

United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards their Total Elimination

Additional comments after the first conference session from a planetary health perspective

Submitted by International Physicians for the Prevention of Nuclear War (IPPNW)

1. Following the first week of negotiations, we wish to offer some additional comments and recommendations to the working paper submitted by IPPNW, the World Medical Association, World Federation of Public Health Associations, and International Council of Nurses, titled “The health and humanitarian case for banning and eliminating nuclear weapons,” A/CONF.229/2017/NGO/WP.11; and to the statement made to the conference on behalf of IPPNW on Wednesday 29 March 2017.

2. We congratulate the Conference President on the impressive process and progress made during the first week of negotiations in New York 24 – 31 March 2017, including the swift adoption of rules of procedure; efficient collection of government views on treaty content; identification of a large number of areas of wide agreement as well as areas of divergence; significant progress made towards identifying options for and possible pathways to address areas of diverging views; and the innovative panel discussions which provided for highly constructive input and dialogue involving governments, international organisations and civil society.

3. We thank and commend Ambassador Whyte Gómez for her clear statement of resolve to fulfill the United Nations General Assembly mandate for the conference and respond to the sense of urgency embodied within it by concluding an agreed treaty text by the scheduled end of the conference on 7 July 2017. We agree that this goal is feasible.

Treaty Preamble

4. We recommend that the treaty preamble make clear and early reference to the catastrophic humanitarian consequences of any use of nuclear weapons, recognised *inter alia* in the outcome document of the 2010 Review Conference of the NPT, and also make specific reference to the conclusions of the three international conferences on the humanitarian impact of nuclear weapons in Oslo, Nayarit and Vienna. The imperative to eliminate nuclear weapons as the only effective and durable protection against their use should also be emphasised.

5. We also urge prominent inclusion in the preamble of the very real risks of nuclear weapons being used, as identified during the humanitarian impact of nuclear weapons conferences.

6. Among the conclusions of a new UNIDIR report “Understanding Nuclear Weapon Risks” released just this month are (p.9):

“2. The substantial levels of investment in nuclear weapons and nuclear weapons systems and their modernization have enhanced rather than decreased the likelihood of an intentional or inadvertent detonation event. ...

5. Technological advance suggests a declining need for terrorists or other groups to directly access an actual weapon in order to effect a nuclear detonation event.”

7. Clear and prominent exposition early in the preamble of the totally unacceptable and catastrophic consequences of any nuclear detonation, the impossibility of any meaningful health or other humanitarian response, and the real and growing dangers of nuclear war, would lay out the compelling need for and rationale for the treaty and will assist the public communication and public education roles of the treaty emphasised by a number of speakers during the first week's deliberations.

8. We urge that the preamble embed the ban treaty not only in treaty and customary international law; international humanitarian law; and existing nuclear disarmament and non-proliferation treaties including the NPT and nuclear weapon free zone treaties; but also that it draw more widely on other underpinnings, including human rights and environmental law; the UN Charter; the Sustainable Development Goals; and major religious teachings and ethical imperatives.

9. We also recommend that the treaty preamble recognise the disproportionate vulnerability of women and especially girls to lifelong increased cancer risk as a result of exposure to ionising radiation. This may usefully be linked to other UN instruments such as the Convention on the Elimination of All Forms of Discrimination against Women.

10. Similarly, we recommend that the treaty preamble recognise the disproportionate health risks and harm suffered by indigenous, minority and rural people as a consequence of nuclear test explosions. This recognition might usefully be linked to the UN Declaration on the Rights of Indigenous Peoples.

Treaty provisions

11. The negotiations currently underway provide a historic opportunity to fill the legal gap that exists around the worst of all weapons and the only weapon of mass destruction not yet prohibited by international treaty. As described in the mandate provided by the General Assembly for these negotiations, their second purpose is to provide for the elimination of nuclear weapons. This current opportunity may not be repeated, and in our view the opportunity should be grasped for the treaty to be as forward looking as possible, providing benchmarks, guidance and possible frameworks for progressing the elimination of nuclear weapons.

12. In our view, the provisions of this treaty should be as comprehensive and unequivocal as possible. We feel that these prohibitions should firmly build on the provisions in other prohibition and elimination instruments such as the Chemical Weapons Convention and the treaties prohibiting and providing for the elimination of antipersonnel landmines and cluster munitions. However, because of the specific characteristics of nuclear weapons—their unique destructive capabilities; their transboundary, transgenerational and genetic effects; and the fact that they have a strategic role assigned to no other existing weapon—we feel that the prohibitions in this treaty need to go beyond these historic precedents.

Nuclear testing

13. The aspects of nuclear weapons that inform our assessment are the uniquely harmful, indiscriminate, and widespread health and environmental consequences of nuclear testing, recognised since the earliest years of the nuclear era in efforts to prohibit nuclear testing, reflected in the Partial Test Ban Treaty and in the Comprehensive Test Ban Treaty (CTBT) and CTBTO. The CTBT, however, only addresses explosive testing of nuclear weapons; and

has not yet entered into force 21 years after its conclusion. There are no foreseeable prospects for its entry into force.

14. All the nuclear-armed states with the likely exception of DPRK, have developed laboratory-based methods to test nuclear warheads, including computer simulation, sub-critical, and hydrodynamic testing, which enable development of new nuclear warheads without explosive testing. For these reasons, to effectively address both vertical and horizontal proliferation of nuclear weapons, we regard it as vital that the treaty now being negotiated comprehensively prohibit both explosive and non-explosive forms of testing nuclear weapons. In our view, this will reinforce and build on, not undermine, the CTBT.

