



NPT News in Review



*Civil society perspectives on the
2010 nuclear Non-Proliferation Treaty Review Conference
3–28 May 2010*

Thinking beyond the NPT review process

Ray Acheson | Reaching Critical Will of WILPF

On Friday afternoon, the 2010 NPT Review Conference adopted its final document. After a tense morning, during which the Iranian delegation sought instructions from capital on whether or not to accept the document, the text was adopted as-is with no objections from the floor. The review portion of the text includes a footnote specifying that it is the Chair's reflection of the Treaty review. The Conference did agree, however, to a forward-looking action plan covering nuclear disarmament, nuclear non-proliferation, and nuclear energy, as well as the 1995 resolution on the Middle East.

While hailed by many governments and news media as a success, the adoption of this document conceals resistance by the nuclear weapon states to any meaningful commitments on nuclear disarmament and reluctance by some non-nuclear weapon states to agree on further substantial measures to deal with non-proliferation challenges. The document itself was carefully crafted to stay within the "red lines" of every delegation and it was, as the Chair described it, the best that could be offered at this point in time.

For the most part, the document preserved the status quo in disarmament and non-proliferation, while promoting the so-called "virtues" of nuclear energy. The most progressive element of the text is the promise of a 2012 conference on the establishment of a weapons of mass destruction free zone in the Middle East. Unfortunately, the Israeli government (which is not a party to the NPT) has already rejected the Review Conference outcome, declaring that it will not attend this conference,¹ and the US government immediately stated that their ability to organize such conference was seriously jeopardized by the fact that the document singled out Israel.²

The disarmament action plan does include a yardstick with which to measure implementation of article VI and the 13 practical steps over the next five years. Action 5 calls upon the nuclear weapon states to "engage with" related issues and report back to the 2014 NPT PrepCom and the 2015 RevCon, the

latter of which will "take stock and consider the next steps for the full implementation of Article VI". This implies that the next Review Conference could potentially work on a roadmap for the complete elimination of nuclear weapons, though the document rather vaguely leaves it up to the nuclear weapon states to "engage with" and "report on" these measures in the interim.

But a final document is just a document. The key indication of the current state of play over these issues can be found in the NPT review process, which led to the document; from studying the process we can glean information not just about government positions (which we largely knew going in), but also about their tactics, pressure points, relationships to other governments, perceptions of how "international relations" should be "managed," understandings of equity and fairness, and interests in truly advancing peace and security. The process also clearly indicates the weak points of the NPT regime itself.

The lack of substantial forward progress reflected in the final document has been caused by the failing commitment to the core bargain of the Treaty. During this review process, the nuclear weapon states—often supported by the states that shelter under the US nuclear weapon umbrella or that host US nuclear weapons on their soil—argued that they have met their nuclear disarmament obligations. They also expected to be praised for what they have said they intend to do, while at the same time demanding "more than words" from others. These states came to the Review Conference looking for strengthened non-proliferation commitments by these "others," to make sure they will never acquire nuclear weapons.

On the other hand, the states that neither possess nuclear weapons nor rely on them for security—the overwhelming majority of countries in the world—believe that they have adequately demonstrated their commitment to not acquire nuclear weapons

continued on page 3

Final Edition No. 21

In this issue:

- 4 | Summary of the 2010 NPT final outcome document**
- 8 | Humanitarian consequences, humanitarian law: an advance in banning use of nuclear weapons**
- 11 | Report on the morning NGO Abolition Caucus**

The *News in Review* is a daily publication produced by the Reaching Critical Will project of the Women's International League for Peace and Freedom.

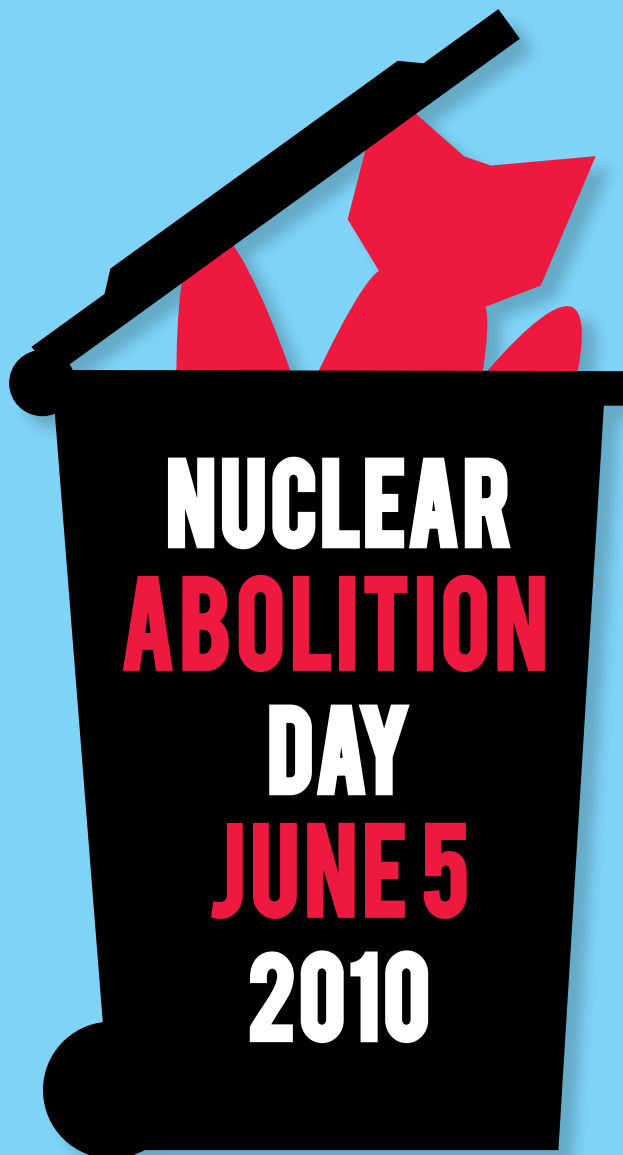
See www.reachingcriticalwill.org for information, statements, papers, reports, archived *News in Reviews*, and more from the NPT.



ican
international campaign
to abolish nuclear weapons

On June 5, the world's people will respond to the NPT Review Conference outcome.

Our message is simple: it's time to
negotiate a Nuclear Weapons Convention.



On June 5, 2010, thousands of people across the world will take part in coordinated local events to mark Nuclear Abolition Day. Our message is simple: it's time for governments to begin negotiating a Nuclear Weapons Convention to ban all nuclear weapons.

