



**A Nuclear Weapons Convention: Implications for Governance and Civil Society**

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On January 17, 2007, the Bulletin of the Atomic Scientists moved the minute hand of the Doomsday Clock two minutes closer to midnight. It was now five minutes to midnight. The Bulletin statement explained:

*We stand at the brink of a second nuclear age. Not since the first atomic bombs were dropped on Hiroshima and Nagasaki has the world faced such perilous choices. North Korea's recent test of a nuclear weapon, Iran's nuclear ambitions, a renewed emphasis on the military utility of nuclear weapons, the failure to adequately secure nuclear materials, and the continued presence of some 26,000 nuclear weapons in the United States and Russia are symptomatic of a failure to solve the problems posed by the most destructive technology on Earth.<sup>1</sup>*

## Key obstacles to disarmament

The question arises: why has it been so difficult to make headway? Why has the euphoria generated by the demise of the Cold War dissipated with so little to show for it? There is, of course, no simple or single answer to this question. The obstacles are numerous, complex and variable. Here we confine ourselves to a few critical observations.

The first and most obvious obstacle centres on the logic of deterrence, which has underpinned the nuclear age virtually since its inception.<sup>2</sup> Nuclear weapons, it is argued, offer the ultimate guarantee of protection by deterring external aggression against the state. In the context of conflict involving two or more nuclear armed states, the traditional deterrence rationale which held sway during much of the Cold War period was that a nuclear attack would provoke a nuclear response. Confronted with the prospect of mutually assured destruction (MAD), the protagonists would choose to act rationally and refrain from initiating the kind of hostilities that would result in virtual suicide.

Over the last half century, deterrence theory has been subjected to withering criticism by strategic analysts, international relations experts, ethicists and public intellectuals.<sup>3</sup> The comforting reassurance offered by deterrence dissolves the moment one introduces the complexities and uncertainties of domestic politics and global geopolitics. Equally unpredictable are the mental and emotional conditions that apply to decision-making in

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<sup>1</sup> Bulletin of the Atomic Scientists, 'It is 5 Minutes to Midnight', *Bulletin of the Atomic Scientists*, 17 January 2007. (accessed at <http://www.thebulletin.org/content/doomsday-clock/overview> on 22 February 2009).

<sup>2</sup> See Robert Powell, *Nuclear Deterrence Theory: The Search for Credibility*, Cambridge: Cambridge University Press, 1990; also Lewis A. Dunn, 'Deterrence Today: Roles, Challenges and Responses', *IFRI Security Studies Centre*, Summer 2007 (accessed at [http://www.ifri.org/files/Securite\\_defense/Deterrence\\_Today\\_Dunn\\_2007.pdf](http://www.ifri.org/files/Securite_defense/Deterrence_Today_Dunn_2007.pdf) on 22 January 2009).

<sup>3</sup> See Cori Elizabeth Dauber, *Cold War Analytical Structures and the Post Post-War World: A Critique of Deterrence Theory*, Westport, CT: Praeger, 1993.

periods of acute stress, not to mention the dire possibilities associated with the unauthorised, inadvertent or accidental use of nuclear weapons. However, regardless of the logic of such arguments, it is arguable that deterrence continues to hold considerable sway over both policy planning and public sentiment in many countries. It is worth noting in this regard that deterrence thinking can accommodate reductions in nuclear stockpiles, even deep cuts, but is clearly hostile to any notion of complete nuclear disarmament.

There is, of course, a second and closely related factor which feeds the deterrence crutch, namely the actual or perceived threats, especially those that revolve around the world's most intractable conflicts. Israel's acquisition of nuclear weapons is a classic example of the phenomenon. Faced with what it considers to be a sharply hostile environment, Israeli governments have committed themselves to nuclear security in the event that their present conventional superiority *vis-à-vis* their Arab neighbours is challenged in the medium or longer term. Similarly, Pakistan's nuclear armoury, though probably less potent than India's, is seen as offering ultimate protection against India's conventional superiority. Recent statements by Putin and other Russian leaders again suggest that maintenance and expansion of nuclear forces are seen as a necessary response to the threat posed by the perceived superiority of US and NATO conventional forces and the proposed deployment of US ballistic missile defence systems in Eastern Europe.<sup>4</sup>

As a general proposition, it would seem that disarmament talks are less likely to succeed in conditions of acute tension, mistrust and suspicion, hence the importance of confidence building measures. Whether it is the US-Russian, Arab-Israeli, India-Pakistan or China-Taiwan disputes, the probability of success in denuclearisation initiatives will to a substantial degree depend in each case on improving the prevailing political and psychological climate.<sup>5</sup>

One other consideration is relevant here, especially in the light of recent US strategic thinking. The George W. Bush administration openly pursued a policy of unchallengeable nuclear superiority. In a sense, deterrence was abandoned in pursuit of a new strategic posture which sought to make use of America's technological superiority to entrench its global military dominance. The development and proposed deployment of missile defence systems, and withdrawal from the Anti-Ballistic Missile Treaty (ABM) appear to fit into this wider strategic mindset. These steps clearly militated against a proactive US role in disarmament negotiations. It may well be that this mindset is now under challenge, and that, given recent statements by leading practising and retired US policy-makers and in particular the stated positions of the new Obama Administration,<sup>6</sup> a new window of opportunity may have opened.

It remains to say a word about the domestic pressures that strongly influence the policy direction of any state that has already acquired or is on the verge of acquiring nuclear weapons. Decisions about research and development programmes, the size and structure of

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<sup>4</sup> Russian Permanent Representative Anatoly Antonov, Statement to the 2007 PrepCom, 30 April 2007 (accessed at <http://www.reachingcriticalwill.org/legal/npt/prepcom07/statements/30aprilRussia.pdf> on 20 February 2009).

<sup>5</sup> Nikolai N Sokov, 'Prospects for Changing Strategic Doctrines', in *Nuclear Challenges and Policy Options for the Next U.S. Administration*, Monterey Institute of International Studies, 2008, p.75.

