



# NPT News in Review

*Civil society perspectives on the third Preparatory Committee  
for the 2010 nuclear Non-Proliferation Treaty Review Conference  
4–15 May 2009*



## Reworking the recommendations

Ray Acheson | Reaching Critical Will of WILPF

On Wednesday evening, after consultations with various delegations, the Chair released a revised version of his draft recommendations to the 2010 Review Conference.

Overall, the revisions weakened the recommendations on disarmament, civil society participation, and education, but have bolstered those on implementing the Middle East resolution. The sections on non-proliferation and nuclear energy have also been adjusted, purportedly in an attempt to create more balance between the three pillars. Each of the three pillars now has an “action plan,” as several delegates requested during their general comments on Tuesday.

It remains unclear as to whether the PrepCom will be able to adopt the recommendations by the end of its session. The amount of time remaining could possibly allow for a second revised document to be offered Thursday afternoon, giving the PrepCom a last chance to adopt it Friday afternoon. However, if the Committee cannot agree to adopt the revised document on Thursday, it is likely that the Chair will have to forward it to the RevCon as a working paper, despite his aversion to such a solution.

Below is a detailed assessment of the differences between the original recommendations and the revised version, pointing out where recommendations have been strengthened, weakened, or changed to some effect.

### Introduction

The introductory paragraph of the revised text, CRP.4/Rev.1, adds a sentence noting, “[t]he States parties reaffirm the need to maintain a balance between the three mutually reinforcing pillars of the Treaty.” It also explains in more depth the methodology of the recommendations, explaining that the recommendations include “elements for [the RevCon’s] consideration in evaluating the implementation of the undertakings of the States parties under the Treaty,” and “areas in which, and the means through which,

further progress should be sought in the future.”

### Section 1. Universality

The revised section on promoting universality has weaker language on disarmament. Where CRP.4 recommended the RevCon “declare that the Treaty provides a legal foundation for the strengthening of the international nuclear non-proliferation regime, and for the achievement of nuclear disarmament and the ultimate objective of general and complete disarmament under effective international control” (the language of Article VI), CRP.4/Rev.1 simply recommends the RevCon, “[d]eclare that the Treaty remains the cornerstone of the global nuclear non-proliferation regime and the essential foundation for the pursuit of nuclear disarmament.”

As per the Algerian delegation’s suggestion during the general comments on Tuesday, the language on non-states parties has been changed to recommend the RevCon call on them to join as non-nuclear weapon states and without conditions.

This section also has new language on compliance—adding “[recognizing] consequences for breaches of Treaty violations”—and on nuclear energy—adding “[r]eaffirm that the Treaty fosters the development of the peaceful uses of nuclear energy.”

### Section 2. Action plans

Rather than outlining one action plan on nuclear disarmament, CRP.4/Rev.1 includes a three-part action plan for all three pillars.

#### Disarmament

The “plan” for nuclear disarmament is similar, but contains a few substantial changes that diminish disarmament. While CRP.4 recommended the RevCon “[r]ecognize growing expectations for progress to achieve nuclear disarmament, and indicate support for ongoing and fu-

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## Strengthening the NWFZs: National Legislation Enabling Enforcement of the Norms

Lisa Tabassi\*

None of the early nuclear-weapon-free zone (NWFZ) treaties required states parties to take the measures necessary to implement their obligations under the respective treaties. Yet even without such explicit provision, it is a general duty for each state to bring its national law into conformity with its obligations under international law. The 1969 Vienna Convention on the Law of Treaties provides that treaties in force are binding upon the parties to them and must be performed by them in good faith. Its Article 27 provides further that a party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Consequently, even when the treaties are silent in this respect, their texts should be examined to determine whether national measures will be necessary in order to implement the treaty. Preventing the development of nuclear explosive devices implies that import/export controls will be established or amended to include all nuclear materials, technology and equipment under safeguards.

This is particularly important in respect of enforcement of the treaties. While the treaties do not explicitly state that there is an obligation to impose criminal sanctions on natural and legal persons for breaches of the treaty's norms, it is inherent that activities prohibited at an international level will be proscribed and enforced at a national level.

Even in legal systems where the treaty automatically forms part of national law, the criminalisation of prohibited activities is essential. None of the NWFZ treaties criminalise the prohibited activities and none proscribe penalties. The fundamental principle of criminal law is the maxim *nullem crimen, nulla poena sine lege* (no crime, no punishment without law): the crime must be defined by law and the penalties established before the act is attempted or committed; otherwise prosecution of offenders will not be possible even when the treaty can be invoked at the national level.

