



NUCLEAR BAN DAILY



Reaching Critical Will

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PATHWAYS TO ELIMINATION

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

One of the most complex questions of the nuclear weapon ban treaty is how it should deal with nuclear disarmament. This was one of the main subjects of debate on Monday afternoon, and is dealt with in the draft treaty text in articles 2–5.

None of the nine states currently possessing nuclear weapons are engaging in these negotiations—some are actively hostile to the effort. Some claim (for now) to support the principle of nuclear disarmament, however. Their refusal to pursue relevant effective measures in good faith is the precise reason why nuclear ban negotiations are taking place at all.

Given this situation, states participating in nuclear ban negotiations have a few options. They can develop a set of strong prohibitions geared toward having practical impacts on current nuclear weapon policies and practices of the nuclear-armed and nuclear-alliance states, seeking to compel these states toward disarmament by stigmatising their policies and impeding their practices. They could also, in this treaty, set out a framework or parameters for future nuclear disarmament. These are not mutually exclusive options. But great care is needed to ensure that the treaty can achieve the first objective as a means to achieving the second.



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.

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Activists blockade the US Mission to the UN to protest its boycott of ban negotiations, 19 June 2017

Photo © Emily Welty

Editorial, continued

As currently drafted, the treaty does not permit states possessing nuclear weapons or engaging in nuclear weapon alliance activities to join. It sets out provisions in article 4 for states to get rid of their nuclear weapons and then join the treaty ("destroy and join"). In addition, under article 5 the draft permits nuclear-armed and nuclear-alliance states to engage in negotiations with ban treaty states parties on protocols related to nuclear weapon programme elimination or "other effective measures" (as yet undefined) for nuclear disarmament.

Some states, such as Austria, Ireland, Mexico, New Zealand, and others, have argued that the treaty should be open to all states to join. They prefer a "join and destroy" approach to the treaty.

Initial reactions in today's debate indicate some support for a standardised approach to elimination in the "join and destroy" vein. Others supported keeping two distinct pathways to disarmament open in this treaty—and some prefer to have none at all.

There are a variety of ways to achieve the goal of having the treaty be open to all states while preventing states from joining and maintaining nuclear weapons or nuclear deterrence policies—but careful crafting is necessary to achieve this.

South Africa introduced a proposal on Monday afternoon for articles 2 and 4 of the draft treaty that outlines a possible "join and destroy" option. In their proposal, any state may join the treaty after submitting a declaration about the status of nuclear weapon possession and other relevant activities. If a state joining the treaty possesses nuclear weapons, stations nuclear weapons on its territory, or engages in any planning, training, or military preparations for the use of nuclear weapons, it must cease these activities within an agreed timeframe specified by the treaty. The timelines are currently marked with an X, indicating that they are to be agreed by states negotiating this treaty now.

South Africa's proposal leaves article 5 intact, but entirely deletes article 3 and its related annex on safeguards. It does require states to conclude a safeguards agreement with the IAEA by a particular deadline if they haven't done so already, and it requires IAEA verification of "completeness and correctness" of a "Final Declaration" of all nuclear weapons that have been eliminated and that "all nuclear facilities and materials are under IAEA safeguards."

While most states participating in these negotiations agree that new verification mechanisms are not neces-

sary for this treaty, most also agree that the current IAEA safeguards system should be reinforced. There is also broad agreement on referring to the "safeguards system" rather than specific arrangements, some of which are now several decades old (e.g. the 45-year old IAEA model comprehensive safeguards agreement known as INFCIRC/153 or the 20-year old Additional Protocol).

This is not the place, as many delegations emphasised, to renegotiate the safeguards system, however imperfect. The Malaysian delegation argued the ban treaty must be dynamic, retaining the ability to incorporate protocols or other instruments at a later date as necessary. It is important to allow for various options, without pre-negotiating them at this stage. As Ireland noted, "We cannot see into the future, we can only allow for it."

In this vein, Ireland also argued that this treaty might not want to set out detailed provisions for an elimination process. "It is not the mandate of this conference, nor is it feasible in the time available, nor is it in fact necessary, to negotiate detailed arrangements for the elimination of nuclear weapons now," argued the Irish delegation on Monday afternoon, suggesting a slightly different formulation from South Africa. It suggested that a state that is not in a position to submit a declaration that it has not manufactured, possessed, or otherwise acquired nuclear weapons after a particular cut-off date, as specified under draft article 2, could still express its intention to join the treaty. A meeting of states parties could then establish the parameters for the process of negotiating the terms and conditions of their accession to the treaty. This might take the form of an additional instrument "to address the transparent, verifiable and irreversible elimination of their nuclear weapons programmes and arsenals."