<sup>6</sup> See the positions articulated on nuclear weapons on the Obama website: [http://origin.barackobama.com/issues/foreign\\_policy/#nuclear](http://origin.barackobama.com/issues/foreign_policy/#nuclear) [accessed on 18 February 2009].

nuclear forces, and nuclear doctrine are not made in a political vacuum. More often than not, such decisions rest less on strategic or doctrinal considerations than on the day-to-day pressures to which policy-making is subjected. Considerable influence is invariably exerted by powerful lobbies, which include arms manufacturers and their suppliers, scientists and technical experts with a direct stake in the development of a nuclear weapons and nuclear power capability,<sup>7</sup> trade unions concerned about jobs for their members, and a range of think tanks and media outlets with particular financial or ideological attachments. It is estimated that in 1999 and 2000 companies with a major stake in missile defence and nuclear weapons contracts spent more than US\$58.9 million on lobbying.<sup>8</sup> In circumstances of heightened international tension, public sentiment itself may be a significant factor in the decision-making process.

This all too brief discussion of the obstacles to nuclear disarmament indicates the critically important role of factors other than strategic argument or esoteric debates about defence and deterrence. Invariably, the influences that decisively shape nuclear disarmament negotiations and outcomes have to do with the psychology of the situation both within and between countries. It follows that governments and political parties with an interest in taking forward the nuclear non-proliferation and nuclear disarmament agenda must individually and collectively do all in their power to create a favourable climate of opinion. This they can do through their public pronouncements and their policies. But governments cannot do this alone; they need the support and active collaboration of the wider public and key elements of civil society, including media, educational institutions, professional and other expert bodies, as well as a range of community organisations.

## **Reshaping the disarmament agenda**

Inevitably we have to ask the question: What is to be done? The answer is both easy and difficult. It is easy in the sense that over the last twenty or more years numerous inquiries, commissions and expert bodies have considered the question in depth and have offered detailed proposals on almost every conceivable element of the nuclear disarmament and arms control agenda. To name a few of the more important contributions:

- In 1982, a commission headed by Prime Minister Olof Palme of Sweden submitted an influential report entitled *Common Security*.
- In 1996, there appeared the Australian Government-sponsored *Report of the Canberra Commission on the Elimination of Nuclear Weapons*.
- In August 1998, just months after Pakistan's and India's nuclear tests, the Government of Japan organized the independent Tokyo Forum for Nuclear Non-Proliferation and

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<sup>7</sup> . Paul Robinson, *White Paper on the Role of U.S. Nuclear Weapons in the 21st Century*, 2001 (accessed at [www.sandia.gov](http://www.sandia.gov) on 15 February 2009).

<sup>8</sup> William D. Hartung and Jonathon Reingold, 'About Face: The Role of the Arms Lobby in the Bush Administration's Radical Reversal of Two Decades of US Nuclear Policy', *A World Policy Institute Special Report*, 2002 (accessed at <http://www.worldpolicy.newschool.edu/projects/arms/reports/reportaboutface.html#II> on 23 February 2009).

Disarmament. Its final report, issued a year later, presented an 'Action Plan' dealing with nuclear disarmament, non-proliferation and terrorism.

- In 2003 the Swedish government sponsored and funded the independent Weapons of Mass Destruction Commission chaired by Hans Blix. Its final report, *Weapons of Terror: Freeing the World of Nuclear, Biological, and Chemical Arms*, was published in June 2006.

To these reports should be added the studies, papers and conferences sponsored by international organisations, in particular the UN Department for Disarmament Affairs (DDA), the UN Institute for Disarmament Research (UNIDIR), the International Atomic Energy Agency (IAEA) and the New Agenda Coalition.

Important contributions have also been made by a range of non-governmental bodies:

- Acronym Institute for Disarmament Diplomacy
- Arms Control Association
- Carnegie Endowment for International Peace
- Federation of American Scientists
- Global Zero Initiative
- Lawyers' Committee on Nuclear Policy
- Middle Powers Initiative
- Monterey Institute of International Studies – Center for Nonproliferation Studies
- Mountbatten Centre for International Studies
- Nuclear Threat Initiative
- The Simons Centre for Peace and Disarmament Studies
- Sipri – Stockholm International Peace Research Institute
- The Henry L. Stimson Center
- VERTIC - The Verification Research, Training and Information Centre
- International Physicians for the Prevention of Nuclear War
- Pugwash
- Reaching Critical Will

There is no lack of expert knowledge and understanding of the issues and remarkable agreement on the most promising avenues to be pursued. The difficulty in answering the question 'what is to be done?' arises from the lack of political will and political know-how as to the most effective way forward. The letter written by four highly influential former US nuclear policy makers (published by the Wall Street Journal in January 2007) was nevertheless indicative of a gradual shift in conventional wisdom.<sup>9</sup> So was President Obama's address in Prague on 5 April 2009, in which he expressed his country's 'commitment to seek the peace and security of a world without nuclear weapons'. To this end, he pledged to reduce the role of nuclear weapons in US security strategy, to urge others to do the same, to negotiate a new strategic arms reduction agreement with Russia, and to press vigorously for US ratification of the Comprehensive Test Ban Treaty.<sup>10</sup> But several

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<sup>9</sup> George P. Shultz, William J. Perry, Henry A. Kissinger and Sam Nunn, 'A World Free of Nuclear Weapons', *Wall Street Journal*, 4 January 2007, 15.

<sup>10</sup> See Remarks of President Barack Obama at Hradčany Square in Prague, on 5 April 2009 (accessed at <http://prague.usembassy.gov/obama.html> on 7 September 2009).

months, the going is proving difficult for the US President. If his administration is to make headway both domestically and internationally, a substantial, carefully conceived and well coordinated international coalition will need to emerge.

The remainder of this paper focuses on this aspect of the question, and in particular on the contributions that Japan and Australia could make to the reinvigoration of the global nuclear disarmament agenda and the development of appropriate governance arrangements.

### **Moving towards a convention for the elimination of nuclear weapons**

The first strategic step, which provides the overarching framework and rationale for any such coalition is a 'Plan of Action'. Central to such a plan is a clear statement of principle, in which Japan, Australia and other likeminded nations commit themselves (through their respective parliaments) to the long-term elimination of nuclear weapons. Such a commitment should be contained in a formal declaration which begins with the affirmation that so long as any nuclear weapons remain, there is a risk that they will one day be used, by design or accident, and any such use would be ruinous for both regional and global security, hence for Japan's and Australia's security. The Declaration would go on to commit both countries to the eventual universal adoption of a legally binding convention outlawing all nuclear weapons. This fundamental objective would be articulated in a formal resolution passed by the two parliaments, and then reiterated by the two Governments at the UN General Assembly and at all available formal and informal international – regional and global – gatherings, and with particular vigour at the 2010 NPT Review Conference.

