

# Doubting a Ban...

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## **About PAX**

PAX stands for peace. Together with people in conflict areas and critical citizens in the Netherlands, we work on a dignified, democratic and peaceful society, everywhere in the world. PAX brings people together who have the courage to stand for peace. We work together with people in conflict areas, visit politicians and combine efforts with committed citizens.

## **About the No Nukes Project**

No Nukes is PAX's campaign for a world free of nuclear weapons. No Nukes is on the steering group of the International Campaign to Abolish Nuclear weapons – ICAN. The No Nukes project seeks opportunities to strengthen the global non-proliferation regime and to accelerate global nuclear disarmament by stigmatising, outlawing and eliminating nuclear weapons.

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# Introduction

At the root of all multilateral nuclear disarmament agreements is the shared desire to prevent the indiscriminate and catastrophic humanitarian consequences that would result from any use of nuclear weapons. Since 2010, the humanitarian discourse has re-emerged as a dominant theme at multilateral meetings about nuclear weapons. A growing number of countries have expressed concern about the humanitarian consequences of the use of nuclear weapons, in joint statements at NPT and First Committee meetings and during international conferences organised by the Norwegian government in March 2013 and the Mexican government in 2014. The evidence-based discussions in Oslo and Nayarit will continue in Vienna at the end of 2014.

At the conclusion of the Nayarit conference, the chair issued a summary stating “*The broad-based and comprehensive discussions on the humanitarian impact of nuclear weapons should lead to the commitment of States and civil society to reach new international standards and norms, through a legally binding instrument... It is time to take action!*” The growing understanding of the risks and consequences of any use of nuclear weapons, under any circumstances are leading many governments and civil society organisations to conclude that the next logical step is the start of negotiations on a global treaty prohibiting the possession of nuclear weapons, for all states, at all times, under all circumstances.

This new focus on the humanitarian consequences of the use of nuclear weapons is reflective of a growing trend in international peace and security, towards greater cooperation focused on examining the impact of weapons. It allows states to judge based on facts whether the impact of use of a weapon is reasonable, justifiable, and acceptable.

The concept of humanitarian consequences has historically been central in multilateral nuclear weapons treaty making as well. It is the principle from which the assumption is derived that the few possessors eventually will come into alignment with the interests of the majority. Or at least the legal agreements assume that they will do so at some point.

In recent years, the lack of progress in multilateral nuclear treaty making has resulted in a stalemate and given the impression that the interests of only a few states matter in this debate. That perception is fed by the nuclear Non Proliferation Treaty (NPT) processes, and by the discussion and decision making structures inside NATO, wherein those who possess nuclear weapons are considered ‘more important’ than those who do not.

As such, calls for a 'ban treaty' challenge some of the understood engagement practices that have underpinned – but also undermined - the international non-proliferation and disarmament machinery. It leads us into uncharted areas in which the most powerful states that are used to controlling the pace and content of international nuclear weapons discussions must now engage as equals with states that do not have nuclear weapons, do not rely on them and do not believe that such weapons of mass destruction contribute to the security of citizens. A ban treaty is a demonstration of multilateralism in its truest form, where all voices are heard and all carry equal weight.

The growing calls for the start of negotiations on a new treaty have caused some blow-back. The recognised nuclear weapon states have boycotted the Oslo and Nayarit conferences and the states that are dependent on U.S. nuclear weapons are in a tenuous position. While recognising that nuclear weapons cause catastrophic humanitarian consequences, some of those states are not yet ready to agree that this should be a reason to prevent their use under any circumstances. Some have expressed concern as to where the humanitarian discussion is going. Others have suggested that outlawing nuclear weapons will not contribute to unblocking the global stalemate on multilateral nuclear disarmament negotiations, while some insist that making nuclear weapons illegal for everyone equally can only be the last step in a step-by-step process of elimination. Some have argued that NATO agreements prohibit participation of NATO member states in a ban treaty process. Some have argued that the timing is wrong for a ban treaty, or that it would undermine the existing disarmament forums such as the NPT, or that a ban treaty process without participation of all nuclear armed states would be pointless. Some have even argued that NATO – for now – needs nuclear weapons because of growing international insecurity.

