



# NUCLEAR BAN DAILY



Reaching Critical Will

3 July 2017  
Vol. 2, No. 11

## IN THIS ISSUE

- 1 | One week to the nuclear ban
- 5 | Deconstructing the concept of security
- 6 | News in brief

## ONE WEEK TO THE NUCLEAR BAN

Ray Acheson | *Reaching Critical Will, Women's International League for Peace and Freedom*

On Friday evening, the President of the ban treaty conference convened a plenary meeting to reveal new drafts of the treaty's articles. These drafts are the results of the work of two days of closed consultations amongst negotiating states. Ambassador Whyte chaired the consultations on article 1, while representatives of Ireland, Chile, and Thailand facilitated the work on articles 2–5, 6–8, and 9–21, respectively. The result is a much stronger draft treaty. There are a few areas where improvements should be made in the time available.

We've got a bit of time this week to address some of these challenges. States and civil society have brought the draft to a pretty solid place and we need to work hard together to solve the outstanding issues to make sure that on Friday we can adopt the

strongest possible prohibition on nuclear weapons and the clearest path leading to their elimination.

### Article 1

The most important revision in Article 1 is that threatening to use nuclear weapons has been added to the core prohibitions. A large number of states and some civil society groups advocated for its inclusion on the basis that such a prohibition would advance the norm against nuclear "deterrence" postures and policies, which are all based on the explicit threat and planned use of nuclear weapons. A few states argued in open meetings that threatening to use nuclear weapons is already covered by the provision against threat of use of force in the UN Charter. This argument overlooks

*Nuclear Ban Daily* is produced by Reaching Critical Will, the disarmament programme of the Women's International League for Peace and Freedom (WILPF) during meetings related to the UN conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading to their elimination, taking place 15 June–7 July 2017. The views expressed in this publication are not necessarily those of WILPF.

Editor: Ray Acheson  
info@reachingcriticalwill.org



© Dimity Hawkins

## Editorial, continued

the simple facts that nuclear weapons states have issued significant nuclear threats despite the UN Charter provision, and that the UN General Assembly has in the past felt it necessary to issue resolutions specifically rejecting threats of nuclear weapons use.

Another important revision is that the prohibition on nuclear weapon testing has been moved into the top list of prohibited activities, and been broadened. Based on open meetings, a few states wanted to remove the prohibition on testing altogether, arguing that it was redundant because of the Comprehensive Nuclear-Test-Ban Treaty (CTBT), even though that Treaty has not yet entered into force. Most states, along with civil society, fought for its inclusion as a reinforcement of the CTBT's norms and verification system.

The new language no longer specifies that only "nuclear test explosions or any other nuclear explosion" are prohibited – and by implication that other kinds of tests might be permitted. The more general prohibition may be seen as a way to incorporate subcritical experiments or computer simulations of weapon tests that do not involve explosions. Some worry that it may still leave considerable scope for these activities to occur in situations where they are performed for purposes other than the testing of nuclear weapons. This change also misses out on prohibiting "other nuclear explosions," though the 2000 NPT Review Conference agreed that so-called peaceful nuclear explosions are considered banned.

Two items still under discussion for article 1 as of Friday evening are transit of nuclear weapons and military preparations to use nuclear weapons. The treaty would benefit from explicit prohibitions on both. It's possible more work will continue on these questions early this week.

Some states, civil society including the International Campaign to Abolish Nuclear Weapons, and international organisations such as the International Committee of the Red Cross have urged the inclusion of a specific prohibition on military preparations to use nuclear weapons, based on language in the Chemical Weapons Convention. There have not been open statements against this provision, though it seems most states think it is in any case at least already covered by the prohibition against assistance, encouragement, and inducement of prohibited acts.

The same argument has been made about an obligation to not to permit the transit of nuclear weapons. The discussion on this has been extensive. While some states see it as difficult to delineate or verify, others see it as an important normative rejection of "deterrence" opera-

tions and practices. Nuclear weapons typically are only in transit on their way to, from, or during operational deployment.

