

# ANALYSING EFFECTIVE MEASURES

Options for multilateral nuclear disarmament  
and implementation of NPT article VI

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ILPI-UNIDIR NPT Review Conference Series

Paper N° 3 of 5  
#NPT2015

- Recent public concern about the humanitarian consequences of nuclear weapons has helped to sharpen the focus on measures by which the international community could progressively achieve the eventual elimination of these arms.
- Although many such measures have been identified over the years at meetings of the Nuclear Non-proliferation Treaty (NPT), a possible new approach for galvanizing nuclear disarmament has emerged.
- Support for negotiating a ban on the possession and use of nuclear weapons has been growing steadily on the back of new evidence accumulated at three conferences on their humanitarian impacts.
- Engaging with the concerns the humanitarian initiative has raised about nuclear weapons in a manner that builds new momentum for nuclear disarmament will be a key challenge for the upcoming NPT Review Conference.

## Introduction

When the parties to the NPT meet on 27 April 2015 to carry out their latest review of the Treaty (see Box 1), they will be aware, when focusing on ways of pursuing nuclear disarmament, of growing advocacy for one comparatively new measure, a ban on nuclear weapons. Its promoters see such a prohibition as a necessary—though not sole—response to the humanitarian consequences of those weapons as well as a means to re-energize stalled nuclear disarmament diplomacy with a view to progress toward nuclear weapons elimination. This paper offers an overview of the ban approach and other vehicles that could be used

for delivering the prized objective of nuclear disarmament.

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## THE NUCLEAR NON-PROLIFERATION TREATY

- The implementation and effectiveness of the NPT is reviewed every five years. Its 190 parties conduct the review under three broad headings or pillars: nuclear disarmament, non-proliferation of nuclear weapons, and peaceful uses of nuclear energy.
- For pillar one on nuclear disarmament, the focus is on Article VI of the NPT.
- Article VI obliges all parties to ‘pursue negotiations in good faith on *effective measures* relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament’ (emphasis added).<sup>1</sup>

## Effective measures

The NPT entered into force in March 1970. The nuclear disarmament obligation (Article VI), however, remains unfulfilled. Although NPT Review Conferences in 1995, 2000 and 2010 identified principles, goals, steps and actions towards nuclear disarmament and reached agreements on outcomes by consensus, the five NPT nuclear-weapon states (China, France, the Russian Federation, United Kingdom and United States—the NPT5) have failed to make dramatic progress in implementing them.

In the 45 years since the Treaty became binding, however, certain actions have been taken that were either intended as—or constituted—partial ‘effective measures’ towards nuclear disarmament under the NPT (see Box 2). Individual NPT5 states have reduced the size of their arsenals, sometimes acting in concert through the negotiation, for example, of ‘new START’.<sup>2</sup> In that bilateral treaty, the Russian Federation and the United States specifically recorded their objective of providing new impetus to the ‘step-by-step process of reducing and limiting nuclear arms [...] with a view to expanding this process in the future, including to a multilateral approach’. (The step-by-step approach will be discussed below.)

At a regional level, the NPT5 and some of the Treaty’s non-nuclear-weapon states have negotiated zones in which the presence of nuclear weapons is prohibited (NWFZs). And at a multilateral level there has been the negotiation of a prohibition on nuclear weapon testing under the Comprehensive Test Ban Treaty (CTBT) whose parties specifically declared their intention to ‘take further effective measures towards nuclear disarmament’. But at least 16,000 nuclear weapons still exist<sup>3</sup>, NWFZs remain incomplete in terms both of global coverage and nuclear-weapon state adherence, and the CTBT has yet to enter into force.

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## FRAMING OF ‘EFFECTIVE MEASURES’

- ‘Effective measures’ are not defined in the NPT. The opening words of the United Nations Charter, however, in spelling out the very purposes of the UN, offer a useful perspective: ‘To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace’.<sup>4</sup>
- In 1969, the United Nations General Assembly declared the 1970s a Disarmament Decade and called upon governments to intensify their efforts for ‘effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament’.<sup>5</sup>
- In the absence of other relevant interpretative guides, ‘effective measures’ should be interpreted in good faith in accordance with the ordinary meaning given to them in their NPT context and in the light of that treaty’s object and purpose. In other words, the obligation on all parties is to negotiate instruments and take actions that are effective for the elimination of nuclear weapons.

