NUCLEAR BAN *DAILY*

Reaching Critical Will

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IN THIS ISSUE

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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PATHWAYS TO THE BAN AND BEYOND

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

On Wednesday afternoon, states participating in the conference to prohibit nuclear weapons found themselves ahead of schedule, so the President suggested they engage in an interactive dialogue with experts on some of the issues discussed so far. Thursday's conversation amongst states, civil society, and the ICRC provided a dynamic space in which to consider several of the key issues upon which there are differing views.

The format seemed extremely useful to allow thoughtful deliberation and exchanges, which will hopefully lead to increasing convergence in the months ahead. It also offered a useful example of how the United Nations could and should operate in terms of open, fluid conversation amonst states, international organisations, academics, and non-governmental organisations. The pursuit of a treaty banning nuclear weapons has been a joint effort between states and the International Campaign to Abolish Nuclear Weapons, so it feels natural for civil society to be engaging with states in discussing the elements of the future instrument.

While some points of divergence remain, it does seem clear that the elements of this instrument are really about pathways: closing off the pathways to develop, retain, or support nuclear weapons; and opening pathways for disarmament.

The nuclear weapon ban treaty is a categorical rejection of nuclear weapons. Its overarching objective is to help facilitate the elimination of nuclear weapons. This means it needs to set out prohibitions and obligations that stigmatise nuclear weapons such that doctrines of "nuclear deterrence" are no longer legally, politically, and socially sustainable; affect the economic incentives for nuclear weapon production and maintenance; and provide legal prohibitions of any activity that supports the existence of nuclear weapons.

At the same time, as several states and civil society presenters pointed out on Thursday, this treaty can and should be seen as part of the larger architecture of general and complete disarmament, and of peace, security, and human rights more broadly. Essentially all supporters of the ban treaty have articulated that this treaty is not an end itself, but a tool to advance peace, justice, and the prevention of humanitarian and environmental harm. In this sense, it is a disarmament treaty—an instrument that should be crafted with an eye on its objective of being a useful mechanism to help achieve and maintain a nuclear weapon free world.

Getting there requires creativity, especially when the nine states that possess nuclear weapons have exhibited no good faith commitment to nuclear disarmament, and, quite the opposite, are investing economically, politically, and culturally in the reinvigoration of the nuclear arms race. Creating a pathway to disarmament in this environment may appear impossible, but it is not.

Getting to the point where we are now may have seemed impossible to some not that long ago. Yet here we are. Agreeing to negotiate a prohibition treaty is, as the Brazilian delegation said today, a breakthrough. It is nothing more than a lack of imagination to believe that changing the status quo is impossible. Change is possible, and it is necessary, but we have to work for it. We have to take risks and be bold.

It was clear from the dialogue on Thursday, and from other sessions during the past week, that some states may be constraining themselves to existing frameworks, methods of work, and understandings about the world. It might be useful for us all to consider how to got to where we are now, what changes were required to see 123 states voting in favour of a resolution in the

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UN General Assembly against the wishes (and in some cases, the strict orders) of all five permanent members of the UN Security Council.

What does this mean for the so-called status quo? What does this mean for what is possible?

States engaged in these negotiations in good faith have an opportunity to do something that perhaps has not been done before. This is not the time to set up a new treaty that is either implicitly or explicitly permissive of the behaviour of a comparatively small number of states that have either chosen or been instructed not to participate in the negotiations. This is the time to set out a new treaty that fundamentally changes the way we do business when it comes to nuclear weapons.

This about delegitimising deterrence and outlawing possession. It is about stigmatising the weapons that risk catastrophic human suffering and potentially the end of the world. That seems like a good pathway for us to be on collectively. •

The final edition of the Nuclear Ban Daily, which will provide coverage of Friday's meetings as well as a wrap-up of the week, will be released online early next week. To receive it by email, please subscribe at www.reachingcriticalwill.org/ disarmament-fora/nuclear-weapon-ban.

"MODERNIZATION" VIOLATES EVERY LIKELY PROHIBITION IN A BAN TREATY

Rick Wayman | Nuclear Age Peace Foundation

According to Hans Kristensen of the Federation of American Scientists, who spoke at a side event in Conference Room B on Tuesday, all nine nuclear-armed countries are "modernizing" some or all aspects of their nuclear arsenals. This might go some way in explaining why many of these countries so vehemently oppose the good faith ban treaty negotiations that began this week in New York.

Taking as an example the United States' actual and proposed modernization plans, every single likely prohibition contained in a nuclear ban treaty would be violated.

