



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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AFFECTING OPERATIONS

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

Civil society is not able to report from Thursday's meetings. The morning session was an informal discussion on transit, while the afternoon was a closed meeting on the revised preamble. On Friday, states will return to consideration of articles 2-5 of the draft treaty text.

All of these potential treaty components are related to one another. Each has implications for the structural, operational, and political aspects of nuclear weapon programmes and policies. If the preamble conveys a strong political message about the rejection of nuclear weapons based on their catastrophic harm and inherent immorality, this helps set the stage for strong prohibitions. It also provides impetus for the obligations related to elimination of nuclear weapon programmes and cessation of related activities and doctrines.

As noted in previous editions of the *Nuclear Ban Daily*, there are several paths to elimination and we cannot predict what will transpire over the coming years. But we can develop a strong prohibition treaty that compels states to disarm and that facilitates effective, verifiable, irreversible, time-bound elimination of nuclear weapon programmes.

Of critical importance is that any prohibitions, obligations, and implementation measures reinforce the humanitarian objectives and norms of this treaty.

In this context, on the subject of transit, establishing that states parties must not permit the transit of nuclear weapons through their territorial waters, land territories, and airspace is consistent with a categorical ban on nuclear weapons. It could have a significant impact on operational policies that are part of the practice of "extended nuclear deterrence" and nuclear brinkmanship. It could also be important for mitigating risk, as nuclear weapons are especially vulnerable to accidents or attacks while being transported, which could have sudden and devastating consequences for local and regional populations.

It's hard to take at face value arguments that having a provision against transit poses too many technical challenges. There are ways in which the treaty could make it explicit that states parties must not permit transit without requiring extensive verification, as there are for other elements being proposed for this instrument. The key is to not permit activities or behaviour that supports or sustains prohibited activities.

In this edition, Nick Ritchie looks at issues related to ensuring the strongest possible norms and provisions against nuclear weapons and "nuclear deterrence"; students from Harvard Law School examine responsibilities for positive obligations; and Amplify discusses its experiences at the conference so far. •



This is Pine Gap. It is a "joint defence facility" in central Australia, located on the traditional land of the Arrernte people. It is involved in US nuclear weapon targeting. Photo © Kristian Laemmle-Ruff

RESPONSIBILITY FOR VICTIM ASSISTANCE AND ENVIRONMENTAL REMEDIATION

Molly Doggett and Alice Osman | Harvard Law School's International Human Rights Clinic

Over the course of the first week of negotiations, states have expressed significant support for including provisions on victim assistance and environmental remediation in the nuclear weapon ban treaty. The establishment of clear obligations in these areas is crucial to mitigating the catastrophic consequences of nuclear weapons on humans and the environment.

During the session on Article 6, much of the discussion centered on who should bear responsibility for these obligations and to what degree. Some states suggested that states that use or test nuclear weapons ("user states") should be held primarily responsible for providing assistance to victims and remediating the environment. A number of other states, the ICRC, and ICAN, by contrast, argued for placing primary responsibility for these activities on affected states while requiring all states parties to help them meet their obligations with international cooperation and assistance.

For both practical and legal reasons, the new treaty should resolve this issue with a combination of affected state responsibility and a robust international cooperation and assistance provision.

First, victim assistance and environmental remediation obligations aim to ensure that the rights of people living in affected areas are protected and realized. It is a basic premise of international human rights law that each state is responsible for protecting and fulfilling the rights of individuals within its own territory. The duty to uphold human rights cannot be outsourced to an external state.

Second, affected states are in the best position to deliver aid to victims and to undertake environmental remediation. Affected states have physical access to victims and contaminated areas and can more readily assess the needs to be met. This allocation of responsibility respects the sovereignty of affected states parties, as affected states will be able to set priorities and develop and coordinate plans for victim assistance and environmental remediation within their territories.

Third, there is a serious risk that placing the primary responsibility on user states, which will be unlikely to join the treaty in the immediate future, will leave the needs of victims and the environment unaddressed.