Negotiating parties must be cognizant of how states that have not participated in this process may approach the final instrument. If our goal is to compel them to join by making it more difficult—legally, politically, economically, and socially—to maintain their current policies and practices, then we need to have a strong, clear set of prohibitions and a feasible mechanism for them to join the treaty and accept these prohibitions. Achieving universality is the goal of any treaty—and surely should be the goal of a treaty seeking to end the nuclear weapon era. •



NEWS IN BRIEF

Tamara L. Patton | Program on Science and Global Security, Princeton University and Allison Pytlak | RCW-WILPF

The News in Brief may not capture every proposal or position but provides an overview of the discussion.

General obligations

General obligations part 1

- South Africa said the core prohibitions should be simple, focused, and verifiable.
- Peru noted that in crafting the general obligations, the conference should work off of UN resolution 71/258, and should ensure the agreement is cohesive, comprehensive, and inclusive.
- Mozambique noted that any repetitions in language should not contradict previous instruments and that we should harmonize and adjust the terms.

General obligations part 1(a)

- Peru would like to support Cuba's proposal to include design.

General obligations part 1(b) and (c)

- Peru supported the inclusion of threat of use. South Africa also supported its inclusion, noting a strong preference that it also be retained in the preamble.
- Peru supported the inclusion of military planning.

General obligations part 1(d)

- South Africa proposed to add the words "other explosive devices," noting that this is more consistent with sub-paragraphs (a), (b) and (c) of Article 1 para 1.

General obligations part 1(e)

- Sweden proposed to remove nuclear testing from the prohibitions.
- South Africa proposed to amend the language to "test nuclear weapons or any other explosive devices".
- New Zealand, Argentina, and Ecuador supported the inclusion of testing in the prohibitions.
- Ecuador also said the treaty should include subcritical testing to support and strengthen the CTBT.
- Brazil supported an explicit reference to subcritical and computational testing, drawing on language from Article 14 of the CTBT.
- Cuba noted that excluding nuclear testing would weaken norms against testing drastically and that therefore all kinds of nuclear testing should be included.
- Chile is concerned by the specification of "test explosion" and would like to see a broader interpretation that there is a prohibition on any kind of development of nuclear weapons.

- Mozambique noted, with regard to the suggestion to delete 2(b) and 1(e), that more time is needed to consider the merit of those provisions.

General obligations part 1(f)

- Peru supported the inclusion of financing. South Africa views financing as too complex to ensure compliance. Austria emphasized that all general obligations should be tied to national implementation, and the ability to implement prohibitions on financing will not be feasible.

General obligations part 2

- Fiji supports Indonesia's proposal to add continental shelf, exclusive economic zones, seabed, subsoil beneath, and airspace.
- Iran suggested using the words "not to permit" rather than "prevent".

General obligations part 2(a)

- Fiji requested that a definition or clarification of stationing would be helpful.
- Nigeria would like to include transport.
- Ecuador and Argentina would like to include transit. Brazil noted, on the issue of the complexity of verifying transit, that it could be framed such that if a state is aware of an instance of transit, it should not allow for it. Austria argued that while the Arms Trade Treaty includes transit, it does so with many caveats, and this is different from the current undertaking of the conference.
- Similarly, New Zealand argues that with respect to transit, the Convention on the Physical Protection of Nuclear Materials qualifies the obligations based on what is reasonable and practical, in recognition of the difficulty of controlling transit. New Zealand is very opposed to including qualifying terms, which could impact the rest of the text.

General obligations part 2(b)

- Sweden prefers to delete 1.2(b) and 1.1(e) under the view it expressed in detail on Friday 14 June 2017 that testing should not be included as a prohibition. Mexico and Nigeria supported the deletion under the view that it is covered under the CTBT.
- Chile is concerned by the specification of "test explosion" and would like to see a broader interpretation, recognizing that there is a prohibition of any kind of development of nuclear weapons. Chile noted its support for Brazil, Cuba, and Ecuador on this point. Chile would like to see the text changed to "any nuclear weapon test."

