



NUCLEAR BAN DAILY



Reaching Critical Will

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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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DEALING WITH THE REALITIES OF NUCLEAR VIOLENCE

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

Severe, lifelong, and trans-generational harm has resulted not only from the nuclear bombings of Hiroshima and Nagasaki, but also from the testing, development, and production of nuclear weapons. Late effects and long-lived environmental contamination will continue to create new victims. This damage has disproportionately affected women and indigenous communities—the reflections of this in the revised preamble are important. For all of these reasons, including provisions on victim assistance and environmental remediation in the nuclear ban treaty is important.

Some delegations such as Egypt, Iran, Cuba, and Viet Nam, amongst others, argued that the primary responsibility for victim assistance should lie with the states that created the victims in the first place. Malaysia argued international customary law supports this, including the Articles on the Responsibility of States for Internationally Wrongful Acts. However, as other states and civil society organisations pointed out, the primary responsibility for ensuring that

victims' rights are respected and needs are met lies with the state in whose jurisdiction or control they live or work. This is consistent with states' sovereignty, general human rights obligations, and responsibilities towards any of their citizens.

This approach does not mean that affected states must face these issues alone or be solely responsible for addressing them. Establishing strong international cooperation and assistance provisions is crucial to helping affected states meet their obligations to victims, and in order to establish responsibility for these matters amongst all states party to the treaty. The provisions on victim assistance in the antipersonnel landmine and cluster munition treaties take this approach, which heavily affected states have joined.

In this context, during the discussion on article 6(1) on victim assistance, Brazil, Ireland, Ghana, Holy See, Mozambique, and Philippines argued for removing the qualifying language that each state party

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Women's March to Ban the Bomb, NYC, 17 June 2017 © David Field

Editorial, continued

"in a position to do so" shall provide assistance. Human rights law requires all states to provide assistance to victims in areas under their jurisdiction or control, and this must be reflected in the treaty. This would not prevent affected states from pursuing redress for such harms through other peaceful means. The treaty should also strongly encourage the states that have caused this humanitarian and environmental devastation to help affected states meet their victim assistance obligations.

There was a suggestion from the delegation of Uganda that the current text discriminates amongst victims, due to its reference to age- and gender-sensitive assistance. However, this language ensures against discrimination. Without paying attention to gender- and age-specific needs, victim assistance mechanisms tend to end up discriminating against women as well as children and the elderly. It isn't a question of providing more assistance to these groups, but ensuring that their unique needs are met rather than overlooked.

There was minimal debate about what acts should be covered in the provision on victim assistance, though Mexico suggested replacing "use or testing of nuclear weapons" with "any detonation of a nuclear weapon or nuclear explosive device". This provision should be expanded to include production of nuclear weapons, given the humanitarian and environmental impacts of uranium mining and production processes. It should also include other types of nuclear weapon development, including so-called minor trials conducted by the UK government in Australia that did not involve detonations but did spread radioactive contamination.

Article 6(1) usefully delineates types of victim assistance to be provided. This type of detail is currently missing from article 6(2) on environmental remediation. As Nigeria said on Tuesday, the provisions for remediation should not be left vague in the treaty. The text should clearly oblige states parties to remediate contamination in areas under their jurisdiction or control. It should also outline in more detail principles for environmental remediation as well as the protection of populations from associated threats, and provide guidance for undertaking such actions. These could include requirements for measures to assess threats and contamination, to reduce risks of exposure, to rehabilitate contaminated areas, and to enact national laws and policies and a national action plan.

The International Committee on the Red Cross (ICRC) suggested that article 6(2) should specify that each state party "shall take necessary and appropriate measures towards environmental areas so contaminated,"

which was supported by the Philippines amongst others. Switzerland suggested that it should say, "states should take steps towards environmental remediation." Sweden later said it supported the Swiss position.

In terms of international cooperation and assistance in relation to these issues, some states suggested merging articles 6 and 8. Others objected, because aspects of international cooperation and assistance will pertain to more than victim assistance and environmental remediation. The ICRC, Holy See, and Switzerland suggested moving article 6(3) to article 8, while Liechtenstein suggested that article 8 could refer to article 6 in some way. It is important to coordinate these articles to make the provisions related to assistance and cooperation on victims and the environment as straightforward as possible, but having separate articles is preferable. There should also be, as some states suggested, an obligation on other states parties to provide assistance when it is requested. It would also be useful to describe the types of assistance to be sought and provided, such as legal or legislative assistance, institutional capacity-building, and technical, material, or financial assistance.

