibiting the production of fissile material for nuclear weapons.
- Both initiatives reflect the growing frustration of non-nuclear weapon states over the lack of disarmament progress made by their nuclear-armed counterparts, and represent attempts to bypass the moribund Conference on Disarmament negotiating forum.

The year 2016 was particularly difficult for those engaged in multilateral nuclear diplomacy, and may go down in history as the point at which the fraying nuclear non-proliferation and disarmament regime began to seriously unravel.

The regime, which was established when the Nuclear Non-Proliferation Treaty (NPT) entered into force in 1970, has been under increasing strain since the failed 2005 NPT Review Conference. These quinquennial gatherings constitute the only decision-making forum for the 191 state parties to the NPT, and are crucial to its ongoing effectiveness.

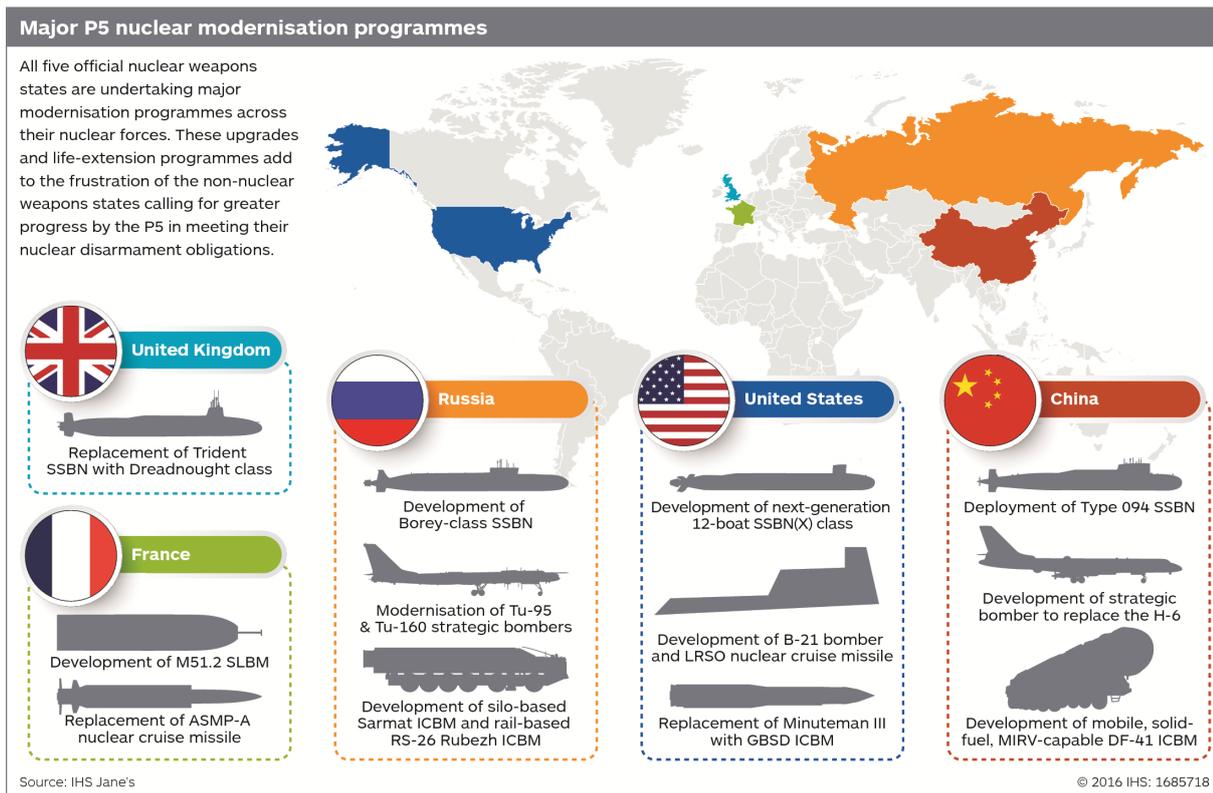
The tensions within the regime were most noticeable at the 2015 NPT Review Conference, when - despite a month of dedicated diplomacy - the parties failed to agree an outcome document due to a dispute over the agenda of a planned conference on a weapons of mass destruction (WMD)-free zone for the Middle East - a measure that had been promised at the previous NPT Review Conference in 2010, but not realised. The Review Conference document failed because of opposition from three states: Canada, the United Kingdom, and the United States.