This discussion paper looks at some of those lines of argumentation. It unpacks the concerns and provides food for thought suggestions. With this paper, PAX aims to stimulate an open debate on a treaty banning nuclear weapons and leading to their elimination. ♦

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<sup>1</sup> Chair's Summary of the Nayarit Conference, February 14, 2014. Accessed online: <http://www.sre.gob.mx/en/index.php/humanimpact-nayarit-2014>

# 1. A ban treaty is not the right next step

Some states have argued that a ban treaty is a necessary step to achieve a world without nuclear weapons – but not a step that needs to be taken until the final stages.

The idea that a world without nuclear weapons can only be achieved through a ‘step-by-step’ approach has been dominant in the language of some nuclear armed states and many of their closest allies. Canada in a March 2014 statement said that “*Canada has long advocated a step-by-step approach to nuclear disarmament that halts the spread of nuclear weapons, reduces existing stockpiles and irreversibly eliminates them.*”<sup>ii</sup> The step-by-step language is mostly used by states that argue that significant progress towards a world without nuclear weapons, while complex, is moving at a reasonable pace. “*We celebrate the progress these step-by-step efforts have achieved, but we know we still have much work to do. We remain committed to fulfilling our obligations and working to take additional practical and meaningful steps,*”<sup>iii</sup> to quote US Under Secretary Rose Goettemoeller.

Political agreements to implement practical steps have been made in the past at various NPT Review Conferences. However, these agreed packages have not achieved the results expected by the majority of states. Not one nuclear armed state has been fully disarmed and no multilateral negotiations towards disarmament have taken place. Instead, proliferation continues and one state left the NPT regime citing the need for a nuclear deterrent. The NPT 13 Practical Steps, hailed as a hallmark agreement in 2000, was quickly stymied by the US abrogation of the ABM treaty in 2002. The 2010 NPT Review Conference 64 point Action Plan was a less ambitious set of steps than in 2000, but it too remains largely unimplemented.

The major weakness of the step-by-step approach has been the fact that the agreements on next steps invariably lack clear deadlines or consequences for failure. While this approach has resulted in some nuclear armed countries reducing their total number of operationally deployed nuclear weapons, it has not yet delivered a disarmed state or begun to fulfil the NPT promise of multilateral negotiations by all nuclear armed states.

There is currently no incentive for progress on nuclear disarmament, or penalty for a failure to disarm. Without clear milestones, timelines, and consequences for failure, the step-by-step approach has effectively become a delaying tactic, perpetuating the special status of the five recognized nuclear armed states and denying the nuclear weapons free states their end of the original NPT bargain.

This is why a growing number of states and civil society organisations are pushing for a global treaty prohibiting possession of nuclear weapons to be the next step, instead of the last step in any approach. Such a prohibition would establish non-possession as the norm and incentivise further action on other steps needed to achieve and maintain a world free of nuclear weapons. An unambiguous legal prohibition on the possession of nuclear weapons would likely unblock the start of negotiations on a fissile materials treaty and provide for the inclusion of existing stocks in such a treaty as any justification for maintaining a hedge against future proliferation would be eliminated.

A nuclear ban treaty would eliminate the distinction between recognised nuclear weapon states and the other nuclear armed states, and put the focus on the illegality of the weapons, regardless of who possesses them. It could also facilitate the entry into force of the Comprehensive Test Ban Treaty, and provide for additional clarity on some of the questionable practices currently permitted (and possibly holding back ratification by some states) of that treaty.