Stockpiling, possession, development, production, and deployment would all likely be prohibited under this treaty. Additional proposed prohibitions include the use, threat of use, transfer, testing, and financing.

It is plain to see how the first five elements listed would be violated by a "modernized" arsenal. But what about the rest?

The use and threat of use of nuclear weapons are implicit in the policy of nuclear deterrence. As President Trump is rumored to have asked about nuclear weapons, "If we have them, why can't we use them?"

Transfer of nuclear weapons is a key to the modernization of the United States' B61-12 nuclear bomb. Widely considered to be the world's first "smart" gravity bomb, this "modernized" bomb, its guided tail fin kit, and variable explosive yield would be transferred to the territories of five non-nuclear weapon states (Belgium, Germany, Italy, Netherlands, and Turkey) under the auspices of NATO.

There are many voices within the United States calling for a resumption of full-scale underground nuclear testing in Nevada. Some believe that it is desirable as a geopolitical message to "foes" such as North Korea. However, proposed US nuclear modernization programs are introducing more and more uncertainty into the stockpile by combining different elements of different warheads into new weapons. These proposed combinations, which are becoming more and more exotic, have never been tested together. Once billions of dollars and years of work have been shoveled into the new warheads, pressure to conduct full-scale tests would be significant.

A prohibition on financing of nuclear weapons would cover financial or material support to public and private enterprises involved in any of the activities covered in the treaty. Predicted to cost at least $1 trillion over the next 30 years, such a prohibition would have meaningful impact. Even the nuclear weapon design labs in the United States are operated by for-profit entities. The companies currently involved in producing and financing nuclear weapons are well known thanks to the investigative work of PAX in their regular "Don't Bank on the Bomb" reports.

While the nuclear-armed states are unlikely to join a ban treaty at its inception, codifying the illegitimacy and illegality of nuclear weapons into international law will be a significant step leading to elimination. Delegitimizing, slowing, and stopping the "modernization" programs of nuclear-armed states is of immediate importance, and is another reason why a ban treaty is urgently needed. •

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.

Procedural issues

- Indonesia, Morocco, and South Africa were elected as Vice Presidents.

Topic 2

- The Holy See called for the treaty to assist in the resettlement of people displaced, and include provisions on clearance. It also called for obligations to raise awareness on the humanitarian impact of nuclear weapons and said the reallocation of resources is also important.
- The Solomon Islands would like to see positive obligations in the operative parts of the treaty, pertaining to remediation, risk education, victim and survivor assistance, promoting the treaty through disarmament education, and active discouragement of violations.
- Ecuador had outlined on Wednesday a detailed statement of the prohibitions it would like to see in the treaty, including use, threat of use, storage, production, testing (including computer based design and sub-critical tests), development, transfer, transit (including maritime and in national airspace), commercialization, and financing.

Interactive discussion on topic 1

The meeting then went into an interactive discussion about Principles and Objectives, kicked off by three presentations from technical experts.

- Lou Maresca (International Committee of the Red Cross) explained that a treaty's preamble is the place to clarify ambiguity and fill gaps that can result in differences of interpretation. He referenced the ICRC statement from Wednesday that outlined its view on key elements to include. He also noted that preambles serve an important public communications function.
- John Burroughs (International Lawyers Association Against Nuclear Arms) stated that the right to life, as mentioned by IPPNW in a statement, is important to emphasise in a preamble. So would be article VI of the NPT, and the opinion of the International Court of Justice (ICJ), which is an authoritative interpretation of article VI and doesn't undermine it in anyway, and also a reaffirmation of the Marten's clause. He encouraged the preamble to welcome the role of the ICRC and ICAN. He also suggested the operative paragraphs could include prohibitions on development, design, producing, testing, and other activities.
- Ray Acheson (Women's International League for Peace and Freedom) posed a framing question - if the overarching goal is elimination then how do we get there through this treaty? It will have to have content that has disincentives to continue the status quo and incentives to reject nuclear weapons and join the prohibition. Stockpiling should be included both in the preamble and as a core prohibition. The gendered rights of victims and affected indigenous communities must be reflected in the preamble. She further advised that universalisation should not be pursued at the expense of strength.

States were invited to respond and ask questions, in an unofficial capacity. The highlights found below do not reflect official government positions, and are not exhaustive of the entire debate.

One area of emphasis that emerged from comments from Mexico, Brazil, and South Africa was around the role that the different parts of a treaty play in reinforcing one another and the potential that institutional arrangements can offer in terms of how obligations of states that accede later on can be dealt with.