In 2004, in its groundbreaking Resolution 1540 adopted under Chapter VII, the Security Council required all states to take measures at the national level to prevent the proliferation of nuclear, chemical and biological weapons among non-state actors. Thus regardless of the treaties to which states are party, and regardless of whether those treaties require national implementation and enforcement measures to prevent the proliferation of nuclear weapons, all states must establish them.

As a matter of public policy, it can be argued that implementing legislation for the NWFZ treaties is important for state actors as well. The NWFZs are durable treaties while governments and national policies change. Covert weapons programmes are a standard feature of military history. National legislation criminalising the research, development, testing, production, possession or use of nuclear weapons and nuclear explosive devices would make it more difficult for successive government administrations to alter the non-proliferation position adopted by a state when concluding a NWFZ treaty. Only Mongolia and New Zealand have adopted legislation criminalising violations of the NWFZ norms. Some states, such as Austria, Brazil, Iraq, Palau and the Philippines, have entrenched the concept at the constitutional level. Other States may have adopted some of the norms piecemeal, in connection with regulating nuclear activities for peaceful purposes. However, the NWFZ treaties are comprehensive. Is the national legislation?

From a good governance point of view, it makes sense for states to establish the legal and institutional framework at the national level in which proliferation activities can be identified, searches and seizures conducted and offenders prosecuted

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Reaching Critical Will

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*Strengthening the NWFZs (cont.)*

and punished. It also enables a state to engage in international co-operation for the prevention or prosecution of proliferation activities, including the exchange of information to prevent such crimes. While contributing to achieving the object and purpose of the NWFZs and addressing the threats in a meaningful way, national implementing legislation removes the national territory as a safe haven for perpetrators.

The establishment of the zone is a process, and the declaration of the zone is only the first step. Giving meaning to the NWFZ concept at the national level in terms of implementation and enforcement poses the greatest task and it must be continuous in order to maintain its viability.

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## News in Brief

Michael Spies | Reaching Critical Will of WILPF

### Recommendations to the 2010 RevCon

- Late in the afternoon, the chair circulated a revised draft of the recommendations to the 2010 RevCon (see editorial).
- Belgium, on behalf of seven countries (Belgium, Lithuania, Netherlands, Norway, Poland, Spain, Turkey), introduced a working paper, making recommendations to the RevCon in all areas of the Treaty. The new paper complements proposals made by the group to the 2005 RevCon.

### Other Issues

#### *Implementation of the Middle East resolution*

- The EU welcomed Russia's proposal for a conference or meeting on implementation of the resolution. The EU described the proposal as complementary with its plans for a follow-on to its June 2008 seminar, to occur before the 2010 RevCon (see NiB, No.6).

#### *Fissile Materials*

- The EU also introduced a new working paper on moving forward on a fissile materials cut-off treaty.

## The Medical and Environmental Consequences of Nuclear War

Lacy Orme | Reaching Critical Will of WILPF

Hosted by the Physicians for Social Responsibility (PSR), this lunch-time panel was chaired by Ruth Mitchell of PSR and featured presentations by scientists Steven Starr and Dr. Ira Helfand, with opening remarks given by Dr. Victor Sidel. According to Dr. Sidel, the purpose of the panel and PSR as a whole, is to "demonstrate to the public and health professional what the kinds of problems are ...what people need to worry about in regards to nuclear weapons." This is an effort, he said, to get policymakers to "take their heads out of the sand and recognize these problems."

Steven Starr highlighted the climactic ramifications of nuclear war, both on large and small scales, using the same scientific models used by the United States government in predicting various other climate change scenarios. The picture Mr. Starr painted was bleak: a world clouded by millions of tons of smoke rising from burning cities, causing global temperatures to drop, crops to die, and a worldwide famine to set in.

Dr. Helfand, discussed — using what he described as "informed and reasoned speculation" — the health and agricultural effects of nuclear war. Referring to the Great Bengal Famine of 1943, in which three million people died of starvation, Dr. Helfand illustrated how a drop in food production, as low as 5%, can have disastrous effects. The regions of the world where the majority of food stuffs are imported would be most vulnerable to contraction of food supplies, he said. The resulting breakdown of public systems and populations suffering from malnutrition would make worldwide epidemics very likely.

The panel lamented on the lack of research on the climactic and agricultural effects of nuclear war. Research on the agricultural effects has not really been done, they said, and such information is not only needed for preparing the world should the unthinkable occur, but also as a lobbying point with governments. For PSR, no time is better than now for governments, especially the United States and Russia, shift "resources and try to solve our problems ... rather than creating a self-destruct button."