Of course, simply banning nuclear weapons is not enough to guarantee their elimination. But such a treaty would facilitate the development of other treaties necessary to bring about and maintain a world free of nuclear weapons. A ban treaty is the sorely missed legal underpinning for each of these necessary 'steps' or 'building blocks', all of which are part of the package necessary to achieve and maintain a nuclear weapons free world. ♦

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<sup>ii</sup> Address by Minister of State Yelich to the Conference on Disarmament, March 4, 2014. Accessed online: [http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2014/Statements/part1/4March\\_Canada.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2014/Statements/part1/4March_Canada.pdf)

<sup>iii</sup> Statement by Rose E. Gottemoeller, Under Secretary of State for Arms Control and International Security, Conference on Disarmament, February 4, 2014. Accessed online: [http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2014/Statements/part1/4Feb\\_US.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2014/Statements/part1/4Feb_US.pdf)

## 2. A ban treaty distracts from existing efforts

In their statements to the Conference on Disarmament, the five recognised nuclear armed states have argued that talk of a ban treaty is a “distraction” from existing disarmament forums such as the Conference on Disarmament (CD) and the NPT.

A 2013 statement by the US argued that it is better to focus on practical steps that are already taken to reduce nuclear weapons.<sup>iv</sup> Russia in a 2013 statement warned that talk of the humanitarian consequences of the use of nuclear weapons outside the CD could “pull apart the CD agenda” and ultimately lead to the collapse of all disarmament mechanisms.<sup>v</sup>

Since 2013, the nuclear armed states have toned down their dismissal of discussions on humanitarian consequences and a subsequent ban on nuclear weapons a bit, perhaps realising how isolated they already are in their refusal to seize opportunities to engage.

The argument that legally binding agreements arranging a world without nuclear weapons would be inconsistent with the purposes of the NPT and the CD seems farfetched. After all, the preamble of the NPT indicates the Treaty intends to “facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control.”<sup>vi</sup>

Similarly, article VI of the NPT clearly requires – as a legal obligation – each member state to “pursue negotiations in good faith on effective measures relating [...] nuclear disarmament.”<sup>vii</sup> The NPT does not in any way limit discussions on a treaty, rather, it mandates all NPT members to discuss and construe legally binding instruments that prohibit the possession of nuclear weapons and effective measures to end the arms race.

It is the NPT stalemate itself and the inability of the Conference on Disarmament to even agree on an agenda that have inspired a rethinking of best strategies to achieve a world without nuclear weapons. Dutch Ambassador Henk-Cor van der Kwast rightly concluded in his address to the CD in February 2014: “Several colleagues have repeated that the CD is the sole multilateral body that negotiates nuclear disarmament. It seems to me somewhat hilarious that we congratulate each other with being the sole multilateral body that negotiates nuclear disarmament, but that this body does not make any progress. Progress on disarmament is made outside this beautiful conference room.”<sup>viii</sup>

Since the 1970 entry into force of the NPT, there has been significant progress made on the obligation to negotiate general and complete disarmament. The Convention on Certain Conventional Weapons (CCW) for example, while not a perfect instrument, does ban or restrict the use of specific types of weapons that are considered to cause unnecessary or unjustifiable suffering to combatants or to affect civilians indiscriminately. Other negotiations have outlawed and eliminated specific indiscriminate or inhumane weapons systems, including chemical weapons, anti-personnel landmines and cluster bombs. A treaty banning nuclear weapons would be in line with these efforts.

There is nothing in the NPT that reinforces the idea that a ban treaty would undermine NPT rules or agreements. More importantly, a ban would address the most important structural weak points that are inherent to the NPT. A ban would level the playing field, undoing the arbitrary and ineffective distinction between states that possess nuclear weapons and states that don't. It would stigmatise the possession of nuclear weapons as a preparation for morally unacceptable mass destruction and it would further challenge the assumption that nuclear weapons can provide security. The achievement of a ban treaty would in itself contribute to restoring trust through a multilateral legal rejection of all nuclear weapons and strengthen the conditions for disarmament as one of the pillars of the NPT.<sup>ix</sup>