## NUCLEAR DISARMAMENT AS A GLOBAL OBJECTIVE

- The first resolution of the United Nations General Assembly in January 1946 established a Commission to make specific proposals 'for the elimination [...] of atomic weapons and of all other major weapons adaptable to mass destruction'.<sup>6</sup>
- The Final Document of the first Special Session of the General Assembly devoted to Disarmament (1978) recognised the need for urgent negotiation of agreements for:
  - (a) Cessation of the qualitative improvement and development of nuclear-weapon systems;
  - (b) Cessation of the production of all types of nuclear weapons and their means of delivery, and of the production of fissionable material for weapons purposes;
  - (c) A comprehensive, phased programme with agreed time-frames, whenever feasible, for progressive and balanced reduction of stockpiles of nuclear weapons and their means of delivery'.<sup>7</sup>

## Prospects for new effective measures

In principle, nuclear disarmament and the ultimate elimination of nuclear weapons is a universally shared global objective (see Box 3). Yet multilateral consensus on a coordinated, time-bound way forward is distinctly lacking. Progress at that level has been hampered by deadlocks in traditional multilateral mechanisms such as the Conference on Disarmament (CD) and the United Nations Disarmament Commission (UNDC), a negotiating body and a deliberative forum respectively. Despite apparent consensus in the NPT on the decisions and outcomes of the review conferences in 1995, 2000 and 2010 mentioned earlier, there has been no systematic implementation of those conclusions.

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The political and military sensitivities of nuclear-weapon possessors surrounding both those armaments and doctrines for their use are not easy obstacles to overcome.<sup>8</sup> But these should not divert attention from practical issues such as the scope, sequence, and timeframe for negotiating such measures and implementing them systematically.

States parties have, however, begun to address this deficit. An example is a document tabled in 2013 in the Open-ended Working Group (OEWG) established by the United Nations General Assembly 'to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons'. The authors of that paper, the New Agenda Coalition or NAC (Brazil, Egypt, Ireland, Mexico, New Zealand and South Africa), suggested that the commitment to work towards nuclear disarmament 'could be in the context of a comprehensive treaty dealing with nuclear disarmament, or a framework agreement under which other instruments would be elaborated'.<sup>9</sup> (The NAC's evolving analysis on the options has since also been tabled in the NPT.<sup>10</sup>)

## 'NUCLEAR DISARMAMENT'

Nuclear disarmament under the NPT means, to quote the treaty's preamble, the 'liquidation' of all existing stockpiles of nuclear weapons and their 'elimination from national arsenals' as well as 'the means of their delivery'. In other words, nuclear disarmament is an end state, the culmination of a process or processes eliminating nuclear arms, not just the process itself.<sup>11</sup>

## The Options

Effective measures for achieving nuclear disarmament (as defined in box 4) could be undertaken not only through an agreed programme or framework or a comprehensive treaty but under a looser notion such as the ‘step-by-step’ approach sometimes referred to as one of ‘building blocks’ towards nuclear disarmament:

### FRAMEWORKS

#### i) General, informal, ‘step-by-step approach’

Generally speaking, the proponents of the so-called step-by-step approach are the nuclear-weapon-possessing states and some countries with which they are allied.<sup>12</sup> They are averse to any notion that there are short cuts to nuclear disarmament such as through an all-embracing single treaty (a ‘comprehensive’ approach discussed below). Instead, these governments envisage nuclear disarmament requiring a sequence of deliberate steps culminating in the verifiable elimination of all nuclear arsenals. Ironically, progress on key steps favoured by advocates of this step-by-step approach—the entry into force of the CTBT and the negotiation of a prohibition on the production of fissile material—is currently held hostage to actions by individual nuclear-weapon-possessing states themselves.<sup>13</sup>

In the NPT context there are several examples of lists of necessary measures including the ‘practical steps’ (or ‘13 steps’) that were agreed by consensus at the Review Conference in 2000. The 13 steps are not so much a framework as a range of actions to be undertaken with a view to translating the NPT’s 1995 ‘Principles and Objectives’ on disarmament into an agenda for systematic and progressive efforts to implement Article VI of the

NPT. The 2010 NPT Action Plan in effect restructured the 13 steps into 22 nuclear disarmament-related actions within the 64-point agreed plan. In action 5, the nuclear-weapon states ‘commit to accelerate concrete progress on the steps leading to nuclear disarmament, contained in the Final Document of the 2000 Review Conference, in a way that promotes international stability, peace and undiminished and increased security’.

