



NUCLEAR BAN DAILY



Reaching Critical Will

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IN THIS ISSUE

- 1 | Editorial
- 2 | The case for positive obligations
- 4 | The need for environmental remediation
- 5 | Back to Bikini, forward to disarmament
- 8 | Victim assistance provisions
- 9 | Side event: The case for a ban
- 10 | News in brief
- 14 | Ban the bomb: pledge for a safer world

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 27-31 March and 15 June-7 July 2017. The views expressed in this publication are not necessarily those of WILPF.

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CONVERGING VISIONS FOR THE BAN

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

Wednesday's discussion on core prohibitions and positive obligations for the nuclear weapon ban treaty was fascinating, and exciting. After working to ban the bomb for so many years, it is thrilling to watch the coalescence of states' views on the development of a clear and comprehensive prohibition of nuclear weapons.

There are some divergences of opinion on certain provisions. The question of whether the UN Charter incorporates threat of use or whether it should be included as an explicit prohibition in the treaty is one. The inclusion of testing and transit/transshipment is another. The extent of verification, and how that relates to future disarmament processes, is also a matter of some debate.

However, governments participating in these negotiations are very clearly articulating a treaty that categorically prohibits nuclear weapons.

There has been near-universal agreement on the prohibition of stockpiling, use, deployment, acquisition, development, and production of nuclear weapons, as well as assistance, encouragement, and inducement of prohibited acts. There was overwhelming support to prohibit the transfer of nuclear weapons, which is important for preventing "nuclear sharing" arrangements.

There was also very broad support for including an explicit prohibition on financing of nuclear weapon-related activities, though some states raised questions about how this would work. Several states suggested they would view a prohibition on assistance as having "implications for the regulation of the investment of our public monies," as Ms. Helena Nolan of Ireland put it. Others asked for clarification on how a prohibition on financing would work.

Opinions on how to deal with stockpiling varies. All states seem to agree that the possession of nuclear weapons must not be

allowed under this treaty, but the question persists of whether the treaty should deal with setting out provisions for the elimination of stockpiles or whether it should leave that for later negotiations with nuclear-armed states. It is a very small minority of states that seem to think the ban treaty should try to address disarmament processes in this treaty.

More broadly, however, perspectives on verification have some divergences. Argentina and Switzerland seem to have suggested that the treaty will be relatively meaningless without verification of its prohibitions, with the Argentinian delegate describing it as a nothing more than a "symbolic declaration" without strong verification mechanisms.

This view does not seem to be held by the vast majority of states participating in these negotiations. There seems to be broad agreement that existing verification mechanisms, including those under the Non-Proliferation Treaty and nuclear weapon free zone treaties, should be sufficient for this treaty. States could consider mechanisms for consultation and cooperation amongst states parties to facilitate implementation and compliance. It's important to remember that states joining this treaty are rejecting nuclear weapons in principle and practice. Building a community of states willing to codify this rejection will help build confidence and assist states in finding ways to cooperate to effectively implement the treaty.

A few issues will require further debate. While there was broad support for including a specific prohibition on testing, some expressed concern that this would undermine the Comprehensive Nuclear-Test-Ban Treaty, both in letter and in norm. Others hold the opposite view, that a prohibition on testing in a nuclear weapon prohibition treaty would reinforce the norm against testing, and that leaving it out could be in danger of creating a loophole. Some states believe

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Editorial, continued

that development includes testing, though, as Ireland said, this does not preclude the need for an explicit testing prohibition.

Threat of use was another issue of some contention, with some states such as Austria and Mexico suggesting it is not necessary. Ambassador Thomas Hajnoczi of Austria argued that there “is already a general prohibition on the threat of use of (armed) force in the UN Charter” and that including a prohibition of threat of use of nuclear weapons in this treaty “could be seen as calling into question the validity of that more general norm.” Others, such as South Africa argued that threat of use needs to be included. Ambassador Nozipho Mxakato-Diseko of South Africa said including threat of use “would be key the effort to delegitimise the concept of nuclear deterrence.”

Many states, including those in the Caribbean Community, supported the inclusion of a provision on

transit and transshipment. Austria argued it was too complicated to demarcate maritime and airspace, and sees transit as being included in assistance. Given the risks associated with the transit of nuclear weapons, and the relationship between transit and deployment, states will need to seriously consider this issue in their deliberations ahead.

Despite these few issues, it does appear that there is strong convergence amongst the vast majority of states negotiating this treaty on the core prohibitions for this treaty. There is also broad support for the inclusion of positive obligations, including on issues related to victim’s rights and environmental remediation. This edition of the *Nuclear Ban Daily* has several thoughtful pieces on these issues, so we encourage all delegates to read the full edition and consider what we can do with this opportunity before us to advance humanitarian disarmament law. •

THE CASE FOR POSITIVE OBLIGATIONS IN THE NUCLEAR WEAPON BAN TREATY

Matthew Bolton | *International Disarmament Institute, Pace University*

The case for the nuclear weapons ban treaty has been rooted in the traditions of international humanitarian law and humanitarian disarmament law, which bind states to acknowledging the suffering caused by war, establishing prohibitions on inhuman methods and means of warfare and taking positive harm-limiting measures.

The Geneva Conventions—the most well-known treaties forming the core of international humanitarian law—prohibit states from targeting civilians, wounded soldiers, prisoners of war, the shipwrecked, and relief workers. But they also commit states to a positive “duty to ensure respect” for the conventions (Common Article 1). And they mandate the International Committee of the Red Cross and the National Societies to provide relief and to raise awareness of humanitarian norms.

The international community will lose an important opportunity if the nuclear weapons ban treaty does not include positive obligations beyond its prohibitions. These measures should reflect the object and purpose of the treaty—to prevent the catastrophic humanitarian and environmental consequences of nuclear weapons.

Positive obligations would make the process of stigmatizing and limiting the harm of nuclear weapons the responsibility of all states, including those affected and not directly affected by nuclear detonations. Such

provisions would encourage states to engage directly in extending and universalizing the norm, and work toward a nuclear weapons free world.