From start to finish, the nuclear weapon ban treaty is a humanitarian instrument. It therefore must take care to provide for victims and the environment that have suffered harm from nuclear weapons. This does not, as one state suggested, imply that we are preparing for future use or testing or production of these weapons, but rather that we recognise the horrific legacy these weapons have already left behind, and that we ensure human rights and environmental care are pursued and respected. •

Thanks to Bonnie Docherty, Molly Doggett, Matthew Bolton, and Erin Hunt for reviewing this article.



WHY STRONG VICTIM ASSISTANCE AND ENVIRONMENTAL REMEDIATION OBLIGATIONS MATTER

Matthew Bolton | International Disarmament Institute, Pace University

The stories and examples of victims and affected communities have been used as the justifying case for the nuclear ban treaty. For example, the second paragraph of the Humanitarian Pledge asserts that “the rights and needs of victims have not yet been adequately addressed.” As a result, it is crucial that the nuclear weapon ban treaty include robust positive obligations on states to provide victim assistance and remediate the environment.

The provisions in Article 6 and 8 of the current draft treaty enable states to seek and provide assistance for victims and in remediating environment contaminated by the use or testing of nuclear weapons. But they must be strengthened to ensure that victims and affected communities are treated as people with rights, not objects of charity.

In particular, the preamble should be bolstered with references to human rights and environmental law, particularly regarding the impact on victims, indigenous peoples, gender equality, and sustainable development.

In the operative part of the treaty, victim assistance and environmental remediation should be made obligations, and the treaty should further elaborate their necessary principles, activities, and institutional arrangements. There should be specification of international cooperation and assistance measures, including the establishment of a voluntary trust fund to aid implementation of positive obligations and other provisions.

A key principle driving this treaty negotiation is that addressing the harms caused by nuclear weapons is the responsibility of all states, including states with and without nuclear weapons, affected or not affected by use and testing. Just as nuclear weapons should be prohibited for being an affront to humanity as a whole, all of us have a responsibility to help those harmed by nuclear detonations.

Indeed, this treaty should uphold the progress in normative standards made in other disarmament instruments like the Cluster Munitions Convention, which establish clear human rights standards for victim assistance and remediation. States should not discriminate against nuclear weapons victims compared with victims of cluster munitions, landmines and other explosive remnants of war.

These kinds of provisions will also contribute the 2030 Agenda for sustainable development—particularly the goals on peace and justice, food, health, education, gender, water, and the environment.

The nuclear weapon ban treaty must not simply be a political declaration. It should be a living document that makes a real difference in the lives of people. Positive obligations will serve as a reminder for states that nuclear weapons cause unacceptable harm that must be addressed by states and the international community as a whole.

Finally, it is important to make clear that nothing in this treaty as drafted, or with the suggested changes

ICAN is calling for, will prevent affected individuals, communities, or states from pursuing redress and compensation through other political, diplomatic, or legal channels.

To learn more about victim assistance and environmental remediation and related international cooperation and assistance, come to the side event sponsored by the Irish Mission at 1.15-2.45pm, 21 June 2017 in Conference Room B. •



Women's March to Ban the Bomb solidarity event in Afghanistan, 17 June 2017 © WILPF Afghanistan



THE NEED FOR A PROHIBITION OF THREAT OF NUCLEAR WEAPONS

John Burroughs | Lawyers Committee on Nuclear Policy

There are compelling reasons to include a prohibition of the threat of use of nuclear weapons in the nuclear ban treaty:

- The treaty should directly contribute to the delegitimization of “nuclear deterrence” by including a prohibition of threat of use of nuclear weapons, including, if deemed appropriate, security doctrines providing for use of nuclear weapons.
- Should a nuclear-armed state accede to the treaty subject to a timebound disarmament obligation or enter into a disarmament protocol incorporating treaty obligations, any threat of use during the period of disarmament should be explicitly barred.
- The treaty should be perfectly clear that a state party may not in any way rely for its defense upon threats of use of nuclear weapons made by non-states parties. It is true that the prohibition of encouraging anyone to commit a prohibited act, in particular use of nuclear weapons, would bar a state party from relying on “extended nuclear deterrence” arrangements as well as specific threats made by a non-state party. But this point would be underlined by the inclusion of a prohibition of threat in the nuclear prohibition treaty.