Chile spoke about how this treaty should be seen as part of the broader peace and security architecture.

Mexico asked about the opinion of the ICJ and how to incorporate it in a preamble, as there are different opinions about it in relation to its standing on the illegality of the use of nuclear weapons. Mr. Burroughs suggested that if it becomes problematic, the ICJ doesn't need to be specifically named in the preamble but rather that the actual language could be used.

Guatemala asked about including elements from the treaties that establish nuclear weapon free zones. Ms. Acheson suggested that it is important that the treaty build on the regional norms those treaties have established, and draw upon the highest standards they set in terms of prohibited activities.

Venezuela asked why there appears to be more support for positing the treaty as complementary to or filling the gaps of the NPT, particularly article VI, than for the Comprehensive Test Ban Treaty (CTBT). New Zealand pointed out that it is equally important to refer to the CTBT because it has not entered into force, which presents an evident legal gap that the ban could help fill. Ms. Acheson agreed that a ban treaty prohibition on testing would be fully compatible with the CTBT.

Guatemala asked to expand on the topic of use and threat of use, and Venezuela asked if these activities

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News in brief, continued

should be covered in the preamble or the prohibitions section. Mr. Burroughs explained that because of their very nature, the use of nuclear weapons is illegal under customary international law and cannot possibly be used in compliance with international humanitarian law (IHL). Stating the illegality of both use and threat explicitly in the preamble is a way to reinforce the emerging norms around these two activities.

Brazil expressed support for language on the 'right to life' in the preamble, and shared that there are two general comments from the Human Rights Council on that affirm the link between human rights and nuclear weapons. The comment currently being drafted undermines this, however.

From civil society, Dr. Matthew Bolton of Pace University queried if the preamble could place the treaty in the broader context of the pursuit of disarmament, or acknowledge the range of voices that have propelled this instrument. Akira Kawasaki of Peace Boat asked what examples exist in IHL about the rights of victims that can be modeled for the preamble. Josefin Lind asked if how we can ensure that total elimination is an important part of the treaty's preamble.

Venezuela noted that there seem to be largely two positions being outlined so far regarding the objectives of the treaty: a simple prohibition possibly followed by the negotiation of something more comprehensive, or a prohibition that sets the basis for disarmament, elimination and the verification of such? Iran noted that there is not verification or monitoring included in the NPT with respect to Article VI, and this is an imperfection we should not repeat in the ban treaty. Mexico stated that to be comprehensive, we would need the involvement of nuclear-armed states, which is unlikely in the short term. This is a different path to elimination, and we are seeking a prohibition that will consist of many pieces. Ms. Acheson agreed with Mexico that there are many possible paths to disarmament and the prohibition treaty should ensure to leave them all open, but should not seek to set out the process for elimination itself at this stage.

Interactive discussion on topic 2

The afternoon featured another informal discussion and debate, this time focusing on Prohibitions. It opened with expert presentations as follows:

- Richard Moyes (Article 36) summarised the general state of play in the room, based on statements delivered this week. He noted some areas where there is still work to be done and decisions made, such as how to balance the scale of the preamble with key legal provisions and the relationship between the ban and other instruments. Mr. Moyes brought up the subject of having definitions in the treaty, explaining that they can both direct states through a negotiation but add complexity.
- Gaukhar Mukhatzhanara (Center for Nonproliferation Studies, Middlebury Institute of International Studies at Monterey) delivered a detailed technical presentation that spoke primarily to testing, verification, and elimination. She recommended including a prohibition on testing, but one that is linked explicitly to the CTBT. There are two kinds of verification; one linked to the process of disarmament and that relating to general treaty compliance. For the latter, the existing safeguard systems of the IAEA would suffice but the former is more complicated, and impossible to negotiate here without the presence of nuclear-armed states. This leaves two approaches. The first is to ask nuclear-armed states wanting to acceded to first complete disarmament, and then join. This will take a longer time but gives flexibility to the negotiations underway. The second would be to join first and then complete disarmament. This can be handled through separate agreements negotiated at the time of accession; the Chemical Weapons Convention could be a useful model.
- Zia Mian (Princeton University) set out what he sees as the two core challenges this process faces. The first is to affirm a shared set of expectations about the status of nuclear weapons in the world. The second is to establish an architecture through which we can address that problem. His presentation spoke to themes of transparency and accountability and explained the multiple dimensions of testing as an activity to make the point that it is not limited only to development. He supported a protective clause for whistleblowers, and encouraged states to keep the treaty process inclusive of international organisations, civil society, and other actors.