Article 1 omits a prohibition on the financing of nuclear weapon programmes. It should be included for the sake of normative force, technical clarity and implementation guidance. If the final treaty text does not include financing, or transit or military preparations to use nuclear weapons, states should make it clear that they understand the legal interpretation of "assist, encourage, and induce" to include all these activities. States can adopt national legislation to prohibit investment in nuclear weapons as part of their ratification of the treaty.

### Articles 2–4

This section of the treaty deals with declarations, safeguards, and accession of states possessing nuclear weapons or that have possessed nuclear weapons. After a lot of work, these provisions have been more fully elaborated.

There is still a question of whether this section should be structured the way it currently is. It could be more straightforward, and create fewer challenges later, to simply have a space carved out in this treaty for future work on how nuclear-armed states could engage with a view to achieving the total elimination of nuclear weapon programmes in a time-bound, verified, irreversible manner. This would have the benefit of not locking us into parameters now that may be questioned later by states seeking to use these provisions to join the treaty and whose legal terminology and relationship to the IAEA have not been subject to rigorous debate given the limited time for negotiations. However, given that traction has been made for the existing structure, at least some of the earlier problems with the text have been addressed. The drafters' view seems to be that nuclear-armed states should not have a free hand to set the terms of their disarmament and present them as a *fait accompli* to the ban treaty states. Their answer is mechanisms and principles for how elimination of nuclear weapons can be achieved.

The safeguards parameters seem clearer and more robust. Previously, states could join this treaty with current safeguards arrangements intact—meaning for some states they may not even have a comprehensive safeguards agreement with the International Atomic Energy Agency (IAEA). Making safeguards mandatory complements the existing regime set up by the Non-Proliferation Treaty (NPT). However, the elimination of

*continued on next page*



## Editorial, continued

the language in the original May 22 annex does risk enabling a two-tier system. A very strong case can be made for replicating NPT Article III language so that there is zero discrepancy between the scope of the safeguards agreement required under the NPT and the scope of the safeguards agreement required under this treaty. This is an important loophole that can be easily remedied.

The Article 4 provisions have been made more comprehensive. Article 4(1) provides an option for states to eliminate their nuclear weapon programmes and then join the treaty. This option requires an agreement to verify non-diversion and provide assurance on the absence of undeclared material or activities. In addition, article 4(6) specifies that the states parties will designate a competent international authority to verify the elimination of nuclear weapon programmes, including facilities, for states choosing either the “destroy-and-join” and “join-and-destroy” options. These two processes are potentially quite different given ambiguities about the verification body and remit.

Articles 4(2) and 4(3) set out the details of “join-and-destroy”. The first step is removing nuclear weapons / devices from operational status and destroying them, as well as elaborating a time-bound, irreversible, verified plan for the elimination of its entire nuclear weapon programme, including related facilities. The parameters of this plan, and the manner in which it will be agreed, is flexible—which is necessary at this stage, though completely open-ended. As with the “destroy-and-join” option, any state choosing “join-and-destroy” must also conclude an IAEA safeguards to verify their nuclear material and undergo verification of the elimination of their programmes and facilities. An explicit requirement to eliminate nuclear weapon-related materials should be added here to add as much irreversibility as possible. It’s also not clear if nuclear weapon programmes includes delivery systems, which perhaps requires some elaboration.

Article 4(4) provides for states joining that have nuclear weapons belonging to other states stationed on their territories. They have to propose the “prompt removal” of such weapons “within a timeframe ... to be ... approved by the next Meeting of States Parties or Review Conference.” There is no means of verification and it says nothing about dismantling or converting nuclear weapons support facilities or providing a mechanism whereby states parties can negotiate this.

This seems highly problematic. This provision risks such states joining the treaty and maintaining the

status quo for a period of its own choosing. It’s difficult to understand why a stationing nuclear weapons should not be allowed to join this treaty until they have removed the weapons. If a state wants to join a treaty prohibiting nuclear weapons, it cannot continue to assist in the possession, deployment, threat of use, or use of nuclear weapons that are bound up with having nuclear weapons on its territory.