There is important precedent for positive obligations in humanitarian disarmament law, which emerges from international humanitarian law but establishes rules regarding specific weapons. These tend to come in three categories: 1) Rights and remedial measures (e.g. environmental remediation, risk education, victim assistance and stockpile destruction); 2) Promotion of the treaty and of its norms (e.g. universalization, norm dissemination, and disarmament education); and 3) International cooperation and assistance to implement the above two sets of obligations.

The following discusses each of these categories in more depth and argues that they offer a foundation on which to build positive obligations in the nuclear weapons ban treaty.

Rights and remedial measures

Humanitarian disarmament treaties obligate states to recognize the rights of those who are harmed by weapons and take steps to limit any ongoing harm. With regards to the nuclear weapons ban treaty, there have been a variety of proposals for such obligations, including stockpile destruction, environmental remediation, risk

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Positive obligations, continued

education and victim assistance. All of these suggested provisions are well-grounded in existing humanitarian law on other weapons.

When weapons cause lasting danger in the environment, humanitarian disarmament treaties include provisions for remediation. Protocol II of the 1980 Convention on Certain Conventional Weapons (CCW) calls for cooperation in the removal of landmines (Articles 8 & 9). The 1997 Mine Ban Treaty (MBT) is much stronger, requiring affected states to clear all minefields from their territories. Other states and international organizations are encouraged to help them (Articles 5 & 6). Similar obligations are found in the 2003 CCW Explosive Remnants of War (ERW) Protocol (Article 3) and 2008 Convention on Cluster Munitions (CCM) (Article 4).

The MBT (Article 5.2, Article 6.3 & 6.7), ERW Protocol (Article 4, 5 & 8) and CCM (Article 4, 6 & 7) all call on states to inform people of the dangers of mines, ERW and cluster munitions, through fencing and marking contaminated areas, offering warnings and “risk education to the civilian population” (ERW Protocol, Article 5).

These same instruments also include provision of victim/survivor assistance. In the MBT, states “that are in the position to do so” are required to “provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims”, supported by other states, international organizations and civil society (Article 6.3). The ERW Protocol has a very similar provision (Article 8.2). The CCM offers much more detail, recognizing the relevance of “human rights law”, the importance of “age- and gender-sensitive assistance” and “psychological support.” States are also expected to “make every effort to collect reliable relevant data with respect to cluster munition victims” (Article 5).

Destroying weapons so that they cannot be used for further harm removes temptations for states to violate the norm. For example, Article 4 of the MBT requires states “to destroy or ensure the destruction of all stockpiled anti-personnel mines it owns or possesses, or that are under its jurisdiction or control, as soon as possible.” A similar obligations is found in Article 3 of the CCM.

Promotion of the treaty and of its norms

Humanitarian disarmament law often includes obligations on states to promote universalization of the treaty and discourage violations of its norms. For example, the CCM requires states to “promote the norms it establishes”, by encouraging accession of states not party and discouraging them, “from using cluster munitions” (Article 21.1 & 2). Similarly, the 2013 Arms Trade Treaty (ATT)

establishes that its annual Conferences of States Parties will “consider and adopt recommendations regarding the...promotion of its universality” (Article 17.4.b).

In addition to promoting the norm among states, several instruments call on states to educate their citizens and militaries about the norms embedded in it. The CCW requires states to disseminate the treaty “as widely possible” and to include it in the curriculum of their “programmes of military instruction” (Article 6). Similarly, the 2001 UN Programme of Action on Small Arms and Light Weapons endorses education for a “culture of peace”, including public awareness of the illicit trade in small arms; the 1999 Programme of Action on a Culture of Peace calls for education to promote general and complete disarmament.

With the nuclear weapons ban treaty, states should consider building on this to develop a positive obligation to promote disarmament education. The conferences on the humanitarian impact of nuclear weapons showed there is a clear need for citizens to understand the catastrophic risks of nuclear weapons and to promote a stigmatizing norm against them. The “importance” of disarmament education was emphasized in the Report of the Open-Ended Working Group on Nuclear Disarmament in 2016, particularly regarding “the humanitarian consequences of nuclear weapons” (para 59, 63 & Annex 1, para 3). Disarmament education was endorsed by the 2010 Nuclear Non-Proliferation Treaty Review Conference Outcome Document (Action 22).

International cooperation and assistance

The humanitarian disarmament treaties mentioned above – the MBT (Article 6), ERW Protocol (Article 8), CCM (Article 6), and ATT (Articles 15 & 16) – have provisions encouraging international cooperation and assistance to implement the commitments they establish. This will be crucial in the nuclear weapons ban treaty, so that the burden of positive obligations is shared collectively and all states parties play a role in ensuring that the new norms are implemented.

Positive obligations must be operative

All the examples of humanitarian disarmament law offered here include positive obligations in the operative parts of the treaty. The same should be true for the nuclear weapons ban treaty. To place them only in the preamble would represent backsliding from progress made in other parts of international humanitarian law and disarmament law. •



THE NEED FOR ENVIRONMENTAL REMEDIATION OBLIGATIONS IN THE BAN

Carina Bentata Gryting and Alice Osman | Harvard Law School's International Human Rights Clinic

From 1946 to 1958, the United States tested nuclear weapons in the Marshall Islands, dropping weapons thousands of times more powerful than the Hiroshima bomb. As described in a side event Tuesday and the recent ICAN report, “Prohibiting Nuclear Weapons: A Pacific Islands Priority”, the environmental impacts of this testing continue to be felt over 60 years later. The nuclear fallout from these explosions heavily contaminated the islands with radioactive material, polluting the drinking water and food supply, and directly endangering the health of those living in the area. Many Marshallese were displaced, losing their homes, cultural heritage, and the ability to practice traditional customs. Recent testing of the area revealed that some islands still have dangerous levels of radioactivity, and many Marshallese continue to live in exile on nearby islands in crowded and unsanitary conditions. Testing by other countries in other places, such as Algeria, Australia, and Kazakhstan, has also had adverse environmental effects.