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News in brief, continued

Suggested new additions to Article 1

- Sweden would like to introduce to Article 1 a definition of nuclear weapons, arguing that a definition of a treaty-accountable item facilitates understanding of prohibited activities and preserves right to peaceful purposes without discrimination. It noted that definitions exist in the nuclear-weapon-free zones, as well as in Chemical Weapons Convention and the Anti-Personnel Landmines Convention. Sweden's definition does not include means of delivery for nuclear weapons.
- Iran thinks a definition would be valuable given the existence of dual-use technologies. It argued that we do not need to define everything, but that we should define key terms. Iran noted that in the NPT, there are definitions of nuclear weapon states and non-nuclear weapon states.
- Mozambique thinks a proposal for a definition is valuable, but that definitions may not stand the test of time and may need amendment, so should be approached with care; it also noted that the introduction of definitions would depart from previous treaties like the CTBT and the NPT. Austria agreed with Mozambique that the conference should follow the established practice of NPT, which opens up the question of how it relates to other treaties, as well as the issue of future developments.
- Mexico and Cuba argued that definitions are not necessary, and referred to the fact that the NPT doesn't have a definition of nuclear weapons and legitimacy is not questioned.
- Malaysia and New Zealand believe that defining nuclear weapons is not a good course of action, as it could lead to having to define more terms.
- Argentina suggests a new paragraph on a positive obligation to dismantle weapons.
- Argentina suggests new paragraph and positive obligation to place a nuclear programme that has been converted to peaceful uses under IAEA safeguards.

Civil society

- ICAN supported the inclusion of a prohibition on military preparations to use nuclear weapons, testing, and financing of nuclear weapons.
- WILPF agreed with maintaining the prohibition on testing and supported including prohibitions on planning and preparations to use nuclear weapons and on financing, and not permitting transit through airspace or territorial waters.
- IALANA argued that an essential prohibition missing is the threat of use of nuclear weapons, saying this is central to stigmatising nuclear deterrence.

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CALENDAR OF EVENTS: TUESDAY, 20 JUNE 2017

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
10:00-13:00	Plenary	CR 1	
13:15-14:30	Fission: Family, Community, Environment and Justice Impacts	CR 1	Permanent Mission of Austria, FAS, IEER, NRDC, NIRS, PSR
13:15-14:30	Prohibiting nuclear weapons: democratic strategies to take forward and implement the nuclear ban in nuclear-armed and umbrella states	CR B	Acronym Institute for Disarmament Diplomacy
15:00-18:00	Plenary	CR 1	
15:00-18:00	Youth Reception for Nuclear Abolition	All Souls Unitarian Church, 1157 Lexington Ave	Amplify, UFPJ, Abolition 2000, IPB, Peace & Planet and AFSC



News in brief, continued

- PAX supported a prohibition on financing, noting the impact this would have on banks and sources of funding for nuclear weapons and the companies that are making components for weapons.
- Unfold Zero also supported financing.
- Japan Federation of Bar Associations called for threat of use to be prohibited.