Yet these differences between NPT parties have been eclipsed by a gap among states regarding the appropriate course of action to fulfil one of the treaty's core aims: nuclear disarmament. Under Article VI of the NPT, the five nuclear weapons states (China, France, Russia, the UK, and the US, known as the P5) are obliged 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, and on a treaty on general and complete disarmament under strict and effective international control".

The frustration of many non-nuclear weapon states (NNWS) over the lack of disarmament progress by the 'nuclear-have' nations manifested in a series of three conferences devoted to examining the humanitarian impact of nuclear weapons. The conferences were held in 2013 and 2014 in the hope of galvanising action on nuclear disarmament. Austria, a leader of the humanitarian-inspired movement to abolish nuclear weapons and host of the last conference, managed to obtain the support of 128 states for its Humanitarian Pledge resolution at the 2015

session of the UN General Assembly. This pledge committed the states supporting it to strive "to fill the legal gap for the prohibition and elimination of nuclear weapons".

The 'humanitarian initiative' has provided the impetus for several subsequent developments affecting nuclear diplomacy. These include the International Court of Justice (ICJ) challenge mounted by the Marshall Islands, the creation of an Open-Ended Working Group (OEWG) on taking forward multilateral nuclear disarmament negotiations, the call for negotiations of a treaty banning nuclear weapons, the possible commencement of work on a treaty banning the production of fissile material for nuclear weapons, and the continued challenge of integrating the four NPT 'outlier' states (India, Israel, North Korea, and Pakistan) into the global non-proliferation regime.



Major P5 nuclear modernisation programmes. (© 2016 IHS)

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Marshall Islands complaint

In a David versus Goliath-style initiative, the Marshall Islands - a Pacific Islands nation that was the site of 67 atmospheric nuclear weapons tests conducted by the US between 1946 and 1958 - filed a complaint with the ICJ in April 2014 against all nine states currently possessing nuclear weapons for their failure to abide by the disarmament obligations enshrined in Article VI of the NPT and in customary international law. However, only the cases against India, Pakistan, and the UK could proceed as the other accused states have not accepted the jurisdiction of the court.

A week of hearings was held before the ICJ in March 2016, during which the Marshall Islands' legal team, headed by former foreign minister Tony de Brum, set out its case against the nuclear-armed states. The defending states, however, argued that the Marshall Islands had not adequately negotiated with them before bringing the issue to court.

The ICJ delivered its rulings on admissibility on 5 October 2016. In close split decisions (8-8 for the UK and 9-7 for India and Pakistan) the court rejected the case brought forward by the Marshall



Islands, preventing it from advancing to the stage where the ICJ would need to rule on its substantive merits.

For many in civil society, the ICJ ruling was further evidence that the non-nuclear weapon states have little leverage against powerful nuclear-armed states, and that efforts to seek redress via the world's courts are in vain.

Open-Ended Working Group

To give operational effectiveness to the humanitarian pledge, the UN General Assembly adopted at its 70th session in 2015 a further resolution that established an OEWG to consider ways to carry forward multilateral nuclear disarmament negotiations.

The OEWG, which is open to participation by any UN member state, was created in response to the continued impasse in the 65-member Conference on Disarmament (CD) in Geneva. Despite its role as the UN's designated body for negotiating multilateral arms control and disarmament agreements, the CD has been in a state of complete paralysis for 20 years.

