

**Briefing by the President of the United Nations Conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination**

**New York, June 12, 2017**

Distinguished Representatives and Delegates,

I thank you for your attendance to this briefing. I am fundamentally enthusiastic to see you all today, a few days before we reconvene for the UN Conference to negotiate a legally binding Instrument to prohibit nuclear weapons, leading toward their total elimination.

Now that I am back in New York with you, as the President of this Conference, I thought it convenient to hold this open briefing, in order to synthesize the process, and share with you the same presentation I made when the draft text of the legally binding instrument text was released in Geneva on May 22<sup>nd</sup>; as the basis for the negotiations that will start this week on June 15<sup>th</sup>.

I thought it was appropriate for you to listen the explanation of the first draft and at the same time to share with you how I intend, with your approval, to develop the modalities of our work starting Thursday.

Let me start by saying the process is unfolding according to schedule. The draft text was released as promised during the second part of May, so as to allow delegations time for consultations and preparations. I have been very active in consultations and I feel great enthusiasm and commitment by all delegations engaged in this conference to actively and constructively contribute to its success.

I will now turn your attention on the overall approach in preparing the draft.

The goal of the Presidency with this draft has been to produce a text which can bring the Conference to an acceptable starting point for its negotiations in June and July.

Let me recall that at the March session of the Conference we had robust and constructive exchanges on the provisions of the legally binding instrument, including on its principles and objectives, preamble and core prohibitions, positive obligations, institutional arrangements and other provisions.

The draft text has drawn from those inputs provided by the States participating at the March session of the Conference, including their statements and working papers.

During that session, many common elements and aspirations emerged. The draft thus aims to synthesize the many areas where the views of States converged, and incorporates those elements which are ripe, well considered and deemed to constitute a basis for consensus. At the same time, on those issues mentioned at the march session but that need further analysis and discussion the draft offers proposed text to prepare the ground for further reflection on the more complex issues.

You will find an approach that builds on points of convergence, in order to preserve the constructive and collaborative spirit that we were able to foster in March.

Of course, the draft is not exhaustive of all the issues discussed in March. At the first session, it was apparent that further discussion was needed on a number of important issues, including among technical and legal experts. In some instances, I have set aside certain issues not ripe for drafting in order to enable to Conference to continue their deliberation without prejudice to the outcome.

### **Overarching principles guiding the preparation of the draft**

I would like to draw your attention to the common aspirations and principles which emerged during the discussions at the first session of the Conference.

1. **Complementarity.** The first was that the instrument should strengthen and complement existing instruments, in no way undermine the nuclear non-proliferation regime, especially the Treaty on the Non-Proliferation of Nuclear Weapons but to strengthen and complement it.
2. **Reinforcement.** Second, the instrument should avoid any loopholes that in any way permits any State to benefit from nuclear weapons or that could enable any State to evade existing non-proliferation norms.
3. **Simple and non-discriminatory.** Third, the instrument should be simple, non-discriminatory and reflect a clear prohibition of nuclear weapons.
4. **Basis for the future.** Fourth, the instrument should be aimed at the future. In this sense, it should be flexible and designed to endure for the long-term. It should constitute a step toward nuclear disarmament and clearly identify and provide for the pathways and framework for the achievement and maintenance of a world free of nuclear weapons.

Let me now go over the main sections of the text, starting with the preamble.

## **Overview of the draft**

### *Preamble*

The preamble of the draft Convention seeks to concisely describe the motivation for the instrument, the aspirations of its parties, and its object and purpose.

First, it bases the Convention on the deep concern over the catastrophic humanitarian consequences of the use of nuclear weapons and recognizes the suffering of the victims of the use and testing of nuclear weapons.

The preamble also bases the instrument on the principles and rules of international humanitarian law, and the conviction by the States participating in the Conference that nuclear weapons must never be used again, under any circumstances. This conviction is enshrined in a clear statement on the illegality of nuclear weapons.

It also recalls the obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control, aspect already mentioned by the International Court of Justice in its consultative opinion of 1996.

The preamble also reflects the strong and unified desire of the States participating at the Conference to recognize, strengthen and complement the existing nuclear disarmament and non-proliferation, reaffirming the crucial importance of the Treaty on the Non-Proliferation of Nuclear Weapons as the cornerstone of the international nuclear non-proliferation regime and an essential foundation for the pursuit of nuclear disarmament, the vital importance of the Comprehensive Nuclear-Test-Ban Treaty, and the contribution of the treaties establishing nuclear-weapon-free zones toward strengthening the nuclear non-proliferation regime and to realizing the objective of nuclear disarmament,.