2010年6月5日、世界中で何千人もの人々がそれぞれの地域で核兵器廃絶の日を記念する協調イベントに参加するでしょう。私たちのメッセージはシンプルなものです。つまり、今こそ各国政府が全ての核兵器を禁止する核兵器禁止条約の協議を始める時なのです。

Le 5 juin 2010, des milliers de personnes à travers le monde entier participeront à des événements locaux coordonnés pour marquer la Journée de l'abolition de l'arme nucléaire. Notre message est simple: il est temps pour les gouvernements de commencer la négociation d'une Convention sur les armes nucléaires afin d'interdire toutes les armes nucléaires.

El 5 de junio del 2010, miles de personas alrededor del mundo participarán en eventos locales para conmemorar el Día de la Abolición Nuclear. Nuestro mensaje es muy simple: ha llegado el momento de que los gobiernos comiencen a negociar una Convención sobre Armas Nucleares para prohibir el uso de cualquier arma nuclear.

2010年6月5日、来自世界各地成千上万的人将万众一心，投入到各地的“核废除日”活动之中。我们想传递的信息很简单：敦促各国举办核武器大会，协商废除所有核武！

No dia 5 de Junho de 2010, para destacar o Dia pela Abolição Nuclear milhares de pessoas por todo o mundo vão participar em eventos locais coordenados entre si. A mensagem é simples: É tempo dos governos começarem a negociar uma convenção sobre as armas nucleares que conduza à sua total eliminação.

Am Samstag, den 5. Juni 2010 werden Tausende von Menschen mit weltweit vernetzten Aktionen auf den „Nuclear Abolition Day“ aufmerksam machen. Unsere Botschaft lautet schlicht und einfach: Es ist höchste Zeit, mit den Verhandlungen über eine Nuklearwaffenkonvention zu beginnen und Atomwaffen endlich abzuschaffen.

5 juni 2010 kommer tusentals människor över hela världen att delta i kordinerade, lokala evenemang med syfte att uppmärksamma Nuclear Abolition Day. Meddelandet är tydligt: det är dags för världens regeringar att börja förhandla om en kärnvapenkonvention vilken innebär ett totalförbud av kärnvapen.

5. juni 2010 vil tusener av mennesker over hele verden markere den internasjonale dagen for et forbud mot atomvåpen. Vårt budskap er enkelt: tiden er kommet for at verdens land begynner forhandling om en konvensjon som forbyr alle atomvåpen.

Στις 5 Ιουνίου 2010 χιλιάδες άνθρωποι σε όλη τη γη θα λάβουν μέρος σε συντονισμένες τοπικές εκδηλώσεις, που σηματοδοτούν την Ημέρα για την Πυρηνική Εξαφάνιση. Το μήνυμά μας είναι απλό. Είναι επιτέλους καιρός οι κυβερνήσεις να αρχίσουν να διαπραγματεύονται μια Συνθήκη Κατάργησης των Πυρηνικών, έτσι ώστε να εξαλειφθούν όλα τα πυρηνικά από τον πλανήτη μας.

Il 5 Giugno 2010, migliaia di persone in tutto il mondo prenderanno parte una serie di eventi locali coordinati per celebrare il Giorno dell'Abolizione delle Armi Nucleari. Il nostro messaggio è semplice: è arrivato il momento per i governi di iniziare a negoziare una Convenzione sulle Armi Nucleari per mettere al bando tutte le armi nucleari.

Sa ika-5 ng Hunyo 2010, libo-libong mamamayan sa iba't-ibang panig ng mundo ay magkaka-isa at makikilahok sa pagdiriwang ng Nuclear Abolition Day. Ang aming mensahe ay simple lamang: Panahon na para simulan ng mga pamahalaan ang pakikipag-usap tungkol sa Nuclear Weapons Convention upang ipagbawal na ang mga armas nukleyar sa mundo.

Kesäkuun viidentenä 2010 osallistuvat tuhannet ihmiset ympäri maailmaa paikallisiin tilaisuuksiin viettämään ydinaseiden poistamisen päivää. Viestimme on yksinkertainen: hallitusten on aika aloittaa neuvottelut ydinaseet kieltävän sopimuksen aikaansaamiseksi, jotta nämä aseet saadaan hävitetyksi.

nuclearabolition.org

Thinking beyond the NPT review process (cont.)

and expect the states that do possess these weapons to fulfill their end of the bargain by eliminating their arsenals. This Review Conference offered the chance for all states to agree to a legally-binding framework for this elimination process. Instead, the outcome pushed this decision into the future and sent related complex issues to be dealt with in other fora. The review process showed that nuclear-armed and protected states are still addicted to their weapons because they afford them a sense of power.

So what needs to change before the nuclear weapon states can overcome their addiction? If the NPT process is failing to achieve a world without nuclear weapons, is it time for something new?

It is clear that nuclear weapons do not offer security from military threats. They are unusable against other nuclear-armed states; they are unusable against terrorists, climate change, poverty, and famine. Focusing on the uselessness, as well as the immorality and illegality of nuclear weapons, will be key to undermining the nuclear weapon states' continued possession of and reliance on these weapons of terror.

The Swiss and Norwegian delegations brought the question of international humanitarian law to the heart of the current debate about nuclear weapons during this Review Conference. The final document included language reaffirming "the need for all States at all times to comply with applicable international law, including international humanitarian law." While watered down from its original incarnation in an earlier draft, this sentiment could be a valuable tool by which to further delegitimize nuclear weapons, which could help facilitate concrete nuclear disarmament and non-proliferation.

The economic burden of nuclear weapons is also instrumental in undermining the addiction to this

particular instrument of power and prestige. At the exact same time as it demanded stricter commitments against proliferation at the Review Conference, the Obama administration put forward to the US Senate a plan to maintain nuclear weapon delivery systems; sustain a "safe, secure, and reliable" US nuclear weapons stockpile; and modernize the nuclear weapons complex—for the price of \$180 billion over the next decade. Is this sound fiscal policy in the midst of a global economic crisis? Can such a double standard be tolerated by an equitable and just process of international relations?

The benefit of this particular NPT review process was not necessarily the adoption of a final document. One real positive outcome was the emergence of a new debate on the relevance and legality of nuclear weapons and the overwhelming support from the vast majority of countries for a legally-binding agreement to achieve their abolition. Most states, not to mention representatives of civil society, repeatedly expressed their frustration with the slow, incremental pace of disarmament. Their frustration was reflected in the process, and even, to a weaker degree in the outcome document itself. While falling short of a commitment to a specified framework for nuclear disarmament, all states parties agreed that the 2015 Review Conference will "consider the next steps for the full implementation of article VI" (Action 5) and the nuclear weapon states committed to implement the unequivocal undertaking to accomplish the total elimination of their nuclear weapons (Action 3).

