



OEWG REPORT

*Civil society perspectives on the open-ended working
group on nuclear disarmament
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EDITORIAL: WHO'S AFRAID OF A BAN TREATY?

Ray Acheson | *Reaching Critical Will of WILPF*

The open-ended working group on nuclear disarmament (OEWG) began its core work on Monday, with a discussion of essential elements for effective legal measures, provisions, and norms for maintaining a nuclear weapon free world. The majority of participating states focused on elements for a legally binding instrument prohibiting nuclear weapons, which they see as the most feasible, practical, and urgent measure in the current context. The discussion highlighted growing support for a treaty banning nuclear weapons and continued to isolate opposing states as nuclear weapon supporters acting against the interests of the nuclear Non-Proliferation Treaty (NPT), nuclear disarmament, and global security.

Comprehensive prohibitions

A treaty banning nuclear weapons will strengthen the global standard against their use and possession and foster their elimination, explained Nicaragua. To this end, a comprehensive set of prohibitions is required, as delegations supporting the ban treaty agreed. These states emphasised the importance of prohibiting all relevant nuclear weapon related activities, including the use, development, production, stockpiling, transfer, acquisition, deployment, and financing of nuclear weapons, as well as assistance with these acts.

Working papers 14, 15, 17, 34, and NGO/3 offer suggested elements of a prohibition treaty. These papers also all suggest that negotiations on such a treaty should begin in the near term, with WP.34 calling for the UN General Assembly to establish a negotiating conference in 2017. This paper, which was originally submitted by Argentina, Brazil, Costa Rica, Ecuador, Guatemala, Indonesia, Malaysia, Mexico, and Zambia, has now also been endorsed by Austria and Jamaica, and the Philippines joined as a cosponsor. These countries, among others, consistently call for a wide-ranging set of prohibitions that are essential for closing the current legal gaps related to the development, testing, and possession of nuclear weapons.

Legal gaps

There are still those few governments who deny that a legal gap exists when it comes to the governance of nuclear weapons. Italy, for example, argued that there is no legal gap and that the NPT provides a sufficient legal framework for nuclear weapons.

As Reaching Critical Will and Article 36 explain in working paper NGO/2, however, the legal gap "arises from various deficits in the regulation of activities involving nuclear weapons, as currently codified." Furthermore, "The current international legal regulation of nuclear weapons is fragmentary, with several instruments covering only certain areas or activities," and "the rules in the existing instruments on nuclear weapons apply to different states in different ways."

Yet some nuclear-weapon supportive countries continue to claim there are no legal gaps and thus no need for a prohibition treaty. Some have developed new contortions to justify this position. Canada's WP.20/Rev.1, for example, asserts that a legal gap can only arise when there is "an inherently 'illegal' situation." However, as New Zealand pointed out, there is actually no such thing as inherent illegality. "Something is either legal or illegal," explained Ambassador Higgie, "One may be able to talk about inherent immorality but there has hitherto been no known concept of inherent illegality."

"Dangers" of a nuclear ban

Strange arguments abound in the opposition to a nuclear weapon ban. A number of nuclear-weapon supporting states, including Belgium, Germany, Latvia, and Poland, argued either that the nuclear ban treaty will be completely ineffective or will be detrimental to the international security environment. Some of them, in a rather incoherent way, argue both. Poland, echoing a victim-blaming US statement from the 2015 First Committee, even suggested that banning nuclear weapons could lead to a nuclear weapon detonation.

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Editorial continued

It is ironic that states storing nuclear weapons, maintaining a role for nuclear weapons in their security doctrines, and / or participating in exercises preparing for the use of nuclear weapons feel in a position to suggest that there is a danger in prohibiting their weapons of mass destruction. These same states continue to argue that nuclear weapons have a “security dimension” that those wanting to ban them “ignore”.

Yet as Austria’s WP.4 and Jamaica and Ireland in recent interventions have noted, the “security dimension” claim raises several questions, such as whose security? What is security? And do nuclear weapons provide security or undermine it? “Nuclear deterrence requires the threat of massive nuclear violence,” Shorna-Kay Richards of Jamaica pointed out. Referencing the Austrian paper, she argued that the humanitarian approach does not ignore the security dimension of nuclear weapons, but rather puts security at the heart of the debate. Similarly, Mexico’s Ambassador Lomonaco noted that the OEWG is a UN General Assembly body and therefore collective security is the appropriate framework under which to examine ways forward.