Finally, the preamble recognizes the essential contribution of non-governmental organizations, the survivors of the atomic bombing, the ICRC and the United Nations in seeking to achieve a nuclear-weapon-free world.

*Prohibitions, effective legal measures, legal provisions and norms*

The core prohibitions are contained in Article 1, general obligations. Based on the inputs provided in March, these provisions largely consolidate, build upon and reinforce the prohibitions and norms contained in various instruments, especially the treaties establishing nuclear-weapon-free zones, the NPT and the CTBT. As such, the

meaning and scope of each of the prohibitions should be readily apparent and clearly understood by all.

Therefore, I will not conduct an exhaustive survey of these provisions and their relation to obligations in other instruments, but will rather address this when we commence our article-by-article review of the text next Thursday.

I do wish to emphasize one point. Given the various international legal instruments that address nuclear weapons, care has been taken to avoid opening any loopholes or in any way contributing to the fragmentation of law and norms in the non-proliferation and disarmament regime.

### *Strengthening and reinforcing the Nuclear Non-Proliferation Treaty*

As I have mentioned, at the March session, there was a strong sense that the instrument should reinforce and strengthen existing legal instruments, especially the Treaty on the Non-Proliferation of Nuclear Weapons and the safeguards regime maintained by the International Atomic Energy Agency.

The draft has sought to accomplish this in a number of ways.

First, the general obligations have been drafted so as to be fully compatible with the provisions of the NPT.

Second, the verification of the general obligations follows the same approach as several nuclear weapon free zones – States Parties would be obliged to apply the safeguards required by the NPT. For those States Parties that are already members of the NPT, they could simply maintain their existing safeguards agreements. The verification standard required by the draft is intended to be the same as that provided for in the NPT.

I also wish to acknowledge that the matter of the relationship between the Convention and the NPT is one that requires careful consideration. As it was very clearly stated in the mandate of this conference, the intent of the draft is to complement and strengthen the NPT as well as other instruments. Upon further reflection, I believe Article 19 could be re-

formulated to better reflect the intent that nothing in this convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any state under the NPT.

**I would like now to refer to articles 4 and 5 with regards to the irreversible and verified elimination of nuclear weapons**

In accordance with the mandate provided in resolution 71/258 and the views expressed by delegations in March, the instrument should constitute a basis for the future total elimination of nuclear weapons. Thus, the final text should provide the appropriate framework to address several situations: first, of the non nuclear states, the states that might destroy and then join and the situation of states that might wish to join the instrument through a process involving the negotiation of an agreed plan for the elimination of their nuclear weapon programs.

Therefore, the issue of accession and compliance verification becomes a central part of the discussion before the conference.

*Destroy and then join*

In following up on the discussions in March, Article 4 offers language that builds upon the positive experience of South Africa, which had dismantled its nuclear weapon programme, joined the NPT and then subsequently declared its former weapon activities. It then allowed the International Atomic Energy Agency (IAEA) to verify the dismantlement of its nuclear weapon programme.

It can never be ruled out in the future that some State possessing nuclear weapons might choose to follow a similar path. In this case, the conference should discuss the legal requirements for the verification that should be pursued to give the international community the assurances that it needs to have confidence that a State has completely eliminated its nuclear weapon programme.

In this case, given the fact that no legal requirements are included in the NPT for this purpose, the draft presents the possibility that verification

of the completeness of a States inventory of nuclear material and installations, drew directly from the mandate and objectives pursued by the IAEA in South Africa. As there have no doubt been important lessons learned over the last two decades, I look forward to receiving feedback on whether or not these standards and objectives can be improved.

The draft includes general provisions, which are meant to complement the authority available to the IAEA in the implementing the comprehensive safeguards required under the NPT and this draft convention. I have also requested the Secretariat to compile a non-paper further elaborating and describing the verification objectives pursued by the IAEA in South Africa for delegations to study.

I am aware that there have been a lot of questions regarding the dates reflected in the text. In drafting the so-called “South Africa-plus” model, it became apparent that the verification objectives pursued by the IAEA in South Africa would be technically challenging, if not impossible, if they had to be applied in States that had also given up nuclear weapon programmes long in past.

As this matter was not discussed in March, the draft inserts an indicative date in Articles 2 and 4 to highlight the need for the Conference to consider this aspect. While the initial verification in South Africa was completed in the first half of the 1990s, there are three States, namely Belarus, Kazakhstan and Ukraine, that voluntarily gave up nuclear weapons pursuant to a treaty commitment. They were required to do so by 5 December 2001 under the Lisbon Protocol to the START I Treaty. This date is included as a starting point for the discussion at the second, and is merely intended as a placeholder to draw attention to the matter.