Of course, we do not need to wait until 2015 to "consider" the full implementation of article VI or the unequivocal undertaking. We do not need to rely on the NPT process alone to eliminate nuclear weapons. The vast majority of states have called for the negotiation of a nuclear weapons convention to outlaw nuclear weapons. The NPT process has demonstrated a need for this convention more than ever before. As Egyptian Ambassador Abdelaziz said while delivering the Non-Aligned Movement's closing remarks, "The outcome document we just approved represents in our view a basis for a deal we intend to vigorously build on in the next years, in cooperation with all States Parties to the Treaty, in particular with Nuclear-Weapons States, aiming at the earliest realization of a world free from nuclear weapons, where policies of deterrence have no place, and where the horrible threat posed by nuclear weapons to human lives on our planet no longer exists."

Notes

1. "Israel rejects Middle East nuclear talks plan," BBC News, 29 May 2010, <http://news.bbc.co.uk/2/hi/10191339.stm>.
2. Reuters, "US 'regrets' that Israel singled out in treaty text," 28 May 2010, <http://www.alertnet.org/thenews/newsdesk/N28171436.htm>

NPT News in Review

Final Edition | No. 21

Reaching Critical Will

A project of the Women's International League for Peace and Freedom

777 UN Plaza, 6th Floor, New York, NY 10017

ph. +1 212.682.1265 | fax +1 212.286.8211

contact: info@reachingcriticalwill.org

Editors: Ray Acheson and Beatrice Fihn

The views expressed in this publication are not necessarily those of the Women's International League for Peace and Freedom or the Reaching Critical Will project.



Summary of the 2010 NPT final outcome document

Beatrice Fihn | Reaching Critical Will of WILPF

The outcome document is 28 pages long and includes two parts, a review of the operation of the Treaty and recommendations for follow-on actions. The review section goes through the Treaty paragraph by paragraph, reaffirms previous decisions, and recalls significant developments and events that have taken place since the last outcome document in 2000. Below, the document is summarized by topic.

Nuclear disarmament

The unequivocal undertaking

The Conference reaffirms the unequivocal undertaking of the NWS to accomplish the total elimination of their nuclear arsenals. The Conference also resolves that NWS should implement this unequivocal undertaking through further efforts to reduce and eliminate all types of nuclear weapons, deployed and non-deployed.

Nuclear Weapons Convention

The Conference notes the UN Secretary-General's five-point proposal to inter alia consider negotiations on a nuclear weapons convention and affirms that the final phase of a nuclear disarmament process should be pursued within an agreed legal framework, which a majority of states parties believe should include specified timelines.

Reductions

The Conference affirms the need for all NWS to reduce and eliminate all type of nuclear weapons and encourages those with largest arsenals to lead such efforts. The Conference resolves that the US and Russia commit to seek the early entry into force of the new START. The Conference calls upon NWS to promptly engage in rapidly moving toward an overall reduction in the global stockpile of all types of nuclear weapons.

Security policies

The Conference notes the need for further progress in diminishing the role of nuclear weapons in security policies and welcomes the reductions announced by some NWS in the role of nuclear weapons in their security doctrine. The Conference calls upon NWS to promptly engage to further diminish the role and significance of nuclear weapons in all military and security concepts, doctrines, and policies. The Conference also calls upon NWS to promptly engage to discuss policies that could prevent the use of nuclear weapons, and lead to their elimination, lessen the danger of nuclear war, and contribute to non-proliferation and disarmament.

Modernization

The Conference recognises the legitimate interest

of NNWS in the constraining by the NWS of the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons.

Operational status

The Conference recognises that reductions of operational status contribute to the process of nuclear disarmament. The Conference also calls upon NWS to promptly engage in considering the legitimate interest of NNWS in further reducing the operational status of nuclear weapons systems.

Consequences and legality of nuclear weapons

The Conference expresses its deep concern at the continued risk for humanity represented by the possibility that these weapons could be used and the catastrophic humanitarian consequences that would result from the use of nuclear weapons. The Conference reaffirms the need for all states at all times to comply with applicable international law, including international humanitarian law. The Conference also calls upon NWS to promptly engage in reducing the risk of accidental use of nuclear weapons and notes the International Court of Justice advisory opinion on the legality of the threat or use of nuclear weapons from 1996.

Nuclear testing

The Conference calls on all states to refrain from any action which would defeat the object and purpose of the CTBT pending its entry into force, in particular as regards to the development of new types of nuclear weapons. States parties commit to refrain from the use of new nuclear weapons technologies. The Conference welcomes the latest ratifications, and expressions of intention to ratify the CTBT by states. The Conference resolves that all NWS undertake to ratify the CTBT and that the CTBTO Preparatory Commission is to be encouraged to fully develop the CTBT verification regime.

Fissile material

The Conference welcomes the declared moratoria by some NWS on the production of fissile material for nuclear weapons. The Conference also reaffirms the urgent necessity of negotiating and bringing to a conclusion a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons, and calls upon the CD to immediately begin such negotiations in accordance with the Shannon mandate. The Conference resolves that the NWS are encouraged to commit to declare to the IAEA all fissile material no longer required

continued on next page



Summary of the final outcome document (cont.)

for military purposes and to place such material under IAEA safeguards. The Conference also resolves that all states are encouraged to support the development of appropriate legally binding verification arrangements, within the context of the IAEA, to ensure the irreversible removal of fissile material no longer required for military purposes. The Conference also encourages all states to initiate a process towards the dismantling or conversion of production facilities for fissile material used for nuclear weapons.

Reporting

The Conference notes the regular reports submitted by parties, as decided at previous Review Conferences. The Conference calls upon NWS to report the undertakings in Action 5 to the Preparatory Committee in 2014, while the Review Conference in 2015 will take stock and consider the next steps for the full implementation of Article VI. The Conference resolves that all states parties should submit regular reports on the implementation of the action plan on disarmament, article VI, and the 13 practical steps from 2000, by recalling the Advisory Opinion of the International Court of Justice of 1996. The Conference also resolves that as a confidence-building measure, the NWS are encouraged to agree on a standard reporting form and to determine appropriate reporting intervals.

Security assurances and NWFZs**Security assurances**

The Conference resolves that all NWS commit to fully respect their existing commitments to security assurances, and those who have not yet done so are encouraged to extend such assurances to NNWS parties to the NPT. The NWS are also encouraged to review any reservations made to the negative security assurances under the protocols of NWFZ treaties.