## Nuclear Weapons Convention Simulation

### Negotiating Article IV: Phases for Implementation

Nicole Phillips | Reaching Critical Will of WILPF

The NWC simulation event was sponsored by the International Network of Engineers and Scientists Against Proliferation (INESAP) and chaired by Dimity Hawkins (ICAN) and Ambassador Labbe from Chile. The purpose of this event was to determine whether or not a NWC would be a feasible or effective way to establish an international nuclear non-proliferation and disarmament regime in pursuit of a nuclear free world.

The NWC simulation, conducted on Tuesday and Wednesday, was based on current existing political realities. Fictitious yet plausible scenarios were enacted in order to steer the direction of the simulation. In the simulation, the Prime Minister of Israel declared that Israel would be able to respond to any Iranian nuclear threat, anytime, in kind, with the full spectrum of weapons. Following this announcement, the states of the Arab League gave three months notice of their withdrawal from the NPT. In hopes of preventing this action, states parties to the NPT decided to initiate negotiations on a Nuclear Weapons Convention using the existing model Nuclear Weapons Convention (UN document A/62/650). Brazil, China, Egypt, France, Germany, India, Iran, Israel, Libya, Malaysia, Russia, South Africa, and the United States were tasked by the UN Security Council and the CD to undertake necessary negotiations. While the negotiations were taking place, the Arab League agreed not to withdraw from the Treaty.

Thirty students from Germany participated in the simulation. Each student was appointed to a delegation of the thirteen represented countries. The workshop began with each delegation presenting its position paper on Article IV of the model Convention, Phases for Implementation. Next, delegations proposed amendments to the draft convention. Ambassador Labbe kept the room in order by ensuring the simulation followed the rules and regulations of a United Nations negotiating body. When delegations failed to come to an agreement on suggested amendments, Ambassador Labbe encouraged them to meet for informal consultations. This seemed to help the participants agree on several suggested amendments.

Overall, the simulation was very educational and a huge success. All those in attendance would likely agree that a Nuclear Weapons Convention is both feasible and necessary.

*Reworking the recommendations (cont from front page.)*

ture efforts in these fields," CRP.4/Rev.1 recommends the RevCon indicates support for ongoing and future efforts and recognizes "the importance of practical nuclear disarmament by all nuclear-weapon States."

Likewise, while CRP.4 recommended the RevCon acknowledge that several commitments from 1995 and 2000 have not yet been fulfilled and called for an action plan to implement these commitments, CRP.4/Rev.1 simply recommends the RevCon "[r]eaffirm and update" these commitments, without mentioning they have not been fulfilled. It also divides the original list of disarmament initiatives into two paragraphs: one calling for facilitation of the entry into force of the CTBT and negotiations on a fissile materials [cut-off] treaty and the other calling for discussion on "ways and means to ensure the irreversibility, verifiability, and transparency of disarmament activities" and for recognition of the benefits of reducing operational status, reducing non-strategic nuclear weapons, and reducing reliance on nuclear weapons.

Unfortunately, while the original version recommend the RevCon examine "ways and means to commence negotiations, in accordance with article VI, on a convention or framework of agreements to achieve global nuclear disarmament, and to engage non-parties to the Treaty," the updates severely undermine this call by only recommending commencement of "open-ended discussions to identify possibilities available to establish an international legal framework for the achievement of global nuclear disarmament." At least the new language also recommends the engagement of non-states parties "with the aim of attaining a world free of nuclear weapons."

The language on security assurances, formerly in the non-proliferation section, has been moved to the disarmament section but remains identical.

#### *Non-proliferation*

The non-proliferation section has been strengthened. It now recommends the RevCon reaffirm that the proliferation of nuclear weapons is "a threat to international peace and security," which is established language, rather than simply a "global challenge".

The paragraph on export controls adds quite a bit of substance, including a recommendation on transparency, dialogue, and cooperation and another calling for recognition of the importance of national rules and regulations on nuclear-related

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*Reworking the recommendations (cont.)*

transfers.

There is also additional language on the IAEA, including a call for affirmation of “the need for full cooperation with the [IAEA] to resolve any outstanding verification issues,” which follows a new paragraph on the de-nuclearization of the Korean peninsula. CRP.4/Rev.1 also recommends the Rev-Con “[r]eaffirm the importance of acceptance of the Agency’s full-scope safeguards,” and welcome the IAEA’s efforts to “increase the Agency’s ability to detect undeclared nuclear activity” rather than just welcoming the IAEA’s efforts to strengthen safeguards.

*Nuclear energy*

Section 4 of CRP.4 covered nuclear energy, safety, and security. In CRP.4/Rev.1, ways to “advance peaceful uses of nuclear energy” has been given its own action plan and “ways and means to strengthen nuclear safety and security” is now a separate section.