The provision of the so-called “South Africa-plus” pathway in no way prejudices the pursuit of agreed measures for the irreversible, verified and time-bound elimination of nuclear weapon programmes. In fact, the draft explicitly provides a proposal to address other circumstances that might arise when

*Provision for the negotiation of agreed measures for the verified and time-bound elimination of nuclear weapons*

The second pathway that we wanted to convey through article 5 responds to the calls for States possessing nuclear weapons to be enabled to join the instrument through a process involving the negotiation of an agreed plan for the elimination of their nuclear weapon programmes.

The approach in the draft provides only for the basic requirements of a framework for this process, namely the possibility for the States parties and the non-party States to consider jointly the effective measures necessary. As stated at the March session, such agreement could take the form of a protocol to the instrument.

This framework approach would empower the meeting of states parties with the necessary flexibility to engage with non-party states, to consider both country-specific and universal measures for nuclear disarmament, and to adapt their working methods for any future requirements. This flexible approach has served well in other contexts such as the Convention on Certain Conventional Weapons.

It also leaves for future negotiations all those matters which by necessity can only be agreed directly with the States possessing nuclear weapons. This includes matters like the items to be declared, provisions for on-site inspections, establishment of necessary institutional arrangements, schedules and timeframes for elimination, compliance and enforcement, and interim measures pending the complete elimination of nuclear weapon programmes.

As the circumstances for each State possessing nuclear weapons differs greatly, and we cannot anticipate at this stage at which point in the future they will be compelled to engage in a process leading to the total elimination of their nuclear weapon programmes, it would be difficult and likely impossible for the Conference, in the span of three weeks, to develop these provisions. Rather, the conference might discuss if these

matters may be best left for the meetings of states parties to discuss further and elaborate.

I believe this approach will allow the conference to discuss the flexibility necessary to enable this instrument to constitute a credible framework for nuclear disarmament and to enable its States Parties to evolve its functions so it can endure for the future.

Overall, regarding accession, an issue that deserves in depth discussion is the appropriate set of accession and compliance provisions to cover the possibility of States still in possession of nuclear weapons, willing to join the treaty so that the current discussion fulfills the mandate that the instrument prohibits nuclear weapons in such a way that also leads toward their total elimination. As President, I have been listening to the delegations that would like to leave a door open for this kind of situations. This is something that will be discussed during the meetings.

### **Other provisions**

Before closing, I will just briefly highlight the other provisions in the draft.

It includes general provisions for positive obligations, including in the areas of victim assistance and environmental remediation.

It includes standard provisions for national implementation, international cooperation and the settlement of disputes.

As the Secretary-General of the United Nations is given the task of circulating declarations and convening the meetings of states parties, the United Nations secretariat –and by default the Office for Disarmament Affairs – would provide the institutional support for the treaty, unless the meeting of states parties decides otherwise.

In light of the principle of non-discrimination, the instrument provides for a simple mechanism for entry into force, commensurate with other recent disarmament instruments.

Finally, it includes language on withdrawal standard for other treaties dealing with weapons of mass destruction. However, in light of its basis in humanitarian law, no notice of withdrawal would be able to go into effect while a party is engaged in an international armed conflict.

### **Way ahead for the June and July session**

Given the shortness of the time available, and based on the feedback I have received in my consultations since 22 May, I have already suggested revising the concept for the indicative timetable for the first part of the second session as follows.

When the Conference reconvenes on 15 June, it is not my intention to conduct a lengthy general exchange of views, but rather to move directly into the substance of the draft text. We should start from that day with the article-by-article review of the text, starting with the preamble. We will then turn to the general obligations (Article 1), declarations, safeguards and measures relating the verified elimination of nuclear weapon programmes (Articles 2 to 5), positive obligations (Article 6), implementation (Articles 7 to 10), and final provisions (Articles 11 to 21).

As discussed at the Conference in March, the article-by-article review will continue on a rolling basis with the aim of completing the first reading of the text no later than Wednesday, 21 June. At the point, I intend to take stock of the situation and to propose how to structure the remaining meetings of the Conference.

It is my hope that this revised concept for our programme of work will help to expedite and focus our efforts, and thereby enable us to fulfil our mandate by 7 July.

I also wish to take this opportunity to remind all States participating in the Conference that have not yet done so to submit their credentials of representatives and the names of members of their delegation, as indicated in the Information Note, which you can find posted on the website for the Conference.

For now, I hope this briefing will be useful to all of us. I will let you go now and I let you know that I will remain available for informal consultations with any interested delegations. I will see you next Thursday when we reconvene with full energy and enthusiasm to restart our talks on the legally binding instrument to prohibit nuclear weapons leading toward their total elimination.