

Briefing paper | 15 June 2017

The draft Convention on the Prohibition of Nuclear Weapons

The draft text of the Convention on the Prohibition of Nuclear Weapons, which provides the basis for a prohibition of nuclear weapons, has been released by the President of the negotiations, Ambassador Elayne Whyte of Costa Rica. The draft is based on the discussions and inputs made at the first session of the conference to negotiate this treaty, held on 27-31 March 2017 at the United Nations in New York.

The negotiations will resume on the basis of this draft text on 15 June at the United Nations in New York, with the aim of concluding the negotiations by 7 July 2017.

ICAN welcomes the release of a draft treaty to ban nuclear weapons as an essential milestone in the years-long effort to ban nuclear weapons because of their inhumane and indiscriminate impacts. Once adopted, the treaty will constitute an important step towards their eventual elimination.

ICAN expects that the Convention on the Prohibition of Nuclear Weapons should be open for signature and ratification soon after its adoption, and ICAN will work to ensure as many states as possible sign and ratify the treaty.

Preamble

ICAN welcomes that the text of the preamble outlines the concern over the catastrophic humanitarian consequences of any use of nuclear weapons and the importance of international humanitarian law. The preambular paragraphs reflecting these concerns and recognizing the victims of nuclear weapons detonations, in particular Hibakusha and those affected by nuclear testing, are a positive and important articulation of why states are taking this vital initiative.

However, there is a need to strengthen the language in the preamble:

- The treaty text should clearly articulate the relevant principles and rules of international humanitarian law, international human rights law and environmental law, as the basis for the treaty itself.
- In addition to the concerns about the catastrophic humanitarian consequences that nuclear weapons cause, the preamble should reference the unacceptable risks that nuclear weapons pose to civilians. It should also highlight that no adequate response capacity exists to provide any sufficient humanitarian response if nuclear weapons are ever used again, either by accident or intent.
- While the draft notes the impact of ionizing radiation on maternal health and girls, nuclear weapons have far greater gendered impacts, both through physical impacts and social structures. Therefore, the text should more broadly recognize the disproportionate impacts of nuclear weapons on women and girls.
- The preamble should also recognize the disproportionate impact of nuclear weapons on indigenous communities around the world.
- The treaty prohibiting nuclear weapons follows other prohibitions of weapons that cause unacceptable humanitarian harm to civilians. It should therefore make reference to such previous treaties, in particular the Biological Weapons Convention, the Chemical Weapons Convention, the Convention on Certain Conventional Weapons and its protocols, the Anti-Personnel Mine Ban treaty, and the Convention on Cluster Munitions.
- The states parties should make clear in the preamble that they are convinced that nuclear weapons serve no legitimate purpose given their indiscriminate nature, inherent immorality and potential to annihilate humanity.
- In addition to recognizing the implications for socioeconomic development, the preamble should also highlight the resources spent on the development, maintenance, and modernization of nuclear weapon systems.

General obligations

A convention on the prohibition of nuclear weapons based on their unacceptable consequences has the transformative potential to codify the illegality of nuclear weapons, stigmatise their possession, and facilitate nuclear disarmament. It would put nuclear weapons on the same footing as other recognised weapons of mass destruction—biological and chemical—which are subject to prohibition through specific treaties.

ICAN welcomes the comprehensive prohibitions to use, develop, produce, manufacture, otherwise acquire, possess, stockpile, transfer, and test nuclear weapons as well as assist, encourage, or induce anyone in such activities.

- As this treaty is deeply rooted in international humanitarian law, the prohibition on use of nuclear weapons is primary, and this should be reflected as it is in other inhumane weapon prohibitions;
- The treaty should explicitly prohibit states parties from engaging in preparation and plans to use nuclear weapons, in order to prevent any state party from using or threatening to use nuclear weapons.
- The treaty should reinforce and build upon existing weapons prohibitions, including WMD prohibitions, when it refers to the concept of possession. Like the other WMD prohibitions, the text should prohibit states from “develop, produce, manufacture, otherwise acquire, stockpile or retain”.
- The draft prohibition on assistance is strong, but could be stronger by making a specific reference to a prohibition on financing of nuclear weapons production. Such an explicit prohibition builds on the growing understanding that providing financial services to companies involved in the production of key components that play a direct role in the lethality of inhumane weapons constitutes a form of assistance. Including ‘financing’ as a named part of assistance therefore strengthens the overall text and provides clarity and guidance towards treaty implementation.

Safeguards

The next round of negotiations should consider the many ways that strengthened safeguards offer positive impacts for this treaty, reinforce existing customary law, and demonstrate a commitment to the vision of a world without nuclear weapons.

To that end, negotiating states should ensure that the text does not hold states to a lower standard of safeguards than they have agreed to elsewhere, encourages them to adopt higher standards, and ensures that these issues are negotiated in the appropriate forums. There should be sufficient flexibility to allow for the continued evolution of safeguards standards.