The devastating humanitarian impacts of nuclear weapons have driven this week’s negotiations of a ban. In drafting a treaty to address these humanitarian concerns, it is not enough to only prohibit nuclear weapons. Positive obligations, especially the obligation to undertake environmental remediation, are also necessary to mitigate the effects of nuclear weapons’ use, whether in armed conflict or testing,

In the first three days of the conference, at least 20 countries highlighted the catastrophic environmental consequences of nuclear weapons in their statements. A nuclear explosion releases huge amounts of radiation that affect expansive geographic areas over long periods of time. Soil, water, plants, and animals absorb radiation, leading to the contamination of crops, livestock, and wild game. These environmental effects, in addition to the harm to human health from radiation—such as cancer, genetic birth defects, and infectious disease—cause human suffering and large-scale displacement, with wider socioeconomic effects.

Environmental remediation is critical to mitigating the devastating effects of nuclear weapons. While remediation cannot completely return the environment to its original state, targeted efforts can contain radioactive materials, minimize human exposure, and remove radioactive isotopes from affected areas, expediting recovery. Remediation encompasses both rehabilitation of the environment and measures that reduce the risk of human exposure. Rehabilitation can include forming a barrier around highly contaminated areas to trap the radioactive material, or separating the radioac-

tive material from the soil through chemical or physical processes. Risk reduction measures include marking and fencing the contaminated areas, relocating nearby populations, and educating local populations about the risks posed by contaminated areas. These measures are important because nuclear contamination can linger for thousands of years.

Incorporating a provision on environmental remediation in the nuclear ban treaty would have legal benefits as well as minimize humanitarian harm and advance efforts to address it. Such a provision would make states parties’ obligations clear and lay out guidelines for implementation. It would set a widely accepted standard that could influence the behavior of states not party. In addition, it would contribute to the progressive development of humanitarian disarmament law by ensuring that the general legal approach for addressing explosive remnants of war is applied to toxic remnants of war.

The treaty should place the primary obligation to remediate on affected states parties while obliging other states parties to provide international cooperation and assistance. Specifically, a stand-alone provision should require states to a) assess affected areas, b) undertake risk reduction activities, c) rehabilitate the environment, d) monitor and report progress in the above activities, and e) create a national plan for these remediation efforts.

Inclusion of an environmental remediation provision in the nuclear ban treaty does not have to be complicated, as it can draw on the language from clearance provisions in prior disarmament treaties. An environmental remediation provision would largely serve the same purposes as those clearance provisions: removing the remnants of weapons and protecting the public from coming into contact with them. Therefore, a draft of the environmental remediation provision could draw from the language found in the Mine Ban Treaty, Protocol V of the Convention on Certain Conventional Weapons, and in particular, the Convention on Cluster Munitions.

Much of the human suffering that states seek to address through the nuclear ban treaty is tied to the long-lasting and destructive effects of nuclear weapons on the environment. A provision on environmental remediation is therefore an essential element of the proposed treaty, and it would ensure that the treaty comprehensively addresses the devastating humanitarian impact of nuclear weapons. •



BACK TO BIKINI, FORWARD TO DISARMAMENT

Nic Maclellan

Charlie Takao Dominick’s grandchildren love telling the story of what happened to their grandfather on the day of the Bravo nuclear test: how young Charlie was in the outhouse on the island of Likiep when he heard the massive fifteen-megaton blast on Bikini Atoll, 450 kilometres away; how, forgetting to put his pants on, he ran out to the other children; and how embarrassment finally overcame fear.

“It’s true,” he acknowledges with a laugh. “There is no one else in the Marshall Islands that has been exposed twice!”

Charlie had been doing jobs around the house on that morning in March 1954. “Before you have breakfast, all the leaves from the breadfruit trees have to be cleaned, the pigs and chickens fed,” he tells me. “As a young lad, I didn’t want to clean the yard, so I went to hide in the outhouse. But then, I heard noise like thunder. The blast shook the building, the trees...

“When such a disaster happens, the first place to go is to the church. I joined the boys and girls who had run there, until I realised I had no pants on – so I had to run back and put them on.”

Stories like this still dominate Marshallese politics and culture. Even as the Republic of the Marshall Islands joins this month’s international negotiations for a treaty to ban nuclear weapons, many locals want people to remember the radioactive legacy of the sixty-seven nuclear tests conducted at Bikini and Enewetak Atolls between 1946 and 1958.

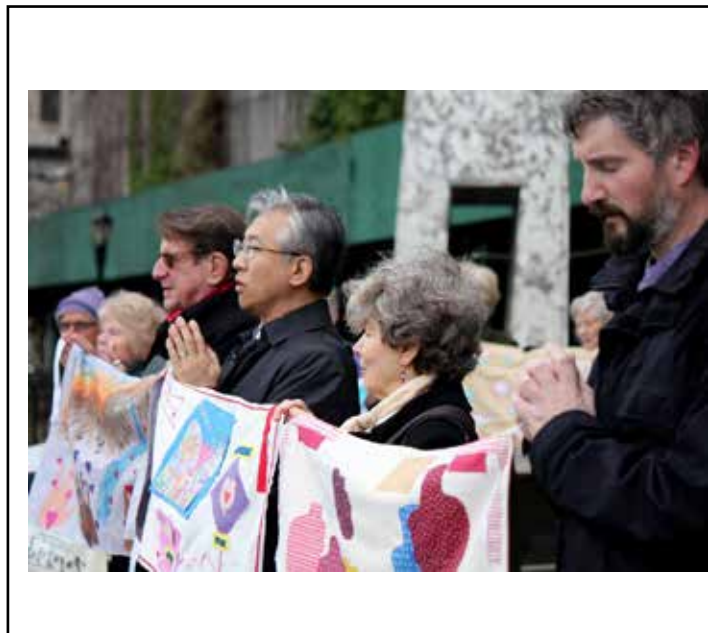
Just weeks after the Bravo test, two Marshallese schoolteachers, Dwight Heine and Atlan Anien, prepared a petition for the United Nations Trusteeship Council. The United States was administering the Micronesian islands as a UN Strategic Trusteeship, and the petitioners wanted “all experiments with lethal weapons in this area [to] be immediately ceased.”

Their call highlighted the importance of land as a source of culture and identity – land that was vaporised or contaminated by hazardous levels of radioactive fallout. “Land means a great deal to the Marshallese,” they wrote. “It means more than just a place where you can plant your food crops and build your houses or a place where you can bury your dead. It is the very life of the people. Take away their land and their spirits go also.”

