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Uniting Civil Society on a Global Law Against Nuclear Weapons

A Contribution to CNANW Meeting, May 13-14,

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A controversy has flared up in the peace movement over whether we should support a nuclear weapons convention or a treaty banning nuclear weapons. Are they really in competition?

The current debate stems from new concentration on the “catastrophic humanitarian consequences” of the use of nuclear weapons highlighted by the recent international conferences in Oslo and Nayarit (to be followed by a third meeting in Vienna December 8 and 9, 2014). Frustration at the inaction of the nuclear weapons states in agreeing to any form of comprehensive negotiations for the elimination of nuclear weapons has mounted. The failure of the third meeting of the Preparatory Committee for the 2015 NPT Review Conference to agree on minimal recommendations suggested by the Chairman exacerbates the present divisions and is bound to build pressure for action outside the NPT process. **It is important that members of the Canadian Network to Abolish Nuclear Weapons stay united in our common effort to achieve a legally binding instrument eliminating the possession of nuclear weapons.**

1. The Canadian Network to Abolish Nuclear Weapons says on its website: "We believe that the use and threat of use of nuclear weapons are abhorrent and morally wrong. We call on the Government of Canada to work urgently with other nations to conclude a convention which will set out a binding timetable for the abolition of all nuclear weapons in the world." A letter, April 10, 2014, from the Canadian Council of Churches to Foreign Minister John Baird asks the Canadian government to "affirm the new momentum toward a ban on nuclear weapons on humanitarian grounds... a ban on nuclear weapons would enhance states parties' capacity to achieve the NPT's goals."

2. What is the difference between a "convention" and a "ban"? A nuclear weapons convention, as proposed by UN Secretary-General Ban Ki-moon, would be a multilateral treaty, signed by the nuclear weapons states as well as non-nuclear weapons states, to outlaw nuclear weapons. This would include the possession, development, testing, production, stockpiling, transfer, use and threat of use of nuclear weapons, as well as provide for their elimination. It would be similar to existing conventions outlawing other categories of weapons, such as biological weapons, chemical weapons, anti-personnel mines and cluster bombs. The International Campaign to Abolish Nuclear Weapons (ICAN) is leading a campaign to obtain negotiations among like-minded states for a treaty banning nuclear weapons: "ban treaty." In common parlance, the two terms – convention and ban – are often used inter-changeably. This is causing confusion. There is a difference. We would explain it this way: the primary value of the ban proposal is that it is meant to stimulate progress toward a legal prohibition on nuclear weapons that is not contingent on the nuclear weapons states'

willingness to implement a concrete plan for elimination. A convention is meant to embrace all states, nuclear and non-nuclear (though such negotiations could be led by a small group of states).

3. It is important to note that, in 2008, when he called for consideration of the Model Nuclear Weapons Convention previously tabled as a UN document, Secretary-General Ban also said an alternate route to a nuclear weapons-free world could be through “a framework of separate, mutually reinforcing instruments.” This is commonly thought to include such items as a CTBT, FMCT and other items, which could be packaged. It is possible that a simple ban treaty could be part of this framework. In fact, the supporters of the ban treaty foresee that it could provide “a framework for the prohibition and elimination of nuclear weapons.”

4. A chief distinction between “convention” and “ban” is that it is assumed that the nuclear weapons states (at least some of them) would participate in the negotiations for a convention. But their bad faith in responding to the obligations of Article VI of the NPT is so blatant that it has given rise to the humanitarian movement, which is essentially appealing to states that want to instigate a legal instrument. This movement is calling for like-minded states to start negotiating among themselves to produce a ban treaty. This is how the Ottawa Landmines treaty process started. However, since nuclear weapons are deemed by their possessors to be the “supreme guarantee” of security, and not marginal as landmines are, the validity of a ban treaty that does not include the nuclear weapons states is questioned. Proponents argue that the value of a ban treaty, negotiated by those who want to produce it, would be to raise up international law to, at the very least, stigmatize the possession of nuclear weapons. To stay within the confines of the NPT (or

C.D.), where the nuclear weapons states essentially use the consensus rule to stop all progressive action is to dash the hopes for a nuclear weapons-free world. Utter frustration at the recalcitrance of the nuclear weapons states has driven the ban treaty movement.

5. The supporters of the ban treaty are careful to say: “A treaty banning nuclear weapons is not inconsistent with a Nuclear Weapons Convention, which is seen as a treaty providing for the elimination of nuclear weapons. A ban treaty, in comprehensively prohibiting nuclear weapons, provides a framework for their total elimination. The key difference is that negotiation of the Nuclear Weapons Convention as currently conceived places the onus on the nuclear-armed states to lead the process, in which they have indicated no interest.”

6. In its outstanding new Working Paper, “Article VI of the NPT,” the New Agenda Coalition says there are “various options” to achieve a nuclear weapons-free world: a) a Comprehensive Nuclear Weapons Convention; b) a Nuclear Weapons Ban Treaty; c) a Framework Arrangement of mutually supporting instruments; d) a Hybrid Arrangement, which might include elements of all or any of the above. The New Agenda “calls for all options to be discussed, examined and tested in full against the requirements of Article VI” to pursue and conclude negotiations for the elimination of nuclear weapons.

7. To the extent that efforts to promote a ban treaty, driven by the “catastrophic humanitarian consequences” of nuclear weapons, raises public opinion and gets forward-minded governments to at least start preparatory work on a legal instrument to prohibit nuclear weapons, it could be a

salutary effort – provided that the ban treaty is not seen as an end in itself. Given the continued obduracy of the nuclear weapons states, we are not criticizing sincere efforts to start a process towards elimination before this entire subject is overtaken by a catastrophic occurrence involving nuclear weapons. That said, we must be mindful of the admonition of UN High Representative Angela Kane, who has said that a nuclear disarmament treaty needs universality. She believes a ban treaty cannot “effectively by-pass the need to pursue a Nuclear Weapons Convention or a framework of multilateral instruments with the same objective, which is exactly what Secretary-General Ban Ki-moon has proposed.” She added: “Universality is not an expendable standard when it comes to achieving global nuclear disarmament.”

8. CNANW should take the position that the ban treaty could be the start of a legal instrument, which would evolve into or be part of a multilateral treaty with specific timelines for nuclear disarmament. To succeed in its goal of eliminating all nuclear weapons, such a treaty must have five essential elements: the means to **verify compliance**; **transparency** requirements so everybody knows who possesses what and what has been destroyed; it should be **irreversible**; it should be **universal**, including all countries without exception; it should be **legally binding**.

9. A ban treaty and a convention should not be seen in competition with each other. Both should be pursued by civil society groups wanting government action to move away from reliance on nuclear deterrence and start to build a global law against nuclear weapons. Time is running out for the international community to stave off disaster stemming from the nuclear weapons states’ continued modernization of their nuclear arsenals.