As is the case with the prohibition of use of nuclear weapons, inclusion of a prohibition of threat of nuclear

weapons would apply, specify, and reinforce existing law set forth in the UN Charter and international humanitarian law treaties and elaborated by the International Court of Justice in its advisory opinion on nuclear weapons. However, the application of existing law is complicated because it is not spelled out comprehensively in the UN Charter and in IHL treaties. Inclusion of a prohibition of threat of nuclear weapons would therefore provide desirable clarity. (For more analysis, see IALANA Working Paper No. 37, “Prohibitions and the Preamble.”)

At its core nuclear deterrence is an ongoing threat of use of nuclear weapons should certain circumstances arise. Nuclear deterrence is not an abstract matter, nor is it just a matter of possession of nuclear weapons. It is a concrete, elaborated military posture, embodied in doctrines and deployments, and in infrastructure that supports deployed nuclear forces.

The abolition of nuclear weapons will not be possible so long as nuclear deterrence holds sway as an alleged means of defense and ensuring peace and security. The inclusion of an explicit prohibition of threat of use of nuclear weapons would help delegitimize nuclear deterrence and accordingly would advance the achievement of complete nuclear disarmament. •

CALENDAR OF EVENTS: WEDNESDAY, 21 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	
11:00-12:30	Examples of national implementation measures	CR B	PNND and World Future Council
13:15-14:30	The Road Back to the Nuclear Brink	CR 1	Permanent Mission of Austria, FAS, IEER, NRDC, NIRS, PSR
13:15-14:30	Protecting Rights, Remediating the Environment: Addressing the Harm from Nuclear Weapons	CR B	Permanent Mission of Ireland, Friedrich Ebert Stiftung, Article 36, International Human Rights Clinic at Harvard Law School, Mines Action Canada, Pace University
15:00-18:00	Plenary	CR 1	



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.

Article 6: Positive obligations

General

- The President explained that much of this article is based on the treaties on anti-personnel landmines and cluster munitions. Ecuador said that the Convention on the Rights of Persons with Disabilities (CRPD) could guide our work.
- Holy See suggested renaming this article "Victim assistance and environmental remediation". Iran and Mozambique indicated support for this.
- Philippines suggesting changing the title to "Assistance to victims of nuclear weapons use and testing".
- Malaysia would support changing the title of article 6 to make it more distinct, possibly as suggested by the Holy See.
- Egypt suggested text that would emphasise that the onus of providing victim assistance or remediation lies with the countries responsible for causing the harm, through adding the phrase "States parties that have used or tested nuclear weapons or other nuclear devices...". Cuba, Ecuador, Iran, and Nigeria agreed with this general perspective.
- Vietnam suggested a new paragraph to go before 6.1 to clarify that "States parties that have used or tested nuclear weapons shall have primary responsibility to provide adequate assistance to affected states parties..."
- Uganda expressed that separating out victims by age and gender is not necessary and that all should be treated the same.
- Brazil noted that the responsibilities pertaining to victim assistance and environmental remediation should not be limited in any way to the nationals of one country, which is currently the case for victim assistance; a "global approach" is needed.
- Chile cautioned to not discourage or create arguments for potential future states parties to refuse to join the ban treaty.
- Algeria considers this article very important, noting that there were seven open-air nuclear tests conducted over its territory, and that it is still assessing effects on people and the environment. Algeria called for compensation on all levels, not just to victims.
- Marshall Islands also underlined the importance of this article and suggested several elaborations and ad-

ditions that it will provide in writing to the Secretariat, noting that there were 67 nuclear tests conducted by the United States on its territory. The Marshall Islands suggested that language be changed to include any victims regardless of their location, noting that the effects of nuclear weapon tests are transboundary and multilateral. It also called for the collection of reliable and relevant data within states capacity to do so, and to add public engagement on risk education in accordance with the humanitarian nature of this treaty.