States were again invited to respond and ask questions, in an unofficial capacity. The highlights found below do not reflect official government positions, and are not exhaustive of the entire debate.

Ecuador raised questions about how states will approach and seek to define terms like assistance, transit, development, and testing, all activities that the presenters had brought up. It expressed the view that if the use of nuclear weapons is a crime against humanity, then it stands to reason that threatening to do so is also such a crime.

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News in brief, continued

South Africa would like to discuss definitions, yet is also mindful of the time available for negotiations. Mexico agreed it would be good to have definitions, but noted that some treaties, such as the NPT, are successful without them. Iran is supportive of definitions.

Transit was picked up by other states. Venezuela and Mexico noted the practical and logistical difficulties in enforcing a transit prohibition. Austria also noted that it is difficult for a state to have full control of all of its borders. Mr. Mian pointed out that UN Security Council Resolution 1540 provides a precedent for how to address this, noting that inclusion in the ban treaty would advance the process of implementing already agreed prohibitions. Thailand, and then Malaysia, explained about some of the unique provisions to the Bangkok Treaty, which take into account maritime jurisdiction.

Ireland appreciated the expert advice on the subject of testing, particularly that there are testing activities which are not covered by 'development'. Thailand expressed that it would be appropriate to include testing as a prohibited activity, in a comprehensive way. This could also strengthen the CTBT. Mexico stated that testing, as part of re-deployment, is helpful to know about but may not be applicable to this treaty given the nature of other potential obligations.

Ireland asked about what types of institutional arrangements would be useful to ensure compliance with the treaty, suggesting peer reviews at meetings of states parties. Iran expressed support for a monitoring mechanism to increase transparency and detect if any states parties are not abiding by obligations.

The Holy See suggested that the 'right to life' approach could be a way to connect the dots between recent developments in IHL with the Universal Declaration on Human Rights and the ban treaty.

Cuba asked about the nature of the relationship between states parties and nuclear-armed states, suggesting that relationships or cooperation must be pursued in a way that respects the provisions of the ban treaty, particularly those relating to military matters.

Switzerland put forward a question about how to engage with a country that might join the ban, but is not part of the NPT. An understanding about the how the ban treaty will interact with the IAEA would be necessary. Brazil noted the importance about crafting a treaty that can adapt to future scenarios. Iran emphasised the need to predict for the long term.

Sweden spoke about the importance of trust, both between states parties and also in future, between states parties and nuclear-armed states that may join, and was interested in what the presenters had to say about verification. Egypt put forward that the strategic objective of any agreement is universality, which in this case means the accession of nuclear-armed states. Iran raised questions about how to balance universality goals with ambitions for disarmament and elimination.

Switzerland asked questions about what the verification requirement would be for a state that wants to accede, given the wide range of views on this. Ireland noted that it was helpful to see verification presented in terms of treaty compliance and stockpile destruction. Uganda asked how the IAEA would interact with the ban treaty and also about if becoming an NPT state party would be a pre-condition to acceding to the ban. Iran raised questions about engaging with IAEA safeguards and verification mechanisms. - Egypt reminded the room that there are good points of reference on some of these subjects in the final report of the open-ended working group, citing parts of the document that pertain to elimination, verification, and other aspects.

Tim Wright of ICAN asked how prohibitions can be expressed in a way that prevent states from claiming nuclear weapons are necessary for security, as well as how to address the concept of extended deterrence.

Erin Hunt (Mines Action Canada) stressed the importance of positive obligations, particularly concerning victim assistance. This was also a point the Mr. Moyes emphasised in responses throughout the session, as ways to take practical action. Ireland said that the role of survivors has been very important. Bonnie Docherty of Harvard University asked about environmental remediation, as well as recommending building on the positive obligations of instruments such as the Convention on Cluster Munitions. •

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	Topic 3	CR 4
13:15-14:30	*Side event*: Looking towards a treay banning nuclear weapons	CR B
15:00-18:00	Topic 3; wrap-up	CR 4
18:00-19:00	ICAN campaigners meeting	CR B

SIDE EVENT: POSITIVE OBLIGATIONS IN TREATY TO PROHIBIT NUCLEAR WEAPONS

Elizabeth Minor | Article 36

At this discussion chaired by Matthew Bolton of Pace University, panellists addressed how the ban treaty should include obligations on states parties regarding victims and the environment, as well as stockpile destruction.

Richard Moyes of Article 36 argued that the treaty should include a straightforward obligation to destroy all stockpiles as soon as possible. It will be important to avoid text that could be used by states as an excuse not to join the treaty later, such as on verification. States with stockpiles acceding to the treaty could be obliged to submit a time-bound plan that other parties would have to review and accept. Stockpile destruction is a key ongoing activity that contributes to final elimination, and including it would be consistent with other treaties.