The most vexing issue is the concern that nuclear-armed states might join the treaty and try to carve out some justification for their continued possession of nuclear weapons while engaging in some long, drawn out, ultimately inconclusive disarmament programme—much as they have done already with the NPT. It seems useful to have states sign on to the prohibition against the use, testing, and other nuclear weapon related activities while engaging in a disarmament programme. This is the approach taken by the Chemical Weapons Convention (CWC), which allows states that possess stockpiles of chemical weapons to join the treaty and eliminate those weapons and related facilities while being bound by the treaty’s prohibitions and to provide, negotiate, implement, and conclude process for verified and irreversible elimination of its programme. However, there are risks and possible inconsistencies with these prohibitions.

The bracketed text about “notwithstanding” in article 4(2) and 4(4) should not be included in the final treaty. It creates ambiguity about the application of the core prohibitions of article 1 in states possessing nuclear weapons. Under the CWC, it is understood that states with chemical weapons are bound by the prohibition against stockpiling and retention of those weapons; it must equally be understood that states with nuclear weapons that are in the process of eliminating those weapons and programmes are bound by the prohibition against possession and stockpiling. There is a slight difference in these phrases, and it may require some additional text changes to work this out, but in principle if there is going to be a join-and-destroy option in this treaty then those states will have to rigorously implement the legally binding plan they set out for disarmament in order to be in compliance in the treaty.

### Articles 6–8

Progress has been made on the provisions dealing with victim assistance, environmental remediation, and international cooperation and assistance. Affected states parties are now obligated to provide assistance to individuals affected by the use or testing of nuclear



## Editorial, continued

weapons as well as to take steps to remediate the environment. The caveat “in a position to do so” has been deleted from the victim assistance provision, which is imperative to ensure the treaty is consistent with human rights law. The draft treaty also now requires user states as well as all other states parties to provide international assistance to affected states parties. States should be sure to preserve these changes in the final days of negotiations. Assistance should be expanded to include those affected by the production of nuclear weapons—including workers and local populations.

One remaining question in the draft text relates to the language of the provision requiring user states parties to assist affected ones with victim assistance and environmental remediation (Article 8(6)). States will have to decide whether the treaty should say that user states have “a primary” or “the fundamental” responsibility to help affected states parties. The word “fundamental” is preferable because it avoids confusion with Article 7 and does not give other states parties an excuse to delay their assistance until the user state does its share. The choice of “fundamental” does not in any way undermine the fact that user states parties must provide support, which was a goal of many negotiating states.

Two other paragraphs that may be discussed are Article 7(3) and Article 8(4), both of which are unnecessary and should be deleted.

### Article 9

Article 9’s description of the meeting of states parties (MSPs) has been changed to incorporate the former article 5 on the development of other instruments or protocols on “effective measures” on nuclear disarmament. This provision has been modified so that MSPs shall consider “measures for the verified, time-bound and irreversible elimination of nuclear weapon

programmes, including additional protocols to this Treaty.” This is fine, as there are other forums for states to take up other issues not related to the elimination of nuclear weapons.

There is still no Secretariat or treaty body specified to help with implementation, though future MSPs could establish one. MSPs could also benefit from a scientific advisory board or working groups.

What is more unfortunate is that MSPs are designated here to be biennial instead of annual. Annual meetings would help civil society and states keep up the pressure for ratifications as well as review implementation and spread awareness of the treaty.

### Article 16

The ratification requirement for entry into force for the treaty has been changed from 40 to 50. 40 is more consistent with the average of other similar instruments and should be retained.

### Article 18

The withdrawal provisions still need some work. The withdrawal clause should be deleted entirely. This would mean the Vienna Conventions on the Law of Treaties provisions on withdrawal would apply, which are stronger than what is in the current draft. If states do want a withdrawal clause, the notice period must be at least 12 months and should trigger some response from an MSP. The obligation for a state to give a statement about the “extraordinary events it regards as having jeopardized its supreme interests” should be deleted, as this suggests that the development and use of nuclear weapons (the only reason to withdraw from this treaty) is somehow justified in some circumstances.