In preparation for, and as a direct contribution to, a legally binding convention, the two governments should outline a detailed programme that incorporates several of the more promising ideas, proposals and recommendations to have emerged over the last fifteen years. Though not an exhaustive list, what follows is an outline of the initiatives which would constitute such a programme. In order to highlight the varying degrees of difficulty associated with implementation, each proposal is listed under three time frames of ascending difficulty: 5 years, 15 years and 30 years. Some of these initiatives could be taken unilaterally, that is individual governments can commit themselves to a particular course of action regardless of whether or not others follow suit. Other initiatives can be the subject of bilateral or multilateral agreements. Multilateral agreements can be of three kinds: (involve states with parallel or converging interests (*plurilateral*), encompass an entire region (*regional*), or the international community as a whole (*global*).

### ***Projected initiatives for period 2009-2015***

#### Unilateral:

1. Nuclear weapon states (NWS) recommit themselves to nuclear disarmament and to the eventual goal of a world without nuclear weapons – a position now held by leading political personalities in the United States and elsewhere.<sup>11</sup> The commitment should be made at the highest political level.

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<sup>11</sup> Kissinger, Shultz, Perry and Nunn, 'Call for a World Free of Nuclear Weapons', *The Wall Street Journal*, 4 January 2007; Canberra Commission, Executive Summary; *Report prepared by an*

As the Canberra Commission report put it, 'the first requirement is for the five nuclear weapon states to commit themselves unequivocally to the elimination of nuclear weapons and agree to start work immediately on the practical steps and negotiations for its achievement'.<sup>12</sup>

2. In line with the above commitment, NWS undertake:

a) not to develop or produce new nuclear weapons;<sup>13</sup>

b) not to deploy new nuclear weapons on foreign soil (including allies).<sup>14</sup>

3. Non Nuclear weapon states (NNWS) commit themselves to working with NWS for the complete elimination of all nuclear weapons. This commitment should also be made at the highest possible level. The 'renewed grand bargain' advocated by the Blix Commission calls on all states to 'accept the principle that nuclear weapons should be outlawed, as are biological and chemical weapons, and explore the political, legal, technical and procedural options for achieving this within a reasonable time'.<sup>15</sup>

4. Governments work collaboratively with civil society and the media to press for nuclear disarmament, especially through their respective educational systems.<sup>16</sup>

5. NNWS withdraw their participation in and support for missile defence systems either on their soil or on the soil of other countries.<sup>17</sup>

6. The United States and other Annex 2 countries that have yet to do so proceed to ratify the Comprehensive Test Ban Treaty.

#### Bilateral:

7. The United States and Russia negotiate a number of nuclear confidence building measures,<sup>18</sup> thereby creating a receptive international climate for negotiations on global reductions of nuclear arms.<sup>19</sup> US-Russian nuclear confidence building might then be extended to the other nuclear weapon states and new measures developed which involve them.<sup>20</sup>

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*Independent Commission at the request of the Director General of the IAEA, May 2008, p. viii; Weapons of Mass Destruction Commission, *Weapons of Terror: Freeing the World of Nuclear, Biological and Chemical Arms*, Stockholm: EO Grafiska, 2006, p.19.*

<sup>12</sup> Canberra Commission, 'Executive Summary', *The Canberra Commission on the Elimination of Nuclear Weapons* (accessed at <http://www.dfat.gov.au/cc/index.html> on 15 February 2009).

<sup>13</sup> WMDC, *Weapons of Terror*, p.99.

<sup>14</sup> *Ibid.*, p.98.

<sup>15</sup> *Ibid.*, p.19.

<sup>16</sup> *Ibid.*, pp.161, 162.

<sup>17</sup> International Campaign to Abolish Nuclear Weapons, *Nuclear Weapons abolition and Nuclear Power*, (accessed at <http://www.icanw.org/> on 20 February 2009), p.1.

<sup>18</sup> Canberra Commission, Executive Summary.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

8. A renewal of the START verification procedures is an important part of restarting bilateral cooperation as well as laying the ground work for future arms reductions.<sup>21</sup> The START I treaty is scheduled to expire on 5 December 2009. Key provisions of this treaty, in particular their essential monitoring and verification requirements, should be extended.<sup>22</sup>
9. The United States and Russia continue the highly successful Cooperative Threat Reduction (CTR) whereby funding is made available to Russia to help secure materials that might be used in nuclear or chemical weapons and dismantle weapons of mass destruction.
10. The United States and Russia reactivate the Trilateral Initiative aimed at developing a verification system under which they can submit classified forms of weapons-origin fissile material to IAEA verification and monitoring in a irreversible manner and for an indefinite period of time.<sup>23</sup>
11. India and Pakistan enter into discussions with a view to negotiating further nuclear confidence building measures.<sup>24</sup>

#### Plurilateral:

12. NWS agree to take their nuclear weapons off hair-trigger alert.<sup>25</sup> The warning and decision times for the launch of all nuclear-armed ballistic missiles must be increased if the risks of accidental or unauthorised attacks are to be reduced. Developments in cyber-warfare pose new threats that could have disastrous consequences if the command-and-control systems of any nuclear-weapons state were compromised by mischievous or hostile hackers.<sup>26</sup>
13. The five nuclear powers agree pledge not to be the first to resume nuclear testing pending the CTBT coming into force.<sup>27</sup>
14. NWS enter into negotiation to further reduce the size of their nuclear arsenals.<sup>28</sup>

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<sup>21</sup> Joseph Biden, *Speech to the 45th Annual Munich Security Conference*, 07/02/2008 (accessed at <http://www.securityconference.de> on 12 February 2009).

<sup>22</sup> Kissinger, Nunn, Perry and Schultz, 'Renewed Call from Kissinger, Nunn, Perry and Shultz for Nuclear-Free World', *Wall Street Journal*, 15 January 2008, p.2.

<sup>23</sup> Step 8, '13 Steps Principles and Objectives for Nuclear Non-Proliferation and Disarmament', Article VI.15, NPT/CONF.2000/28; WMDC, *Weapons of Terror*, p.49. For more detail on the initiative, see Thomas E. Shea, 'The Trilateral Initiative: A Model For The Future?', *Arms Control Today*, May 2008, (accessed at [http://www.armscontrol.org/act/2008\\_05/PersboShea.asp%2523Sidebar1](http://www.armscontrol.org/act/2008_05/PersboShea.asp%2523Sidebar1) on 11 February 2009).

<sup>24</sup> WMDC, *Weapons of Terror*, p.83.