The new president of the Marshall Islands, Hilda Heine, has followed that tradition of speaking out about the legacies of nuclear testing. Heine, who took office in January last year, is the first woman to be elected as leader of an independent Pacific island nation. A leading educationalist and the first Marshallese to obtain a PhD, she is outspoken about the failure of successive US governments to address the health and environmental legacies of the US nuclear tests.

“We face the reality that, after the US nuclear weapons testing program first began with the moving of Bikinians from Bikini Atoll, seventy-one years of inconsolable grief, terror and righteous anger followed, none of which have faded with time,” she said in a speech on this year’s

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“At times we are overwhelmed. At times we despair that in the face of the forces of oppression and sickness, of violence and destruction, our actions, our work, our faith, amounts to nothing. Dr. King reminds us that, with love, and faith, one person really can change the world.” (Paul S Sawyer, A Life Dedicated to Justice, Equality, and Peace Prayer)

“If nuclear weapons epitomize the forces that would divide and destroy the world, they can only be overcome by the solidarity of ordinary citizens, which transforms hope into the energy to create a new era.” (Daisaku Ikeda 2009 Nuclear Disarmament Proposal)

From the interfaith vigil for the nuclear ban treaty conference, 29 March 2017. All are welcome, at 8:00-8:15 a.m. each day, the Isaiah Wall (1st Ave. between 42nd and 44th St.).



Back to Bikini, continued

Nuclear Remembrance Day, the anniversary of the 1954 Bravo test. "This is exacerbated by the United States not being honest as to the extent of radiation and the lingering effects the US nuclear weapons testing program have on our lives, ocean and land, and by the United States not willing to address the issue of adequate compensation as well as the radiological clean-up of our islands."

As Marshall Islands ambassador-at-large Tony de Brum points out, "Bravo was the highest yielding of the US tests, exploding with the force of fifteen million tonnes of TNT. It was also the greatest radiological disaster in American history."

To revitalise awareness and action, President Heine hosted a major conference, "Charting a Journey Toward Justice," in the capital, Majuro, on 1–3 March. Over three days, hundreds of participants heard from nuclear survivors, research scientists, anthropologists and government leaders. Throughout the conference, the Marshall Islands president and the US ambassador to the Marshall Islands sat quietly in the audience, among ordinary citizens and many students from the College of the Marshall Islands and the University of the South Pacific.

For Heine, it was heartening to see the interest shown by young people in events that took place decades before they were born. "Very few of those who were there in the 1950s are still with us," she told me. "Many of the living ones are quite old, close to the end of their life. They are very disappointed, because nothing has happened in their lifetime and they know that nothing will happen before they pass on. Therefore it's up to us to energise the young generation to take on the mantle and go forward, because obviously it's going to be a long fight."

Bikini and other atolls are still contaminated with hazardous levels of radioactive isotopes, such as caesium-137, that can enter the food chain. In a 2016 paper published in the prestigious Proceedings of the National Academy of Sciences, a Columbia University team led by Professor Emlyn Hughes found relatively high gamma radiation at Bikini nearly sixty years after the end of nuclear testing. Low levels of gamma radiation persist on the settled island of Enewetak and the island of Rongelap.

"Bikini has radiation levels higher than the US and Marshalls governments have agreed on for resettlement," says Hughes. "This is simply from background radiation. This is only one path and does not include the measurement of radiation in food such as coconut, breadfruit or fish." This May, Hughes will lead another team to the northern atolls to look at exposure through food and from the ocean environment.

For decades, the US government hid the full extent of contamination in the Marshall Islands. During that period, it negotiated the Compact of Free Association, an agreement that led to self-government and independence for the Micronesian nation in 1986. As part of the Compact, the Marshall Islands government and people gave away the right to sue in US courts over damage to person and property from the tests. In return, a fund of US\$150 million was established to deal with the legacies of the testing program.

Successive US governments have acknowledged the damage to the four northern atolls – Bikini, Enewetak, Rongelap and Utirik – from nuclear testing. But in May 1994, the US Department of Energy released to the Marshall Islands government more than seventy boxes of newly declassified documents, revealing that the fallout from Bravo and other tests had spread much more widely than Washington had previously acknowledged. For fifty years, US governments had hidden the fact that fallout from the Bravo test had reached other atolls, including Ailuk, Likiep, Wotho, Mejit and Kwajalein.

As archivists collate the documentary history of the testing era, Ambassador de Brum believes the US government still has a responsibility to provide full, unredacted documentation from the 1950s. "There cannot be closure without full disclosure," he says.

In 2000, following the further revelations, the Marshall Islands government submitted a "changed circumstances" petition to the US Congress, seeking increased funding to pay compensation for damage to health and property. Under the provisions of the Compact, a Nuclear Claims Tribunal issued rulings for compensation amounting to more than US\$2.3 billion, a sum far in excess of funds available through the trust fund. To this day, the US Congress has failed to grant the extra funding needed to cover the Tribunal's decisions.

Hilda Heine stresses that the United States' responsibility for health and environmental impacts across the whole country is still a concern for her government. The 1950s documents, she says, "have now shown that eighteen other inhabited atolls or single islands were contaminated by three of the six nuclear bombs tested in Operation Castle, as well as by the Bravo shot in 1954. The myth of only four 'exposed' atolls of Bikini, Enewetak, Rongelap and Utirik has shaped US nuclear policy on the Marshallese people since 1954, which limited medical and scientific follow-up and compensation programs."

To coordinate further action on the nuclear program, the Marshall Islands Nitijela (parliament) recently passed legislation to establish a three-person National Nuclear

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Back to Bikini, continued

Commission. The commission will develop a nuclear justice strategy and document all aspects of the US nuclear testing program.

"We only have six years left of the current Compact," says Heine, "and so we will soon be talking to the United States on the economic provisions that are expiring in 2023. Right now, there are programs in existence that deal with the effects of the nuclear program, but the importance of the commission is that they will coordinate all of these separate programs as well as look at the strategy for going forward."

Despite the US government's health and remediation programs in the northern atolls, Heine believes it is time for the US Congress to respond to the changed circumstances petition. "You can see they are able to help the people of the four atolls but in very small ways, reacting to what is happening but not taking account of the root causes," she says. "They realise that it's a big job and it would take quite a bit of their resources. So they'd rather take care of the surface issues rather than the root causes. That's the problem we're facing in discussing our issues with the US government."