Its last achievement was the negotiation of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) in 1996, a key treaty that has not yet entered into force due to the failure of eight designated countries (China, Egypt, India, Iran, Israel, North Korea, Pakistan, and the US) to ratify the agreement. Given that the NPT parties have regularly affirmed their support for the CTBT's early entry into force, this protracted failure to deliver on a priority commitment significantly contributes to the credibility gap surrounding the NPT.

As a further repudiation of the CD, the OEWG was established under UN General Assembly rules of procedure that permit voting rather than the strict consensus procedures that have stymied the effectiveness of the CD for so long.

The OEWG held three weeks of sessions in February, May, and August 2016 in Geneva, and adopted its report in mid-August - a report that was duly conveyed to the UN General Assembly for consideration. The report provided an accurate account of the principal proposals that were put forward by participants in responding to the group's objective to identify "effective legal measures ... to attain and maintain a world without nuclear weapons".

The principal recommendation of the report was that the UN General Assembly in 2017 should commence the negotiation of a legally binding instrument to prohibit nuclear weapons, with the aim of moving towards their total elimination. The assumption among the diplomats engaged in finalising the OEWG report was that it would be adopted by consensus. In an unexpected last-minute move, the Australian delegation (possibly operating as a proxy for the absent US) called for a vote on the text of the report. Consequently, the OEWG report was adopted on a divided vote: 68 in favour, 22 opposed, and 13 abstentions.

Some features of the OEWG undertaking may affect the political-diplomatic context in which nuclear issues are considered by the UN General Assembly. It is notable that, despite the OEWG being a duly constituted body pursuant to a UN General Assembly resolution, none of the nuclear weapon-possessing states participated in its deliberations. This boycott of the group by the nuclear-armed states (justified in part, they asserted, by the OEWG's refusal to accept consensus procedures) was deeply resented by the NNWS that attended the proceedings.

Those states that have dutifully participated in various nuclear-related bodies and conferences that were of special interest to the nuclear-armed states (such as the series of Nuclear Security Summits initiated by the administration of US president Barack Obama in 2010) were particularly

disappointed that the P5 chose not to engage in an issue of priority concern for the NNWS.

Clearly the lack of participation in the OEWG by the nuclear-armed states did little to build the international co-operation required to make progress on other global nuclear challenges, such as the threat of nuclear terrorism and illicit trafficking.

Furthermore, the split in the ranks of the NNWS over the OEWG recommendation does not augur well for the re-establishment of an international 'common purpose' on nuclear issues. Notably, however, the states opposed to the OEWG report were largely NATO members arguing in favour of a continued step-by-step approach to nuclear disarmament, rather than the more radical pursuit of a nuclear weapons ban. Seemingly acting as proxies, and with little to point to in the way of recent disarmament progress, those opposed to the OEWG recommendation gave the impression of being apologists for their absent nuclear-armed allies and those who espouse the supposed security benefits of nuclear arms.

Ban the bomb

Taking at face value the "unequivocal commitment to the total elimination of nuclear weapons" that the NPT parties (including the P5) have pledged to achieve, there remains a wide gap between the goal and any diplomatic process to achieve it. To overcome this impasse, the majority view emerging from the OEWG is that a multilateral negotiation to develop a treaty prohibiting all nuclear weapons should be undertaken. A group of states is already in the process of operationalising this conclusion through the mechanism of a UN General Assembly resolution.

During the opening week of the UN General Assembly in September 2016, Austrian minister of foreign affairs Sebastian Kurz announced that his country would introduce a resolution to implement the key recommendation of the OEWG. By doing so the following month (Resolution A/C.1/71/L.41), Austria, along with initial co-sponsors Brazil, Ireland, Mexico, Nigeria, and South Africa, set out a serious challenge to the nuclear status quo. In its primary operational paragraph, the resolution decides "to convene a United Nations conference in 2017, to negotiate a legally-binding instrument to prohibit nuclear weapons, leading towards their total elimination". The resolution provides for 20 working days for the negotiating conference in New York (with an initial session 27-31 March 2017) and the use of UN General Assembly rules of procedure (no consensus requirement).