Finally, it is worth noting that the NPT cannot be expected to resolve all issues with regards to nuclear disarmament. Four of the nine nuclear armed states (DPRK, India, Israel and Pakistan) are not currently members of the NPT and are not expected to become members any time soon, despite the calls for universalisation. The current situation that allows these four countries to maintain nuclear arsenals outside any treaty regime is unsatisfactory and in itself undermining the credibility of the NPT. A ban treaty would end the special status of these countries to the extent that a universal ban would render their nuclear warheads illegal, just as those of the nuclear armed states recognised by the NPT. ♦

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<sup>iv</sup> Statement by United States Ambassador Laura Kennedy to the Conference on Disarmament, March 5, 2013. Accessed online: [http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2013/Statements/5March\\_US.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2013/Statements/5March_US.pdf)

<sup>v</sup> Statement by Ambassador A. Borodaykin of the Russian Federation to the Conference on Disarmament, March 5, 2013. Accessed online: [http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2013/Statements/5March\\_Russia.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2013/Statements/5March_Russia.pdf)

<sup>vi</sup> UN Department for Disarmament Affairs (1968): *The Treaty on the Non-Proliferation of Nuclear Weapons*, New York (US), Preamble.

<sup>vii</sup> *Ibid.*, Article VI.

<sup>viii</sup> Statement by Mr. Henk Cor van der Kwast, Disarmament Ambassador at large of the Kingdom of the Netherlands at the CD Plenary, February 4, 2014. Accessed online: [http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2014/Statements/part1/4Feb\\_Netherlands.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2014/Statements/part1/4Feb_Netherlands.pdf)

<sup>ix</sup> See for further elaboration: Acheson, Ray and Fihn, Beatrice (2013): *Preventing Collapse: The NPT and a ban on nuclear weapons*, Reaching Critical Will, New York (US), p. 9-10.

# 3. Without participation of the nuclear armed states, a ban is meaningless

It is true that a ban treaty with constructive participation of the nuclear armed states from the outset, would be preferable. Nevertheless, the refusal or inability of the nuclear armed states to play a constructive role in this process does not mean a ban treaty is unfeasible, undesirable or even contrary to what the nuclear armed states say they themselves want to achieve.

A nuclear ban treaty would serve two main functions, both of which do not necessarily need participation or even support of the nuclear armed states. First of all, the treaty would generate legal clarity<sup>x</sup> and end the disagreement on whether nuclear weapons are illegal or not. A ban treaty would most likely also close some of the current loopholes, such as the arbitrary interpretation of NPT articles I and II to allow for NATO nuclear sharing.<sup>xi</sup> A universal ban on nuclear weapons – including their possession – would put an end to the claim that nuclear sharing is permissible.

A second important function of a ban is to set a new norm of non-possession as the only acceptable behaviour for any state. A strengthened norm prohibiting the use of nuclear weapons would undermine the credibility of nuclear deterrence as a realistic policy option. It would do so for all nuclear armed states equally and as such can contribute to overcoming the nuclear dependence problems of states possessing nuclear weapons and states relying on the nuclear weapons of others.

Agreements relating to the verified dismantlement of nuclear warheads could be developed with the nuclear-armed nations at a later stage once they choose to engage. Once negotiations are under way, any nation – whether nuclear-free or not – would be welcome to join the negotiating process so long as it accepted the goal of concluding a ban treaty by an agreed date. So the start of negotiations would not in any way be ‘against’ the interests of nuclear armed states, whether they are ‘recognised’, ‘declared’ or ‘non-declared’.

Finally, a core lesson learned from the decades of attempts to negotiate international treaties regulating, limiting or prohibiting weapon systems is that negotiations on a ban treaty should be open to all, but blockable by none. Constructive participation of all nuclear armed states would be welcome, but even without their participation, the 115 states currently part of regional nuclear weapons free zones are experienced in negotiating treaties outlawing nuclear weapons and are no

doubt capable in every sense of the word to take the lead in starting the ban treaty negotiating process, with or without the participation of nuclear armed states. ♦

Status and **prestige** belong  
not to those who **possess**  
nuclear weapons but to those  
who **reject** them

**UN Secretary-General Ban Ki-moon**

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<sup>x</sup> Article 36 (2013): Banning nuclear weapons without the nuclear armed states, London (UK), p. 1.

