



NUCLEAR BAN DAILY



Reaching Critical Will

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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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COURAGE AND COLLABORATION

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

Last week was transformative. Not just in terms of banning nuclear weapons, but in terms of international relations and the United Nations more broadly. The majority of states—more than 130—came together at the UN to start negotiating a treaty that the five permanent members of the UN Security Council (aka the P5)—and the other nuclear-armed states—do not want. This alone is transformative. It is extremely rare, if not unheard of, for anything to get done at the UN if the P5 collectively oppose it. We were told it was impossible to get traction on any issue if faced with a united front of opposition from the “powers that be,” yet we not only have traction but momentum.

In addition, states, civil society, and international organisations engaged in interactive dialogue together, highlighting the uniquely collaborative nature of these negotiations. Civil society organisations accredited to the conference were able to give interventions on each of topics discussed by states, and on Thursday experts were invited by the President to engage informally with states to discuss some of the most critical issues under consideration.

The courage that brought states to the room to negotiate this treaty and the collaborative spirit of engaging with non-state actors have both been instrumental to the success of this initiative to ban nuclear weapons. Both courage and collaboration will remain essential ingredients to achieving success in July—which the President of the conference, Ambassador Elayne Whyte Gómez of Costa Rica, has said is “an achievable goal”.

Based on the debates last week, Ambassador Whyte will prepare a draft text for the treaty, to be circulated to participating states in the latter half of May or early June. Negotiations will resume at the UN for three weeks starting on 15 June, during which time governments will work their

way through the draft text with the aim of concluding the treaty by 7 July.

This is an ambitious agenda, but with the good faith participation of states and others, it is certainly possible. There is broad agreement on most of the core prohibitions as well as the principles and objectives of the treaty. Outstanding issues include whether or not the treaty should prohibit threat of use, testing, and financing; how to best address victim and survivor rights and environmental remediation; and how to deal with stockpiling and verification. In the weeks ahead, it will be important for governments and civil society groups to work together to solve these remaining issues.

In the meantime, opposition and pressure will undoubtedly be felt from those governments that have chosen to (or been instructed to) boycott these negotiations. The stigmatisation of nuclear weapons resulting from the process to ban them is already affecting the perceived legitimacy of these states' positions. A final treaty will present an incredible obstacle to the continued retention of these weapons of mass destruction. But states opposing this treaty and the change it represents cannot block this treaty's adoption or its entry into force. Courage and collaboration will be key to resisting the pressure to come.

The treaty to ban nuclear weapons is not an end in itself. It will be a catalyst for change, just as the process to negotiate it has been already. There is much work to be done ahead, and once the treaty is secured, there will be even more work to achieve its entry into force, its implementation, and to achieve the goal of nuclear disarmament and a nuclear weapon free world. But we have seen so far should give us great hope that this is possible, and that the process of banning nuclear weapons is bringing broader change to how things can be and will be done in international relations. •

The International Campaign to Abolish Nuclear Weapons (ICAN) and its partner organisations, in particular the Women’s International League for Peace and Freedom (WILPF), are the most visible CSOs that have contributed to the humanitarian initiative. They have given statements and contributed working papers at disarmament forums, delivered presentations and taken part in expert panels, published research on the humanitarian, health, gendered, and environmental impacts of nuclear weapons, facilitated the participation of civil society at various forums, persuaded governments to endorse the humanitarian pledge to ‘fill the legal gap’ on nuclear weapons, and championed the need for a prohibition on nuclear weapons under international law.

This week, as we’ve shifted into negotiating mode, CSOs have continued to advocate for the humanitarian perspective on nuclear weapons. But they have also promoted the value of the treaty-making process, considered the inclusion of core prohibitions, and argued that a nuclear weapons prohibition will complement existing international law and norms—especially that it reinforces the NPT framework. Importantly, they are ensuring that the voices and perspectives of survivors, indigenous peoples, and women are heard and reflected in the treaty.

CSOs are also arguing for positive obligations to ensure the safeguarding of the environment for future generations, as well as explicit links to human rights and human dignity. They are determined that the treaty’s core prohibitions should be based upon the evidence of the humanitarian impacts, reflect the true the risks of a nuclear detonation, and an understanding of what “elimination” means and what it requires.