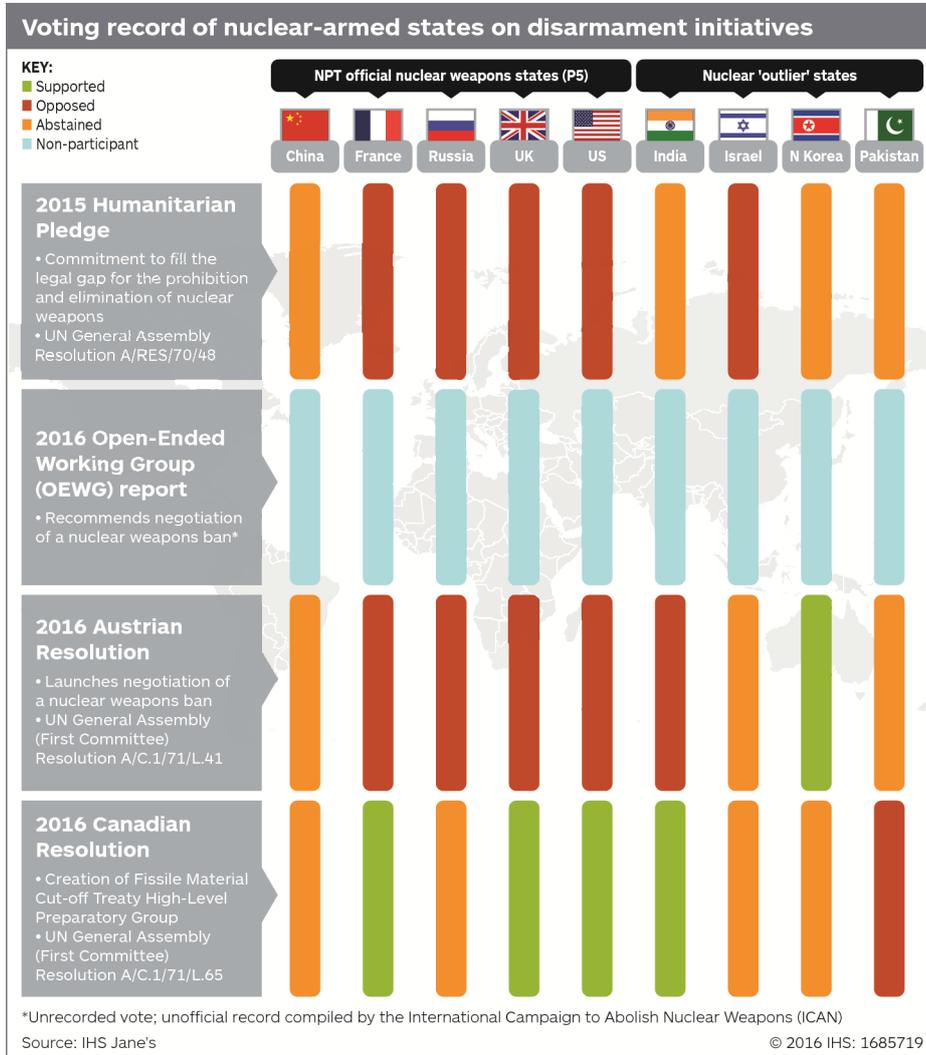
Despite an active lobbying campaign by the nuclear-armed states against the resolution, it received majority support when it was put to the vote in the UN General Assembly's First (Disarmament) Committee on 27 October 2016. The outcome of the vote was 123 in favour, 38 opposed and 16 abstentions. With its passage and the requisite conference planned for 2017, the broad consensus on nuclear affairs that hitherto had been anchored by the NPT is beginning to break down.