<sup>xi</sup> Van der Zeijden, W and Snyder, S (2012): Exit Strategies: The case for redefining NATO consensus on U.S. TNW, Utrecht, (NL) p. 10.

# 4. A ban treaty is incompatible with NATO Alliance agreements

Several NATO member states have recently argued that a treaty banning nuclear weapons would be difficult to reconcile with current NATO policies. Some went further, saying that even participation in discussions and negotiations would be irreconcilable with NATO policy documents adopted by consensus in 2010 and 2012.

Indeed, the 2010 NATO Strategic Concept (SC) and the 2012 Deterrence and Defence Posture Review (DDPR) do not seem conducive to the idea of outlawing nuclear weapons. NATO declared in the 2010 SC that “*as long as nuclear weapons exist, NATO will remain a nuclear Alliance*”<sup>xii</sup> and in the 2012 DDPR, NATO again attributed to nuclear weapons the function of “*supreme guarantee of the security of the Allies*.”<sup>xiii</sup> At the same time, NATO’s SC and DDPR reiterate that NATO’s overall policy goal is to create the conditions for a world free of nuclear weapons.<sup>xiv</sup>

Both documents were adopted after months of consultations and are intended to guide NATO policy for an unspecified period. The documents are however not legally binding. Instead, they are political commitments. They can be amended, bypassed, discarded or re-interpreted by NATO member states and NATO as a whole.<sup>xv,xvi</sup> The legally binding documents underpinning the Alliance, most notably the 1949 Washington Treaty, do not mention nuclear weapons or nuclear policies at all. The more recent documents contain little language to inspire hope that NATO members will en masse embrace the idea of a ban on nuclear weapons, but they do not contain language blocking engagement in discussions on a ban treaty either.

A recent paper by the International Law and Policy Institute (ILPI) demonstrates how throughout its history, NATO has accommodated national exceptions, exemptions, and implementation delays with regard to nuclear policies of the Alliance. Denmark, Norway and Spain do not allow nuclear weapons on their territory during in peacetime. Iceland and Lithuania prohibit the deployment of nuclear weapons on their territories in all circumstances.<sup>xvii</sup> Nuclear policy and posture are discussed in the NATO Nuclear Planning Group (NPG) but France is no part of the NPG as it wishes to maintain an independent ability to deter other countries with its own weapons of mass destruction. As such, France, is not under the US ‘nuclear umbrella’. Historically, national attitudes toward ratification of the NPT, the PTBT and the CTBT have varied without apparent effect on NATO’s standing as an alliance.<sup>xviii</sup>

A similar varied approach among NATO members can now be observed with regard to the new emphasis on the catastrophic humanitarian consequences of nuclear weapons as a core concern. Most NATO member states have refused to sign joint statements supported by 80 states at the 2013 NPT Preparatory Committee and no less than 125 states at the 2013 UNGA First Committee on humanitarian consequences. Some indicated that they believed the statements were incompatible with agreed NATO policies. Yet four NATO states have supported one or more of these statements. NATO member Norway organised the first international conference looking specifically at humanitarian consequences of nuclear weapons in 2013.

In the 2010 Strategic Concept, NATO recognised that “*National decisions regarding arms control and disarmament may have an impact on the security of all Alliance members. We are committed to maintain, and develop as necessary, appropriate consultations among Allies on these issues.*”<sup>xix</sup> In doing this, NATO reaffirmed that each member state must make disarmament and arms control decisions based on its national priorities and that there is scope and space within the alliance for all positions.

NATO member states need to answer for themselves whether they believe that a treaty banning all nuclear weapons for everyone will be contributing to or detracting from the central objectives of the Alliance. Whether they believe that a ban treaty is irreconcilable with the protection of the European and North American citizens they represent. ♦

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<sup>xii</sup> NATO (2010): Active Engagement, Modern Defence: A Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organisation, NATO, Brussels (BE), §17.