The process, as well as the debate and discussion at the March negotiating session, has been nothing short of revolutionary for a UN forum. According to states and CSOs, the interactive session on 30 March—essentially an open debate on the object and purpose of the treaty and its core prohibitions—was an overwhelming success. It was something rarely—if ever—seen in a disarmament forum. Not only were CSOs on the panel, they provided interventions from the floor, interspersed between the statements of governments. This week, the mutual respect between states and CSOs has been genuine and palpable.

Over the next few months, my task is to quantify the contributions of CSOs to the nuclear weapons ban treaty. It is a difficult and sometimes unwelcome task. First, because as the international community is trying to get a treaty “across the line,” one does not want to detract from the process and cause undue tension between

parties who are negotiating in good faith. Second, in the current system, CSOs carefully safeguard their entry points into the debate. The current state-centric vision of international law can make CSO involvement complicated and sensitive. But my question, for both states and CSOs is: in an increasingly globalised world, in which humanity needs global solutions to global challenges, is this a sustainable model for developing international law?

It seems clear that during this round of negotiations, CSO participation has enhanced the development of international law. Of course that remains to be fulfilled in process over the next few months, and in the final treaty to be agreed upon, hopefully, on 7 July 2017. But this week, evidence was evidence and a robust legal provision was a robust legal provision, whether it came from a state, CSO, or another actor. Whether the international community can learn from this week’s negotiating process, to reinvigorate other disarmament forums, remains to be seen. There are a huge number of factors that have permitted this process to reach this point, not least the fact that P5 states are not in the room. That analysis cannot be covered here. But it is fair to say that CSOs have proved that they are not simply spectators in international law; this week, they have been contributing to its development. •

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SIDE EVENT: TOWARDS A TREATY BANNING NUCLEAR WEAPONS

Josefin Lind | Svenska Läkare mot Kärnvapen / Swedish Physicians against Nuclear Weapons

This panel chaired by Akira Kawasaki, member of the ICAN International Steering Group for Peace Boat, summarised the discussions and looked to the time ahead of us. There was broad consensus by the panelists on the fruitfulness of the discussions both by states and by experts and civil society.

There should be a lot of substance for the drafters of the treaty, said Ms. Helena Nolan, Director of Disarmament and Non-Proliferation, Department of Foreign Affairs and Trade of Ireland. She concluded that the Swedish ambassador's statement that the seriousness of the participants cannot be questioned was very true. Ireland will use the coming time to further develop and analyse positions and also undertake media and public awareness efforts.

Ambassador Jorge Lomonaco, Permanent Mission of Mexico to the United Nations, Geneva, followed by repeating his earlier statement that we wouldn't be here without the pressure, engagement, and participation by civil society. He emphasised the need to finish negotiations as soon as possible due to urgency of the issue and the international climate.

Mr. Lou Maresca, Legal Adviser to the Arms Unit of the International Committee of the Red Cross (ICRC) stated that the ICRC's wish for an emphasis on the humanitarian consequences of nuclear weapons, support for adherence to IHL, and arguments for a robust treaty have come to fruition. The coming period will be

important for the ICRC to further reflect on and develop thinking about crucial issues and they expect to have a number of national societies present in June/July to engage with governments.

Ms. Ray Acheson, Director of the Reaching Critical Will programme of the Women's International League for Peace and Freedom and member of ICAN International Steering Group, summarised that this has been a great week and that we haven't seen anything like this before. She emphasised it was particularly great that states clarified both where the positions are clear and where it's still evolving, and that they have shown an openness to engage with each other and with civil society. We are not only getting the treaty done but we're getting it done despite the great objection by some on the most militarily powerful states in the world, she noted. All together 132 have states showed up during this week to participate in the conference.

Ms. Beatrice Fihn, Executive Director of ICAN, agreed this has been a successful method of working for both states and civil society. There are going to be some tricky issues where civil society needs to mobilise, and would therefore wish an early draft. It would help to engage in capitals, she suggested, as it's going to be hard to involve all regions of the world on all elements in just a few weeks. ICAN will continue to do outreach to states not participating and concluded by stating that the stronger the draft is, the better job can civil society do. •



President of the conference meets with atomic bomb survivors and others from Japan and Australia © ICAN

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.