Nuclear weapon free zones (NWFZs)

The Conference welcomes the entry into force of the Pelindaba and Central Asian NWFZ treaties, as well as the ratification by some NWS of relevant NWFZ treaty protocols. The Conference also welcomes Mongolia's declaration of its nuclear weapon free status and supports measures to consolidate and strengthen such status. The Conference calls on NWS to bring into effect the security assurances provided by NWFZ treaties and their protocols. The Conference also notes the first and second meeting of states parties to NWFZ and acknowledges the initiative to hold such a meeting in the framework of the forthcoming Review Conferences of the NPT.

Non-proliferation**IAEA safeguards**

The Conference welcomed that 166 states have brought into force the IAEA comprehensive safeguards agreements and recognized that these safeguards are a fundamental component of the non-proliferation regime. The Conference urges the remaining 18 states parties to bring such comprehensive safeguards agreement into force.

Additional protocol

The Conference welcomes that 133 additional protocols have been approved by the IAEA Board of Governors and that such protocols are currently being implemented in 102 states. The Conference notes that the implementation of the additional protocol increases the confidence about the absence of undeclared nuclear material and activities and further notes that "numerous states were of the view that those measures have been introduced as an integral part of the IAEA safeguards system" and encourages all states parties to conclude and bring into force such additional protocol. The Conference also notes that while it is a sovereign decision to conclude an additional protocol, once in force, it is a legal obligation. The Conference also stresses the importance of confidentiality regarding information related to implementation of safeguards. The Conference also calls for wider application of safeguards to peaceful nuclear facilities in the NWS. The Conference recommends that the IAEA safeguards should be assessed and evaluated regularly.

Export controls

The Conference recognises that national rules for export of nuclear material are necessary to ensure commitments in line with article I, II, and III of the Treaty, while fully respecting article IV. The Conference also notes that numerous states underline that effective and transparent export controls are important to facilitating trade of peaceful nuclear material, which, according to those numerous states, depends on the existence of a climate of confidence about non-proliferation. The Conference urges all states parties to ensure that their nuclear-related exports do not directly or indirectly assist the development of nuclear weapons or other nuclear explosive devices and urges states to make use of multilateral guidelines and understandings in developing their own national export controls. The Conference also encourages states to consider whether a recipient state has brought into force IAEA safeguards obligations in making nuclear export decisions.



Summary of the final outcome document (cont.)

Nuclear energy

Peaceful uses of nuclear energy

The Conference reaffirms the right of all states parties to the fullest possible exchange of measures for the peaceful uses of nuclear energy in conformity with all the provisions of the Treaty. It also reaffirms that preferential treatment should be given to non-nuclear weapon states parties to the Treaty, taking into account in particular, the needs of developing countries. The Conference encourages states to further develop a new generation of proliferation-resistant nuclear reactors.

Nuclear safety and security

The Conference notes the “paramount importance” of effective physical protection of all nuclear material and welcomes the adoption of the amendment to the Convention on the Physical Protection of Nuclear Material and encourages all states to become a party to it. The Conference also encourages all parties to become parties to the Convention on Nuclear Safety, Convention on Early Notification of a Nuclear Accident, the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, and the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management. The Conference acknowledges that while nuclear safety and security are national responsibilities, the IAEA should play the key role in development of standards, guidance and best practice conventions. The Conference encourages all states to maintain the highest possible standards of security and physical protection of nuclear material and facilities. The Conference also notes the entry into force of the 2007 International Convention for the Suppression of Acts of Nuclear Terrorism and the Nuclear Security Summit held in Washington in April 2010 and calls upon all states parties to improve their national capabilities to stop illicit trafficking in nuclear materials throughout their territories. The Conference recognizes the safety and security issues associated with nuclear energy, as well as the important issue of managing spent fuel and radioactive waste in a sustainable manner. Nuclear fuel suppliers are encouraged to work with and assist recipient states in the safe and secure management of spent fuel. The Conference also considers attacks or threat of attack on nuclear facilities devoted to peaceful purposes jeopardize nuclear safety, have dangerous implications, and raise serious concerns regarding the application of international law on the use of force. The Conference notes that a majority of states parties suggested a legally-binding instrument to be considered in this regard.

Uranium

The Conference welcomes the efforts by states parties on a voluntary basis to minimize the use of highly enriched uranium in the civilian sector. It also recognizes the importance of applying best practice and basic principles in mining and processing, including those related to environmental management of uranium mining.

IAEA technical cooperation

The Conference notes that IAEA technical cooperation activities contribute to improvement of many areas, such as the helping to achieve the Millennium Development Goals, and welcomes the contributions already pledged by countries or groups of countries in support of such IAEA activities. The Conference calls upon all states parties to continue efforts to enhance the effectiveness and efficiency of the technical cooperation programme and make every effort to ensure that the funding for such programme are sufficient, assured and predictable.

Multilateral approaches to the nuclear fuel cycle

The Conference notes the establishment of a reserve of low-enriched uranium in Russia for the use of IAEA Member States, and calls upon states to continue to discuss further possibilities to create voluntary multilateral mechanisms for assurance of fuel supply as well as possible schemes dealing with the back-end of the fuel cycle.

Regional issues

Middle East

The Conference reaffirms its endorsement of the aims and objectives of the Middle East peace process and recognises that efforts in this regard contribute to a Middle East zone free of nuclear weapons and other weapons of mass destruction (WMD/FZ). In order to implement the 1995 resolution, the Conference calls upon the UN Secretary-General and the co-sponsors of the 1995 resolution, in consultation with the states of the region, to convene a Conference in 2012 on the establishment of a Middle East WMD/FZ. The Conference also calls upon the UN Secretary-General and the co-sponsors of the 1995 resolution, in consultation with the states of the region, to appoint a facilitator to support the implementation of the 1995 resolution and undertake preparations for the 2012 conference. This facilitator will also report to the NPT Review Conference in 2015 and its Preparatory Committees. The UN Secretary-General and the relevant states are also asked to designate a host country for the 2012 conference. The Conference emphasises the requirement of maintaining parallel progress in the process leading to achieving total and complete elimination of all WMD in the region.

continued on next page



Summary of the final outcome document (cont.)

DPRK

The Conference condemns with strongest possible terms the nuclear test explosions of the DPRK and recalls that it cannot have the status of a nuclear weapon state. The Conference also affirms that the nuclear programme in DPRK constitutes a threat to the peace and security of Northeast Asia and to the entire international community. The Conference strongly urges the DPRK to fulfil its commitments under the Six Party Talks and urge it to return to the Treaty and its adherence to IAEA safeguards. The Conference also reaffirms its firm support for the Six Party Talks and remains determined to achieve resolution to the issues through diplomatic means.