Looking beyond Washington, successive Marshall Islands governments have sought to break the international stalemate over the reduction of nuclear arsenals. In April 2014, the government filed landmark lawsuits in the International Court of Justice challenging the nine nuclear-armed nations for failing to comply with their obligations under the Nuclear Non-Proliferation Treaty, to negotiate the total elimination of nuclear weapons. Cases against India, Pakistan and Britain proceeded to preliminary submissions. But the court dismissed the lawsuits last October, ruling that there was insufficient evidence of a dispute between the Marshall Islands and these nuclear-armed nations.

Heine doesn't regret the previous government's decision to launch the cases. "I think it served its purpose to the extent that it continues to place the issue to the forefront of the minds of people, internationally as well as in the United States," she says. "Unfortunately, the conclusion was not what we hoped it would be, but I think it was important for us to put it out there, because otherwise, who will?"

She believes that there is a need to revive momentum on disarmament. "When you look at discussion on nuclear disarmament, it has pretty much come to a stop," she says. "There seems to be no pathway moving forward. So I think it was important for the Marshall Islands to put some pressure on, by going to the International Court of Justice, and to keep the momentum and the discussion alive."

This nuclear diplomacy comes alongside efforts to increase action on climate change, another environmental challenge to the low-lying atoll nation. Ambassador Tony de Brum played a key role in establishing the Higher Ambition Coalition, which linked developed and developing nations in the final stages of the negotiations leading to the Paris Agreement on Climate Change.

In December last year, the Marshall Islands joined 113 nations to support a landmark UN General Assembly resolution to begin negotiations on a treaty to prohibit nuclear weapons. All Pacific island states, with the exception of the Federated States of Micronesia, voted in favour of the resolution, reflecting the importance of the cold war history that saw more than 315 atmospheric and underground nuclear tests at ten sites.

Now, beginning on 27 March 2017, negotiations for the nuclear weapons ban treaty are under way in New York, with a second round of talks scheduled for June and July. Across the Asia-Pacific region, governments as diverse as Indonesia, Thailand, Malaysia, New Zealand, Papua New Guinea and Fiji are discussing a binding international agreement similar to treaties that have abolished other classes of weapons (landmines, cluster munitions, chemical and biological weapons).

It's no surprise that the nine nuclear-armed states will be reluctant to accede to the treaty. But the refusal of the Australian government to participate in the negotiations is a sad commentary on how Canberra's security posture has been integrated into US nuclear war doctrines. With the nuclear ban treaty likely to be completed later this year, non-nuclear states will have the opportunity to sign on to an international agreement delegitimising nuclear weapons and setting in train a process for nuclear abolition.

With its ongoing support for Extended Nuclear Deterrence, the Turnbull government is further aligning itself with the United States, even as president Donald Trump announces another US\$52 billion in defence spending. When Malcolm Turnbull joins island leaders next September at the Pacific Islands Forum in Apia, Australia's nuclear isolation will be fully on display. But the Marshall Islands, along with other neighbours, are likely to remind Australia of the folly of nuclear weapons. •

This story was originally published in Inside Story at <http://insidestory.org.au/back-to-bikini-forward-to-disarmament>.



VICTIM ASSISTANCE PROVISIONS: ADDRESSING HUMANITARIAN HARM

Erin Hunt | Mines Action Canada

In their remarks on Monday, Pope Francis and ICRC President Peter Maurer both cited a humanitarian imperative to prohibiting nuclear weapons. As the discussions continue on the principles, objectives, and core provisions of a ban treaty, the rights of victims should be recognized, and legal provisions for assistance to existing and possible future victims of nuclear detonations should be addressed in order to minimize the humanitarian harm caused by nuclear weapons.

Victim assistance, as it is currently understood, is not charity. It is a humanitarian obligation in line with the protection of civilians' agenda and the principles of international humanitarian law. At the most basic level, victim assistance is action taken to ensure that victims have their needs met and their rights respected.

While some of the effects of nuclear weapons do not have a parallel in conventional weapons, the impact of nuclear weapon use on a person's ability to fully realize their human rights is similar, therefore, there are lessons that can be learned from other treaties.

For a model of successful legal provisions to assist victims and ensure the fulfillment of their rights, we can look to the Ottawa Treaty banning landmines and the Convention on Cluster Munitions. Under these treaties, victim assistance includes emergency care, ongoing medical care, physical rehabilitation, psychological and social support, and economic integration, all of which aim to support victims' full participation in society and realization of their rights.

The nuclear prohibition treaty will need to include a definition of victim as well as outline the overall obligations of states. A rights-based understanding of a victim would include all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalization or substantial impairment of the realization of their rights caused by the detonation of nuclear weapons as well as their families and communities. Key obligations should include providing age- and gender-sensitive assistance, such as: medical care; rehabilitation; psychological support; social and economic inclusion; data collection; laws and policies; national plans; consultations with victims; mobilizing resources; and appointing a focal point person.

Principles of participation, inclusion, non-discrimination, and age- and gender-sensitivity should underline victim assistance provisions in the treaty. While affected states will have primary responsibility for assisting victims in areas under their jurisdiction or control, the nuclear weapon prohibition treaty should include a positive obligation for international cooperation.

There are, of course, nuclear weapons specific aspects to consider including the recognition that indigenous people have been disproportionately affected by nuclear detonations. On Tuesday, Sue Coleman-Haseldine shared the impact of nuclear weapon testing on her community in Australia and called for the treaty to "acknowledge the permanent damage done to people, land and culture, across generations..." States should heed her call.

