



*Permanent Mission of
Costa Rica
Geneva*

REF. MCR-ONUG/2017-261
13.17

United Nations Conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading toward their total elimination

Geneva, 24 May 2017

Excellency,

After the release on Monday of the first draft text of the legally binding instrument to prohibit nuclear weapons, leading toward their total elimination, I am attaching the speaking notes I delivered with the presentation of the text. I believe this would clarify some doubts delegations might have specially if they were not present in the room.

Please accept, Excellency, the assurances of my highest consideration.



Ambassador Elayne Whyte G.
Permanent Representative of Costa Rica
to the United Nations in Geneva
President of the Conference

To all
Permanent and Observer Missions
to the United Nations in New York and Geneva

Draft legally binding instrument to prohibit nuclear weapons, leading towards their total elimination

**Ambassador Elayne Whyte Gomez (Costa Rica)
President**

United Nations Conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination

Geneva, 22 May 2017

In preparation for the second substantive session of the Conference, which will reconvene on June 15th, I am now releasing the draft version of the legally binding instrument that will serve as the basis of the Conferences' forthcoming deliberations.

Overall approach in preparing the draft

This first draft has been elaborated on the basis of the inputs provided by the States participating at the first session of the Conference which took place in March, including their statements and working papers.

At the first session of the Conference in March 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.

During the session, many common elements and aspirations emerged. The draft thus aims to synthesize the many areas where the views of States converged, and incorporated those elements which are ripe, well considered and deemed to constitute a basis for building consensus.

The goal of the Chair with this draft has been to produce a text which can bring the Conference to a constructive starting point for its negotiations in June and July, highlighting the many common elements and aspirations that have so far emerged.

At the same time, I should emphasize that 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 fully developed for

drafting, in order to enable to Conference to continue their deliberation without prejudice to the outcome.

I have chosen this approach on building on the points of convergence, in order to preserve the constructive and collaborative spirit that we all were able to foster in March, and provide the ground for further reflecting on the more complex issues.

Overarching principles guiding the preparation of the draft

The draft was prepared on the basis of several common aspirations and principles which emerged during the discussions at the first session of the Conference.

1. **Complementarity.** The first is that the instrument should strengthen and complement existing instruments and in no way undermine the nuclear non-proliferation regime, especially the Treaty on the Non-Proliferation of Nuclear Weapons.
2. **Reinforcement.** Second, the instrument should avoid any loopholes that could in any way enable any State to evade existing non-proliferation norms.
3. **Simple and non-discriminatory nature.** Third, the instrument should be simple, non-discriminatory and reflect a clear strong prohibition of nuclear weapons.
4. **A basis for the future.** Fourth, the instrument should aim 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 future accession of nuclear weapon states, thus promoting the achievement and maintenance of a nuclear-weapon-free world.

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 prohibition of nuclear weapons.

It then reflects the aspirations of the parties to advance the principles of the United Nations, including through the achievement of nuclear disarmament and the ultimate objective of general and complete disarmament.

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 norms.

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. 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 in June.

I do wish to emphasize one point. Given the various international legal instruments that address nuclear weapons, consideration 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.

I have sought to accomplish this in a number of ways.

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

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 in fact maintain their existing safeguards agreements. As the basis for the discussions, the verification standard required in the draft is thus designed to be equal to that provided for in the NPT.

Framework and pathways for the irreversible and verified elimination of nuclear weapons

In accordance with the mandate provided in resolution 71/258 and with the views expressed by the delegations in March, the instrument should constitute a basis for the future total elimination of nuclear weapons, and thus provide a framework and pathways to address the issue of future outreach to nuclear weapon states.

The draft elaborates and simultaneously provides for two pathways by which States possessing nuclear activities can join, according to the proposals presented by the delegations in March.

South Africa-plus

The first pathway builds upon the positive experience of South Africa, which had dismantled its nuclear weapon program, joined the Non Proliferation Treaty 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 program.

It can not be ruled out that in the future some State possessing nuclear weapons might choose to follow a similar path. Under the existing treaties, there are no 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 program before acceding to the treaty.

As was specifically proposed during the conference to draw from the South African experience, the draft includes provisions for verification of the completeness of a States inventory of nuclear material and installations, building 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, the delegations will have the opportunity to reflect on whether or not these standards and objectives can be improved. The draft includes a general provision and also I requested the Secretariat to compile in a non paper the standards and objectives of the South African experience for the delegations to study.

The draft also considers that there are three States, namely Belarus, Kazakhstan and Ukraine, which have voluntarily given up nuclear weapons pursuant to a treaty commitment. In order to avoid subjecting any State to a duplicative verification exercise, the draft mandates South Africa-method verification for those States which have possessed, manufactured or acquired nuclear weapons from the date that the Lisbon Protocol under the START I Treaty was implemented – 5 December 2001.

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 other nuclear weapon programs. In fact, the draft explicitly provides for a second pathway.

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

The second pathway responds to the calls expressed by most delegations 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 programs.

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 the effective necessary measures. 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 nuclear-weapon 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 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, the establishment of necessary institutional arrangements, schedules and timeframes for elimination, compliance and enforcement, and interim measures pending the complete elimination of nuclear weapon programs.

As the circumstances for each State possessing nuclear weapons differ 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 programs, it would be difficult and likely impossible for the Conference, in the span

of three weeks, to develop these provisions.¹ Rather, these matters may be best left for the meetings of states parties to discuss further and elaborate.

I believe this approach provides for the necessary flexibility 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 and grow for the future.

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.

CONCLUSION

2017 offers a historic opportunity to secure international consensus on a robust, legally-binding instrument to prohibit nuclear weapons, leading toward their total elimination, that achieves significant gains for Humanity. By giving birth to an

¹ It was noted to the Chair that the New START Treaty, which provided only for the reduction of nuclear weapon systems and not even the destruction of a single warhead, was incredibly complex. While the treaty text was a mere 17 page-document, comprised of sixteen articles, it also included: a 165-page protocol on definitions, data exchanges, and procedures for elimination, verification, dispute resolution, and consultations; a 91-page annex on inspection activities; a 68-page annex on notifications; and a 15-page annex on the exchange of telemetric information.

effective Convention, we all are recognizing the urgency that the current international climate imprints to the international community, to ensure substantive progress on priority nuclear disarmament and non-proliferation issues.

As the General Assembly has called upon States participating in the conference to make their best endeavors to conclude as soon as possible a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination, I would like to encourage delegates to review the President's first draft text from the perspective of its being a starting point, and to bring to the commencement of the June Conference your views, comments and proposals, not only on its substance but also on how the legal and technical language might be improved.

We all must have the determination that with the time available, we are committed and ready to lend our full weight to efforts to achieve a strong instrument that will attract the broadest possible international support.

Before closing, I wish to remind delegations that my team and I continue to be available for consultations in Geneva and will be available in New York very soon, as of June 7th, in order to allow delegations time to consult with their capitals and receive their instructions.

I look forward to co-operating closely with States, Civil Society and Academia as we work to bring these vital negotiations to a successful conclusion.