Bonnie Docherty of the International Human Rights Clinic at Harvard Law School noted that including an obligation on environmental remediation is consistent with calls for the treaty to be lean and easily negotiated: previous humanitarian disarmament treaties have included obligations on assessment, clearance, and reducing risk, which can be used as a basis. The levels of harm caused by nuclear weapons mean that environments are unlikely to be restored to their previous state, but including an obligation and guidance will make a contribution and is essential. More than 20 states have mentioned the environment at this conference already.

Erin Hunt of Mines Action Canada highlighted that given the humanitarian aims of the treaty, people must be kept at its centre. The particular impact of nuclear weapons on indigenous people should be recognised in the preamble. The treaty should include an obligation on victim assistance drawing on the Anti-Personnel Mine Ban Treaty (MBT), Convention on Cluster Munitions (CCM), and the Convention on Certain Conventional Weapons Protocol V. All states participating in the negotiations are party to one or more of the MBT, CCM, or the Convention on the Rights of Persons With Disabilities, so have already accepted the basic responsibilities that underpin victim assistance. At least 17 states have mentioned victims' rights or assistance at the conference.

Bolton noted previous treaties have also included important provisions on communicating and advancing norms of the conventions. During questions, panellists affirmed the importance of an international cooperation and assistance provision to support the implementation of positive obligations—though the primary responsibility would lie with the affected state to ensure the rights and protection of their own populations. •

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Side event: Looking towards a treaty banning nuclear weapons

At this side event the participants will summarise the week of negotiations and briefly analyse the week. We will also be looking ahead to the coming intersessional period and the negotiations in June/July. What will be the key issues to solve and what will be the most crucial points when the states reconvene in June? What will be the focal actions for ICAN to ensure pressure on states are high during this period?

Participants:
Helena Nolan, Director, Disarmament and Non-Proliferation, Department of Foreign Affairs and Trade, Ireland
Jorge Lomonaco, Ambassador, Permanent Mission of Mexico to the United Nations, Geneva
Lou Maresca, Legal Adviser, Arms Unit, Legal Division, ICRC
Beatrice Fihn, Executive Director, ICAN.
Ray Acheson, Director of Reaching Critical Will (Women's International League for Peace and Freedom) and member of ICAN International Steering Group

Facilitator:
Akira Kawasaki, member of ICAN International Steering Group for Peace Boat

When and where?
Friday 31st March, 2017
13.15-14.45
Conference Room B

ican
international campaign to abolish nuclear weapons

THE NUCLEAR BAN TREATY AND GENERAL AND COMPLETE DISARMAMENT

Kevin Miletic | SCRAP

Why did the statements of Brazil, Costa Rica, Ecuador, Guatemala, Malaysia, Morocco, Peru, and Venezuela, amongst others, make reference to general and complete disarmament in the context of the nuclear weapon ban treaty?

Most major multilateral disarmament treaties describe themselves in the preamble as one step towards the ultimate goal of general and complete disarmament (GCD). Indeed, GCD is embedded in almost all WMD-related treaties, including Article VI of the NPT; Bangkok Treaty; Biological Weapons Convention; Chemical Weapons Convention; Comprehensive Nuclear-Test-Ban Treaty; Convention on Certain Conventional Weapons; Pelindaba Treaty; Sea-Bed Treaty; Treaty of Tlatelolco; and Treaty on Nuclear-Weapon-Free Zone in Central Asia.

By filling the gap on the prohibition of nuclear weapons, the nuclear weapon ban treaty will contribute to making significant progress towards that goal and reinforcing the existing broader disarmament architecture. As such, the ban treaty should not be viewed as an end in itself but rather as a critical step towards nuclear disarmament in the wider context of GCD. Therefore, the treaty's preamble should include a reference to states' ongoing commitment to pursue both nuclear disarmament and general and complete disarmament. •

The Women's March to Ban the Bomb is a women-led initiative building on the momentum of movements at the forefront of the resistance, including the Women's March on Washington. It will bring together people of all genders, sexual orientations, ages, races, abilities, nationalities, cultures, faiths, political affiliations, and backgrounds to march and rally at 12:00-16:00 on Saturday, 17 June 2017 in New York City in support of negotiations of a nuclear weapon ban treaty at the United Nations!

Check out our Call to Action, become a partner, or sign up for more information:

www.womenbanthebomb.org