Articles 2-5

Article 3 and Annex on safeguards

- The President noted that the inclusion of safeguards responds to input from delegations in March 2017, as well as Article 6 of UN resolution 71/258, which reaffirms the importance of the NPT and the obligations that have been taken under this instrument. The President noted that it has been recognised that the text of the Annex should allow for the evolution of safeguards, and that a specific reference to INFCIRC/153 in the Annex could be substituted by text that would call for states to undertake safeguards in accordance with the IAEA under its statute and the IAEA's safeguards system.
- A number of states expressed preference to incorporate the content of the Annex directly into Article 3, including Ireland, Nigeria, Ghana, Malaysia, Brazil, Egypt, Cuba, Lichtenstein, and Venezuela. Cuba noted that conventions typically state the purpose of annexes and their relationship to the agreement, as in the Chemical Weapons Convention, and that if the annex will be left in, this relationship is important to clarify.
- Ireland noted that the treaty should be clear and strong in terms of safeguards and suggested new language that all states are required to maintain existing agreements, without prejudice to possible future developments to the safeguards system. Austria, Ghana, Malaysia, and Lichtenstein supported this. Austria noted that this proposal could be an acceptable compromise over the issue of the IAEA Additional Protocol (AP). Lichtenstein supported the President's amendment for a more general standard, and noted that the Irish proposal was also important and appealing and might save states from future problems on a technical level. Switzerland called for states to review and consider Ireland's proposal.
- New Zealand, Austria, Malaysia, Sweden, and Lichtenstein underlined that the treaty should at least not set a lower safeguards standard than other instruments. Thailand expressed its view that Article 3 should be non-discriminatory, and this should be accomplished by incorporating existing CSAs or APs.
- Several states expressed preference that the AP be mentioned in the text, including New Zealand, Chile, Sweden, Switzerland and the Netherlands:
 - New Zealand interprets not lowering safeguards standards to mean not anchoring states into the single document of INFCIRC/153, but going on to address the AP in some form, expressing hope that compromise language will be possible.
 - Chile called for mentioning the AP, noting its great importance for providing the IAEA with the technical verification resources and access that would prevent the development of clandestine nuclear programs. Chile suggested a possible comprehensive approach, including mentioning regional agreements such as the Brazilian-Argentine Agency for Accounting and Control of Nuclear Material as well as the AP.
 - Sweden and Switzerland argued that an obligation to undertake and adhere to safeguards does not require any additional costs on top of those already devoted to implementation under the NPT or nuclear weapon free zones.
 - Sweden and Switzerland argued that the AP should be mandatory, and that to settle only on INFCIRC/153 would run counter to joint experiences that clandestine programs were not discovered under INFCIRC/153, and the lessons learned since 1997. Sweden remarked surprise that more states would not call for a verification system that would illicit the respect of international community.
 - Switzerland noted that the current draft text sets weaker safeguards standards than the NPT and would weaken the existing global standard. Switzerland recommended that the text call for states to adopt the most stringent safeguards measures available to them.
 - Netherlands is concerned that Article 3 weakens international safeguards standards given that it relates to NPT but not in its entirety.
- Some states argue the treaty should not impose additional verification obligations on states without nuclear weapons and objected to the inclusion of the AP, including Brazil, Argentina, Egypt, Iran, and Venezuela. Malaysia cautioned the treaty should not be the place to make optional measures mandatory.

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News in brief, continued

- Brazil argued that safeguards would not address non-peaceful nuclear activities in nuclear-armed states. It noted that the AP is voluntary in nature and that INFCIRC/153 is the instrument that fulfills legal requirement under NPT Article 3.1, but it noted that it is willing to review and consider the President's amendment.
- Egypt maintained that safeguards obligations would be redundant for states that already have safeguards agreement with IAEA, and suggested amending the language to specify that each state party, with the exception of states that have already concluded a comprehensive safeguards agreement (CSA), undertake to conclude a CSA with the IAEA.
- Egypt opposed mention of the AP in the agreement, underlining that it is voluntary.
- Cuba supported Egypt's proposal on Article 3. Cuba noted that while it would not object to mentioning the AP, the conference should recognise legitimate concerns of states that do not have an AP.
- Iran objected to the inclusion of any verification-related measures in the text, and questioned the need for Articles 2, 3, 4 and 5.
- South Africa argued that Article 3 and the Annex should be deleted. It remarked that the treaty should not create parallel safeguards to the NPT and that mentions of safeguards should therefore focus on states not party to NPT and nuclear-weapon-possessing states. It proposed new language circulated to states.
- Indonesia on behalf of ASEAN recommended that the convention should establish formal relationships with institutions including but not limited to IAEA, CTBTO Preparatory Commission, and the implementation bodies of NWFZs. Thailand also recommended that the text recognise the core competence of IAEA and its relationship to the treaty, and that if the relationship is not ultimately recognised in the draft, then it should be mentioned in Article 9 and the Meetings of States Parties.

New proposals treating articles 2-5 as a package

- Egypt, Ireland, New Zealand, and South Africa introduced new proposals relevant to articles 2-5; many states said that they view these articles as package to be negotiated together.
- The South Africa proposal covers articles 2-5 and Annex A. Among other changes, it suggests removing

draft article 3 on safeguards. The proposal urges a rapid removal of nuclear weapons from operational status and outlines provisions for setting deadlines, or requesting extensions, for destruction of stockpiles, as well as for removal of nuclear weapons from territories and ending engagements with planning, training, or preparations to use nuclear weapons.