*Thanks to Nick Ritchie, Zia Mian, and Bonnie Docherty for their contributions to this article. •*

| When        | What                                  | Where       | Who   |
|-------------|---------------------------------------|-------------|---|
| 08:00       | Morning Inter-Faith Vigil             | Isaiah Wall | Humanitarian Disarmament Interfaith Working Group |
| 09:00-09:50 | ICAN campaigners meeting              | CR B        | ICAN  |
| 10:00-10:30 | Role playing: Answering all arguments | CR 1 or B   | Nuclear Age Peace Foundation                      |
| 13:15-14:30 | Rising nuclear risks                  | CR 1 or B   | People for Nuclear Disarmament                    |
| 17:00-18:00 | Plenary                               | CR 1        |   |





## DECONSTRUCTING THE CONCEPT OF SECURITY

Alice Slater | Nuclear Age Peace Foundation

Those of us laboring in the wasteland of nuclear arms control and countless thwarted attempts to abolish nuclear weapons have been witnessing one of the most striking shifts in the global paradigm of how the world thinks about nuclear weapons, which has brought us to this present glorious moment. The world is now poised on the eve of actually completing negotiations for a treaty to ban the bomb! The shift, which has proceeded so rapidly, relative to other efforts to curb nuclear weapons, can largely be attributed to the transformation of the public conversation about nuclear weapons, from the same old, same old talk, about national “security” and its reliance on “nuclear deterrence”, to the widely promoted and publicized well-founded scientific evidence of the catastrophic humanitarian consequences which would result from the use of these lethal instruments of death and destruction.

A series of forceful and convincing presentations of the devastating effects of nuclear catastrophe organized by enlightened governments and civil society’s International Campaign to Abolish Nuclear Weapons (ICAN) was inspired by a stunning statement from the International Committee of the Red Cross addressing the humanitarian consequences of nuclear war which was referenced in the 2010 Non-Proliferation Treaty outcome document. ICAN subsequently organized a global turnout of activists from every corner of the world at three subsequent meetings hosted by Norway, Mexico, and Austria, demonstrating the overwhelming evidence of the disastrous devastation threatening humanity from nuclear weapons—their mining, milling, production, testing and use—whether deliberately or by accident or negligence, and the unbearable

consequences that could be visited upon our Mother Earth. This new knowledge, exposing the terrifying havoc that could be inflicted on our planet, gave the impetus for the present moment at the UN where governments and civil society are now engaged in fulfilling a negotiating mandate for a treaty to prohibit nuclear weapons leading towards their total elimination.

It would be useful to examine even more closely the concept of “security” and deconstruct it for future use as we work to bring an end to war on the planet. Peace activists refer to “human security” as a way of distinguishing humanitarian concerns from the military’s use of the term “security”. But there are contradictions inherent in the concept of security reflected in the etymology of the very word “security” itself. Derived from the Latin *se cura*, or free from care, security can be understood not only as freedom from care, worries or attention—of being carefree—but also as being careless. And it is ironic that carelessness—failing to pay sufficient attention to or care for one’s surroundings—will result in conditions that are destructive of wellbeing, or safety, the very opposite of what people are seeking when they talk about national “security”. How careless some nations have been in equating their security with massive weapons systems capable of destroying all life on earth. To truly free ourselves of the mistaken notion represented by the word “security,” we must act with care and reevaluate and explore the conditions that will truly bring the positive benefits of real safety in the peace that humanity has always longed for. •