Article 6.1

- Holy See suggested removing "in a position to do so"; and adding, "shall make every effort" after the reference to international humanitarian and human rights law. Brazil, Ghana, Ireland, Mozambique, and Philippines supported the suggestion to remove those words.
- Brazil would like to remove the word "adequately". Mexico supported this.
- Mozambique said to include the term "explosive devices" to balance the reference to them in 6.2.
- Mexico suggested that "use or testing" could be replaced by "any detonation of a nuclear weapon or explosive device".

Article 6.2

- Holy See suggested deleting "right to request and receive assistance" and replacing it with "shall make every effort".
- Liechtenstein suggested that it might make sense to merge 6.1 and 6.2 to become more comprehensive. New Zealand supported this.
- Malaysia prefers to keep the articles separate and said that balance and consistency between these articles is important.
- Switzerland suggested a re-wording to "take steps to environmental remediation".
- Viet Nam suggested adding an element of protection similar to article 10 of the CWC so that a victim state can request protection and assistance, but noted that the procedure for a request might depend on the outcome of the implementation cluster.
- Ireland supported adapting this paragraph along the lines suggested by the ICRC by inserting "shall take necessary and appropriate measures toward the environmental remediation of areas so contaminated".

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News in brief, continued

- Ghana feels that 6.2 should be re-formulated. It also proposed a 6.2bis .
- Nigeria noted that remediation should not be left to vague interpretation but find a way to ensure that it is properly articulated.
- Cuba felt that the wording of this paragraph could cause confusion as to which state bears the responsibilities for providing victim assistance or remediation, which in its opinion should be the state that caused the harm.
- Mexico suggested replacing “testing or use” with “any detonation of a nuclear weapon or explosive device”.

Article 6.3

- Holy See suggested a reference here to article 8. It suggested making this paragraph become 8.3. This was supported by the Philippines.
- ICRC suggested moving this paragraph to article 8.
- Austria would like to include “the International Red Cross and Red Crescent movement”.
- Liechtenstein feels that this paragraph could be made more explicit about the forms of assistance or remedy that could be provided.
- Switzerland suggested moving this paragraph to article 8 and rename it.
- Nigeria requested to add in “...including NWFZ treaty offices...” after the reference to international organizations. Malaysia did not support this because those bodies all play different roles.

National implementation

Article 7

- Egypt suggested adding a new paragraph to this article about submitting biennial national implementation reports, to be consistent with article 9 and considered at meetings of states parties (MSPs). This was supported by Chile.
- Argentina requested to eliminate “in accordance with its constitutional processes” in 7.1. Ecuador supported this.
- Argentina expressed that the term “criminal sanctions,” as found in draft 7.2, has the wrong connotation, particularly when translated into Spanish.
- New Zealand suggested separating this article into two paragraphs to distinguish between the acts of adopting measures to implement the treaty from what it means to have penal measures in place.

- Ireland suggested adding “prohibit” before “prevent and suppress”.
- Chile noted that this provision is often found in disarmament instruments, and given that the conference is examining a weapon system contrary to IHL, penal sanctions add weight and credibility to the treaty. Chile also noted that penal sanctions contribute to strengthening the international architecture of disarmament, including other instruments. ICRC supported this intervention.

Article 7.2

- Netherlands foresees problems because in combination with the unclear scope of A1, 7.2 could lead to issues with legislation and enforcement. It noted that contributions to nuclear programmes by individuals are already controlled, so this could be deleted.
- Ecuador said that the measures outlined here should prevent individuals from financing nuclear weapons.
- Ireland noted some overlap with article 1.2 and recommended streamlining.

Article 8

- Liechtenstein suggested including a reference to the assistance needs that are set out in article 6.
- Switzerland recommended modifying article 8 to clarify that any state party can receive assistance to implement article 6.
- Brazil, Cuba, and Malaysia prefer to keep articles 6 and 8 separate.
- Uganda encouraged specifying where assistance will come from and moving article 8 to become article 7. Singapore supported this.
- Ireland said that the additional article 8 provisions included in the ICRC working paper seem helpful.
- Chile underlined that elements of international cooperation are focused on implementation, not just victim assistance, enshrined in other disarmament instruments, and that this distinction should be recognized.
- Holy See views Article 8 as greatly important given that it's directly linked to assisting victims and environmental remediation. Holy See suggests amending the title of the article to “International Cooperation and Assistance.” It also suggested setting up a fund to assist with cooperation and implementation.
- Nigeria noted its preference that Article 8 be adjusted as Article 8.2 seems redundant with Article 6.