<sup>25</sup> Kissinger, Shultz, Perry and Nunn, 'Call for a World Free of Nuclear Weapons', *The Wall Street Journal*, 4 January 2007; Kissinger, Nunn, Perry and Schultz, 'Renewed Call from Kissinger, Nunn, Perry and Shultz for Nuclear-Free World', *Wall Street Journal*, 15 January 2008; Canberra Commission, Executive Summary'; WMDC, *Weapons of Terror*, p. 18.

<sup>26</sup> Kissinger, Nunn, Perry and Schultz, 'Renewed Call from Kissinger, Nunn, Perry and Shultz for Nuclear-Free World', *Wall Street Journal*, 15 January 2008, p.2

<sup>27</sup> Einhorn, 'Building P-5 Cooperation on Non-Proliferation', p. 40



15. All Countries with nuclear research or nuclear power programmes agree to a moratorium on the production of fissile materials for nuclear weapons pending completion and entry into force of a Fissile Materials Cut-off Treaty (FMCT).<sup>29</sup>
16. As proposed by the 2000 NPT review Conference, arrangements are made by nuclear-weapon states to place fissile material no longer required for military purposes under IAEA supervision or other relevant international verification.

Global:

17. The 2010 NPT Review conference agrees on a transparent and enhanced system of IAEA safeguards obligations, going beyond those currently administered by the IAEA. This would increase confidence that verification arrangements can detect promptly any attempt to cheat the disarmament process whether through retention or acquisition of clandestine weapons, weapons components, means of weapons production or undeclared stocks of fissile materials. Formal legal undertakings should be accompanied by corresponding legal arrangements for verification.<sup>30</sup>
18. Steps are taken to institutionalise cooperation between NWFZs.<sup>31</sup> To this end one state offers to host an international conference of all NWFZ member states.<sup>32</sup>
19. A Fourth Special Session of the UN General Assembly is convened to consider future steps to advance the programme of nuclear disarmament and arms control.<sup>33</sup>

***Projected initiatives for period 2015-2025***

Unilateral:

20. NWS discard any existing plans – largely a legacy of the Cold War years – for massive attacks.<sup>34</sup>
21. NWS undertake full transparency regarding the size, structure and deployment of their nuclear weapon arsenals.<sup>35</sup>
22. NWS remove from their nuclear forces non-strategic nuclear weapons.<sup>36</sup>

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<sup>28</sup> Kissinger, Nunn, Perry and Schultz, 'Renewed Call from Kissinger, Nunn, Perry and Shultz for Nuclear-Free World', *Wall Street Journal*, 15 January 2008

<sup>29</sup> Einhorn, 'Building P-5 Cooperation on Non-Proliferation', p. 41; WMDC, *Weapons of Terror*, p.74

<sup>30</sup> Canberra Commission, Executive Summary.

<sup>31</sup> International Campaign to Abolish Nuclear Weapons, *Nuclear Weapons Abolition and Nuclear Power*, , p.8

<sup>32</sup> Devon Chaffe, Herbert Scoville and Jim Wurst, 'Strengthening Existing Nuclear Weapon Free Zones', *Prepared for the Uppsala, Sweden Seminar on NWFZs*, September 2000.

<sup>33</sup> John Langmore, 'Note on the Possibility and Potential Value of Holding a Forth Special Session of the UN General Assembly on Disarmament', *International Commission on Nuclear Non-Proliferation and Disarmament*, (accessed at <http://www.icnnd.org/> on 20 February 2009).

<sup>34</sup> Kissinger, Nunn, Perry and Schultz, 'Renewed Call from Kissinger, Nunn, Perry and Shultz for Nuclear-Free World', *Wall Street Journal*, 15 January 2008, p.3.

<sup>35</sup> WMDC, *Weapons of Terror*, pp.94, 95.

23. NWS that have not already done so, make a commitment to no-first use of nuclear weapons.<sup>37</sup>
24. NWS significantly diminish the role of nuclear weapons in their national security policies and undertake a major review of their nuclear disarmament programmes, with a view to strengthening their disarmament initiatives, institutional arrangements and public awareness.<sup>38</sup>
25. All existing non-strategic nuclear weapons and other nuclear weapons related facilities are withdrawn from deployed sites on foreign soil to a limited number of secure national storage facilities.<sup>39</sup>

Bilateral:

26. Nuclear weapons reductions outlined in SORT are fully implemented.<sup>40</sup>
27. The United States and Russia take the lead in agreeing to further reductions of their arsenals, beginning with a legally binding, verifiable follow to previous START agreements.<sup>41</sup> A feasible objective would be to reduce existing deployments by half.<sup>42</sup>

Plurilateral:

28. Expanding on the success of the Cooperative Threat Reduction programme, a Global Threat Reduction Initiative (GTRI) is negotiated with a view to extending nuclear weapon and nuclear material securing and dismantlement activities to states outside the former Soviet Union.<sup>43</sup>
29. NWS reach agreement on the staged removal of warheads from delivery vehicles.<sup>44</sup>

Regional:

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<sup>36</sup> Canberra Commission, Executive Summary.

<sup>37</sup> Italy, Working Paper on Security Assurances, 2007 PrepCom, NPT/CONF2010/PC.1/7 (accessed at <http://www.reachingcriticalwill.org/legal/npt/prepcom07/papers.html> on 20 February 2009); China, Working Paper on Security Assurances, 2007 PrepCom, NPT/CONF2010/PC.1/WP.43, 2007 (accessed at <http://www.reachingcriticalwill.org/legal/npt/prepcom07/papers.html> on 17 February 2009)

<sup>38</sup> China, Working Paper on Security Assurances, 2007

<sup>39</sup> WMDC, *Weapons of Terror*, p. 98.

<sup>40</sup> Kissinger, Nunn, Perry and Schultz, 'Renewed Call from Kissinger, Nunn, Perry and Shultz for Nuclear-Free World', *Wall Street Journal*, 15 January 2008, p. 2

<sup>41</sup> Einhorn, 'Building P-5 Cooperation on Non-Proliferation', p.40; Vice President Joseph Biden, 45<sup>th</sup> Annual Munich Security Conference; Kissinger, Nunn, Perry and Schultz, 'Renewed Call from Kissinger, Nunn, Perry and Shultz for Nuclear-Free World', *Wall Street Journal*, 15 January 2008; Canberra Commission, 'Executive Summary'.

<sup>42</sup> WMDC, *Weapons of Terror*, p. 93.