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Some of those steps are listed under action 5, although other relevant elements appear throughout the 2010 Action Plan. The steps in this Action Plan are no more exclusive or prescriptively sequential in nature than the 13 steps of 2000. Nor, of course, do they apply to the four nuclear-weapon-possessing states that are not members of the NPT.

NPT parties have nonetheless recognized the need to develop a framework. In 2010 they called on all nuclear-weapon-possessor states to undertake concrete dis-

BOX 5

### FEATURES OF THE MODEL NUCLEAR WEAPONS CONVENTION

- Prohibition of the production of all fissile and fissionable materials that could be used for the production of nuclear weapons.
- Placement of uranium, plutonium and other ingredients of nuclear weapons under international safety controls.
- Sequenced phases for implementation with deadlines recommended, although with a mechanism for approving extensions.
- Parties would be required to adopt national legislative measures to comply with the obligations of the model convention.

armament efforts and affirmed the need for all states to make ‘special efforts to establish the necessary framework to achieve and maintain a world without nuclear weapons’.<sup>14</sup> The 2010 Review Conference also noted the five-point proposal for nuclear disarmament of the United Nations Secretary-General who urged consideration of ‘negotiations on a nuclear weapons convention or agreement on a framework of separate mutually reinforcing instruments, backed by a strong system of verification’.<sup>15</sup> The status of the framework envisaged by NPT states parties and the Secretary-General is not specified, but the context in each case suggests a legally binding one if it is to deliver its professed objective.

## ii) Formal, legally binding frameworks

A formal, legally binding framework may take any of several forms. It could comprise a head agreement that would be supplemented over time by additional legally-binding measures, in much the same way as the Convention on Inhumane Weapons (CCW) has been augmented by a series of ‘Protocols’.<sup>16</sup> The head agreement of the CCW simply described the scope of application of the framework it established and set out the manner in which it and its protocols would become legally binding on states parties.

Another form for a framework could be where the head agreement stipulates the sequence under which subsequent agreements within its scope would be negotiated. The framework in such an instance would be a procedural skeleton on which to develop the flesh of a progression of effective measures negotiated individually. Conceivably, the framework would amount to a time-bound programme for elimination of nuclear arsenals, but this is an issue to which nuclear-weapon states have been especially allergic. This may be one reason that those states seem more comfortable with the comparatively vague step-by-step approach.

In any event, the timeframe leading to elimination of nuclear weapons might be lengthy. As the issues are complex, a formal framework might be confined instead to the range and basic scope of effective measures that would validly be developed under it rather than an actual sequence or time-scale for the requisite negotiations. The framework could also provide for periodic review of progress with a view to stipulating timeframes for future steps. From the perspective of non-nuclear-weapon states, a clear commitment by the NPT5 to a pathway to the elimination of nuclear armaments will be a litmus test of the latter’s readiness to strengthen the NPT, the more so if timeframes can be established.

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The framework examples just discussed are in essence agreed programmes by which states would agree to channel, in one way or another, their efforts towards a particular end. In sum, while an informal framework amounts to more than a loose set of steps or a menu or agenda for nuclear disarmament it falls short of imposing obligations to pursue a series of pre-agreed steps until all nuclear weapons are eliminated. On the other hand, a legally binding framework would be a commitment under international law to proceed incrementally in an ordered man-