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News in brief, continued

Article 8.1

- Indonesia noted that this article is valuable but could be more proactive rather than passive, suggesting additional language beyond “facilitate,” that each state party has the right to participate in the implementation of the obligations of the treaty. This language is based on BWC article 10 para 1.

Article 8.2

- Liechtenstein recognized the difference in scope between articles 8 and 6, but proposed that to make this paragraph more consistent with Article 6, to add a direct reference to Article 6.

Article 9

- Uganda proposed merging 9.1 and 9.3.
- Switzerland suggested that the current formulation is fine but the function and content addressed at MSPs will change, so would like to see the different proposals that have been made. There is a discrepancy between having biennial meetings but a review conference every five years that should be resolved. Ecuador suggested a review conference every six years.
- New Zealand is interested in hearing views on if the treaty should specify that the first MSP should include adopting its rules of procedure.
- Sweden suggested creating a new sub-paragraph (e) in order to allow states parties to act if they believe another state party is not in compliance with core prohibitions of the convention.

Article 9.1 (chapeau)

- Argentina proposed eliminating “elaboration of effective measures for nuclear disarmament” because this could potentially lead to the creation of new international fora for nuclear disarmament with an open agenda. Sweden supports this. Malaysia said that it understands that this means technical conversations related to the treaty.
- New Zealand questioned what is meant by “effective measures” in the chapeau and 9.1d, and creates an “unnecessary cross reference” to the NPT.
- Brazil said that MSPs are probably not the best place for discussions about in-depth topics, such as safeguards.

Article 9.1b

- Liechtenstein noted that it is unclear what “reports by states parties” refers to, and that unless it is specified somewhere in the treaty, it would question its introduction here. It noted that MSPs should

have a role in dealing with compliance issues, and suggested introducing a new paragraph 9.1(b) bis concerning situations of non-compliance, partial compliance and measures to address such situations.

- ICRC noted that reporting is critical to implementation and that specifying requirements should not be left to MSPs, and the conference should address this now.

Article 9.1d

- Switzerland feels that the reference to Review Conferences could be eliminated or re-phrased.
- Cuba, supported by Brazil and Viet Nam, suggested adding “within agreed timeframes”.
- Liechtenstein suggested adding two new elements for proposals: 9-1(d) bis on requests for assistance in accordance with Article 6 and 8; and 9-1(d) ter on contributions to settlement of disputes in accordance with Article 12.

Article 9.2

- Thailand supports convening a first meeting of states parties within one year of entry into force and review conferences on a five year cycle.
- Malaysia noted that as currently drafted there would be an inconsistent number of MSPs during each review cycle.
- Chile agreed with the Ecuadorian proposal to have MSPs every 2 years and review conferences every 4 or 6 years. Ecuador, Liechtenstein, and Indonesia suggested that more clarity and guidance on the purpose of MSPs would help to better determine frequency.
- Liechtenstein suggested that the paragraph could specify that an MSP could be called as required by a notification of withdrawal, given that this would be a matter of serious concern and should be discussed by all states parties. Ecuador noted that it is favourably considering this proposal and may even expand upon it.
- Viet Nam supported the proposal for the capacity for special or emergency meetings as proposed by Swiss. Ecuador also supported the proposal but noted that we need to specify circumstances. Ecuador noted that we should look to what Vienna Convention says.
- Guatemala supports annual meetings of states parties, at least during the first five years.

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News in brief, continued

- Switzerland said that the periodicity of the meetings is appropriate, but proposed building in flexibility such as through convening special meetings that could address situations such as the accession of a nuclear-armed state. Austria, Ireland, and Singapore agreed with this.

Article 9.3

- Colombia suggested replacing “may” with “should” in 9.3.

Article 9.4

- Thailand asked to add “civil society” in 9.4, supported by Mexico. Ireland suggested strengthening the reference to NGO participation to say “invited to participate” rather than “may be invited”, also supported by Mexico.
- Ecuador would prefer instead of “may be invited” to use “will be” or “shall be” to avoid ambiguity over questions of who should be invited, to which sessions, and when. Ecuador noted that Brazil’s proposal to use the rules of procedure for the current meeting would be more appropriate. It also questioned the need for the world “relevant,” concerned with the matter of who decides whether NGOs are relevant or not.
- ICRC requested to add to the mention of its organization “International Federation of the Red Cross and Red Crescent Societies” noting precedent in other conventions.
- Liechtenstein supported proposals for stronger language to replace “may” with “shall.” It also suggested deleting “with a view to...” noting that it doesn’t add substance.