<sup>43</sup> Rose Gottemoeller, Centre for Strategic and International Studies and the Massachusetts Institute of Technology, 'Cooperation Threat Reduction beyond Russia', *Washington Quarterly*, 28(2), pp. 145-158.

<sup>44</sup> Canberra Commission, Executive Summary.

30. NWS ratify all existing NWFZs.<sup>45</sup>

#### Global

31. The CTBT achieves universal ratification.<sup>46</sup>
32. Preparations commence for a World Summit to consider the drafting of a Nuclear Weapons Convention.<sup>47</sup> “A model Nuclear Weapons Convention already exists as an official UN document. No doubt it will undergo many adjustments over time. It need not take the form of a single treaty, but ‘a framework of separate, mutually reinforcing agreements which together are comprehensive’.<sup>48</sup>
33. International agreement is reached on all key transparency principles and safeguard mechanisms to enable effective verification of disarmament.<sup>49</sup>
34. A Fissile Materials Cut-off Treaty is successfully negotiated.<sup>50</sup> Such a treaty that precludes nations from producing nuclear materials for weapons would contribute to a more rigorous system of accounting and security for nuclear material.<sup>51</sup>
35. A legally binding agreement is concluded banning all nuclear sharing activities relating to technology and equipment transfer for the manufacture and deployment of nuclear warheads and their delivery systems.<sup>52</sup>
36. A universal treaty is concluded committing all Parties to the no-first use of nuclear weapons.<sup>53</sup>
37. Agreement is reached on an internationally legally binding instrument extending negative security assurances to all NNWS party to the NPT.<sup>54</sup>

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<sup>45</sup> Nabil Fahmy, ‘Cooperative Security: the Importance of Regional and Other Security Arrangements-Pointers for a New Administration’, *Nuclear Challenges and Policy Options for the Next US Administration*, Monterey Institute of International Studies, 2008, p.85; Uppsala Declaration on NWFZs, Conference hosted by the Dag Hammerskjold Foundation, Uppsala Sweden, 4 September 2000.

<sup>46</sup> Statements by the New Agenda Coalition: Delivered by Ireland, Statement to the 2007 PrepCom, 2007 (accessed at <http://www.reachingcriticalwill.org/legal/npt/prepcom07/statements/8mayNAC.pdf> on 20 February 2009); Kissinger, Shultz, Perry and Nunn, ‘Call for a World Free of Nuclear Weapons’, *The Wall Street Journal*, 4 January 2007, p. 3; WMDC, *Weapons of Terror*, pp. 15, 61.

<sup>47</sup> WMDC, *Weapons of Terror*, p. 18.

<sup>48</sup> International Campaign to Abolish Nuclear Weapons, *Nuclear Weapons Abolition and Nuclear Power*, p. 1.

<sup>49</sup> Canberra Commission, Executive Summary.

<sup>50</sup> Kissinger, Nunn, Perry and Schultz, ‘Renewed Call from Kissinger, Nunn, Perry and Shultz for Nuclear-Free World’, *Wall Street Journal*, 15 January 2008; WMDC, *Weapons of Terror*, pp. 15, 18, 49.

<sup>51</sup> Kissinger, Nunn, Perry and Schultz, ‘Renewed Call from Kissinger, Nunn, Perry and Shultz for Nuclear-Free World’, *Wall Street Journal*, 15 January 2008, p. 2.

<sup>52</sup> Cuban Ambassador Norma Goicochea Estenez, Statement to the 2007 PrepCom, 01/05/2007 (accessed at <http://www.reachingcriticalwill.org/legal/npt/prepcom07/statements/1mayCuba.pdf> on 17 February 2009).

<sup>53</sup> China, Working Paper on Security Assurances, 2007 PrepCom, NPT/CONF2010/PC.1/WP.43, 2007 (accessed at <http://www.reachingcriticalwill.org/legal/npt/prepcom07/papers.html> on 17 February 2009).

38. A multilateral nuclear fuel bank is established under IAEA auspices.<sup>55</sup>

**Projected initiatives for period 2026-2040**

Plurilateral:

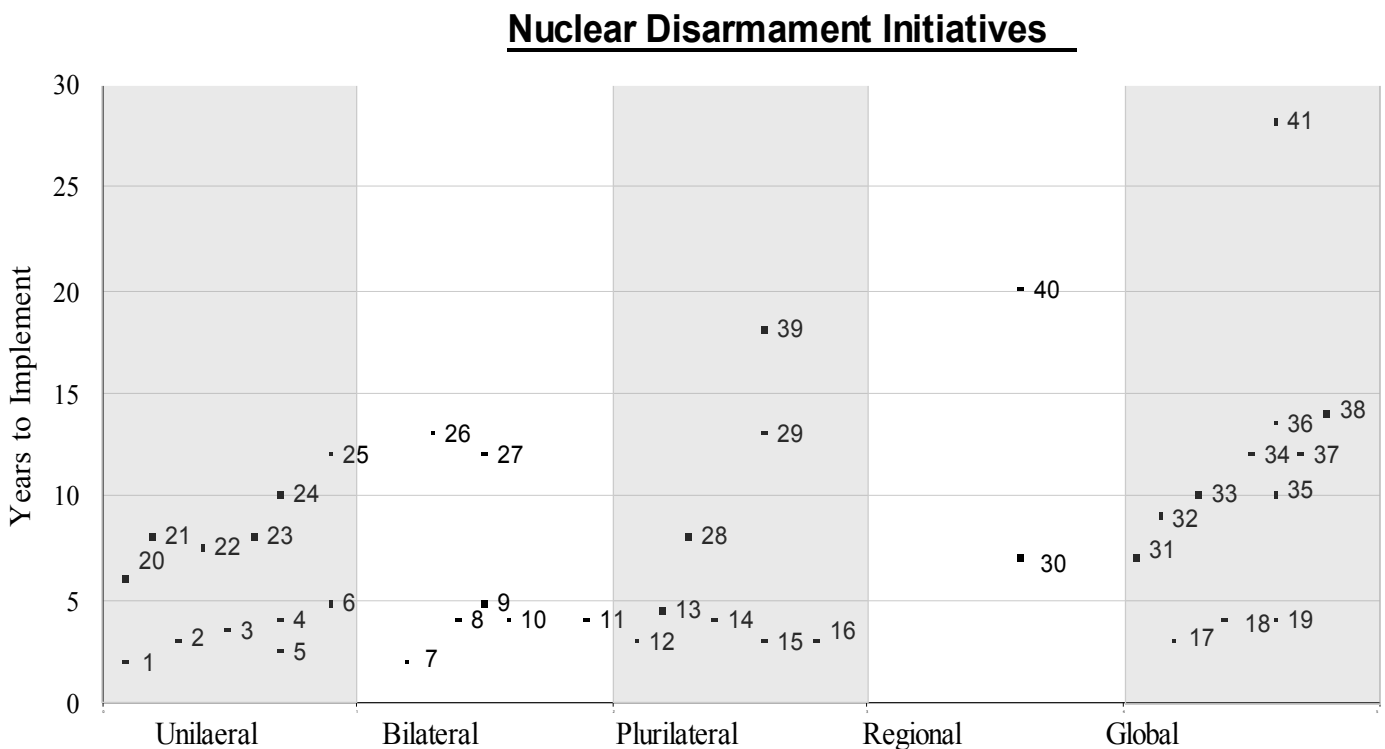
39. Agreement is reached on further drastic reductions to nuclear armed forces of all NWS.<sup>56</sup>