Stockpile destruction

Article 2, Article 4 and Article 5 all deal with the responsibilities that fall on states that have possessed nuclear weapons in the past and destroyed them (or had them removed) and states that may still possess nuclear weapons. While it outlines very specific arrangements for states that have already destroyed or removed their stockpiles, it defers any action or obligation on the destruction of existing stockpiles that acceding states may have to later protocols or other arrangements. In order to remain consistent with other weapons prohibitions, the treaty should provide a clear and explicit obligation to destroy any stockpiles in a verifiable, time bound manner.

Specific points for clarification include:

- Article 5 should provide a mechanism by which states with nuclear weapons can join the treaty, accepting its prohibitions and an obligation for stockpile destruction with a time bound plan approved by states parties, and with effective verification and safeguards.
- The articles don't make clear the process by which states that have hosted nuclear weapons can confirm that such arrangements are no longer in place. Furthermore, procedures for confirmation that nuclear weapons no longer play a role in states parties' policies and doctrines are not provided for. The requirements of article 2 could be expanded so that all states parties should address and report on their compliance with the general obligations of the treaty.

Provisions for victim assistance, environmental remediation and international cooperation and assistance

In its preamble and draft article 6, the draft treaty contains elements that provide a solid basis for robust victim assistance provisions. The text recognizes the humanitarian consequences of nuclear weapons and the suffering caused to victims, notes the role of victims, and includes a requirement to provide appropriate assistance to individuals affected by nuclear weapons use or testing.

However, these provisions should be strengthened and clarified, in order to best serve the victims of nuclear weapons, reflect the humanitarian underpinnings of the treaty, and uphold standards set by other treaties with respect to victim assistance. The need to fully realize the rights of all victims should also be referenced in the preamble.

In particular:

- The requirement to uphold the rights of and assist victims under a state's jurisdiction or control should apply to all states. This is consistent with states' existing human rights obligations. Those states that require assistance to undertake this must have the right to request this.
- The text should outline in more detail the principles for victim assistance and ways in which it can be provided, and provide guidance and provision for reporting.
- The text should include a definition of nuclear weapon victims as considered by the treaty,, to provide clarity on the harms suffered or rights impaired considered by this article and assist in implementation. The principle of non-discrimination – meaning that those affected by nuclear weapons detonations should not be discriminated against, and that there should be no discrimination in assistance given between victims of nuclear weapons

detonations and others with similar needs - should also be included in the treaty.

The draft text also provides a solid basis for useful provisions on the remediation of affected environments. Currently, draft article 6 only refers to the right of parties to request assistance with environmental remediation. In order to strengthen this provision and bring it more in line with and improve on standards for other weapons, the text should also:

- Articulate the responsibility of states to take steps to remediate both terrestrial and aquatic environments under their jurisdiction or control to the extent possible. As already articulated in draft article 6, those that require assistance to do so must have the right to request this.
- The text should outline in more detail principles for environmental remediation and ways in which it can be undertaken, as well as the protection of populations from associated threats, and provide guidance and provision for reporting.

To strengthen these and other provisions, draft article 8 should detail the areas in which states will have a right to seek and receive assistance, and should also elaborate the areas in which states in a position to do so shall provide assistance to others – currently it only mentions cooperation. The right to seek and receive assistance for victim assistance and environmental remediation, and the obligation to provide assistance in these areas to other states, should be fully articulated in the treaty.

Meeting of States Parties

Article 9 proposes regular meetings of states parties, review conferences, and outlines the tasks of such meetings. In order to ensure efficiency as well as consistency with other weapons treaties, a few modifications may be necessary.

- The text should ensure that a key objective of meeting of states parties is to discuss measures to support the objects and purpose of the treaty.
- The treaty should allow for annual meetings of states parties, in order to ensure regular discussions on the prohibition of nuclear weapons and progressing their elimination.
- The treaty should specify that international organisations and civil society will be invited to not only attend but also participate in the meetings of states parties and review conferences, at least in the same manner as international organisations and civil society are participating in the negotiations of the treaty.
- The treaty should also establish a treaty body to assist with implementation of the treaty, organization of meeting of states parties, encouraging ratification,

developing verification and enforcement mechanisms, and educating the public about the treaty and about the humanitarian impact of nuclear weapons.

Universality

The text should impose an affirmative duty on all states parties to the treaty to promote the norms it establishes, including by disseminating information about its content, purpose, and basis to their militaries, public, and other states, to encourage states outside the treaty to sign, ratify or otherwise accede to it, and to follow its provisions even if they have not yet joined. This would follow and build on the example of the Convention on Cluster Munitions.

Withdrawal

The consequences of the use of nuclear weapons are so significant that no state should be permitted to withdraw from the treaty, and this should be clearly stated. Any withdrawal would be considered a threat to international peace and security and require emergency action by states parties.

Relations with other international legal agreements

The treaty prohibiting nuclear weapons builds on previous legal instruments, both those preventing the proliferation of nuclear weapons and those prohibiting indiscriminate or inhumane weapons.

- The treaty text should highlight that states should still adhere to existing obligations under the Nuclear Non-Proliferation Treaty, the Comprehensive Test-Ban Treaty and the Nuclear Weapon Free Zone treaties.
- Such language could also refer to the obligations under the Geneva Conventions and the prohibitions of the other two weapons of mass destruction, the biological weapons convention and the chemical weapons convention.