- Austria, Ireland, Indonesia, Malaysia, Mexico, Mozambique, and Nigeria will study it.
- Malaysia sees the value in re-organizing the articles and urged making this treaty dynamic so that protocols can be put in place when needed in future. It noted that the accession formula that states agree upon for this treaty should reinforce its ability to be dynamic into the future, in terms of how it engages with nuclear-armed states.
- Switzerland said the proposal it has interesting elements and language but it's not clear why we would eliminate article 3, noting that safeguards are essential for the credibility of this treaty.
- Austria said that references to military planning and preparations would be too complicated to include here.
- Ireland noted that it is not the mandate of this conference nor is it necessary to negotiate provisions for elimination now, and suggested putting off the development of provisions for stockpile elimination until a situation requiring such provisions arises, to be agreed in coordination with the state wanting to join the treaty.
- Egypt proposed a revised article 2 that would require states parties to declare nuclear weapons whether manufactured or possessed. It noted that their proposal is not different than what South Africa has put forward.
- New Zealand that modeling this instrument on the Chemical Weapons Convention, with respect to making declarations and establishing a "baseline," is not possible here because there are not nuclear-armed states participating in the negotiations.

Article 2

- Egypt suggested removing the date reference because this creates new groupings of states and risks becoming discriminatory. Argentina, Brazil, and Malaysia supported this.

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News in brief, continued

- Mexico urged avoiding avoid creating categories of states parties by asking some states to take certain actions, but not others.
- Sweden said that this article is superfluous and could be deleted.
- Austria noted that the article is missing a way to address countries that have nuclear weapons stationed on them.
- Mozambique said that the 30-day deadline should be deleted.
- Netherlands noted a discrepancy between the strictness of articles 1 and 2 and would like to hear the views of other delegations.
- Cuba says that declarations in article 2 should correspond to prohibitions in article 1.

Article 4

- Netherlands said that the modalities of verification are insufficient to provide a guarantee of disarmament. The article gives a role to the IAEA but there is no certainty that the IAEA is equipped to carry it out, and lacks a mandate to do so. Netherlands proposed re-wording to read, "States commit to develop an effective mechanism for verifying ND" along the timelines that they specified in article 1.

Article 5

- New Zealand said that it prefers the pathway put forward in this article, rather than what is outlined in article 4, but more detail is required.

- Netherlands asked what is meant by protocols, and the related procedure of agreeing them. It suggested removing this paragraph.
- Switzerland suggested limiting the scope of this article and not elaborating further here but instead, considered in other fora.

Relationship between articles 4 and 5

- Austria said that there is no need for the two pathways that are outlined in articles 4 and 5 and will submit new language that combines them.
- Malaysia urged considering these two items together as very important, but an issue for the future. It said that the procedures for how to address verification do not need to be finalized at this time because they are so complicated; instead it would be good have language that sets up a framework for discussing protocols.
- Switzerland supports the logic that both options be available. Not convinced that the provisions be as elaborated as they currently are. Can be outlined more simply and non-discriminatory way.
- Sweden said that these articles are forward looking; it is flexible on the wording of them whether separate or combined.

Other

- Holy See supports the establishment of new authority to complement IAEA in order to implement the prohibitions in the treaty. •



Women's March to Ban the Bomb solidarity event in Canberra, Australia, 17 June 2017 © ICAN Australia



The Permanent Mission of Austria to the United Nations in conjunction with

**Federation of American Scientists
Institute for Energy and Environmental Research
Natural Resources Defence Council
Nuclear Information & Resource Service
Physicians for Social Responsibility New York
Western North Carolina Physicians for Social Responsibility**

are pleased to invite you to

**Side Events presenting evidence of humanitarian impacts of nuclear
weapons production, testing and use via expert and eyewitness
testimony**

Tuesday 20 June

Fission: Family, Community, Environment and Justice Impacts

1:15 -2.30pm in Conference Room 1

Impacts of nuclear weapons production, testing, and use on health, families, communities and human rights. Speakers: Karina Lester, South Australia; Linda Cataldo Modica, Tennessee USA; Roland Oldham, Atomic Veteran French Polynesia; and Mary Olson, Nuclear Information and Resource Service. The panel will be moderated by Kathleen Sullivan, Director, Hibakusha Stories

Wednesday 21 June

The Road Back to the Nuclear Brink

1:15 -2.30pm in Conference Room 1

Developments in nuclear weapons targeting systems will be presented and discussed in the frame of international effort to reduce nuclear dangers. Speakers: Matthew McKinzie, Natural Resources Defence Council; Hans Kristensen, Federation of American Scientists; and Arjun Makhijani, Institute for Energy and Environmental Research