Finally, affected state responsibility for victim assistance and environmental remediation (which is analogous to clearance of landmines and explosive remnants of war) follows the precedent of other humanitarian disarmament treaties, such as the Convention on Cluster Munitions and the Mine Ban Treaty.

States advocating for user state responsibility have expressed concern that heavily affected states with limited resources would be unable to meet their positive obligations. But affected states would not face the task of implementation alone. A strong international cooperation and assistance provision would require other states parties (including user states) to contribute to victim assistance and environmental remediation efforts. This arrangement would ensure that the treaty does not place an undue burden on affected states, while guaranteeing that the needs of the victims are in fact met (an outcome that would be jeopardized if responsibility lay with non-party user states).

The treaty could also strongly encourage user states to provide information about the types of weapons used or tested and the location of detonations. Language for such a political commitment could be drawn from Article 4(4) of the Convention on Cluster Munitions.

Some states have also questioned the fairness of assigning primary responsibility to affected states rather than the state that caused the harm. Nothing in the convention, however, would preclude affected states from pursuing redress from user states through other peaceful means. Affected states would retain the right to seek accountability for the suffering they experienced.

By obliging affected states to take responsibility for victim assistance and environmental remediation, the new treaty would create a practical framework for implementation, build on legal precedent, and entitle affected states to international cooperation and assistance. In so doing, it would advance the humanitarian goal of the nuclear weapon ban treaty without penalizing the individuals or countries that have suffered from the use and testing of these unacceptable weapons. •



DELEGITIMISING NUCLEAR WEAPONS IN THE NUCLEAR WEAPON BAN TREATY

Dr. Nick Ritchie | University of York, UK

A core purpose of the Convention is to comprehensively delegitimise nuclear weapons. The draft text and new preamble provide a foundation for fulfilling this core purpose, but there are areas where it can and should go further.

Comprehensive delegitimation of nuclear weapons requires the explicit withdrawal and denial of legitimacy for nuclear weapons and associated practices. This begins with a categorical prohibition on the existence of the weapons themselves, but must also extend beyond this.

First, the illegitimacy of nuclear weapons should be made explicit in an additional preamble paragraph along the lines of "Convinced that nuclear weapons are unacceptable and illegitimate weapons of mass destruction based on the foreseeable humanitarian and environmental effects of their use."

The updated draft preamble released on 20 June further grounds the prohibition of nuclear weapons in international humanitarian law and human rights law (though not environmental law) as well as the unacceptable harm caused by nuclear detonations. This implies the illegitimacy of these weapons, but that implicit recognition should be made explicit.

Second, the delegitimation of nuclear weapons requires explicit recognition of the rights transgressed through nuclear weapon practices and the gendered and racial effects of these transgressions. This is in addition to the human, cultural, and environmental rights that will be foreseeably transgressed through any future nuclear detonations. The new draft preamble has made important steps in this direction but it could make this more explicit by declaring that global security practices that privilege human, cultural, and environmental rights are fundamentally incompatible with and superior to security practices rooted in the threat of nuclear violence.

Third, the treaty text should explicitly delegitimise the practice of nuclear deterrence as a security strategy. Many non-nuclear-armed and post-nuclear-armed states will retain a latent capacity for manufacturing and delivering nuclear weapons or nuclear explosive devices, some possibly deliberately so through an opaque strategy of nuclear "hedging".

The prohibition of physical nuclear weapons should therefore be complemented by the delegitimation of any commitment to the practice of "nuclear deterrence" that, by its own logic, requires a credible threat to use nuclear weapons. This should be made explicit by expanding the notion of "use" in Article 1 to prohibit the practice of nuclear deterrence by nuclear-armed states and support for

the practice by allies of nuclear-armed states through the following prohibitions:

- (x) [...never:] Use, threaten to use, or the support of the use, of nuclear weapons for any political or military purpose.
- (x) [...never:] Include the threat or use of nuclear weapons in any military and security concepts, doctrines and policies [reflecting Action 5(c) in the consensus Final Document of the 2010 NPT Review Conference].