Throughout the negotiations states should be calling for positive obligations to be included in the treaty. Such obligations related to victim assistance would be a concrete way to demonstrate their commitment to eliminating the humanitarian harm caused by nuclear weapons. Obligations to assist victims reflect a significant, positive measure to reaffirm the humanitarian focus of the treaty, while simultaneously attempting to mitigate the impact of these indiscriminate weapons. •

TODAY'S SCHEDULE

When	What	Where
08:00	Morning interfaith vigil	Isaiah Wall
09:00-09:50	ICAN campaigners meeting	CR B
10:00-13:00	Interactive discussion on topic 1	CR 4
13:15-14:30	<i>Side event:</i> What content for an efficient ban treaty	CR B
13:15-14:30	<i>Side event:</i> Positive obligations in a treaty banning nuclear weapons	CR B
15:00-18:00	Interactive discussion on topic 2	CR 4
18:00-19:00	ICAN campaigners meeting	CR B



SIDE EVENT: A CASE FOR A NUCLEAR WEAPONS BAN

Clara Levin | Svenska Läkare mot Kärnvapen (Swedish Physicians against Nuclear Weapons)

At the launch of the book *Civil Society Engagement in Disarmament Process – A case for a nuclear weapons ban*, four powerful and competent women spoke about the role of civil society and the path towards the ban.

“I’m not exaggerating when I say that civil society has shaped the nuclear disarmament fora,” Helena Nolan, diplomat from Ireland, said in reference to the importance of civil society to their work. She mentioned three key points. The first is the expertise, the research and knowledge that brings credibility. The second key point is the advocacy, that civil society raises public awareness. And the third key point is that civil society presents the challenge to, in Ms. Nolan’s own words, “make the governments do better.”

“It’s important that we learn from each other, and that we teach each other. And it is true, we do need to challenge each other to be and to do better,” she said.

“It’s the small interactions that can lead to a change.” Ray Acheson from Reaching Critical Will said, whose chapter in the book is entitled, *Revolt and Resistance*. She spoke of a collaborative dialogue that has laid the foundation for the ban treaty process, and how we need to be even more courageous and collaborative. Ms. Acheson also mentioned how the politics of the nuclear issue have been patriarchal and patronizing, but now, during the ban negotiations, that dynamic has begun to change. From the first day of the negotiations, it’s been interesting to hear the

detail and variety of what states describe should be in the treaty.

There has been a long history of civil society engagement in nuclear disarmament and treaties benefit when civil society is involved and engaged, Rebecca Johnson from Acronym Institute explained. A good treaty needs to focus on humanitarian impacts and the ban treaty was born of that. “It will become a legal tool for civil society, so we can hold states accountable,” said Dr. Johnson.

Hiroshima survivor Setsuko Thurlow was the last speaker on the panel. She talked about how ordinary people made a huge difference in Japan in the 1950s, for anti-nuclear activism, particularly women. Hibakusha were shamed into silence, not allowed to speak about their suffering and their experiences, the occupying forces confiscated items like dairies, poetry, photographs, and other things that showed how the people suffered. But after the US tested their biggest nuclear bomb, Castle Bravo, in the Pacific, Japanese women became active, opened their eyes and started a petition. This is how the biggest anti-nuclear movement in Japan got started. This phenomenon helped to spread awareness about Hibakusha suffering and build support and assistance for the atomic bomb survivors.

Lessons learned from this side event are that civil society is hugely important. We are the voice of the people, the ones who speak truth to power, and the ones that are fighting every day for a better world. •



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NEWS IN BRIEF

Allison Pytlak | *Reaching Critical Will of the Women's International League for Peace and Freedom*

The news in brief is not a comprehensive overview of all statements or positions. It is a brief summary of key points. Statements that have been made available are online at www.reachingcriticalwill.org.

Topic One (continued)

- Iran presented an outline for a potential preamble that included stated any use of nuclear weapons is contrary to international law, especially international humanitarian law (IHL). It further suggested including references to the obligations of states under the NPT; the advisory opinion of the International Court of Justice (ICJ); rejecting the concept of nuclear deterrence and acknowledging the catastrophic humanitarian consequences.

Topic Two

Use and threat of use

- Mexico, Bangladesh, Sweden, Sri Lanka, Iran, Brazil, Austria, Colombia, Indonesia, South Africa, Thailand, New Zealand, Ireland, the Philippines, Nigeria, Liechtenstein, Kazakhstan, Viet Nam, Cuba, Egypt, Guatemala, Peru, Malaysia, Switzerland, Jamaica, Trinidad and Tobago, and CARICOM support a prohibition on the use of nuclear weapons.
- Venezuela called for a prohibition on use, as well as on engaging in nuclear war planning, or establishing security doctrines that justify the use or threat of nuclear weapons.
- Sri Lanka, Thailand, Colombia, Indonesia, South Africa, Liechtenstein, the Philippines, Viet Nam, Iran, Bangladesh, Egypt, Malaysia, Guatemala, Cuba, Peru support a prohibition on threat of use.
- Chile said that threat of use must be the focus of the prohibitions. It is the foundation of nuclear deterrence, which has allowed for the existence and continuation of this kind of weapon.
- Austria, Mexico, Sweden, and Switzerland said threat of use is already covered in Article 2.4 of the UN Charter and asked if necessary to repeat it here to avoid questioning integrity and scope of a norm that has already been codified.
- Women's International League for Peace and Freedom (WILPF) advocated for inclusion of a prohibition on use and threat of use, as this would be compatible with what is in the NWFZ treaties and that the concept of deterrence is rooted in threat of use.
- The Lawyer's Committee on Nuclear Policy (LCNP) also strongly advocated for including threat of use,

also for reasons relating to weakening the rationale behind nuclear deterrence.

Stockpiling / possession

- Mexico, Sweden, Sri Lanka, Brazil, Colombia, Indonesia, Liechtenstein, Venezuela, Thailand, Ireland, Algeria, New Zealand, Bangladesh, the Philippines, Switzerland, Cuba, Kazakhstan, Egypt, Jamaica, Trinidad and Tobago, and CARICOM support a possession prohibition.
- Mexico, Sweden, Brazil, Austria, Colombia, South Africa, Venezuela, Ireland, Thailand, Algeria, the Philippines, Bangladesh, Liechtenstein, Iran, Peru, Viet Nam, Kazakhstan, Egypt, Switzerland, Jamaica, Trinidad and Tobago, and CARICOM support a prohibition on this.
- Sri Lanka further suggested including a timeline for stockpiling.
- Malaysia worried that if stockpiling is included as a main prohibition it will 'close doors' for countries with weapons stockpiled on their territory to join.
- WILPF advocated for a prohibition on stockpiling as important to the treaty, noting that provisions for a disarmament process could be negotiated later.
- Article 36 called for a clear framework under which any state with nuclear weapons would, upon accession, come under obligation to destroy their stockpiles in a time-bound and environmentally sound way.
- The International Campaign to Abolish Nuclear Weapons (ICAN) believes the treaty must contain a legal obligation to destroy nuclear stockpiles and establish a related framework.

