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Open-ended Working Group taking forward multilateral nuclear disarmament negotiations¹

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Taking forward multilateral nuclear disarmament negotiations

Non-nuclear-weapon States and a treaty prohibiting nuclear weapons

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1. International debates about the implementation of Article VI (the disarmament provision) of the Treaty on the Non-Proliferation of Nuclear Weapons of 1968 have typically focused on the role of nuclear-weapon States: whether they are in compliance with their obligations and what steps they should take moving forward. Increasingly, however, the role of non-nuclear-weapon States in advancing (or hindering) nuclear disarmament is being considered. Like the nuclear-weapon States, they are bound “to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament”.
2. The Humanitarian Initiative on nuclear disarmament has demonstrated the important role that non-nuclear-weapon States can play in raising awareness about the grave risks and catastrophic humanitarian consequences of any use of nuclear weapons and in building momentum for nuclear disarmament. At the same time, the Initiative has also drawn attention to the unfortunate reality that certain non-nuclear-weapon States regularly undermine the goal of nuclear disarmament by, inter alia, facilitating the manufacture of nuclear weapons and engaging in preparations for their use. This working paper describes some of the policies and practices of non-nuclear-weapon States that are incompatible with the achievement of a nuclear-weapon-free world.
3. This open-ended working group has a mandate “to substantively address concrete effective legal measures, legal provisions and norms that would need to be concluded to attain and maintain a world without nuclear weapons”. We believe that it is time for like-minded States to launch a diplomatic process to negotiate a legally binding instrument prohibiting nuclear weapons. Such an instrument should, inter alia, fill the legal gaps in the

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current regime that allow non-nuclear-weapon States to engage in activities detrimental to nuclear disarmament. By focusing on non-nuclear-weapon States in this working paper, our intention is not to diminish in any way the responsibility of nuclear-weapon States to act. Rather, we hope to demonstrate the considerable potential for a treaty prohibiting nuclear weapons to achieve meaningful results even if nuclear-weapon States refuse to engage.

Policies and practices

4. This section identifies a number of ways in which non-nuclear-weapon States parties to the NPT undermine the goal of attaining and maintaining a nuclear-weapon-free world. Some of these policies and practices increase the risk of nuclear weapon use in particular settings; many convey the idea that nuclear weapons are a legitimate and necessary source of security; others create risks of proliferation, both vertical and horizontal. All of these policies and practices, we believe, should be prohibited through a new global treaty.

(a) **Hosting nuclear weapons on territory:** Five non-nuclear-weapon States in Europe are said to host an estimated total of 180 to 200 air-delivered nuclear weapons on their territory as part of a North Atlantic Treaty Organization (NATO) nuclear-sharing arrangement. The new treaty should require the host States to dismantle these weapons or return them to the possessor State on the stipulation that they be dismantled by that State.

(b) **Participating in nuclear war planning:** All non-nuclear-weapon States that are members of NATO participate regularly in decision-making processes related to nuclear planning and nuclear force posture. They may be involved, for example, in determining potential targets for a nuclear attack and developing strike plans. Such preparations for nuclear war run counter to the goal of nuclear disarmament.

(c) **Training nationals to deliver nuclear weapons:** Certain non-nuclear-weapon States in NATO are said to train their military personnel to deliver the nuclear weapons stationed on their territory. While military personnel of the possessor State may guard these weapons in peacetime, the host State (in some instances) would be responsible for loading the weapons onto their aircraft for employment in the event of war.

(d) **Assisting with nuclear targeting:** Certain non-nuclear-weapon States host military and intelligence facilities that are said to play a significant role in the targeting of nuclear weapons. Other forms of intelligence gathering for the purpose of nuclear targeting should also be prohibited.

(e) **Claiming protection from nuclear weapons:** Non-nuclear-weapon States in NATO and a number of other non-nuclear-weapon States allied to a nuclear-armed State claim protection from nuclear weapons in their military posture, subscribing to the doctrine of “extended nuclear deterrence”. One such State is a party to a nuclear-weapon-free zone treaty, namely, the Treaty of Rarotonga.

(f) **Discouraging an ally from disarming:** Non-nuclear-weapon States may make formal representations to their nuclear-armed allies discouraging them from pursuing reductions in their nuclear stockpiles or from taking other steps towards nuclear disarmament. They may also urge their allies to invest more heavily in programmes to enhance their nuclear forces.

(g) **Allowing nuclear-armed ships into ports and waters:** Some non-nuclear-weapon States, including parties to nuclear-weapon-free zone treaties, may allow submarines and other vessels carrying nuclear weapons to enter their ports or territorial waters.

(h) Allowing nuclear-armed aircraft to enter airspace: Some non-nuclear-weapon States, including parties to nuclear-weapon-free zone treaties, may allow aircraft carrying nuclear weapons to enter their airspace.

(i) Allowing transit of nuclear weapons through territory: Some non-nuclear-weapon States, including parties to nuclear-weapon-free zone treaties, may allow nuclear weapons to be transported through their territory.

(j) Contributing to modernization programmes: Some non-nuclear-weapon States contribute to programmes to modernize the nuclear weapons and delivery vehicles of their allies. For example, companies domiciled in non-nuclear-weapon States may receive contracts from nuclear-armed States to engage in nuclear-weapon-related activities.

(k) Financing nuclear weapon programmes: A number of non-nuclear-weapon States invest public funds, or permit private companies to invest funds, in companies that are involved in the manufacture and modernization of nuclear weapons and their delivery vehicles.

(l) Supplying nuclear-capable delivery vehicles: Some non-nuclear-weapon States manufacture nuclear-capable delivery vehicles, such as missiles and submarines, and supply these to nuclear-armed States in the knowledge that they may be used for the purpose of delivering nuclear weapons.

(m) Supplying uranium without comprehensive safeguards: Some non-nuclear-weapon States supply uranium or other special fissionable material to nuclear-weapon States (and to one State outside the NPT) in the absence of comprehensive safeguards. Such material could be diverted for use in nuclear weapon programmes or free up other reserves for that purpose.

(n) Stockpiling weapon-grade fissile material: Some non-nuclear-weapon States produce and stockpile fissile material for potential use in nuclear weapons. By developing a “break-out” capacity, whereby they would have the capacity to manufacture nuclear weapons within a short time frame, other States may be discouraged from pursuing nuclear disarmament.

Conclusion

5. We recommend that the Open-ended Working Group examine carefully the many gaps that exist in the current legal regime governing nuclear weapons and how these relate to the policies and practices of non-nuclear-weapon States. It should begin developing possible elements for inclusion in a legally binding instrument to fill these gaps. Non-nuclear-weapon States have an important role to play in realizing a nuclear-weapon-free world: both by refraining from engaging in practices that impede progress towards nuclear disarmament and by contributing positively to the establishment of strong global norms against the use and possession of nuclear weapons.