Threat of use

15. Given massive nuclear arsenals; the existential global threat they pose; the high alert status on which almost 2,000 nuclear warheads are currently held; and the high risk that any use of nuclear weapons would result in rapid escalation to global nuclear war; there is an absolute need to prevent any use of nuclear weapons. This is fundamental to securing the future of humanity and life on Earth. Use of any other kind of weapon, including biological and chemical weapons as well as landmines and cluster munitions, does not pose the same dangers of rapid and uncontrollable escalation involving such profound existential hazard.

16. The threat of use implicit in possession and deployment of nuclear weapons and planning and preparations for their use are embedded in the military policies not only of the nine current nuclear-armed states, but also in those of all of the 28 member states of NATO, as well as Japan, South Korea and Australia. Policies of nuclear deterrence and extended nuclear deterrence are the principal justifications used for continued possession and reliance upon nuclear weapons.

17. In our view, the absolute need to prevent any use of nuclear weapons, and the obstacle that nuclear deterrence policies constitute to elimination of nuclear weapons, mean that the threat of nuclear weapons use that underpins these policies should be unequivocally prohibited in the nuclear weapons ban treaty.

Obligations of states parties to the ban treaty

18. We believe that a set of obligations for future states parties to the ban treaty which do not possess nuclear weapons can significantly contribute to pressure for nuclear disarmament and progress towards nuclear elimination, without being onerous for such states.

These include:

- Introducing domestic legislation making it a criminal offence for anyone within their jurisdiction to be involved in activities prohibited under the treaty;
- Prohibiting financing of nuclear weapons development, production and acquisition and any other activities proscribed by the treaty;
- Recognising the rights of and providing for the needs of victims of nuclear testing and past nuclear detonations, including through international cooperation and assistance;
- Monitoring and managing sites contaminated through nuclear weapons development and testing and, where possible, clean-up or containment of contamination to minimise leakage and current and future health and environmental risks;
- Education of their publics about the humanitarian impacts and risks associated with nuclear weapons, and about the ban treaty and its purpose;
- Protection of whistle-blowers who make public information about possible treaty violations.

Accession by nuclear-armed and nuclear-dependent states

19. We believe that in order to maximise the benefits of the treaty in progressing the elimination of nuclear weapons, it will be important for nuclear-armed states—current signatories of the NPT and otherwise—as well as states that rely on nuclear weapons owned by other states in their military policies, to join the ban treaty under strict and specified, verified, irreversible and time-bound plans, approved by states parties to the treaty, in order to enter into full compliance with its provisions.

20. In regard to nuclear-armed states, we believe that their accession to the treaty should not only require plans for the verified, irreversible and time-bound elimination of their nuclear weapons stockpiles, but should also include time-bound, verified and irreversible plans for cessation of production of and elimination of their stockpiles of weapons-usable materials.

21. Currently these stockpiles are sufficient to reconstitute the current global nuclear arsenal many times over. Unless specific provision is made to eliminate weapons-usable materials, it will be much more difficult to achieve and sustain a world free of nuclear weapons. In this way, the ban treaty could also help advance the long-obstructed goal of an effective treaty on fissile materials, which has languished unfulfilled for decades, with no currently foreseeable prospects of a breakthrough.

Nuclear power

22. Finally, we were concerned that during the debates in the first negotiating week, a number of states referred to the contents of NPT Article 4 relating to access for all states to peaceful uses of nuclear energy.

23. Uranium enrichment plants are intrinsically capable of producing not only reactor-grade, but also weapons-grade, uranium. Nuclear reactors inevitably produce plutonium, which can be chemically extracted from spent reactor fuel. In addition, nuclear power facilities, including reactors and spent fuel ponds, pose risks of catastrophic radiation releases comparable or even greater in magnitude to those produced by nuclear explosions. Such releases could occur triggered by natural disasters such as earthquakes, tsunamis, or volcanic eruptions; as a result of military targeting; deliberate disruption of cooling water and power supply; or through cyberattack. In effect, each such facility is an enormous, pre-positioned, radiological ‘dirty’ weapon. We therefore urge that the nuclear weapons prohibition treaty currently under negotiation should in no way encourage or promote nuclear power, or attempt to echo the language of the NPT in this regard.

Institutional arrangements

24. We were pleased with the wide agreement demonstrated during the first week of negotiations around many of the institutional arrangements for the ban treaty. We support:

- a treaty of indefinite duration;
- simple entry into force once a specified number of ratifications – no more than 50 - have been achieved;
- no states parties should be able to make reservations with respect to any of the treaty’s elements;
- the treaty should be able to be amended;
- regular meetings of states parties, with provision for participation by nuclear explosion and test survivors, civil society organisations and experts, and international organisations;

- a clear mechanism for settlement of disputes and addressing questions of compliance;
- no provision for withdrawal from the treaty. If a withdrawal provision is allowed, the process should be long and difficult, and trigger an immediate meeting of states parties and referral to the UN Security Council; and
- the UN Secretary-General as the treaty depositary.

We feel it important that there be an agency or organisation, preferably under the auspices of the UN, responsible for providing support for the implementation of the treaty.