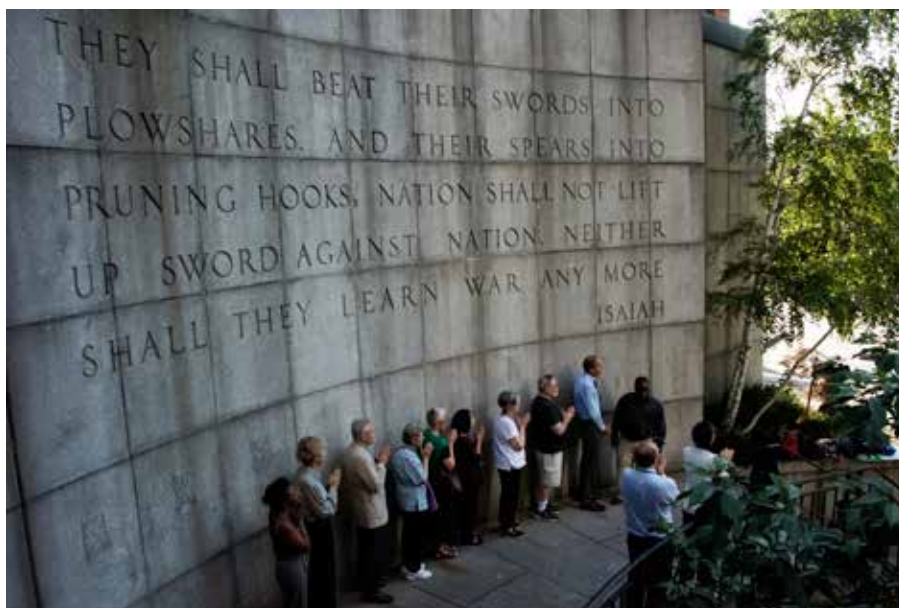
© ICAN



## NEWS IN BRIEF

Allison Pytlak | *Reaching Critical Will of the Women's International League for Peace and Freedom*

- Ambassador Whyte, the conference president, convened a plenary to hear report backs from facilitated working groups on various parts of the draft treaty text.
- She reported that the working group on article 1 has agreed to include the threat of use, in paragraph d, as a prohibited activity. Testing and transit and possibly other issues remained under discussion as of Friday evening.
- Ireland, the facilitator of the working group on articles 2-5, reported that there are still pending issues for article 4. Draft article 5 has been removed because states felt that the issues it covered can be adequately addressed under article 9. One state has reportedly expressed a reservation about current draft article 3.
- Chile, the facilitator of the working group on articles 6-8, stated that each of the points under consideration had achieved consensus, except for one aspect, which is highlighted in the draft text provided by the group.
- Thailand, the facilitator of the working group on articles 9-21, said that states have expressed a preference for the treaty to open for signature at the UN headquarters during the high level opening of the General Assembly in September.
- All working group facilitators emphasized the collaborative and constructive attitude of states participating in their respective groups.
- Ambassador Whyte explained that she intends to submit a new revised version of the treaty to the Secretariat on Monday in order to begin the process of translation into official UN languages. Plenary sessions will be convened on Monday afternoon and Wednesday and Thursday mornings to address any matters that might arise, with the intention of adopting the treaty next Friday, as well as consider the report of the credentials committee. Ambassador Whyte reminded everyone that in order for the treaty to be adopted on Friday, it must be sent to delegations 24 hours in advance to allow for sufficient review. 09:00 on Thursday, 6 July is the deadline for doing so.
- Cuba asked if it would be possible to avoid having more than two meetings taking place simultaneously, noting the strain that multiple simultaneous meetings puts on small delegations. It said it would like to avoid a situation in which it would have to re-open, in plenary, an agreement achieved by a working group in which it was not participating. The president noted that she is aware this is a concern.
- Netherlands said that its proposals and concerns have been insufficiently addressed. It reiterated its concerns about the treaty's need for a clear relationship to the NPT, verification issues, and its compatibility with the Netherlands' obligations as a NATO member state. It said it will continue to engage constructively and looks forward to further discussion on article 1.



*"Based on the proud determination to make the struggle for nuclear abolition the foundation for a world without war, and convinced that participation in this unprecedented undertaking is the greatest gift we can offer the future, [all] people of goodwill everywhere [should] work together toward the realization of a world finally free from the menace of nuclear weapons." 2009, Peace Proposal*

From the interfaith vigil for the nuclear ban treaty conference, 30 June 2017. All are welcome, at 8:00-8:15 a.m. Mon 3, Wed 5 and Thu 6 June, the Isaiah Wall (1st Ave. between 42nd and 44th St.).