Institutional arrangements

Establishment of a treaty body

- The Caribbean Community (CARICOM) called for the establishment of a mechanism for overseeing the operation of the treaty, to ensure compliance, to manage follow-up steps and to provide a forum for consultation and cooperation among state parties. This mechanism will also be charged with managing and organising regular conferences of states parties, with the support of the UN.
- Chile called for a permanent secretariat to administer the treaty’s implementation and organise meetings of states parties.
- Mexico said it would be desirable to have a support body for the treaty, but to avoid excessive financial burdens by considering synergies with existing institutions.
- Ireland stated that based on resourcing issues that other implementation support units (ISUs) face, they are interested in hearing creative ideas about how to manage this and recognise the need for support structures to organise meetings and handle dispute resolution.
- Sweden and Egypt support a small ISU.
- Brazil does not see a need to establish a permanent secretariat.
- Algeria said a future executive secretariat should have close coordination with other international treaties on weapons of mass destruction. Prior to its entry-into-force, states must reflect on which body should manage this secretariat, suggesting the International Atomic Energy Agency (IAEA), Comprehensive Test Ban Treaty Organisation (CTBTO), or a new joint body.
- The Philippines supports the establishment of an adequately staffed treaty secretariat with clear roles to assist states parties in implementation, to facilitate conferences, and to provide technical assistance and capacity building through matching resources programmes.
- Guatemala supports an executive secretariat.
- South Africa said that an ISU or secretariat to support universalisation could be established at a later date.

- Similarly, Thailand said that further discussion is needed on a mechanism for secretariat services to meetings, and to promote universalisation and constructive engagement with states.
- Bangladesh stated that it sees merit in a dedicated mechanism for outreach and implementation, under the auspices of the UN.
- Trinidad and Tobago support the establishment of an institutional mechanism that would facilitate the treaty’s implementation and universalisation. It could be the repository of the treaty and organise review conferences.
- New Zealand took note of the different models of institutional support that exist from other treaties, and recommends taking a hybrid approach.
- Iran recommended drawing on the institutional arrangements of the Chemical Weapons Convention (CWC).
- The Solomon Islands suggested that a secretariat could oversee implementation and provide a forum for consultation and cooperation.
- Nigeria noted that treaties with dedicated mechanisms tend to engender better support.
- The International Campaign to Abolish Nuclear Weapons (ICAN) called for a secretariat to support implementation, ensure compliance, promote cooperation, and have a mandate to educate the public about the treaty and the humanitarian impact of nuclear weapons.

Meetings of states parties

- Mexico, Ecuador, and South Africa referenced convening annual meetings, while
- Sweden, Algeria, Austria, Bangladesh, Liechtenstein, Fiji, the Solomon Islands, Malaysia, Switzerland, and Ghana support regular meetings but did not specify periodicity.
- Malaysia suggested following the model of the Arms Trade Treaty (ATT).
- Bangladesh suggested looking at existing meeting cycles and anchoring them within that; Switzerland said that the complementarity to the NPT could be emphasised in the structure of meetings.
- Sweden supported short review conferences. Brazil, Cuba, Malaysia, Ecuador, South Africa, Ghana, and Indonesia support review conferences taking place

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News in brief, continued

every five years, with other states such as Fiji and Liechtenstein supporting review conferences but without specifying frequency.

- Brazil suggested meetings focus initially on universalisation of the treaty and highlighted the importance of extraordinary sessions that might be used as a space to negotiate complementary instruments to the treaty such as relating to the destruction of nuclear arsenals and measures related to a non-discriminatory verification regime.
- Algeria, among other countries like the Solomon Islands and Nigeria, supported these meetings being open to all states, international organisations, and civil society, as observers.
- The Philippines supported periodic meetings and review conferences, with the frequency and duration to be decided during a first meeting.
- Indonesia said that costs should be borne by states parties on an assessed basis.
- ICAN called for regular meetings and review meetings that would be open to civil society and other non-governmental bodies.
- Positive obligations and international cooperation and assistance
- CARICOM called for institutional arrangements to international cooperation and assistance to comply with positive obligations, such as environmental remediation, risk education, victim/survivor assistance, and stockpile destruction.
- Trinidad and Tobago urged that the treaty's institutional arrangements recognise the rights of victims, including women, children, and the disabled, and their challenges and need for assistance.
- Nepal stated that victims' rights must be protected.
- Austria supported a specific reference to hibakusha (atomic weapon survivor) in the treaty.
- Austria and Ecuador said more discussion is needed about how environmental remediation would work practically, but are supportive of including it.
- Ireland supports positive obligations that respect the rights and role of survivors, as well as on disarmament education and awareness-raising.
- Thailand and Timor-Leste called for international assistance to be included as a way to meet positive obligations, such as victim assistance and environmental remediation.