<sup>xiii</sup> NATO (2012): Defence and Deterrence Posture Review, NATO, Brussels (BE), §9.

<sup>xiv</sup> NATO (2010): Active Engagement, Modern Defence: A Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organisation, NATO, Brussels (BE), §26.

<sup>xv</sup> van der Zeijden, W. (2014): A Dutch Revolt? The salience of the nonstrategic nuclear weapons issue in Dutch politics, in: European Security, Vol 23, Issue 1: NATO's Uneasy Consensus: European views on nuclear issues, Routledge, London (UK), pp. 45-57.

<sup>xvi</sup> Lothe Eide, Stein-Ivar (2014): A Ban on Nuclear Weapons: What's in it for NATO?, Policy Paper No 5, International Law and Policy Institute, Oslo (NO), p. 4.

<sup>xvii</sup> Ibid, p. 6.

<sup>xviii</sup> Ibid, p. 10.

<sup>xix</sup> NATO (2010): Active Engagement, Modern Defence: A Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organisation, NATO, Brussels (BE), §26.

# 5. Without the weapons, NATO is less secure

At the centre of the reluctance of NATO alliance members to embrace the idea of a treaty banning nuclear weapons, stands the belief that ultimately, nuclear weapons provide NATO with a strategic advantage and that they ensure the security of NATO citizens.

With three of the five recognised nuclear armed states in its ranks, the NATO alliance has been deeply involved in the development of the nuclear standoff that came to dominate thinking during much of the Cold War era. In the 70s especially, NATO members argued that Russian conventional superiority demanded a balancing nuclear response. 25 years after the end of the Cold War, the tables have turned. The combined military expenditures of NATO member states together account for some 60% of global military spending. Of the top 10 spenders, numbers 1, 4, 6, 9 and 10 are in NATO. NATO countries together spend more than ten times as much as the Russian Federation and more than five times what China spends.<sup>xx</sup> By now, Russia is said to rely on its nuclear arsenal to balance NATO's overwhelming conventional military superiority. In that sense, a nuclear ban treaty leading to an effective verification regime guaranteeing a world free of nuclear weapons would provide a comparative advantage to NATO. It would end Russia's nuclear balancing act.

In Europe, austerity measures have resulted in shrinking defence budgets. By now, the most heard complaint within NATO is the unwillingness of member states to increase the percentage of GDP defence spending. The current financial climate makes large increases in military spending unrealistic. Ending the dependence on nuclear weapons would allow member states to reallocate funds to military capabilities NATO now says it is lacking.

NATO member states needs to address the inherent proliferation push that results from their own refusal to end their reliance on nuclear weapons. With three nuclear armed member states, five states hosting US nuclear weapons, at least 15 states actively involved in planning nuclear war, and a consensus document reemphasising the intention to keep the ability to threaten others with nuclear weapons as long as nuclear weapons exist – NATO continues to set a bad example. This special responsibility deserves more attention from NATO member states and should be an incentive for member states to be forward leaning with regard to discussions on a treaty banning nuclear weapons for everyone. A nuclear ban treaty would strengthen the push for a system of verification to prevent production of nuclear weapons for all states, including those that are of strategic importance to NATO.

Finally, the security of NATO is not only a function of its raw military capabilities. Continued reliance on nuclear weapons undermines its ability to develop healthy political relations with countries in its vicinity that do not rely on nuclear weapons. For many countries in the Middle East and North Africa, NATO's tendency to nuclear posturing is at best irrelevant, but more often it is perceived as undermining the national security of countries that are not nuclear armed and not part of the US nuclear umbrella.

A nuclear weapon free NATO, in a world that has banned nuclear weapons ultimately contributes to the security and safety of NATO's citizens. ♦

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<sup>xx</sup> SIPRI (2014): Yearbook 2013, Stockholm, (SV).



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