

Banning Nukes: Divergence and Consensus at the UN Working Group on Nuclear Disarmament

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Those of you who attempted to follow the discussion in real-time over the last two weeks at the Open-Ended Working Group (OEWG) at the United Nations in Geneva may have been non-plussed at the language in the speeches, especially if you were reading in the 140 character condensed form of Twitter posts. Those of us commenting and reporting from the “front-line” do our best not to overdo the acronyms and use plain speech, but it is easy to get sucked into diplo-speak. So here are a few personal definitions to help you understand what lies behind some of the frequently used code words in the many statements and in over sixty working papers submitted to the May session of the OEWG.

Convergence means that states are generally expressing enough similar language that the subject can be explored further as a basis for possible negotiation. However, it only indicates that states are near to agreement, there is still work to do. Here’s the thing: if there is convergence on a number of measures, then there is a risk that other measures on which there is divergence can be deemed less important, even if the majority of states support them. This is the case with a prohibition or ban as a step that could stand alone before negotiating elimination of nuclear weapons. At the OEWG, a clear majority of states expressed their support for a ban and called for a negotiating conference in 2017 and yet in the [short summary](#) to wrap up the two-week meeting by the Chair, Ambassador Thani Thongphakdi of Thailand, there seemed to be more emphasis on convergence than on the majority opinion and he explicitly refused to give weight to any of the points discussed in terms of the level of support given to them. The Chair will now draft a final report to be submitted to delegates by the end of July or early August and to be discussed and adopted at a further OEWG session in August. This report will go to the UNGA in October.

Adherence to consensus in the final report was called for by the states allied with the nuclear weapons states, also known as nuclear umbrella states or nuclear-dependent states (some refer to them as “weasels” because of their ability to weasel their way out of sticky diplomatic corners by renaming their approach or pretending to be mediators between the nuclear-armed and nuclear-free states). It is usually counter-intuitive for us to reject consensus, as most of us would like everyone to agree. But in the nuclear disarmament context, consensus actually means giving the nuclear weapons states, or their allies, veto power, thereby effectively silencing the majority. Thus it was possible for the Conference on Disarmament to do no work at all for twenty years. And for the NPT to have lively and interesting debates with many very good proposals that were dropped on the way to wishy-washy draft final reports that satisfy no-one. Note that in 2015 such a report was not adopted because there was no consensus and that many NGOs saw this as a good thing.

Such final reports are often referred to as lowest common denominator agreements.

Ambassador Dell Higgie of New Zealand [made it clear](#) on the final day of the 2nd session that her country would not support such a report on the OEWG. After all, the OEWG conducts itself under UNGA rules which allow for majority decisions, as opposed to the Conference on Disarmament which works only with consensus.

The nuclear umbrella states also called for the Chair's final report to be balanced. This means that the diverging opinions of the two camps (for and against outright prohibition, otherwise known as the ban approach) should have equal weight, although the numbers do not warrant that. This attitude is indicative of the [statement](#) by UN High Representative Kim regretting that some important states were not there, referring to the boycott of the OEWG by the nuclear-armed states. Following this logic, the opinion of nuclear-dependent states carry greater weight, due to their association with their 'important' but absent allies. Instead Ambassador Lomonaco of Mexico and many others called for a fair report that reflected what actually happened at the OEWG.



Diplomats put up their nameplates to show they want to speak – quite a line-up. Photo: Daniel Högsta

So what did happen at the OEWG? For the first time in many years a large number of states decided that they did not want consensus but confrontation on the issue of the illegitimacy of nuclear weapons. Tired with decades of patient discussions on micro-measures, principally for non-proliferation, and led by Argentina, Brazil, Costa Rica, Ecuador, Guatemala, Indonesia, Malaysia, Mexico and Zambia, states are now going for broke. Despite the prospect that the nuclear-armed states are unlikely to attend, they have [submitted a proposal](#) to the OEWG to “convene a Conference in 2017, open to all States, international organizations and civil society, to negotiate a legally-binding instrument to prohibit nuclear weapons” (ban treaty) and “to report to the United Nations high-level international conference on nuclear disarmament to be convened no later than 2018 ... on the progress made on the negotiation of such an instrument.” On the final day of the OEWG resounding majority support for prohibition and the commencement of negotiations was repeatedly expressed. States are convinced that with this approach they can bring pressure to bear on the nuclear-armed and nuclear-dependent states to begin genuinely considering negotiating the elimination of their nuclear arsenals.

On the other hand, another potential front-runner is the framework instrument that has an overarching character and implies that past and future agreements might find a place within the framework. A framework agreement would principally be a treaty that sets out broad commitments and a governance system which can be expanded upon in a further instrument or series of instruments. These instruments could detail technical, legal and other arrangements. Examples of framework agreements are: the UN Framework Convention on Climate Change (UNFCCC) and the Convention on Conventional Weapons (CCW). Such a framework agreement could establish key provisions, such as the prohibition of use or of further qualitative development of nuclear weapons. But it could actually contain a complete prohibition of nuclear weapons (including prohibitions on the development, production, modernisation, testing, acquisition, stockpiling, transfer, deployment, threat of use and use of nuclear weapons, and even prohibitions on assistance, financing, encouragement and inducement of these acts), as well as a timeframe for elimination, although its main proponents do not put emphasis on this because it would mean that the nuclear weapons states and their allies are less likely to support it. If this framework were to contain complete prohibition, then it would essentially be the similar to the idea of a nuclear weapons convention.

Whether states will decide to negotiate a stand-alone ban treaty or a framework instrument is still open to discussion. I do not believe that there is sufficient support for the progressive approach – a series of measures known as building blocks, which are essentially the same as the step-by-step approach but allow for steps to be taken in parallel – proposed by the nuclear umbrella states. A nuclear weapon ban treaty may have less support than a framework agreement but it could be done much more quickly. A framework agreement could drag on for many years because of its potential complexity. What the UN Secretary-General says on this in September may have some bearing on states' decision to call for negotiating one or the other. Certainly the UN High Representative for Disarmament Affairs Kim Won-soo from South Korea has made it clear that he wishes to see more inclusivity and an approach which could allow the nuclear weapons states to come on board.

The beauty of a stand-alone ban treaty is in its clarity, especially in terms of the moral imperative. It would leave no room for doubt as to the illegitimacy of nuclear weapons and would place any state that relies on nuclear weapons for their defence outside international law, if enough states were to support such a norm. Its entry into force could not be held hostage by nuclear-armed states reticence to ratify, as the CTBT has been. Given the present anger about the arrogance of the nuclear-armed states refusal to engage with the nuclear-free states which has been made explicit both through the boycott of the OEWG, but also through the ever hardening rhetoric of the nuclear umbrella states, it remains the most attractive option for states to pursue at the UN General Assembly in October. In this way, they can continue to put maximum pressure on the nuclear-armed states to take them seriously as the majority and therefore to respect their rights and security needs.

This debate has as much to do with redefining world order and democracy as it has to do with disarmament. As Mexico pointed out: there is nothing to be said against consensus when it is fair and reflects the truth. But when divergence exists and states with more power due to nuclear weapons wield a veto over the majority then there is nuclear oppression. Now the majority is rising up to liberate itself from this yoke with persuasive and well-thought out arguments for a comprehensive ban treaty. After more than twenty years of attending these often repetitive and boring diplomatic debates, I can hardly wait for the next one.

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