BOX 6

## SCOPE OF OTHER PROHIBITIONS

The Chemical Weapons Convention and other arms prohibition regimes under international law include provisions outlawing use, possession, development, production, stockpiling, transfer and other forms of acquisition. With regards to nuclear weapons, only transfer, acquisition and manufacture are currently explicitly prohibited under international law, and those prohibitions are not universally applicable (i.e., the non-parties to the NPT are not bound by the terms of that treaty). Compared to other weapon categories deemed to cause superfluous injury and unacceptable humanitarian suffering, the prohibition regime for nuclear weapons is therefore relatively weak.<sup>20</sup>

ner to that objective. A different approach is the ‘comprehensive’ one sometimes also referred to as a ‘Nuclear Weapons Convention’ (NWC), for example, in the United Nations Secretary-General’s five-point proposal mentioned earlier.

## COMPREHENSIVE APPROACHES

Comprehensive approaches can, of course, encompass legally binding frameworks, in which the latter spell out the entire route to the final objective. But other approaches, such as the comprehensive Model Nuclear Weapons Convention (see Box 5), amount not only to a blueprint for the measures that will be necessary for the elimination of nuclear weapons but also propose draft treaty language as a focus for negotiations to that end.

### i) Model Nuclear Weapons Convention

In 2007, Costa Rica and Malaysia tabled a draft Model Convention on Nuclear Weapons (‘model convention’) in the United Nations General Assembly.<sup>17</sup> Their NWC proposal seeks to prohibit the development, production, possession, transfer, use or threat of use of nuclear weapons. It would oblige parties to it to destroy their nuclear weapons in phases and to declare publicly all nuclear weapons, installations and nuclear delivery systems that they possess or control.

The model convention, in its comprehensiveness, offers in a single document an approach whose ambition extends beyond a mere listing of the effective measures required to eliminate nuclear weapons. As mentioned above, it also contains treaty text on which negotiations might be opened at the outset. Negotiations would take place in a phased manner although there would be flexibility to agree, for confidence-building reasons, to focus first on one of the draft annexes or protocols to the convention. Whatever the initial preoccupation of the negotiators, they would have in front of them not just a framework of measures but a fully-fledged draft of a number of the measures themselves (except that provisions on the verification of disarmament activities analogous to the verification annex in the Convention on Chemical Weapons’ remain to be developed).

A more recent example of a comprehensive approach was the proposal Cuba circulated at the Vienna conference on the humanitarian impact of nuclear weapons in December 2014. Stating

that it was ‘time to negotiate a legally binding instrument banning nuclear weapons and providing [for] their total elimination’, Cuba proposed that the United Nations General Assembly should establish an OEWG to negotiate and recommend a ‘comprehensive draft international convention to prohibit the possession, use or threat of use, development, production, acquisition, testing, stockpiling and transfer of nuclear weapons and to provide for their verified destruction not later than in 20 years’.<sup>18</sup> Cuba envisages that the draft Convention would be adopted at the United Nations High Level Conference on nuclear disarmament to be convened under General Assembly Resolution 68/32. Significantly, Cuba situates its proposal in the General Assembly—with its more flexible decision-making procedures and universal membership—rather than the CD or NPT.

### ii) A convention banning nuclear weapons

On the back of efforts to draw international attention to the humanitarian impacts of nuclear weapons in the wake of concern expressed by NPT parties in the final document of the 2010 Review Conference, many civil society actors advocate a prohibition of these weapons. The International Campaign to Abolish Nuclear Weapons (ICAN) takes the view that the

‘core of the treaty would be comprehensive prohibitions on the use, possession, development, production and transfer of nuclear weapons under any circumstances, and on assistance or encouragement with prohibited acts. This would put nuclear weapons clearly alongside other weapons that have been internationally banned, including the other weapons of mass destruction<sup>19</sup>’ (see Box 6).

ICAN’s proposed measure should not be confused with a ban merely on the *use* of nuclear weapons, an approach that implicitly condones on-going possession of those arms.

No draft of a ban convention has yet been publicly put forward either by civil society or by a state. Such a measure might simply contain treaty language for the negotiation of a ban that in essence would codify prohibitions implicitly assumed by all of the non-nuclear-weapon states when they joined the NPT. The ban treaty need not envisage all of the steps towards the elimination of nuclear weapons or provide a framework under which those steps would be achieved. But its proponents recognize full well that a ban convention would in itself be but one step towards that ultimate

objective. Such a step might be taken within or alongside any agreed framework in a longer-term process building upon existing obligations (such as the NPT and NWFZs) towards elaborating a complete set of effective measures for the achievement and maintenance of a world without nuclear weapons.