Regional

40. NWFZs are established in the Middle East and Northeast Asia.<sup>57</sup>

Global

41. An internationally legally binding Nuclear Weapons Convention for the Permanent and Complete Elimination of Nuclear Weapons comes into force.



<http://www.reachingcriticalwill.org/legal/npt/prepcom07/papers.html> on 20 February 2009).

<sup>55</sup> Statement by Austrian Federal Minister for European and International Affairs, Ursula Plassnik, Statement to the 2007 PrepCom, 30 April 2007 (accessed at

<http://www.reachingcriticalwill.org/legal/npt/prepcom07/statements/30aprilAustria.pdf> on 20 February 2009); Mohammed El Baradei, 'Statements of the Director General IAEA', *Statement to the Sixty-Third Regular Session of the United Nations General Assembly*, 28 October 2008, p.3.

<sup>56</sup> Kissinger, Nunn, Perry and Schultz, 'Renewed Call from Kissinger, Nunn, Perry and Shultz for Nuclear-Free World', *Wall Street Journal*, 15 January 2008.

<sup>57</sup> Fahmy, 'Cooperative Security', p. 85; WMDC, *Weapons of Terror*, pp. 19, 47, 70.

The path that is actually followed need not conform to this particular sequence or configuration of initiatives. They are, however, indicative of the need for an incremental approach that builds over time the cumulative momentum needed to support the objective of eliminating nuclear weapons as an instrument of national policy. But the objective must consciously guide the process from the outset. At a reasonably early stage, preparations should get under for a World Summit that would consider the drafting of a Nuclear Weapons Convention.<sup>58</sup> A model Nuclear Weapons Convention already exists as an official UN document. No doubt it will undergo many adjustments over time. It could take the form either of a single treaty, or of 'a framework of separate, mutually reinforcing agreements which together are comprehensive'.<sup>59</sup>

The notion of a world free of nuclear weapons may at first sight appear utopian. There is, indeed, a real danger that mere words will condemn such a policy to 'utopian' irrelevance, which is why the policy needs to be translated into a series of incremental steps of ascending scope and difficulty, pursued collaboratively with others. How is a steadily expanding framework of formal and informal, legal and organisational arrangements of the kind proposed here to be achieved? How, in other, might we establish a psychological and political climate conducive to the desired outcomes? Here, there is much to be gained from a close analysis of past efforts both in the area of non-proliferation and disarmament, and in comparable multilateral initiatives, where a multifaceted and sustained programme of action resulted in the adoption of an international, legally binding convention.

For reasons of space we limit ourselves to a brief examination of three examples. Two are drawn from the field of conventional disarmament (the outlawing of land mines and cluster munitions) and the other from the field of international criminal justice (the establishment of an international criminal court). All three offer significant insights as to how the international community and individual governments (Australia in this case) might effectively move towards an international nuclear weapons convention.

Key features of these three extraordinary initiatives are captured in the three skeleton chronologies provided below. Each in its own way suggests what can be achieved when the necessary momentum develops as a result of concerted action. Taken together the three initiatives graphically illustrate how relative inaction and prolonged stalemate can, provided certain conditions obtain, be followed by impressive results in a relatively short space of time.

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<sup>58</sup> WMDC, *Weapons of Terror*, p. 18.

<sup>59</sup> International Campaign to Abolish Nuclear Weapons, *Nuclear Weapons Abolition and Nuclear Power*, p. 1.

## Landmines Convention Timeline

- 1980** *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects* (CCW) enters into force. Protocol II of the CCW restricts the use of mines, booby-traps and other devices.
- 1992** Representatives from six NGOs meet to issue a *Joint Call to Ban Anti-Personnel Landmines* and to establish the International Campaign to Ban Landmines (ICBL).
- 1993** First international conference of the ICBL.
- The Parties to the CCW adopt a new protocol – Protocol V – to address ‘*the serious post-conflict humanitarian problems caused by explosive remnants of war*’.
- Following pressure from Handicap International (France), the French Government formally submits a request to the UN Secretary General to convene a CCW review conference.
- The UN General Assembly urges the establishment of a group of governmental experts to prepare for a conference to consider strengthening restrictions on the use of anti-personnel mines; the establishment of a verification system; and study opportunities for broadening the scope of this Protocol to civil conflicts.
- Review Conference of the CCW is held in Vienna in September. The Parties to the conference fail to reach consensus on an amendment to Protocol II.
- 1996**
- January The Canadian government announces an immediate moratorium on the use, production, sale or export of any anti-personnel mines.
- May Follow on session to the Review Conference is held in Geneva. Parties to the CCW adopt an amended protocol II, which was subsequently criticised as ‘woefully inadequate’ by the ICRC.
- May Canada announces that it will host an international conference in order to plan a ban on landmines
- October 50 participating states and 24 observer states, together with a strong representation of NGOs, assemble for the *International Strategy Conference: Towards a Global Ban on Anti-Personnel Mines* in Ottawa.
- Canadian Minister for Foreign Affairs, Lloyd Axworthy, ‘challenge[s] the international community to negotiate and sign a treaty to ban anti-personnel landmines by December 1997’.
- November US Special Representative to the UN introduces a draft resolution into the General Assembly, with 84 co-sponsors, calling for the negotiation of a total prohibition on landmines
- December UN General Assembly adopts the proposed text as 51/45S which urged states to pursue a ‘*legally binding international agreement to ban the use, stockpiling and transfer of anti-personnel landmines with a view to completing the negotiation as soon as possible*’
- 1997**
- February 111 states meet in Vienna to discuss the first draft of the treaty.
- June States sign the Brussels Declaration which agrees to on a ban anti-personnel mines by December 1997.
- September Governments negotiate the Convention at the *Diplomatic Conference on an International Total Ban on Anti-Personnel Land Mines* in Oslo over three weeks with NGOs playing an unprecedented role in the process.
- December *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* is signed by 122 countries in Ottawa.
- 1999**
- March With the ratification by 40 states, the Convention enters into force.