The advocates of the nuclear ban initiative - which include the International Committee of the Red Cross and many civil society groups as well as sympathetic states - believe that its aim to stigmatise nuclear weapons is worthwhile regardless of whether the nuclear weapons states participate in the negotiations. In their view, it is overdue to fill the legal gap of the NPT, a treaty that failed to prohibit nuclear weapons in a manner consistent with the comprehensive prohibitions that have been applied to other WMD by means of the Biological Weapons Convention and the Chemical Weapons Convention.

Advocates of a nuclear weapons ban also argue that the legal prohibition of nuclear weapons can be rapidly agreed upon, as it would leave to future negotiations the complex arrangements for the

irreversible, verifiable, and transparent destruction of existing warheads.

Sceptics of the nuclear ban initiative are concerned that a treaty prohibiting nuclear weapons would be ineffectual in the face of opposition from nuclear-armed states. There is also concern that for the NNWS, such a treaty would be duplicative of their existing NPT commitments, and thereby contribute to diluting the authority of the NPT.



Voting record of nuclear-armed states on disarmament initiatives. (© 2016 IHS)

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Fissile material ban

Another factor eroding the NPT's standing is its failure to act upon a longstanding commitment to negotiate a treaty banning the production of the fissile material needed to construct nuclear weapons, namely plutonium and highly enriched uranium. The negotiation of a Fissile Material Cut-off Treaty (FMCT) has been an agreed objective of the international community for the last half-century, and is a logical next step towards nuclear disarmament: in order to eliminate nuclear weapons, it will be necessary to cease producing the essential materials for such weapons.

However, the dictates of logic and diplomacy are not always in alignment; in actuality, negotiations towards an FMCT have still not commenced. Part of the reason for this is the assignment of FMCT negotiations to the moribund CD in Geneva. Since the CD functions on an extreme version of the consensus principle - under which no decision, procedural or substantive, can be taken unless all



65 members are in agreement - it is unsurprising that an agreed programme of work allowing for FMCT negotiations has eluded the CD for the past 20 years. What is surprising, however, is how long UN member states have tolerated this situation.

Within the UN, Canada has traditionally acted as the lead country on the annual resolution at the UN General Assembly concerning an FMCT. This role has placed Ottawa in an awkward position as there are only so many times it can reaffirm the desirability of negotiating an FMCT without any tangible progress being made towards that goal.

In 2012, Canada attempted a novel tack by establishing via its resolution a UN Group of Governmental Experts (GGE) that would meet during the 2014-15 timeframe to consider aspects of a fissile material production ban without constituting a formal negotiation. This was an unorthodox approach, as GGEs are typically created to study newly emerging issues facing the UN, whereas positions regarding a fissile materials ban have already been explored during the course of many decades and are, for the most part, widely known.

Nevertheless, the move successfully brought the fissile materials issue into the spotlight during the two years that the GGE met, and provided a forum for a thorough airing of national views on key issues of contention. The report of the GGE, duly tabled in mid-2015, was a welcome contribution to the neglected FMCT file, but also raised expectations about what should be done next.

At the 71st session of the UN General Assembly, Canada opted to propose another variant of the GGE by calling for a High-Level Preparatory Group of 25 states that would operate by consensus to produce recommendations for substantial elements of a future ban on fissile materials. The resolution was adopted by the First Committee with 177 in favour, one opposed (Pakistan), and 10 abstentions (including China, Egypt, Iran, and Russia). The Preparatory Group - of which the members are to be selected by the UN but will undoubtedly include representatives from the P5 - is to meet for a total of four weeks during a period of two years and render a report to the UN General Assembly's September session in 2018.

The wide support for the resolution reflected in part the fact that it did not challenge the existing status quo regarding the fissile material ban, by which this supposed priority treaty is subject to much talk but little action. Although the sponsors of the resolution argue that it will represent added value to the findings of the GGE, it is difficult to accept this claim as it will address the same conflicting positions on the fissile material ban without any inducement to overcome them. The diplomatic dynamic is such that it is only within the context of an actual negotiation that there will be any pressure on the participants to make the compromises between opposing views required to produce a treaty text. The danger attendant upon the fissile material ban preparatory group is that it provides a semblance of work behind closed doors without constituting the open negotiation required to generate an actual treaty.