Article 10

- Colombia, Uganda, and Sweden among others, expressed concern about the costs of having many meetings.
- Austria sympathizes with these concerns but wondered if there are measures to take through the language of the convention or if this is something to be dealt with later on.
- Sweden proposed new paragraphs relating to the costs of meetings of states parties that would introduce penalties for states parties that fall behind in making their contributions, such as not being able to submit working papers, be eligible for sponsorship or be able to take part in decision-making. The proposals also caution states parties to be realistic in budgetary planning vis-à-vis the anticipated income. Thailand supported these proposals.

- Brazil said the Swedish proposal is “draconian”.
- Brazil pointed out that there are many places in the draft verification is referred back to the ‘the agency’; if this means the IAEA then states must ensure that it can meet the costs.
- Malaysia noted that if contributions are based on the UN scale, then we should be realistic about who the initial states parties are and the level of their contributions.
- Netherlands suggests adding “to this convention” after “states parties”.
- New Zealand felt that more detail could be provided about the logistical arrangements for these meetings, such as what entity would perform the secretariat function.

Final provisions

Article 11 Amendments

- ASEAN would like to see permission of amendments with at least two-thirds of state parties approval. This was supported by Austria. Ireland also supported this, but noted that a three-quarters majority may be more appropriate. Iran noted its preference for the widest possible support for amendments.
- Cuba would like to see this begin with new paragraph with wording that states may propose amendments to this treaty and the text of any proposed amendment shall be submitted to depositary and circulated to all states parties. It noted that in the current formulation, using the words “may” opens the door for only some amendments to be able to be presented and considered, and suggested substituting with the word “shall.” Chile and Mozambique supported this. Chile underlined that all states should have the right to submit proposals and for these proposals to be considered. Ecuador suggested amending “may be given” to “will be given.” Brazil supported Cuba but noted that we can clarify even more.
- Malaysia noted that this article needs to be reformulated, given that it is open to potential misuse, and suggested that the amendment process should follow the usual process evident in the CWC, APLC, CCM and other conventions.
- Malaysia, with the support of Brazil, noted that it should be clarified that any amendments should not go against purposes of the agreement.

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News in brief, continued

- Liechtenstein also noted that the current formulation of the article poses the danger of leading to different regimes, which might be problematic if we think about possible amendments to core prohibitions of the treaty. Iran supported this, suggesting that language can be brought more in line with the CWC example.
- New Zealand suggested that the article should spell out in more detail who can submit proposals, and to specify the particular period of time before being required to take action on an amendment, e.g. submitted at least 90 days before it can be considered for adoption. Sweden agreed that more detail is needed and that the APLC and CCM could serve as examples.
- Ireland suggested adding to the article that the convention may be complemented by future protocols.
- Iran noted that paragraph 11.1 should be tight, rigid, and strict.

Article 12

- Cuba suggested that a new paragraph could be added that issues will be considered in conformity with the UN Charter, following the example of the CWC Article 14. Iran said Cuba's suggestion should suffice for the

article and that the rest should be deleted, possibly with the inclusion of language of Article 33 of the UN Charter. South Africa said Cuba's proposal was a useful basis for further discussion.

Article 12.1

- Liechtenstein proposed that there should be improved sequencing of actions regarding disputes, and that there should be a progression. Brazil strongly supported this recommendation, noting that this path is needed for friendly settlement before resorting to further actions or escalation.

Article 12.2

- Cuba proposed deletion of "by whatever means it deems appropriate," which was supported by Brazil. Cuba noted that if that proposal were not accepted, an alternative would be, to that issues would be dealt with in accordance with the relevant provisions with this Convention and in conformity the principles of the Charter of the United Nations." Brazil supported this, suggesting removing "whatever means" and starting with UN Charter.
- Ecuador noted that the second line is broad and vague on the nature of a dispute, and would perhaps prefer the drafting proposal put forth by Cuba.