Acquisition

- Mexico, Sweden, Sri Lanka, Iran, Austria, Colombia, Venezuela, Switzerland, Thailand, Ireland, Algeria, the Philippines, Liechtenstein, Viet Nam, Kazakhstan, Jamaica, Trinidad and Tobago, and CARICOM support an acquisition prohibition.

Development

- Mexico, Austria, Bangladesh, Colombia, Indonesia, Iran, Venezuela, Thailand, Ireland, Algeria, the Philippines, Liechtenstein, Malaysia, Nigeria, Guatemala, Kazakhstan, and Egypt support prohibiting development.
- Sweden said that if included, it must be "crystal clear" that rights to develop nuclear energy in accordance with the NPT will not be affected.
- Colombia, Kazakhstan, and Iran called for exempting nuclear energy from the prohibitions including trade.



News in brief, continued

- Ireland explained its understanding that “development” could also encompass “testing” and that this would include computer simulated testing, but requires further discussion and have the view that ‘develop’ means capturing design, testing and production, and indeed anything required to bring a weapon into existence and operation.
- Algeria, the Philippines, and Switzerland spoke of right of states to peaceful use.
- Malaysia also referenced “manufacture” and “production”.
- Guatemala also referenced “production”.
- Cuba called for inclusion of “research and design for modernization”.
- WILPF called for a comprehensive prohibition on development and production.
- LCNP made the case for including research, design and testing among prohibited activities.

Testing

- Colombia, Thailand, Iran, New Zealand, Guatemala, Bangladesh, Kazakhstan, Jamaica, Trinidad and Tobago, CARICOM and Venezuela support a prohibition on testing.
- South Africa supports prohibiting testing, referencing that it should include new forms of testing, such as sub-critical testing; Cuba made a similar statement.
- Ireland fully notes the key role of the Comprehensive Test Ban Treaty (CTBT) but expressed concern over omitting a specific prohibition on testing.
- Austria is not convinced of the value of added provisions on testing.
- Malaysia stated that testing could be addressed in the preamble because almost all countries are signatories to the CTBT. Which means this ought to be a simple prohibition unless political divisions develop about what constitutes testing.
- WILPF supports including a prohibition testing to capture all methods of testing and to reinforce the norm against testing.

Transfer

- Austria, Brazil, Bangladesh, Colombia, South Africa, Ireland, Iran, Algeria, Nigeria, Guatemala, Egypt, and CARICOM support prohibiting transfer.
- Liechtenstein referenced “export” and “import” specifically.

- Cuba mentioned the transfer of nuclear weapons through waters as well as ports and airfields.
- Senzatomi, an Italian civil society group, spoke from their experience as country that hosts nuclear weapons under the rubric of nuclear sharing. They called for a prohibition on transfer, as well as deployment of nuclear weapons or parts.
- WILPF supported a prohibition on transfer.

Transit or transport

- Venezuela called for a prohibition permitting nuclear weapons in national air space, through national territory or be stationed or deployed in a national territory
- Austria does not support a prohibition on this because it would require elaborating practical issues; Malaysia voiced a similar position.
- Viet Nam supports a prohibition on transport, so does Kazakhstan and Egypt.
- Bangladesh referenced transit only.
- CARICOM and Jamaica called for a prohibition on transit and transshipment.
- WILPF supported prohibitions on transit and transshipment do the risks and its relation to deployment.

Deployment and stationing

- Mexico, the Philippines, Malaysia, and Thailand referenced a prohibition on both deployment and stationing.
- Sweden, South Africa, Algeria, Guatemala, and CARICOM referenced only deployment.
- Brazil said that stationing must be included, because this is incompatible with prohibitions on possession and stockpiling. Peru, New Zealand, Jamaica and Egypt also referenced stationing.
- Austria sees this as covered by a prohibition on assistance.
- Colombia referenced “bases”.
- Indonesia called for a prohibition on “deployment, transit, visitation or over flight of vessels or aircraft carrying nuclear weapons”.
- Article 36 said the treaty should not allow states parties to continue in relationships whereby nuclear weapons are maintained on their territory.
- WILPF supported prohibitions on deployment and stationing.

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News in brief, continued

Assisting, encouraging, inducing

- - A prohibition on these actions has support from Mexico, Colombia, Thailand, Ireland, Liechtenstein, Nigeria, Bangladesh, New Zealand and CARICOM.

Financing, as a form of assistance

- Sri Lanka, Nigeria, Bangladesh, and Cuba support prohibitions on “assisting, financing or encouraging”.
- Austria said a prohibition on “assistance” would also apply to financing.
- Liechtenstein referenced financing and brokering.
- Colombia, Cuba, Indonesia, Thailand, and CARICOM support prohibiting financing.
- Algeria said the treaty should apply to dual-use items.
- Ireland and New Zealand expressed interest in exploring this provision more.
- Many civil society groups support a financing prohibition. PAX presented a longer statement that outlined reasons for this and examples of success, referencing the International Convention for the Suppression of the Financing of Terrorism and clauses in other disarmament treaties. WILPF also spoke to this point.

International cooperation and assistance

- Sri Lanka, Viet Nam referenced.

Positive obligations

- Sri Lanka said rights of victims are “fundamental”.
- Thailand, Brazil, Viet Nam, Cuba, Algeria, Bangladesh, CARICOM, and Switzerland support victim assistance or recognizing the rights of survivors.
- Venezuela called for recognizing the victims of the use and testing of nuclear weapons, with “greater attention to the security and pollution problems related to nuclear programmes”. It advocated for providing assistance to victims and recovery of the environment, including “safe resettlement of any displaced population and restoring economic productivity”.
- Viet Nam, Guatemala, Bangladesh, and Switzerland also referenced environmental support.
- CARICOM supported risk education.
- WILPF also spoke about risk education and called for recognizing the rights of victims and survivors of use and testing, and the need to rehabilitate territories.
- Article 36 spoke to the importance of provisions on environmental remediation. They also advocate for the rights of victims to be fully addressed.