Whether we like it or not, states talk about nuclear weapons and deploy them as if they have positive political effects and therefore political value and it is this valuing of nuclear weapons that needs to be rendered illegitimate.

Moreover, some have argued that prohibiting a threat to use nuclear weapons would make little difference to the core prohibition on possession. But this neglects the fact that nuclear weapons are not just individual physical things, but part of a system of organisations, ideas, and practices in which the possibility of perpetrating massive nuclear violence makes sense to their possessors. The existence of nuclear weapons, the varied doctrines of nuclear deterrence, operational planning for actual use of nuclear weapons, and the risk of deliberate or inadvertent nuclear use are all intimately tied together and it is this system that needs destabilising, delegitimising, and disestablishing.

Fourth, the treaty should explicitly prohibit two further practices in addition to those named in the draft text that lend support to the continued existence of nuclear weapons: transit of nuclear weapons and financing of nuclear weapons. Knowingly allowing the transit of nuclear weapons through state territory, territorial waters, and airspace lends tacit support to nuclear weapon operations. Financing corporations that are directly engaged in the research, design, production, manufacturing, deployment, and operation of nuclear weapons directly and indirectly supports the continued existence and operation of nuclear weapons. Identifying direct and indirect financing of nuclear weapons is, however, a complex process and could be further developed in a protocol on financial divestment. Both of these would mirror UNSCR 1540's obligation under Article 3(d) to develop effective national controls on funds and services that contribute to proliferation, including finance and transport (the definition of proliferation being extended here to include "vertical" proliferation within nuclear-armed states).

continued on next page



Delegitimising nuclear weapons, continued

Some negotiating states argue that transit and financing are covered by the prohibition on “assisting, encouraging, or inducing” support for activities prohibited by the draft treaty. They are correct insofar as this constitutes a broad umbrella prohibition. But, as suggested above, the comprehensive and unequivocal delegitimation of nuclear weapons requires explicit withdrawal of consent and support for specific practices within the wider system that enables nuclear weapons.

Fifth, if the treaty text refers to the Non-Proliferation Treaty (NPT) as it does in Article 19 (and there are good arguments that it should not), then it should directly address the use of the NPT’s category of “nuclear weapon State” to legitimise continued possession of nuclear weapons. Explicit negation of this argument for the legal legitimacy of nuclear weapons under the NPT could take the form of a declarative interpretation in the treaty that might read “This Convention does not recognise the Treaty on the Non-Proliferation of Nuclear Weapons as ascribing a ‘right’ to nuclear weapons for any State Party to that Treaty.”

Sixth, the treaty should not include a withdrawal clause. The comprehensive delegitimation of nuclear weapons includes the delegitimation of a sovereign right to withdraw from the treaty. Withdrawal from the treaty in order to develop nuclear weapons (and why else might a state party seriously consider withdrawal?) because a state judges its “supreme interests”

to be under threat is rendered illegitimate by the Convention because not only are the weapons themselves illegitimate, but the very idea of nuclear weapons having any state “security” value at all is rendered illegitimate. It is arguably incongruous to base a prohibition on the unacceptable consequences of nuclear violence whilst ostensibly enabling states to pursue a nuclear weapons capability after the current three months’ notice, or even twelve months as negotiators are now suggesting. The very logic of the nuclear ban treaty delegitimises the sovereign prerogative to understand security in terms of nuclear weapons. Deterrence and a withdrawal clause dilutes that message. A withdrawal clause for the Charter of the United Nations was debated at the San Francisco Conference but was omitted because of the intention and necessity for the UN to be permanent.