South Asia

The Conference urges Pakistan and India to accede to the NPT as non-nuclear weapon states and to place their nuclear facilities under IAEA safeguards. The Conference also urges these two countries to strengthen their export controls for material and technology that can be used for nuclear weapons and their delivery systems.

Other issues

Strengthening the review process

The Conference recommends that a dedicated staff officer should be added to the UN Office for Disarmament Affairs in order to support the Treaty's review cycle. The Conference also encourages past and incumbent Chairs to be available for consultations by the incoming Chairs.

Transparency

The Conference notes the released number of nuclear weapons in inventories of some NWS and encourages all NWS to provide additional transparency in this regard. The Conference also calls upon NWS to promptly engage to further enhance transparency and increase mutual confidence.

Compliance

The Conference reaffirms that the responses to concerns of compliance should be pursued by diplomatic means, in accordance with the provisions of the Treaty and the UN Charter. The Conference also notes the concerns expressed by numerous parties on non-compliance of the Treaty by states parties, as well as their calls on those states non-compliant to move promptly to full compliance with their obligations. The Conference underscores the importance in complying with non-proliferation obligations, addressing all compliance matters in order to uphold the Treaty's integrity, and the authority of the safeguards system. The Conference underscores the importance of resolving all cases of non-compliance with safeguards obligations in full

conformity with the IAEA statute and member states respective legal obligation.

Universality

The Conference remains convinced that universality of the Treaty is the goal and calls upon all states non-parties to the Treaty—India, Pakistan, and Israel—to accede to it without further delay. The Conference reaffirms that achieving universality is essential to regional and international peace and security. The Conference also reaffirms that new supply arrangements for transfers of fissionable material should require as a necessary precondition acceptance of full scope safeguards and international legally-binding commitments not to acquire nuclear weapons. The Conference also calls upon all states parties to exert all efforts to promote universal adherence to the Treaty and not to undertake any actions that can negatively affect prospects for the universality of the Treaty.

Withdrawal

The Conference reaffirms the national sovereign right to withdraw from the Treaty, but reaffirms the conditions for such notifications. The Conference also underscores that a withdrawing party is still responsible for violations of the NPT committed before the withdrawal. The Conference notes that numerous states were of the view that states parties should undertake consultations, as well as regional diplomatic initiatives, in the case of withdrawal.

Machinery

Conference on Disarmament (CD)

The Conference expresses deep concern that after more than a decade, the CD has been unable to commence negotiations and urges it to begin work without delay. The Conference calls upon the CD to establish a subsidiary body to deal with nuclear disarmament, within the context of an agreed, comprehensive, and balanced programme of work. The Conference also calls upon the CD to begin discussions on effective international arrangements for security assurances and negotiations on a FMCT based on the Shannon mandate. The Conference also invites the UN Secretary-General to convene a high-level meeting in September 2010 in support of the work of the CD. •

Follow Reaching Critical Will year-round

www.reachingcriticalwill.org

Please consider donating to this critical resource



Humanitarian consequences, humanitarian law: an advance in banning use of nuclear weapons

John Burroughs | Lawyers Committee on Nuclear Policy

An excellent Swiss initiative at the 2010 NPT Review Conference resulted in an innovation in the NPT review context: a consensus statement on the moral and legal dimensions of the imperative of non-use of nuclear weapons. The Action Plan for Nuclear Disarmament in the Conference outcome document includes this provision: “The Conference expresses its deep concern at the catastrophic humanitarian consequences of *any* use of nuclear weapons, and reaffirms the need for all states *at all times* to comply with applicable international law, including international humanitarian law.” (Principles and Objectives, A(iii), emphasis added.)

International humanitarian law (IHL) protects civilians and combatants from indiscriminate and unnecessary effects of warfare. The Review Conference statement strongly implies the unlawfulness of use of nuclear weapons in any circumstance, advancing the 1996 advisory opinion of the International Court of Justice (ICJ).

In the general debate on May 4, Micheline Calmy-Rey, Head of the Federal Department of Foreign Affairs, stated that “Switzerland’s aim is to bring the humanitarian aspect to the heart of the current debate on nuclear disarmament.” To that end, on May 10, Switzerland and the James Martin Center on Nonproliferation Studies released the thoughtful publication *Delegitimizing Nuclear Weapons*. Adding impetus to this effort was the April 20 statement of Jacob Kallenberger, President of the Geneva-based International Committee of the Red Cross (ICRC). Based on a recent ICRC analysis, the statement observed that there is “little” capacity to aid victims of a use of nuclear weapons. It also said that “the ICRC finds it difficult to envisage how any use of nuclear weapons could be compatible with the rules of international humanitarian law.”

The original version of the provision first appeared in the May 21 Revised Chair’s Draft Action Plan for Nuclear Disarmament. It read: “The Conference expresses its deep concern at the humanitarian consequences of any use of nuclear weapons, and reaffirms the need for all states to comply with international humanitarian law at all times.” In closed negotiations, France reportedly called for deletion of the provision, and the UK at least expressed doubts about it. In its idiosyncratic argument before the International Court of Justice in 1995, France remained silent on the application of IHL to use of nuclear weapons, arguing instead that absent an express prohibition, their use is “authorized

in the event of the exercise of the inherent right of individual or collective self-defence.” In contrast, the US, UK, and Russia accepted before the ICJ that IHL applies to nuclear weapons as it does to other weapons, though they contended implausibly that nuclear use could be compatible with IHL depending upon the circumstances.

As revised and approved by the Conference, the second part of the provision is changed to call for compliance “at all times” with “applicable international law, including international humanitarian law.” Why the reference to “applicable” law? First, because IHL governs methods and means of warfare, the extent of its application in time of peace is controversial; it is also sometimes a matter of dispute as to whether and where an armed conflict has commenced or ended. Second, the use of the phrase “at all times” could raise the question of whether that phrase should be added elsewhere in the Final Document when it calls for compliance with an NPT obligation. Modification of “at all times” by “applicable law” assuaged these concerns.

The revision is rhetorically regrettable because it makes the statement less punchy and powerful. The reference to “applicable international law” also provides a textual basis for invoking self-defence and reprisal, though this could have been done in any case. And it muddies the argument that doctrines generally contemplating use of nuclear weapons—as opposed to signals in specific circumstances of armed conflict—are “threats” contrary to IHL. (There is no doubt that the UN Charter prohibition of threat or use of force, which the ICJ found potentially applicable to doctrines of “deterrence,” is in effect whether or not an armed conflict is underway.)