Moving forward

The ongoing debate at the OEWG, NPT, First Committee, and Conference on Disarmament have clearly

demonstrated that moving forward constructively to fill the legal gap for the prohibition and elimination of nuclear weapons requires an approach that does not rely on nuclear-armed or nuclear-supportive states’ leadership. The political viability for progress on nuclear disarmament, argued Brazil, lies with capacity of non-nuclear-armed states to lead the way. These states are no longer willing to accept the status quo, declared Jamaica. The circuitous debate and stalling tactics are thinly veiled attempts to prevent progress on nuclear disarmament, while the humanitarian initiative has given non-nuclear-armed states urgency and agency.

Ridding the world of nuclear weapons will take courage. It will take leadership by states free of nuclear weapons. But it is achievable, feasible, and practical. It can be crafted in such a way to establish a comprehensive set of prohibitions and provide a framework under which the elimination of nuclear weapons can be pursued. And it is necessary. At a time when the nuclear-armed states continue to demonstrate their lack of commitment to pursuing tangible, good faith nuclear disarmament, as international tensions rise and nuclear weapons lurk in the background behind the use of military force, and as the potential for accidents or use persists, banning nuclear weapons is an urgent necessity. •



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NEWS IN BRIEF

Mia Gandenberger | *Reaching Critical Will of WILPF*

The News in Brief is not a comprehensive summary of all statements. It highlights positions on a few critical issues covered during plenary discussions. Today's brief covers the exchange of views on panel IV on essential elements that could form part of effective legal measures, legal provisions, and norms that will need to be concluded to attain and maintain world without nuclear weapons.

Instruments and approaches

- Dr. Stuart Casey-Maslen, Professor of International Law, University of Pretoria stressed the need for definitions of key terms irrespective of the instrument being negotiated, i.e. for nuclear weapons, use, threat of use, testing, development, production, stockpiling, and transfer. He also suggested decoupling prohibition and stockpile destruction as effective way forward.
- Spain, Poland, Turkey, Finland, Italy, Japan highlighted the so-called progressive approach contained in WP.9 and the measures discussed therein.
- Germany highlighted WP.25 on the road to zero: The progressive approach
- Germany, Belgium also highlighted WP.26 on negative security assurances.
- Dominican Republic and Colombia highlighted CELAC's WP.6.
- Malaysia introduced WP.34 calling for a conference to negotiate a prohibition treaty in 2017, noting that the Philippines has joined as a co-sponsor.
- Austria and Jamaica endorsed WP.34.
- Ecuador, El Salvador, Dominican Republic, Nicaragua, Egypt, Palau, Mexico, Jamaica, Costa Rica, Colombia, Brazil called for the negotiation of a prohibition treaty, even without the nuclear-armed states.
- Los Alamos Study Group argued that the only measures that will be effective are those that don't rely on the nuclear-armed states to participate.

- New Zealand referred to its 2015 First Committee paper and NAC's WP.18 from the 2014 NPT Preparatory Committee, highlighting key prohibitions for a new nuclear disarmament instrument.
- Mexico introduced WP.17 on a legally-binding instrument that will need to be concluded to attain and maintain a world without nuclear weapons.
- Norway said that a prohibition of nuclear weapons is needed.
- Canada highlighted its working paper questioning the existence of a legal gap on nuclear weapons. New Zealand critiqued this paper.
- Italy, Poland also did not think there was a legal gap on nuclear weapons.
- Belgium, Germany, Latvia, and Poland argued either that the nuclear ban treaty will be completely ineffective or will be detrimental to the international security environment.
- Germany argued that those wanting a ban treaty ignore the "security dimensions" of nuclear weapons.
- Jamaica and Mexico argued that the security dimensions are at the heart of the humanitarian initiative.
- S. Casey-Maslen agreed a prohibition treaty could be useful.
- Switzerland thought one or more legally-binding instruments will be required for nuclear disarmament, along with other measures.