## International Criminal Court Timeline

- 1948** Members of the UN General Assembly adopt the *Convention on the Prevention and Punishment of the Crime of Genocide*. Members also ask the International Law Commission (ILC) to examine the possibility of establishing an international criminal court (ICC)
- The UN General Assembly adopts the *Universal Declaration of Human Rights*
- 1949-54** The ILC drafts statutes for the creation of an ICC. Opposition from both sides of the Cold War obstruct the effort and the General Assembly abandons the effort. Little will happen for the best part of four decades
- 1989** The UN General Assembly calls on the ILC to prepare a new draft statute.
- 1993** The UN Security Council establishes an *ad hoc* criminal tribunal under Chapter VII of the UN Charter to examine war crimes and human rights violations that constitute international crimes in the Former Yugoslavia.
- 1994** A second *International Criminal Tribunal* is established with the task of investigating the crimes committed in Rwanda in 1994 and bringing the perpetrators to justice.
- The ILC submits a draft statute for an ICC to the UN General Assembly which establishes a committee to review the draft.
- A coalition of NGOs (CICC) is formed to campaign for the creation of an ICC, and hold two 2-week meetings at UN headquarters.
- The UN General Assembly establishes a three-year Preparatory Committee (PrepCom) to finalise the text of the ICC statute to be presented in 1998.
- 1998**
- June The Italian government hosts the *UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court* in Rome, attended by 160 governments.
- CICC actively participates in the Rome Conference – monitoring the negotiations, producing daily information for worldwide distribution and facilitating the participation and parallel activities of the more than 200 NGOs attending the Conference. CICC is credited with influencing some of the most important provisions of the Rome Statute
- July UN member states vote overwhelmingly in favour of the Rome Statute of the ICC, thereby establishing the first permanent international court able to try individuals accused of war crimes, genocide and crimes against humanity.
- 1999**
- May The NGO Coalition for the ICC launches a campaign from The Hague calling for the wide ratification of the Rome Statute.
- 2000**
- June The PrepCom adopts a draft for the rules of procedure and Evidence and the Elements of Crimes as mandated by the Final Act of the Rome Conference.
- September UN Secretary General, Kofi Annan, calls on all states to ratify the Rome Statute
- December Deadline for signature to the ICC; US, Israel and Iran add their signatures.
- 2002**
- April The Rome Statute is ratified by 60 states,
- July The Rome Statute comes into force, despite the strong opposition of the US Administration.
- September The Assembly of States Parties to the ICC holds its first meeting.

## Cluster Munitions Convention Timeline

- 1980** Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW) enters into force. Occasional reference is made to problems associated with the use of cluster bombs.
- 2006** Belgium is the first country to ban the use, transportation, export, stockpiling, trade and production of cluster munitions.
- 2007**
- February Norway convenes the Oslo Conference on Cluster Munitions. This is the start of the 'Oslo process' which aims to solidify the political will to ban cluster munitions. States pledge to conclude a legally binding instrument to 'prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians' by 2008.
- March South-East Asian Regional Forum Taking Action on Cluster Munitions is held in Phnom Penh, Cambodia.
- April ICRC Expert Meeting in Montreux, Switzerland explores the Humanitarian, Military, Technical and Legal Challenges of Cluster Munitions (CCM).
- May 67 states attend the Lima Conference on the CCM in Peru. Broad consensus is reached on key elements of the treaty. Peru announces plans for a Latin American Cluster Munitions Free Zone.
- October The Belgrade Conference of States Affected by Cluster Munitions brings these states together for the first time
- December 138 states and civil society organisations from over 50 countries attend Vienna Conference on the CCM. Strong coordinated action by civil society highlights international support for a Convention
- 2008**
- February Fourth international conference is held in New Zealand as part of the Oslo process. The work of the Cluster Munitions Coalition (CMC) is publicly acknowledged. Despite misgivings and resistance in some quarters, momentum is maintained. All proposals are compiled in a separate 'Compendium' document.
- March At the Livingstone Conference on the CCM, Zambia, the all-African participating states adopted the Livingstone Declaration, which commits African states to negotiate an international ban on cluster munitions at the Dublin Diplomatic Conference.
- May At the Dublin Diplomatic CCM, Ireland 107 States adopt a new treaty comprehensively prohibiting production and use of cluster munitions.
- September Sofia Regional Conference is the first of a series of regional meetings designed to increase awareness about cluster munitions and promote the CCM.
- The Kampala African Conference on the CCM agrees to an Action Plan that calls for the earliest possible signature and ratification.
- October At The Safe Path: South East Asia Regional Conference (Laos), Australia and other states announce their intention to sign the Oslo CCM.
- Global Week of Action to Ban Cluster Bombs is active in 74 states.
- The *Faith Leaders Conference on Cluster Munitions* (Bosnia-Herzegovina) adopts Statement of Commitment A Total Ban on Cluster Munitions – A Moral Responsibility.
- November At the Latin American Regional Conference on the CCM (Quito), 20 states announce that they will sign the Oslo CCM.
- At Beirut Regional Conference, Lebanon announces strong support for convention.
- December At the CCM Signing Conference in Oslo, 94 states including users, producers, stockpilers and affected countries sign the convention.



These key features may be described as follows:

1. Action was taken by a number of parties in the wake of a steadily deteriorating situation (rapidly increased use of certain weapons in two cases, and instances of large-scale war atrocities and crimes against humanity in the other).
2. In each of the three cases, four types of actors played a critical role at particular times, often in close cooperation with each other:
  - Individual national governments (which gave the necessary impetus at critical moments)
  - Clusters of governments and/or regional organisations (which contributed the necessary muscle for the initiative to be sustained in the face of opposition)
  - Civil society organisations (which conducted intensive educational and advocacy campaigns)
  - International organisations (which provided the necessary authority, forums and public visibility).
3. At key moments individual governments were prepared to take unilateral initiatives. These were usually the governments of small or middle powers (e.g. Belgium, Canada, Italy, Norway). The nature of these initiatives varied with circumstances. They were generally of four types:
  - Policy decisions committing the government to a certain course of action that was of practical importance but also of considerable symbolic value (e.g. Canada's decision to impose an immediate moratorium on the use, production, sale or export of any anti-personnel mines);
  - Announcements that the government would host a major international conference (either in preparation for the proposed convention or with a view to its adoption);
  - Sustained action involving close cooperation with international organisations on the one hand and civil society (both in the home country and internationally) on the other;
  - Offer of resources (financial and in-kind) which were essential to the holding of conferences, public awareness programmes, and provision of physical infrastructure.
4. Civil society organisations with the support of a number of governments and international organisations formed large international coalitions which played a critical role in advocacy (advice to governments, including review of draft legal documents), public education, and liaison with national and international media.