Nonetheless, the provision as adopted by the Conference without question develops the norm of non-use of nuclear weapons. Indeed, when combined with the *practice* of non-use since the US atomic bombings of Japanese cities, the provision strengthens the case for a customary legal obligation categorically prescribing non-use. The welcome US statement in its Nuclear Posture Review is also relevant here: “It is in the U.S. interest and that of all other nations that the nearly 65-year record of nuclear non-use be extended forever.”

The reach of the Conference’s statement can be illustrated by a comparison with the ICJ opinion. The Court explained that the principles of IHL protecting civilians and combatants are “fundamental” and

continued on next page



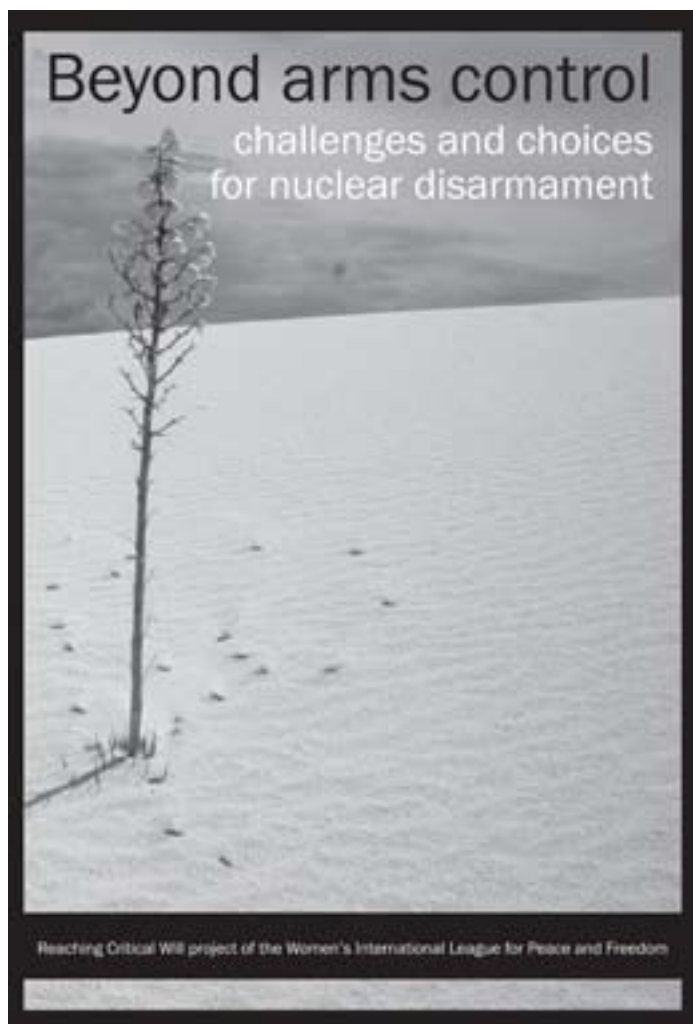
Humanitarian consequences, humanitarian law (cont.)

“intransgressible,” and that “methods and means of warfare, which would preclude any distinction between civilian and military targets, or which would result in unnecessary suffering to combatants, are prohibited.” It found: “In view of the unique characteristics of nuclear weapons ... the use of such weapons in fact seems scarcely reconcilable with respect for such requirements.” However, given the facts and law available to it, the Court felt that it could go only so far as stating that threat or use of nuclear weapons is “generally contrary” to international law, and could not reach a conclusion one way or the other regarding an “extreme circumstance of self-defence, in which the very survival of a state is at stake.”

The Conference takes this further: the reference to the catastrophic humanitarian consequences of “any” use of nuclear weapons directly joined with the call for compliance with law implies that use of nuclear weapons is unlawful in all circumstances. Further, since there is no doubt that IHL applies to

armed conflict, the insistence on compliance with applicable international law “at all times” weighs against any suggestion that IHL bends or wavers depending upon the circumstances. That includes the “extreme circumstance” referred to by the ICJ, self-defence as invoked by the French, or second use in “reprisal” purportedly aimed at preventing further attacks. All such ambiguities and arguments probably can only be definitively resolved by a treaty obligation like that contained in the Chemical Weapons Convention, in which each state party “undertakes never under any circumstances to use chemical weapons.” But the Conference’s statement takes us closer to that day, and reinforces the moral unacceptability and presumptive unlawfulness of any use of nuclear weapons in the meantime.

Dr. John Burroughs is Executive Director of the New York-based Lawyers Committee on Nuclear Policy and author of The Legality of Threat or Use of Nuclear Weapons: A Guide to the Historic Opinion of the International Court of Justice (1997). •



New publication from Reaching Critical Will
soft cover • 296 pages • March 2010 • 10USD

Beyond arms control: challenges and choices for nuclear disarmament is a collaborative work of 25 non-governmental researchers and activists who critically examine the mainstream discourse of nuclear weapons. The book explores some of the most important challenges that governments and civil society will face at the 2010 NPT Review Conference and beyond, highlighting the prospects and pitfalls for nuclear disarmament in the current world order.

Throughout, the authors demonstrate that nuclear disarmament must be pursued in the context of a broader movement for social and economic justice and equality. The military utility of nuclear weapons may be diminishing in the current world order, but nuclear weapons and nuclear power are still useful to the economic and political elite of many countries and will thus be pursued by others seeking the same elite status. The first step on this road is distinguishing the rhetoric from the reality and creating a new discourse for nuclear disarmament that promotes true human security.

Order online • www.reachingcriticalwill.org



ADVERTISEMENT: Nuclear Ban Treaty Provisions

by Frederick N. Mattis

Following is a summary of provisions for a treaty [convention] banning nuclear (and chem-bio) weapons. For details, please see the book *Banning Weapons of Mass Destruction*, by Frederick N. Mattis [ISBN: 978-0-313-36538-6], published by ABC-CLIO/Praeger Security International (also available at Amazon.com).