An arguably more constructive approach could have been for Canada or another country to call for the initiation of an FMCT negotiation under the authority of the UN General Assembly. A General Assembly resolution would not be subject to the veto of any one state, as is the case in the CD, and successful precedents for this approach already exist (namely the negotiation of the Arms Trade Treaty). Although some states such as Russia, India, and Pakistan are unlikely to participate in such a negotiation, a critical mass would almost certainly be willing to proceed, and the establishment of an inclusive and transparent negotiating process would restore some credibility to the repeated designation by NPT parties and the wider international community of a fissile material production ban as the next logical step in multilateral nuclear arms control.

Outlook

The NPT is a treaty under considerable strain and its future authority as the cornerstone of the global nuclear order cannot be taken for granted. The failure to deliver on the express priorities of its parties - particularly the entry into force of the CTBT, the negotiation of an FMCT, and the reduction and devaluing of nuclear weapons - has been aggravated by the perceived inability of the nuclear weapon states to make progress in fulfilling their Article VI disarmament obligation.

The stagnation in nuclear disarmament by the P5, as well as the energetic pursuit of a nuclear arms build-up on the part of at least three of the four nuclear outlier states (India, Pakistan, and North Korea), has led many to conclude that the NPT no longer represents a viable bargain or the right vehicle for achieving a world without nuclear weapons. This sentiment is only reinforced by the major modernisation programmes for nuclear forces under way in all nuclear weapon-possessing states, both within and outside the NPT.

Despite ritually affirming a commitment to the universalisation of the NPT, few concrete efforts have been made to bring the remaining outlier states on board. Indeed, the actions taken by major NPT states have tended in the opposite direction. The nuclear co-operation agreements with India that have been concluded by leading NPT states have essentially granted New Delhi the advantages of NPT membership without its obligations. This backdoor method of bringing India into the nuclear weapons club, which includes persuading the Nuclear Suppliers Group (NSG) to endorse a special exemption from its trade rules, has undermined any move towards the universalisation of the NPT. Moreover, the favours shown to India have also spurred regional rival Pakistan to ever more damaging acts of diplomacy (such as the sustained blockage of FMCT negotiations) and nuclear sabre-rattling in the form of increased nuclear weapons production and deployment.

China and India may eventually conclude a deal that will enable both countries to join strategic groups to which they wish to belong (the Missile Technology Control Regime for China, and the NSG for India), but these self-serving machinations are unlikely to yield many benefits to the broader enterprise.

Furthermore, the failure of the leading powers to curb North Korea's nuclear ambitions, despite a battery of UN Security Council sanctions, may eventually lead states such as Japan and South Korea to reconsider whether continued nuclear abstinence under the NPT remains in their national security interests - particularly given the uncertainty of US security guarantees under the leadership of US president-elect Donald Trump.

Within weeks of his unexpected election victory in November 2016, Trump appeared to be revising some of his campaign rhetoric, which initially included suggestions that Japan or other non-nuclear allies should acquire nuclear weapons to lessen the military burden on the US.

Despite his apparent non-commitment to nuclear non-proliferation, Trump's interest in reducing government expenditures could potentially lead him to reconsider the costly modernisation programme for nuclear forces put forward by the administration of outgoing US president Barack Obama. As a Republican president with a Republican-controlled Congress, Trump will be well-placed to achieve the kind of arms control progress that eluded his predecessor.

Furthermore, given Trump's apparent desire to improve US-Russian relations, he may be willing to make concessions to induce Russian president Vladimir Putin back to the negotiating table for further strategic arms reductions. Nevertheless, it remains to be seen exactly how the Trump presidency will affect a global nuclear non-proliferation and disarmament regime in desperate need of restorative action.



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