Seventh, the treaty must state that it will remain in force at all times, including in war. The delegitimation of nuclear weapons cannot have temporal exceptions. It must be, and be seen to be, a permanent and expanding process. NATO states have argued that their nuclear sharing agreements do not breach the NPT because transfer would not occur until the outbreak of “general war,” at which point the treaty would no longer be in force. The treaty text should disavow any such interpretation of its application and unambiguously state that it will remain binding during armed conflict. •

CALENDAR OF EVENTS: FRIDAY, 23 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	
10:00-13:00	Children and nuclear disarmament	CR B	PeaceJam Foundation
13:15-14:30	Gender and nuclear weapons	CR B	Permanent Mission of Ireland to the United Nations, WILPF, NIRS, ICAN
15:00-18:00	Plenary	CR 1	



AMPLIFYING YOUTH VOICES AND OUR CALL FOR DISARMAMENT EDUCATION

Leah Murphy | Amplify

Sixteen youth from 13 countries gathered for the Amplify Youth Summit for Nuclear Abolition that took place from 17–21 June. Amplify is a global network of young people working for nuclear abolition. We believe that the United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards their Total Elimination offers an opportunity for the international community to finally say that nuclear weapons are unacceptable. These weapons do not belong in our society now and they have no place in our future.

For these reasons, Amplify organized the Youth Summit in New York on the margins of the negotiating conference. Throughout the Summit our delegates were involved in a wide range of activities, which allowed us to provide a youthful perspective to the negotiations. Highlights of our five-day summit included co-organizing sign-making and pizza party along with the youth of Peace Action New York State and Gensui-kyo; participating in the Women's March to Ban the Bomb through the rain storm; meeting the Hibakusha; and hosting a Youth Reception for Nuclear Abolition supported by 10 co-sponsor organizations. We also had briefing meetings with the President of the Conference Ambassador Elaine Whyte Gomez, Austria, Ireland, Under-Secretary-General of Disarmament Affairs, and ICAN.

Our various discussions and briefings confirmed that youth participation in disarmament discussions is critical in ensuring that such discussions reflect the voices of younger generations, which are a key stakeholder

for a world without nuclear weapons. It also ensures that important multilateral decisions such as the current ban treaty negotiations reach the wider youth and general public. In this sense, youth participation is not only our right; it is our contribution.

In relation to participation, as a youth network, Amplify places a high importance on disarmament education and risk education. All states parties to the future treaty should have an obligation to support disarmament education globally. If nuclear disarmament is to be sustainable, people everywhere must be aware of the issues. Moreover, quality disarmament education can help foster action for complete disarmament. We regret that the most recent revised preamble text does not include reference to disarmament education and we will continue to voice our support for this important element.

We also see the potential for security based on diplomacy and cooperation, not fear and intimidation; the current negotiations are thus an opportunity for us to rethink our assumptions about power dynamics and security in the international community, rather than accepting the current "reality."

Amplify's views on the key issues including those discussed above are further expanded in our working paper A/CONF.229/2017/NGO/WP.43, Youth Perspective on "The draft Convention on the Prohibition of Nuclear Weapons". While the Youth Summit has concluded, we will continue to monitor the discussions and speak out for the interests of our generation. •





Buan-Ionad na hÉireann
chun na Náisiún Aontaithe

Permanent Mission of Ireland
to the United Nations

WOMEN'S INTERNATIONAL LEAGUE FOR
PEACE & FREEDOM



GENDER AND NUCLEAR WEAPONS

Friday 23 June 13:15–14:30

Conference Room B

The revised preamble of the draft nuclear weapon ban treaty addresses the gendered impacts of nuclear weapons and the need to support and strengthen the effective participation of women in nuclear disarmament.

This panel will examine the gendered impacts of nuclear weapons and the ways in which gendered impacts of other weapons, as well as women's participation, are reflected in other disarmament and arms control instruments.

Speakers:

- H.E. Patricia O'Brien, Ambassador and Permanent Representative of Ireland to the United Nations and other International Organisations, Geneva
- Mary Olson, Nuclear Information and Resource Service
- Vanessa Griffen, FemLINKpacific
- Jasmin Nario Galace, Center for Peace Education and Pax Christi-Pilipinas

Moderated by Ray Acheson, Reaching Critical Will of the Women's International League for Peace and Freedom