1. All states must join the treaty before it takes effect. [Obviously, this would help induce states to join, and would give the enacted treaty unprecedented geopolitical, psychological, and moral force.]
2. Only states already parties to the 1993 Chemical Weapons Convention (CWC) and the 1972 Biological Weapons Convention (BWC) can sign the nuclear ban treaty. [Aside from the inhumanity of chem-bio weapons, at least one state (Israel) that possesses nuclear weapons will not renounce them if other states—being nonparties of the CWC and/or BWC—could with relative impunity maintain chem-bio arsenals. (See chapter 6 of *Banning Weapons of Mass Destruction* for discussion of the nuclear ban and particularly “problematic” states: North Korea, Iran, Israel, India, Pakistan, Russia.)]
3. After nuclear ban treaty entry into force, the warhead elimination period does not begin until: (a) All states enact national implementing legislation, and also for the CWC; (b) All states accept their fellow states’ implementing legislation (for nuclear ban and CWC) as adequate; (c) All states submit treaty-required declarations of nuclear material, facilities, and weapons; (d) The nuclear ban’s Technical Secretariat completes and reports on baseline verification of declarations; (e) All states agree to proceed to the “next step” of warhead elimination. [#3(b) and #3(e) are thus junctures at which a single state could halt (presumably temporarily) further treaty implementation. If, to the contrary, states could not do so in event of perceived, major problems with another state’s implementing legislation or with a state’s declarations, then some at least of the current nuclear powers probably would decline to join the treaty.]
4. (a) The enacted treaty does not permit withdrawal; and (b) Treaty parties (all states) are pledged by treaty terms not to withdraw from the CWC and BWC. [Note, however, #5 below; for further legal points of a non-withdrawal treaty, see chapter 4 of *Banning Weapons of Mass Destruction*.]
5. If a state under color of Article 60(2) of the Vienna Convention on the Law of Treaties ever undertakes otherwise treaty-prohibited activity pertaining to any of the three agreements (nuclear ban, CWC, BWC) because another state is in “material breach,” the former state must declare beforehand which state it arraigns as in material breach. [This prevents a state from being able to undertake or attempt to undertake treaty-prohibited activity in secret and later on citing as justification that “another state was in material breach.” It also confirms, although indirectly, the important principle (to gain accession to the treaty by today’s nuclear powers) that states would be the ultimate, sovereign determiners of whether another state was in “material breach.”]
6. (a) World stocks of highly-enriched uranium (HEU)—which is the nuclear material for a relatively simple, “gun-type” weapon—are blended-down to low-enriched uranium (LEU) over a span of years, which may need to extend beyond the weapons elimination period (depending on how much current HEU is blended-down to LEU before treaty entry into force). (b) HEU use in reactors (mainly naval and research) must cease six months before weapons elimination ends, with an exception thereafter for any highly-protected projects approved by three-quarters treaty Executive Council vote, including votes of all permanent Council members. [See chapter 5 of *Banning Weapons of Mass Destruction* for discussion of HEU and plutonium, plus treaty verification (inspection). For the USA in particular, conversion of HEU naval propulsion reactors to LEU fuel would be a big step, but necessary in all likelihood to achieve a nuclear weapons-free world. If, instead, nonsafeguarded HEU (in reactors of vessels at sea) was permitted, then the nuclear ban—which must treat states equally—would also have to permit states such as North Korea to possess nonsafeguarded HEU, in which case nuclear ban verification would be vitiated.]

The provisions summarized above, plus eleven more in *Banning Weapons of Mass Destruction*, are largely in addition to (and some different from) those of the Model Nuclear Weapons Convention. However, without the meritorious MNWC, nuclear abolition would be years farther away. A finalized nuclear ban, ready for states’ signatures, will surely employ the vast majority of MNWC provisions.

“Frederick N. Mattis’s book deals with a complex and deadly subject. It does so with clarity, great intelligence, and the appropriate sense of urgency. I hope it is widely read.”

- Ambassador Richard Butler, former Chief U.N. Weapons Inspector in Iraq



Report on the morning NGO Abolition Caucus

Alice Slater | Nuclear Age Peace Foundation

The NGO Abolition Morning Caucus met each day during the four week Non-Proliferation Treaty Review Conference starting on Tuesday, May 4th straight through to the last day of the UN meeting on May 28th. We gathered each day at 8:00 AM at the UN gates on First Avenue, waiting for the guards to unlock the chains on the UN fence and then proceeded through “security” to the temporary building on the North Lawn where a conference room had been reserved for the use of NGOs. Conference Room A was almost always in use, hosting the Abolition Caucus, the daily NGO government briefings organized by Reaching Critical Will, the plethora of NGO panels, films, testimony from *Hibakusha*, and brainstorming and strategy sessions through the course of the Review Conference.

Our Abolition Caucus began each morning by reviewing the day’s calendar, proposing a new agenda for each day, and then planning various actions during the course of the Conference. At the end of each meeting, a new facilitator would volunteer to Chair the meeting for the following day, and volunteers sent out daily minutes of our work. In the first week, as many as 60 activists showed up at our morning meetings, hailing from every continent and united in our commitment to rid the world of the nuclear scourge.

We were encouraged by the many nations who called for negotiations on a Nuclear Weapons Convention. We all signed thank you notes that were presented to the ambassadors of these countries at the Review Conference. One ambassador was so moved by our message that he asked us to send another one to his foreign minister.

We sent two letters from the Caucus to UN Secretary-General Ban Ki-moon. One expressed our thanks and appreciation for his enthusiastic support of negotiations for a nuclear weapons convention

and his Five Point Plan. The other was to express our dismay at the rude treatment we witnessed of Iran’s President by the western powers who walked out on him during his speech on the first day of the Conference and to urge mediation in this situation.

We drafted statements in response to the Main Committee I and III reports, issued our own nuclear abolitionists preamble to the President’s draft report, did a satirical take on the conference in *The Scallion*, a riff on *The Onion*, which is a well received satirical newspaper in the US, and issued a final statement and critique of the weakened outcome document at the Conference. Usually our documents were handed out with the *NPT News in Review* issued by Reaching Critical Will. The Abolition Caucus documents are on the web at <http://www.reachingcriticalwill.org/legal/npt/2010index.html> under “Other Resources”.

We also networked with the Commission on Sustainable Development (CSD), which was meeting concurrently with the NPT. The CSD addressed the catastrophic results of mining. They held a heart-wrenching presentation on the havoc of uranium mining. Our Caucus was able to convince the French delegation to permit us to show the promotional advertisement for a film on the evils of uranium mining at the end of a presentation France organized on the benefits of “peaceful” nuclear power.

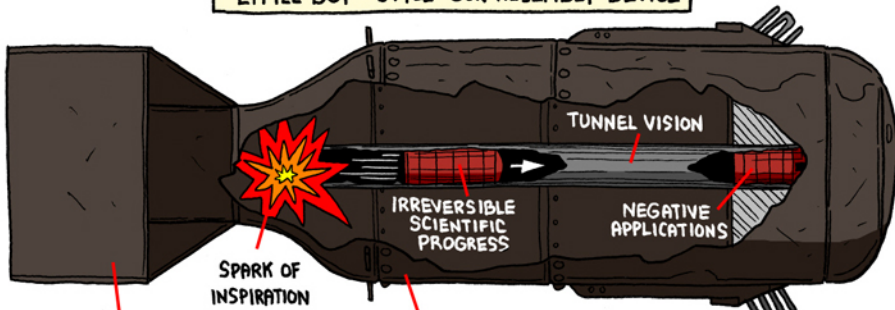
At the close of the meeting we presented the delegates with fortune cookies, which when opened, said “Global Zero Now”. Most importantly, we now have a list of over 100 international participants who can continue the warm relationships and camaraderie that developed over the four weeks, newly energized and inspired by each other as we work together for a nuclear free world.

