
The Public Conscience Awakens

Draft Nuclear Weapons Ban Treaty – An Overview

Amela Skiljan, IPB Coordinator

On Monday, 22nd of May, the Draft Convention on the Prohibition of Nuclear Weapons was publicly released by Ambassador Elayne Whyte Gomez, the president of the United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards their Total Elimination.

It is the result of the first discussion round held in New York 27-31.03.2017.

It builds on “the catastrophic humanitarian consequences that would result from any use of nuclear weapons and the consequent need to make every effort to ensure that nuclear weapons are never used again under any circumstances”. Civil society has been warning from the catastrophic humanitarian consequences of nuclear weapons nuclear weapons for more than 70 years, so it is appropriate and necessary that this paragraph is at the very beginning of the preamble. In this regard, the preamble pays respect to “victims of the use of nuclear weapons (Hibakusha) as well as of those affected by the testing of nuclear weapons”. The draft contains a positive obligation for states to assist victims of use or testing of nuclear weapons.

The Draft Treaty gives a very strong prohibition in its operative section using the wording “never under any circumstances” at the very beginning of Article 1. Accordingly, it is prohibited to “develop, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices”. It is more than necessary to include all of these actions in this prohibition provision.

The use of nuclear weapons is prohibited in Art. 1.1. (d). Moreover, the Draft declares that “any use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law”. This paragraph reinforces the exciting law that already prohibits the use of nuclear weapons. As the Treaty relays on international law, it reinforces its provisions and makes them clearer and stronger.

However, the draft does not mention the threat of use of nuclear weapons. The illegality of the threat of use was intensively discussed during the first round of the negotiations. There were arguments in favour of this prohibition relaying on the UN Charter or on the fact that many states relay on nuclear deterrence. By the prohibition of the threat of use the cooperation or reliance on nuclear weapons would be undermined.

The Draft, further, prohibits nuclear weapon tests. Furthermore, it reaffirms “the vital importance of the Comprehensive Nuclear-Test-Ban Treaty as a core element of the nuclear disarmament and non-proliferation regime”. Besides the CTBT, the Draft mentions the NPT reaffirming its crucial importance and it clearly states that it does not affect the obligations of the state parties under the NPT.

Bank Account in Germany:

Account Holder: Unterstützung des Internationalen
Friedensbüros
IBAN: DE23 1005 0000 0190 6331 58
BIC (SWIFT): BELADEBEXX
Bank: Berliner Sparkasse

Bank Account in Switzerland:

Account Holder: International Peace Bureau
IBAN: CH53 0844 0140 0492 9009 0
BIC (SWIFT): COOPCHBB
Bank: Banque Coop

Transfer of nuclear weapons or the (direct or indirect) control over nuclear weapons is prohibited by this Draft as well. To receive the transfer or the control is also prohibited. This provision is especially important in terms of nuclear sharing, as it addresses situations in which are hosting countries involved such are Germany, Italy, Belgium, the Netherlands and Turkey.

The Draft has no clear prohibition on financing nuclear weapons. However, it prohibits to “assist, encourage, or induce, in any way, anyone to engage in any activity prohibited ... under this Convention”. To seek or receive any assistance is prohibited as well. Financing the production of nuclear weapons could be seen as a form of assistance, but this is a point, which has to be further discussed in the second negotiation round. A clear prohibition on financing is definitely necessary.

The Treaty would come into force 90 days after the 40th ratification. Considering that 132 have participated in the first discussion round, this is a relatively low threshold. This would mean that there is a Treaty prohibiting nuclear weapons on the international law level. As more states join this Convention, the “embarrassment effect” of those who did not grows. The process of stigmatizing nuclear weapons would have more and more success.

Another important question (not) addressed by the Draft is the accession of nuclear weapons states. The Draft has an article on measures for states that have eliminated their nuclear weapons. It requires states that “have manufactured, possessed or otherwise acquired nuclear weapons after 5 December 2001, and eliminated all such weapons prior to the entry into force of the Treaty for it, to cooperate with International Atomic Energy Agency for the purpose of verification”. Unfortunately, the draft does not mention states that have stationed nuclear weapons in this regard, which would be important for hosting states.

The date 5 December 2001 marks when the Lisbon Protocol under the START I Treaty was implemented. The reason for this is that the Draft considers states that have given up voluntarily on nuclear weapons (Belarus, Kazakhstan and Ukraine) and wants to avoid duplicative verification mechanisms for them. However, the Draft calls for an agreement between a state party and the IAEA, but does not specify which party should prepare this agreement.

The Draft also requires state parties to encourage states to ratify this Convention. This makes the Treaty a political tool to make pressure on nuclear weapons states. On the other hand, each state party should help other state parties to implement the Convention. They shall meet regularly in order to discuss the implementation of the Treaty and possible further steps. Unfortunately, there are no strong verification mechanisms for the implementation process and the important role civil society has in such verification processes. This point should be further discussed in the second negotiation round.

IPB also expects the Treaty to become a political tool, as it should unite the state parties in their efforts of reaching nuclear disarmament against the arms race undertaken by the nuclear weapons state and their allies. This whole process represents a transformational moment for two reasons. Firstly, it takes place at the UN against the will of the permanent members of the Security Council, and secondly, it showed an impressive and (until now) unique cooperation of representatives of governments and of civil societies.

In addition, this is what IPB aims and hopes for, to strengthen the nuclear disarmament “coalition” in power and courage including governments and civil societies, and to strengthen the arguments for nuclear disarmament based on international law.

The first Draft included almost all provisions upon which there was consensus or near-consensus during the first negotiation round. The debate continues with in June 15 and ends, with a strong Treaty, on July 7th. Ambassador Whyte Gomez stated that this is “an achievable goal”.

Once entered into force, our tasks begin – to stay united, governments and civil society, and to persuade nuclear weapons states and their allies to sign and ratify the Treaty – in order to get a nuclear weapons free world.