- Liechtenstein supports inclusion of international cooperation and assistance.
- Fiji, reflecting on the humanitarian and environmental consequences that it has experienced as a result of testing, spoke in favour of including the rights of victims of use and testing, as well as a commitment to provide assistance and environmental redress.
- Ecuador said that international assistance provisions will be necessary for compliance with both prohibitions and positive obligations.
- Ghana suggested working together with civil society on sensitisation campaigns about the treaty, particularly in nuclear-armed states. It supports provisions on victim assistance and others affected by testing and detonations.

National measures

- CARICOM, Algeria, and Indonesia stated that national measures to implement the treaty's obligations could include penal sanctions.
- Malaysia suggested that states parties could identify a national focal point for implementation matters.
- Thailand spoke of crucial importance of universalisation and compliance, particularly the strong partnership between government, international organisations, and civil society.
- ICAN called for taking necessary legal, administrative, and other measures including penal ones to ensure full compliance at a national level.

Reporting

- Mexico proposed initial reports and annual implementation reports so as to facilitate compliance and monitoring.
- Malaysia supported simple reporting obligations and suggested a first report on national implementation measures a year after a country becomes party, and subsequent reports later.
- Indonesia suggested reporting on national implementation measures, which could be updated annually and shared with the UN.
- Switzerland supported reporting and suggested building on the repository of information provide by nuclear-armed states under the UN Office of Disarmament Affairs.

Depositary

- Mexico, Algeria, Austria, Malaysia, Guatemala, South Africa, Ghana, and New Zealand said that the UN Secretary-General should be the depositary.

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News in brief, continued

Entry into force

- Almost every state that spoke supports a threshold that is contingent on a number of ratifications, rather than that of a specific country or group of countries. Some cited the negative example of the CTBT.
- Mexico and the Philippines suggested 30 ratifications as a threshold; Sweden suggested 80. Malaysia suggested one-third of expected states parties, which could be perhaps between 30-40. Guatemala said 25.

Amendments

- Brazil stated that any state party should be entitled to propose amendments to the treaty, the text of which should be submitted to the Secretary-General and circulated to states parties for discussion and require a two-thirds majority to be passed.
- Nigeria referenced an agreed qualified number for amendments.
- The Philippines also suggested a two-thirds majority to pass an amendment.
- Cuba said this should be possible, once the instrument enters into force.
- Liechtenstein supported an amendments process that isn't too cumbersome.
- Switzerland said that amendments deserve careful consideration.

Reservations

- Malaysia said that reservations should be permitted at time of joining, provided they are not incompatible with the object and purpose of the treaty.
- Mexico, Brazil, Austria, Ireland, Guatemala, Cuba, Thailand, Bangladesh, Liechtenstein, New Zealand, the Solomon Islands, and ICAN spoke against allowing reservations.

Withdrawal

- Mexico argued that withdrawal should not be possible during armed-conflict and only possible after the treaty had been in force for 15 years, for that state party.
- Sweden said that withdrawal could be possible, but only after a meeting of states parties discusses the issue, and that once all nuclear-armed states have joined it should not be possible.
- Brazil stated that a provision on withdrawal should include strong language and establish specific criteria compatible with the importance of the object of the treaty, potentially based on article X of the NPT.

- Austria said it does not want to see withdrawal allowed but the process should at least be serious and lengthy.
- Kazakhstan said that withdrawal must be strictly regulated and that a mechanism to influence countries that intends to withdraw is necessary.
- New Zealand is conflicted because it believes that a treaty setting global norms should not contemplate the prospect of withdrawal, but has also heard the view from other states that excluding the possibility of withdrawal would be a barrier to joining.
- South Africa, Egypt, Ecuador, and Ghana said that withdrawals should be in line with the Vienna Convention on the Law of Treaties. Switzerland also suggested looking to the standard practice of other treaties.
- Ghana said to not encourage withdrawals.

Duration

- Mexico, Sweden, Austria, the Philippines, Cuba, Ecuador, Nigeria, and Switzerland supported the treaty having indefinite duration.
- Ireland noted that the treaty should remain in force during armed conflict.

Definitions

- Mexico said that a definition of a nuclear weapon is not indispensable for the effectiveness or usefulness of the prohibition treaty, noting that the nuclear Non-Proliferation Treaty (NPT), does not include one.