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Former Canadian disarmament ambassador, Paul Meyer, has expressed the view that a prohibition convention

‘would draw its authority from the number of states adhering to the ban and would use the power of stigmatization to persuade nuclear-armed states to divest themselves of these weapons. The ban treaty would not be incompatible with and could be a pre-

cursor to a comprehensive agreement to eliminate nuclear weapons’.<sup>21</sup>

NPT nuclear-weapon states and some of their allies, however, currently oppose a ban treaty. Without their participation in such a measure, could it be regarded as effective in terms of NPT Article VI? Advocates for a prohibition contend that its effectiveness would depend on its ability to establish a universal norm against both use and possession of nuclear weapons. Strengthening the norm against the use and possession of nuclear weapons—on the coat tails of growing concerns about humanitarian impacts of those armaments—would in turn be a catalyst for their complete elimination.<sup>22</sup> As in the Ottawa and Oslo processes on anti-personnel mines and cluster munitions respectively, real movement towards abolition of nuclear weapons will likely occur only when enough policymakers and publics are persuaded that a situation in which the weapons continue to exist indefinitely is not acceptable, their purported legitimacy can no longer be tolerated, and that a ban process must be pursued without further delay irrespective of what existing possessors would prefer.<sup>23</sup>

## Conclusions

In the absence of any sustained traction on nuclear disarmament in the CD and UNDC or, to date, in the NPT (beyond the identification in 1995, 2000, and 2010 of lists of measures that would be needed), the obligation on all NPT parties to pursue negotiations on effective measures for nuclear disarmament is attracting growing attention and urgency. The call of the 2010 NPT action plan for all states to make special efforts to establish the necessary framework to achieve and maintain a world without nuclear weapons (mentioned earlier) has prompted increased discussion of possible frameworks and other options such as those in the United Nations Secretary-General’s five-point plan.

Boiled down to their essentials, the options for NPT parties to advance negotiations on effective measures as required by the Treaty have much in common. A comprehensive nuclear weapons treaty such as the model NWC envisages a number of phases of implementation and the negotiation of a verification annex, entailing the incremental elimination of nuclear weapons, albeit

under a single, legal concept in the form of a draft treaty committing parties to the phases it specifies. In that sense, the model convention can be regarded as a ‘framework’ or as a series of steps within a clear legal construct, that is, in draft treaty language.

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Negotiation ultimately of an agreement to eliminate nuclear weapons would, of course, require the participation of the nuclear-weapon states.

Other forms of framework might prescribe and link a series of legally binding measures to be negotiated and implemented sequentially as steps towards the elimination of nuclear weapons. And there is the ephemeral step-by-step approach that is no more than a nominal, informal recognition

that the measures required for such elimination will—of necessity—be multiple.

An interim step towards elimination might include the negotiation of a ban on nuclear weapons even if the nuclear-weapon states chose not to participate. Negotiation ultimately of an agreement to eliminate nuclear weapons would, of course, require the participation of the nuclear-weapon states. That agreement would need to be supported by mechanisms to verify the destruction of those arms—an essential re-assurance to nuclear weapon states that the possibility of ‘cheating’ was thereby minimized.

The point has been made by Angela Kane, United Nations High Representative for Disarmament Affairs, that ‘neither the step-by-step nor the comprehensive approach has given us a nuclear-

weapon-free world. We see instead an endless debate over conditions, divergent priorities, and red lines, as the world approaches the seventh decade of its precarious nuclear age’.<sup>24</sup> The perception of stagnation in relevant multilateral forums is widespread. It has incubated new approaches, such as the humanitarian initiative, which has further served to expose the bankruptcy of current efforts to pursue nuclear disarmament (see the first and fifth papers in this series). Although it is not synonymous with the humanitarian initiative, the notion of a ban on nuclear weapons is drawing currency from exploring these realities. It remains to be seen whether the NPT Review Conference will be up to the task of evaluating and responding to such proposals, in order to contribute to momentum for nuclear disarmament, and so preserve and strengthen the ‘grand bargain’ at the NPT’s heart.