Elements

- Malaysia and Costa Rica highlighted WP.34 that lays out how a new instrument should include a prohibition of possession of nuclear weapons or other nuclear explosive devices, their use and threat of use, acquisition, stockpiling, development, testing, production, transfer, transit, stationing, deployment, as well as assisting, encouraging or inducing, directly or indirectly, the engagement in any activity prohibited by the legally-binding instrument.

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Calendar of events

When	What	Where
10:00-13:00	Exchange of views on panel IV continued	Room XIX
13:15-14:45	Side event: Short fuses and spiralling risks: keeping tensions from going nuclear (Sweden, Switzerland, Malaysia, Global Zero)	Room XXIV
15:00-18:00	Exchange of views on panel IV continued	Room XIX



News in brief, continued

- Nicaragua supported an instrument to include prohibitions on use, possession, production, and acquisition of nuclear weapons. Potentially also prohibitions on testing, including on subcritical testing, and modernisation should be part of the instrument.
- Nicaragua suggested looking at other disarmament treaties to draw lessons for prohibitions to be included in a new legal instrument on nuclear weapons.
- Jamaica suggested drawing elements from NWFZ treaties, BTWC, and CWC.
- Jamaica explained a prohibition of nuclear weapons should include prohibitions on among other things financing, development, production, use, possession, stockpiling, testing, transfer, stationing, and assistance.
- Sweden highlighted that some elements discussed in annex I of the Chair's synthesis paper, e.g. elimination, financing of elimination, and verification would only make sense with the nuclear-armed states present. Others, the non-nuclear armed states could address independently; however, the added value would have to be clarified. Further, the new legal instrument should not duplicate existing ones, e.g. the CTBT.
- Brazil highlighted elements 1, 8, 10, 12, 14, 15, and 16 of Annex I of the Chair's synthesis paper.
- The Dominican Republic thought a prohibition treaty should also include provisions to remove nuclear weapons from security doctrines and prevent modernisation.
- Austria, Palau, and Sweden highlighted the importance of including provisions for the rights of victims of nuclear weapons explosions.
- WILPF highlighted NGO/3 outlining elements, principles, and effects of a treaty banning nuclear weapons.
- Hungary thought the entry into force of the CTBT is an important still-missing measure toward nuclear disarmament.
- Japan suggested elements addressing measures toward the entry into force of the CTBT, beginning negotiations on a fissile material cut-off treaty, and agreement follow-on measures to New START.
- Mexico later made a point of procedure and called on states to focus on effective legal measures as laid out in the OEWG mandate.
- Wildfire made a similar point, noting that everyone at the OEWG already supports the CTBT but that is not the point of this meeting.

- S. Casey-Maslen stressed the need for clarity in definitions and pointed to the model nuclear weapons convention that included drafting of some of the elements already.
- Ecuador elaborated on what each element, e.g. development, manufacturing, possession, use, transit, or assistance in the prohibited acts, would include.

Process

- Malaysia, Costa Rica highlighted WP.34 which explains the most viable option for immediate action is to negotiate a legally-binding instrument prohibiting nuclear weapons, establishing general interdictions and obligations and pronouncing an unambiguous political commitment to the achievement and maintenance of a world free of nuclear weapons. Such an instrument would not need universal adherence to be negotiated nor to enter into force.
- Further they proposed the OEWG, in its report, include the following recommendations to the General Assembly: (a) Convene a Conference in 2017, open to all states, international organizations and civil society, to negotiate a legally-binding instrument to prohibit nuclear weapons and (b) To report to the United Nations high-level international conference on nuclear disarmament to be convened no later than 2018, pursuant to resolution 68/32, on the progress made on the negotiation of such an instrument.
- Germany reiterated the importance of including nuclear-armed states in the discussions on nuclear disarmament.
- Costa Rica did not think the participation of nuclear-armed states necessary, however remained open to that possibility.
- New Zealand and Mexico stressed that a treaty's effectiveness cannot be proved in advance. NZ said such a requirement is a recipe for never doing anything.
- While still expressing support for a comprehensive nuclear weapons convention, Egypt endorsed a ban treaty as interim step towards comprehensive towards that end.
- Palau called for negotiations on a ban treaty to begin in latter half of 2016. •