The action plan on nuclear energy “notes” rather than “welcomes” the “growing applications” of nuclear technology, though it still reaffirms the “inalienable right” to nuclear energy of states parties.

Rather than stressing “the need to intensify consideration of multilateral approaches to the nuclear fuel cycle,” the new version recommends stressing “the importance of extensive and transparent consultations in the consideration of multilateral approaches to the nuclear fuel cycle.” The rest of the language in this paragraph is the same as in the original.

Another paragraph has been added to include language on cooperation programmes to assist new-nuclear energy states develop adequate infrastructures.

**Section 3. Nuclear safety and security**

Maintaining much of the original language, the revised recommendations do not include the note that acquisition of nuclear materials by non-state actors “could potentially jeopardize the Treaty.” This section also no longer includes a recommendation to urge “careful consideration of measures of control and monitoring of global stocks” of weapon-usable materials “and the capacity to produce such materials” or to support efforts to “enhance the security of stockpiles” of such materials or to minimize their use in the civilian nuclear sector.

**Section 4. Regional initiatives**

Most of the language on nuclear weapon free

zones remains the same, though in the new version the new Central Asian NWFZ is “noted” rather than welcomed. The new version adds a recommendation noting the importance of the UNDC’s guidelines for NWFZ, but it takes away the recommendation to “[n]ote the existence of strong support for the creating of a [NWFZ] in the Southern Hemisphere,” replacing it with a call to consider establishment of new zones “in regions with nuclear facilities and materials” and to note the importance of establishing WMDFZs.

**Section 5. Middle East**

Previously folded into the section on regional initiatives, the Middle East resolution now has its own section. Rather than describing the 1995 resolution as being “integrally linked” to the extension of the NPT, it is now “an essential element” of the decision to extend the Treaty.

The new version does continue to recommend consideration of a conference on implementing the resolution, though it no longer specifies the nuclear weapon states as the potential convenors. The rest of the section goes much further than the original language, adding a recommendation to establish a subsidiary body to Main Committee II at the RevCon “to consider practical steps to promote the earliest implementation” of the resolution and to consider appointing a special coordinator to hold consultations with the countries in the region and report to the review process, which has been suggested by Egypt and supported by other delegations, including the Russian Federation.

**Section 6. Withdrawal**

The two short paragraphs on withdrawal remain identical to the originals.

**Section 7. Strengthening the review process**

The new version eliminates the recommendation for consideration establishment of a “uniform, practical and cost-efficient reporting system for the implementation of the Treaty.” This section otherwise remains the same.

**Section 8. Civil society; education**

The new version significantly diminishes the recommendations on both subjects. It only recommends “noting” rather than “considering” the proposals for enhanced participation of NGOs in the review process. It also recommends “consideration” of the UN Secretary-General’s recommendations on disarmament and non-proliferation education rather than “encouraging” states to implement them, for which the original text called.







## What's On Today's Calendar of Events

### Abolition 2000 Caucus

Where: Conference Room E

When: 8:00–8:50 AM

Contact: Anthony Salloum, Abolition 2000

### Government Briefing: Mr. Febrian Ruddyard of Indonesia

Where: Conference Room E

When: 9:00–9:50 AM

### Wag the World: The Irrational Grip of Nuclear Weapons

Where: Conference Room E

When: 10:00 AM–1:00 PM

Contact: Diane Perlman, Psychologists for Social Responsibility

### Towards the 2010 Conference of States Parties to Nuclear Weapon Free Zones

Where: Conference Room D

When: 1:15 AM–2:45 PM

Contact: Alyn Ware, IALANA

### Time to Outlaw the Use of Nuclear Weapons

Where: Conference Room 8

When: 1:15 AM–2:45 PM

Contact: Carol Naughton, Acronym Institute

### Government Briefing: Ambassador Caroline Millar of Australia

Where: Conference Room E

When: Immediately following the close of the afternoon plenary, which starts at 3:00 PM

## Nuclear Wordsearch

l l n o a a s i a e a n  
a a l a t n o z i r o h  
n n e r e t n e c i p e  
o o t o t n u e t r a l  
i n a l i e n a b l e s  
t i a e i u r a t y a n  
a t p b t e t o e t b e  
n i u u p n i e u i c z  
r e s o l u t i o n s i  
e n o c l o l e t a l t  
t c m e e l e a i m e i  
n a n p o i a e a u o c  
i a b y z z i f a h i i

inalienable  
nuetral  
humanity  
ban

resolutions  
tlatelolco  
international  
fallout

citizens  
cooperation  
horizontal  
epicenter

## Answers to yesterday's crossword