- ICAN delivered a similar position regarding the full realization for the rights of victims and an obligation to ensure rehabilitation, to the greatest extent possible, of affected environments.

Elimination

- Sweden advocated including a reference, but not an elaborate system.
- Sri Lanka said that an obligation to move towards total elimination must be included.
- Brazil said that prohibition often comes before elimination; the chemical weapons process is a good example.
- South Africa suggested including a provision dealing with destruction, an initial and final declaration, as well as verification arrangements that would apply to any state possessing nuclear weapons joining the treaty. It further suggested a ten-year timeline to complete destruction, with a verification process to follow. South Africa stated that the type of instrument that it envisages would not include all elements that may be necessary in a comprehensive Nuclear Weapons Convention, citing broad agreement that extensive verification arrangements related to reduction are not appropriate here, nor is the concept of a framework agreement.
- The Philippines recommends a provision for establishing a timeframe for complete elimination once a nuclear weapon state accedes, along with verification.
- Cuba spoke of the time-bound destruction of nuclear arsenals, including those in the territory of another state.
- Peru said that nuclear weapons should be destroyed within a given time frame; appropriate protocols for verification can be discussed.
- Nigeria referenced a time-bound, transparent and verifiable path for the irreversible elimination of nuclear weapons.
- New Zealand expressed that it is interested in hearing the views of colleagues on the best approach to this topic, and whether it is something to articulate and develop now, or in a later stage.
- ICAN and its partner organization WILPF stated that detailed provisions for the verified destruction of nuclear weapons should be negotiated at a later stage such as through protocols or other legal instruments.

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News in brief, continued

Verification

- Sweden suggested following the model of Additional Protocols of the IAEA.
- Algeria supports a strong verification regime.
- Guatemala spoke to having detailed provisions for elimination but agreed by states parties through other means.
- Switzerland spoke to the need for inclusion of the highest verification standards such as by the International Atomic Energy Association (IAEA).
- Guatemala referenced having modalities to ensure compliance and implementation of measures in case of non-compliance.
- Sweden suggests reporting to states parties or review conference.
- Egypt called for the establishment of NWFZ's globally and to reject the role of nuclear weapons in strategic doctrines.
- Switzerland said that the treaty should impede or constrain security or military cooperation, when doing so is not in contradiction with the treaty's purpose.
- The International Committee of the Red Cross (ICRC) said that the primary goal of negotiations is to establish a prohibition that must be clear and robust, and suggested that Article 1 of the Chemical Weapons Convention is a good model in this regard.

Relationship to other states

- Sweden suggested a chapter or protocol envisioning relationships with future states parties. Any verification system would require their participation.
- Liechtenstein referenced universalizing the treaty, and specifically the importance of disarmament education as a positive obligation
- Colombia spoke about the importance of finding ways to engage with states that are not participating and have a different view on this issue
- South Africa said it may be necessary to consider provisions related to involving nuclear umbrella states.
- Soka Gakkai International encouraged the conference to incorporate into the text a recognition that nuclear weapons are unacceptable because of their inhumane nature and ensure that suffering of the hibakusha is never repeated.

General

- Mexico supports broad prohibitions.
- Sweden supports a "reasonable scope" that does not introduce many new obligations.
- Sri Lanka noted similarities to conventions on chemical and biological weapons as a basis; Guatemala stated a similar observation.
- Brazil spoke of the mounting urgency for action because of a lack of timeline in the NPT for disarmament.
- Colombia said that that new prohibitions cannot be contrary to other obligations.
- Colombia noted that fissile materials is currently being discussed elsewhere and this should be taken into account should the ban treaty choose to take an approach to it.
- Mexico questioned including prohibitions around actions already covered by instruments such as the CTBT or the FMCT. This is not the space to correct errors or omissions in other instruments.



BAN THE BOMB: PLEDGE FOR A SAFER WORLD

Kimberley Brisse | *Ban All Nukes Generation*

On Tuesday evening, BANG partnered with NYU's International Relations Society, as well as PAX, Peace Boat, and Hibakusha Stories to host "Ban the Bomb: Pledge for a Safer World" for students and others to learn about nuclear disarmament, and to hear more about the goals of this week's treaty negotiations at the United Nations.

Attendees heard from Mr. Toshiko Fujimori, a survivor of the Hiroshima atomic bombings and Assistant Secretary General of Nihon Hidankyo (Japan Confederation of Atomic and Hydrogen Bomb Sufferers Organizations). They also heard from Susi Snyder from PAX and George-Wilhelm Gallhofer, Counsellor for Disarmament Affairs of Austria.

The event brought out several NYU students, as well as members of civil society. The group was moved by the

powerful account of his experience in Hiroshima told by Mr. Fujimori.

Following his testimony, Susi and George-Wilhelm elaborated on the devastating humanitarian effects of nuclear weapons, and explained some of the existing treaties and norms surrounding nuclear weapons. They also talked about the existing mandate that made these negotiations possible, and shared their views on why this ban treaty will be effective.

The speakers left attendees with several options to continue working toward a world without nuclear weapons, including visiting the websites dontbankonthebomb.com and nuclearban.org, attending the Women's March to Ban the Bomb in New York on June 17 (womenbanthebomb.org), and getting involved with organizations, such as BANG and Amplify. •

SIDE EVENT

Positive obligations in a treaty to prohibit nuclear weapons

Thursday 30th March 2017

13.15 – 14.45

Conference Room F

A new legal instrument banning nuclear weapons should include not only a comprehensive set of prohibitions, but also positive obligations on states parties – to address the rights of victims, remediate affected environments, destroy stockpiles, and assist other parties to meet their obligations.

Positive obligations would strengthen the treaty, its operation and impact. This event will cover some of the provisions that states should consider adopting in this area, and highlight why these could be particularly important to the prohibition treaty.

Article36

contact: elizabeth@article36.org



Injured civilians in Hiroshima, 6 August 1945 (UN photo/Yoshito Matsushige)

Moderator: Matthew Bolton, Pace University

Panel:

- Richard Moyes, Article 36
- Bonnie Docherty, International Human Rights Clinic, Harvard Law School
- Erin Hunt, Mines Action Canada