Alice Slater is the New York Director of the Nuclear Age Peace Foundation and Convener of the Abolition 2000 Sustainable Energy Working Group. •



UNDERSTANDING NUCLEAR WEAPONS

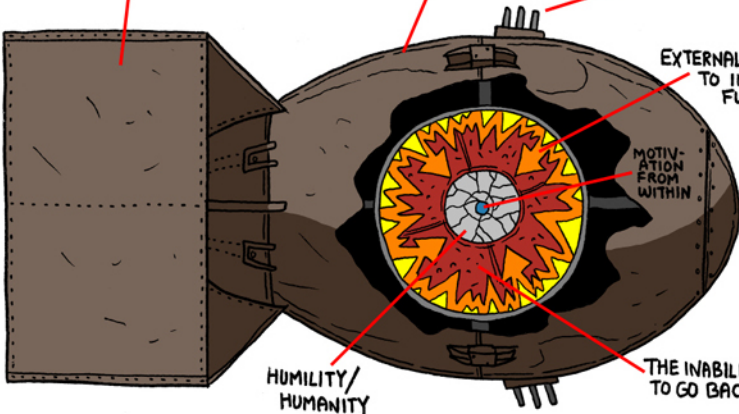
"LITTLE BOY"-STYLE GUN ASSEMBLY DEVICE



SHORT-TERM ECONOMIC STABILITY

MILITARY-INDUSTRIAL COMPLEX

FOREIGN INTELLIGENCE



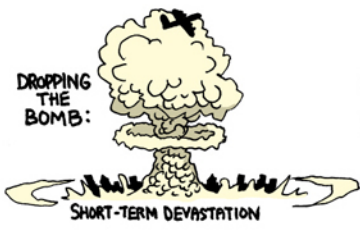
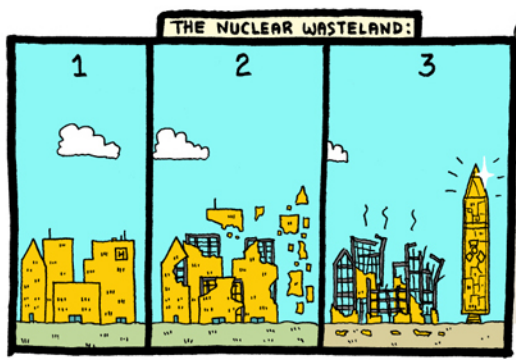
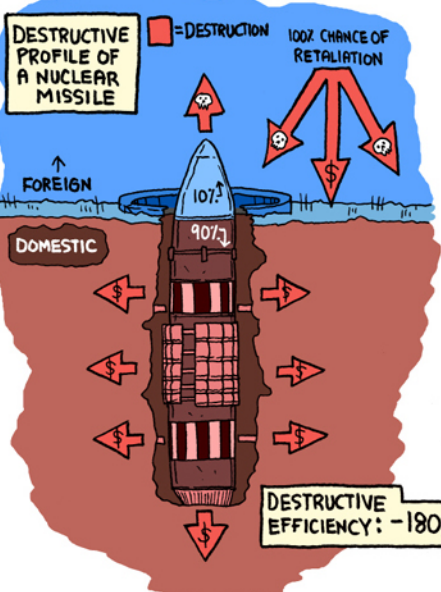
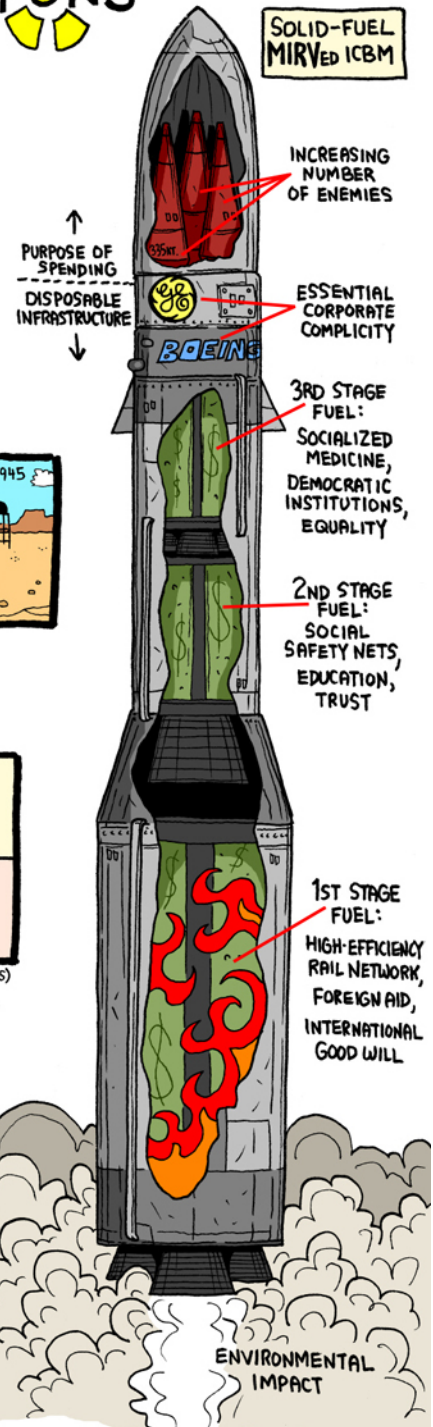
"FAT MAN"-STYLE IMPLOSION DEVICE



NUMBER OF NUCLEAR DETONATIONS ON AMERICAN SOIL: 1054
NUMBER DETONATED ON ENEMY SOIL: TWO
NUMBER OF NUCLEAR DETONATIONS ON SOVIET SOIL: 715
NUMBER DETONATED ON ENEMY SOIL: ZERO

(ACTUAL FIGURES)

SOLID-FUEL MIRVed ICBM



LIFE EXPECTANCY, PRESENT DAY:	
WASHINGTON:	73 yrs.
MOSCOW:	72 yrs.
HIROSHIMA:	80 yrs.

(ACTUAL FIGURES) [EMAIL FOR SOURCES]

LONG-TERM DEVASTATION