Article 13

- Egypt, supported by Brazil, suggested changing "with the goal of attracting adherence of all States to this Convention" to "with the goal of achieving or realizing states adhering to this convention."
- Netherlands suggested deleting this article, arguing that there may be better ways to promote dialogue with non-states parties.
- Colombia underlined the importance of this article and of active pursuit of this goal.

Article 14

- Malaysia suggested this article could go together with Article 15.
- Liechtenstein, supported by Ireland, suggested whether the signature of the treaty should be provided to states indefinitely.
- Liechtenstein suggested deleting the last part of this article, so that it just reads that this treaty is this open to signature from all states.
- Ireland noted that there is no article on accession in the draft text and that depending on the revised content of articles 2-5 may return to the subject later.



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News in brief, contined

Article 15

- ASEAN would like to see reasonable number of ratifications for states for entry into force.
- Sweden suggested that instead of the 40th instrument, we should note 65th, as this is roughly 1/3 of the membership of UN and about half of participants in the first half of negotiations.
- Ecuador noted that it is flexible regarding number of ratifications.
- New Zealand noted that it would not like to see any unnecessary impediment to entry-into-force, recalling the experience of the CTBT, but noted that the number of ratifications should not be an insignificant one.
- Iran said more detail in this article is needed.
- Egypt would like to see a reference in this article to the UN Secretary General in a new paragraph 16.3, including that the UNSG will inform of relevant dates related to signature, ratification and accession, and noted that this is common practice in other instruments.

Article 17

- Cuba suggested revision to avoid misinterpretations of preambular sections or annexes. Chile supported Cuba's intervention and noted that the current wording allows for reservations by states.
- Ecuador supports that the treaty should not be subject to reservations.
- Malaysia suggested that annexes should not be subject to reservations.
- Liechtenstein proposes revising to "no reservations may be made to this convention" for simplicity.
- Iran suggested that core articles should not be subject to reservations, e.g. articles 1-9, but that for the other non-core articles, we should not close the door.

Article 18

- Egypt, Liechtenstein, Iran, Austria, Brazil and Sweden supported changing the title of this article to "Duration and Withdrawal."
- Ecuador noted that withdrawal should be subject to stringent discussion, and suggested that the current phrasing surrounding withdrawal is too easy. For comparison, it noted that trade treaties have denunciation periods of 5-10 years.

- Chile noted that withdrawal is a key aspect and does not support proposals aimed at weakening the treaty's process for dealing with it. Chile suggested the article should be further strengthened.
- South Africa supports unlimited duration, but noted that withdrawal provisions need more specification. It noted that the language should be careful not to justify acquiring nuclear weapons as possible means for withdrawal.
- Ireland noted that withdrawal should be made more difficult, and supported the proposal with Liechtenstein to extend the notification period to 12 months.

Article 18.2

- Egypt would prefer a watered down phrasing related to withdrawal, including deleting the second half of paragraph 18.2.
- Brazil, Iran, and Sweden suggested deleting the mention of the UN Security Council, given that many of these states may not be members for a while, and to instead mention depository.

Article 18.3

- Iran suggested making it the provisions in the paragraph conditional to the specific situation.
- Sweden suggested deleting this paragraph.

Article 19

- The President noted that the relationship between the convention and the NPT requires careful consideration and that upon further reflection, Article 19 could be reformulated in other ways to clarify that it does not in any way detract from the NPT.
- ASEAN would like to see a formulation that ensures coherence with the NPT and other instruments but does not imply any new obligations on states parties.
- Cuba suggested replacing the entire article with language that nothing in this treaty, under international law, shall detract from obligations including under the NPT, NWFZs, or legal instruments related to nuclear weapons. Liechtenstein noted its consideration of Cuba's proposal and support for the President's goal.
- Malaysia suggested using language from ATT Article 26.1, which is more general, comprehensive language non-specific to any instrument, and could be used in a way that supports the President's suggested direction for the article. New Zealand sup-

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News in brief, continued

ported this, noting that there is no need for explicit mention of NPT. Brazil and Sweden supported this suggestion. Ireland said it will consider Malaysia's proposal.