## Endnotes

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- 2 Strategic Arms Reduction Treaty, 8 April 2010.
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- 4 Article 1.1, United Nations Charter.
- 5 United Nations General Assembly resolution 2602 E (XXIV), 16 December 1969.
- 6 United Nations General Assembly resolution 1(1), 24 January 1946.
- 7 Final Document of the first Special Session of the General Assembly devoted to Disarmament 1978 A/S-10/2, paragraph 50.
- 8 See Reaching Critical Will, ‘The NPT Action Plan Monitoring Report’, Geneva, Women’s International League for Peace and Freedom, March 2015, and G. Evans, T. Ogilvie-White and R. Thakur, ‘Nuclear Weapons: The State of Play 2015’, Canberra, Australian National University Press, 2015.
- 9 United Nations General Assembly Open-ended Working group, New Agenda Coalition working paper, A/AC.281/WP.10, 20 August 2013.
- 10 New Agenda Coalition working papers, NPT/CONF.2015/PC.III/WP.18, paragraph 29 and NPT/CONF.2015/WP.9, paragraphs 8-10.
- 11 For further discussion see J. Borrie and T. Caughley, ‘Viewing Weapons Through a Humanitarian Lens: From Cluster Munitions to Nukes?’, *Irish Studies in International Affairs*, 25, 2014, pp. 1-21.
- 12 J. Borrie and T. Caughley, *Viewing Nuclear Weapons through a Humanitarian Lens*, chapter 5, UNIDIR, 2013: <http://www.unidir.ch/NucHumanitarianLens>.
- 13 Lack of ratification of the CTBT (inter alia by China, DPRK, India, Pakistan and the US); withholding consensus in the CD.
- 14 NPT Review Conference 2010, Final Document—Volume 1, p. 20, Conclusions and recommendations for follow-on actions, B, iii. Disarmament of nuclear weapons.
- 15 United Nations Secretary-General’s Address to the East-West Institute, New York 24 October 2008.
- 16 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, 1980.
- 17 UN Doc A/62/650, 18 January 2008, and NPT/CONF.2010/PC.I/WP.17, 1 May 2007.
- 18 [http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/vienna-2014/9Dec\\_Cuba.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/vienna-2014/9Dec_Cuba.pdf).
- 19 R. Acheson, T. Nash, R. Moyes, ‘A Treaty Banning Nuclear Weapons’, *Reaching Critical Will and Article 36*, May 2014: <http://www.reachingcriticalwill.org/images/documents/Publications/a-treaty-banning-nuclear-weapons.pdf>.



- 20 See T. Graff Hugo, 'About A Ban', International Law and Policy Institute, 2013.
- 21 P. Meyer, 'From Vienna to New York: The bumpy road to nuclear disarmament', Canadian International Council, 29 January 2015: <http://opencanada.org/features/from-vienna-to-new-york>.
- 22 See T. Graff Hugo, 'About A Ban', International Law and Policy Institute, 2013.
- 23 J. Borrie, 'Viewing Nuclear Weapons through a Humanitarian Lens: Context and Implications', 2013, in J. Borrie and T. Caughley (eds), *op cit*, p. 41. See also J. Borrie, 'Humanitarian reframing of nuclear weapons', *International Affairs* 90: 3, May 2014, pp. 625-646.
- 24 A. Kane (United Nations High Representative for Disarmament Affairs), 'The 'step-by-step' process of nuclear disarmament: Quo vadis?', 10th International Security Forum, hosted by the Geneva Centre for Security Policy, 24 April 2013.



## PREVIOUS POLICY PAPERS BY ILPI & UNIDIR

This series follows six earlier briefing papers for the third conference on the humanitarian impacts of nuclear weapons (HINW), which was convened in Vienna, Austria, from 8 to 9 December 2014:

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Production of this series was made possible thanks to the support of the Governments of Norway, Ireland and Austria.

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