Core prohibitions

- Some states used the session to clarify or outline their positions on prohibitions.
- Venezuela had indicated in an earlier statement that it is concerned about the practical challenges of a transit prohibition but strongly support the inclusion of such.
- Nepal said that this treaty should prohibit core actions such as those that fall under the CWC and prohibit encouraging such acts.
- Fiji stated that the treaty must include prohibitions on stockpiling, transfer, deployment, use, threat of use, assistance, financing, and inducing, as well as testing. It acknowledged the challenges of over flight transit, particularly in the Pacific, but supports the inclusion of transit.
- Timor-Leste said that the treaty should prohibit nationals from engaging in activities such as development, production, testing, acquisition, stockpiling,

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News in brief, continued

deployment, use, and threat of use, and from assisting, financing, or inducing such acts.

Accession of nuclear-armed states

- Mexico outlined two options for how states with nuclear arms can join the treaty: they either disarm and join, or join with elaborating a plan for disarmament. Regarding the latter option, Mexico proposed destruction to be completed within 15 years and that the disarmament plan include an international verification mechanism, all of which should be considered and discussed during a meeting of states parties. The verification mechanism could be that of the IAEA, or something else. Austria made a similar proposal.
- Brazil proposed a “hybrid arrangement” comprising either a set of mutually reinforcing instruments dealing progressively with various aspects of the nuclear disarmament process, or a main prohibition agreement followed by subsidiary agreements or protocols thereto. Brazil stated that the treaty should envisage the possibility of accession before complete stockpile destruction, requiring a detailed plan on how the acceding country will carry out the obligation to eliminate its stockpiles.
- Viet Nam called for a non-discriminatory and verifiable legal arrangement to ensure that nuclear weapons have been destroyed, and no more are being produced. Mechanisms for verification and enforcement could be modeled on the CWC, the CTBT, or the IAEA safeguards system.
- Guatemala said that verifiable stockpile destruction included should be in future mechanisms. Cuba also called for the establishment of a mechanism to address verification and compliance.
- Venezuela referenced the three options outlined by Gaukhar Mukhatzhanov on Thursday with respect to how states parties can approach the issue of nuclear-armed states joining the treaty and related elimination of their stockpiles. Venezuela noted the practical value of the first option (elimination prior to accession) but said it does not want to rule out the possibility of the second (accession, then timebound elimination). The third is not acceptable to Venezuela, which argued that this treaty must include clarity on the way forward and anticipate the eventual elimination of nuclear weapons.
- Bangladesh noted that more discussion is needed on this subject and favours a flexible accession mechanism that stipulates specific provisions.

- Trinidad and Tobago called for additional practical and legally-binding measures that will ensure the destruction of existing nuclear weapons in an “irreversible, verifiable and transparent manner”.
- Iran stated that elimination must be time-bound, and that the ban treaty should model the CWC for how to relate to states not party.
- Switzerland said that verification guarantees could be outsourced to the IAEA.
- Peace Boat, on behalf of a network of other Japanese organisations, called for clarity in the treaties institutional arrangements so as to enable nuclear-armed states to accede.

Relationship to other agreements and institutions

- Brazil, the Philippines, Colombia, Trinidad and Tobago, Ghana, Guatemala, and Argentina called for language that that this instrument does not derogate commitments to other treaties and/or institutions such as the NPT, the IAEA, the nuclear weapon free zones, and the CTBT.
- Brazil further referenced treaties on weapons in outer space and the Antarctic. Algeria strongly supports the protection of outer space from all militarization, which would extend to this instrument.
- Colombia stated that the IAEA is the body to provide technical cooperation and assistance to states on the “peaceful uses” of nuclear power.
- Liechtenstein supports other states that have called for building expertise in the area of verification, such as through the IAEA and CTBTO.
- Fiji called for a strengthening of the nuclear weapon free zone in the Pacific and transparency mechanisms.
- Iran is wary of the ability of the IAEA to play a central role in verifying disarmament because it is subject to its board of governors, which includes countries that are not participating in this conference.
- Argentina said that all states signing this treaty should also be party to the NPT and the CTBT.
- OPANAL reviewed the various bodies that have been established by various nuclear weapons treaties and the role they play in implementation and support; noting that many of these bodies are not represented in the conference but could be consulted with. He also encouraged states to consider that this treaty will need to be enforced in situations of crisis, and it is important to think about and plan for this. •