- Egypt is in favor of deleting this article completely, saying there is no merit to linking this treaty to the NPT and that the reference in the preamble suffices.
- Chile noted that some states did not participate in this conference because of concern that this convention could damage NPT, and that therefore it is important to include in the name of attracting more members. Chile supported Cuba's suggestion to name the NPT, NWFZs, and added the CTBT.
- The Netherlands noted that the hierarchy of agreements must be clarified, and that in case of any conflict between these two instruments, the NPT prevails. It also suggested all ban treaty state parties should have to also be NPT states parties.
- Austria welcomed suggestions to clarify that obligations shall be in line with the object and purpose of treaty treaty, and the inclusion of both the NPT and CTBT in the article.
- Switzerland noted that this is an important article and cannot support Egypt's proposal to delete it. It noted that the language should not only cover NPT, but should encompass both existing and future instruments (e.g. the CTBT and a possible future FMCT), and accordingly, suggested wording similar to the ATT as suggested by Malaysia, with the clarification that the obligations shall not prejudice obligations undertaken with regard to existing and future agreement where those agreements are consistent with this convention. Switzerland noted that the article should clarify that states cannot withdraw from NPT to join this convention.
- Switzerland and Sweden would like to see a paragraph reaffirming the right to peaceful nuclear activities.
- Iran requested to split the article into two paragraphs: one on rights under NPT and one on obligations under the NPT.
- Colombia suggested including a mention of other nuclear disarmament and nonproliferation related treaties.
- South Africa noted that article 19 is too selective in referring to only one agreement, is superfluous from legal perspective and should be deleted.

Reporting

- Switzerland supports a reporting requirement. Ecuador urged finding a balance in introducing reporting requirements to avoid reporting fatigue, possibly by thinking closely about frequency and content.
- Austria said to follow the Egyptian proposal to include mandatory reporting.
- Ireland proposed that as a part of implementation reporting measures, states attending the MSPs could share best practices on a wide range of issues, but it is not necessary to delineate this in the article.
- Guatemala urged that it is necessary for the treaty to establish from the beginning that reporting is mandatory, such as in the ATT for accountability. It might be helpful to divide this article into two parts. Switzerland supports a reporting mechanism.

Transit

- Singapore proposed a new paragraph on against constraining transit of nuclear weapons that is based on language from article 7 of the Bangkok Treaty.

Institutional arrangements

- Ireland said that an implementation support unit (ISU) or other dedicated resource will be necessary, including to support MSPs, universalization, liaison with other bodies, and monitor implementation. It is acutely aware of the cost implications and recommends that this be situated within the UN system and be reflected in the implementation cluster of the treaty.
- Mexico noted that it does not see a need for an ISU and that the functions of Secretariat should be something that is reflected in the treaty. •





Buan-Ionad na hÉireann
chun na Náisiún Aontaithe
Permanent Mission of Ireland
to the United Nations

“Protecting Rights, Remediating the Environment: Addressing the Harm from Nuclear Weapons”

Side Event on Positive Obligations in a Treaty to Prohibit Nuclear Weapons

**June 21, 2017, 13:15 to 14:45pm
Conference Room B, UN Headquarters**

During the March negotiation session of the nuclear weapons ban treaty, 27 states plus the Caribbean Community (CARICOM), the ICRC and civil society called for the new legal instrument to include also positive obligations on states parties. Such positive obligations could include:

- Rights and remedial measures (e.g. environmental remediation, risk education, victim assistance),
- Promotion of the treaty and of its norms (e.g. universalization and disarmament education),
- International cooperation and assistance to implement the above two sets of obligations.

This panel discussion will assess the positive obligations in the first draft of the treaty, suggest ways to improve them, and highlight why such revisions would be particularly important to the prohibition treaty. This event will help ensure that the treaty not only builds on previous humanitarian disarmament treaties but that it also contributes to the SDGs and the Agenda 2030.

Speakers:

- **H.E. David Donoghue**, Permanent Representative of Ireland to the UN
- **Roland Oldham**, Moruroa e Tatou (MET), President of an organization advocating for the rights of victims of nuclear testing in Tahiti
- **Bonnie Docherty**, Harvard Law School International Human Rights Clinic, expert on humanitarian disarmament law
- **Erin Hunt**, Mines Action Canada, expert on victim assistance
- **Elizabeth Minor**, Article 36, expert on humanitarian disarmament

Chair:

- **Matthew Bolton**, Director of Pace University's International Disarmament Institute