5. The process inevitably encountered difficulties along the way, the most significant of which was the strong resistance of one or more powerful states, often the United States. Such resistance was evident at various stages in the lead-up to the Convention, and in some instances after the signing of the Convention. While many feared or predicted that such resistance would in the end scuttle the project, these fears proved unfounded. Sooner or later many of the great powers either became signatories themselves or at least put an end to their overt opposition.

How might these insights be translated into 'Plan of Action' supported by Japan and Australia? Here we do no more than list certain key initiatives which might be taken over the next three to five years (corresponding to the first phase outlined above), but each pursued with the clear intention of supporting the long-term objective – the adoption of a nuclear weapons convention. For this purpose we use as headings the categories described in earlier sections.

#### Unilateral:

- Both countries commit themselves to a nuclear weapons convention as the ultimate objective;
- In line with that objective, they articulate a package of proposals and measures of the kind outlined in the three-phased programme above (pp. 5-11; such advocacy should form the basis of a major Prime Ministerial Statement to each of the two parliaments, and a series of speeches delivered by the Prime Minister, Foreign Minister and other senior Ministers of the two countries at the United Nations and other appropriate international forums;
- Both governments should enact a rigorous nuclear safeguards programme. In Australia's case, the continued export of uranium to any country should be made subject to a rigorous bilateral safeguards agreement (existing agreements may need to be reviewed), and no uranium or other nuclear materials should be made available to any country which is not a signatory to the NPT, or to any nuclear weapons country which has not committed itself to a transparent and comprehensive nuclear non-proliferation and disarmament policy;
- Civil society organisations in Australia and Japan, working collaboratively, should initiate, in close consultation with media and educational bodies, a national public awareness and education programme on all issues pertaining to nuclear non-proliferation and disarmament;
- At the same time civil society organisations should formulate (with the support of relevant expert groups) a number of carefully elaborated proposals for

widespread public discussion, and eventual adoption by their respective governments. Such proposals would include:

- Australia and Japan to jointly host an international Conference designed to strengthen existing NWFZs and encourage the establishment of new ones;
- Australia and Japan to offer to host at an appropriate time (once the necessary groundwork has been done) an international conference that would set in motion the drafting of an International Convention for the Elimination of Nuclear Weapons;
- Establishment of an on-going consultative mechanism involving relevant civil society organisations in Australia and internationally.

Bilateral:

- Both Japan and Australia should seek a sustained dialogue with the United States, with a view to encouraging both the US Administration and Congress to support and, where appropriate, initiate some or all of the steps outlined earlier.
- A similar dialogue could be attempted with other major nuclear powers (in particular China) with a view to exploring possible areas of collaboration;
- A review should be conducted of the Japan-US and Australia-US military relationships with a view to determining whether any aspects of this relationship run counter to the proposed nuclear non-proliferation and disarmament programme, and, where necessary, to determine what appropriate remedial action should be taken (terminating any support for or involvement in anti-ballistic missile defence projects might be one such example);
- Australia and Japan, preferably acting in tandem, should initiate a sustained dialogue with their Southeast Asian neighbours (in particular Indonesia and Malaysia) which have had a longstanding interest in nuclear disarmament with a view to determining what bilateral or multilateral initiatives might be taken.

Plurilateral:

- Australia should convene a meeting of the Parties to the South Pacific NWFZ Treaty with a view to strengthening its provisions and their application;
- Both Australia and Japan should consider joining an existing informal coalition of like-minded middle powers (e.g. New Agenda Coalition) or forming a new one provided that such a step does not lead to the wasteful or competitive duplication of efforts;

### Regional:

- Consideration should be given to ways in which existing regional forums in the Asia-Pacific region (e.g. ASEAN Regional forum, East Asian Summit) could develop a coherent nuclear non-proliferation and disarmament action plan, taking on board at least some of the key proposals outlined in this paper (such an initiative could be taken in concert with one or more Asian members of these forums);
- Nuclear non-proliferation and disarmament would be obvious issues worthy of inclusion in current discussions about the possible establishment of an Asia-Pacific Community (as recently proposed by the Australian Prime Minister).

### Global:

- In line with the above proposals, and in collaboration with as many other stakeholders as possible, Japan and Australia should launch a concerted diplomatic effort to ensure the success of the NPT 2010 Review Conference; to this end, the two countries would need to:
  - Articulate the key principle linking nuclear non-proliferation and nuclear disarmament;
  - Promote (in collaboration with others) a set of concrete proposals in line with key elements of this submission (see pp. 8-10).
- In the event that the NPT Review Conference does not achieve the desired outcomes, civil society in both Japan and Australia should press for a nuclear weapons convention to be placed before the General Assembly, preferably at a Special Session, and before the Security Council.

Such a plan cannot come to fruition without the necessary commitment of human and financial resources. Put simply, the commitment to nuclear non-proliferation and disarmament must be appropriately funded. To this end two closely related measures seem advisable:

- a) Both countries should form, once the Evans-Kawaguchi commission has released its report, a high-level inter-department committee coordinated by the Prime Minister's Office, which would have overall responsibility for the formulation and execution of the 'Action Plan';
- b) Such a Committee should be assisted by a sufficiently large team of experienced and knowledgeable personnel who can contribute to the framing of policy, its presentation in diplomatic forums, its implementation, and the complex processes of negotiation, consultation and collaboration;

The ideas and proposals contained in this submission may at first sight seem unduly ambitious. On close reflection, however, they are highly practical steps that are within the reach of both countries. In each case, both civil society and government have at

different times in the past played a constructive role, though seldom in collaborative or sustained fashion. Yet, both Japan and Australia are regional powers whose history, geography and political culture make them uniquely placed to contribute to the cooperative effort needed to create a world free of nuclear weapons.