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

7 June 2017

English only

New York, 27-31 March 2017 and 15 June-7 July 2017

The Convention Prohibiting Nuclear Weapons Should Not Include Disarmament, Fissile Material, or Verification Protocols; Other Comments

Submitted by the Los Alamos Study Group
June 6, 2017

The Convention's Preamble properly includes the goal of general and complete disarmament.

1. This is not a *pro forma* matter. For example, the 25 nuclear umbrella states in Europe, and the three nuclear-armed states allied with them in NATO – currently a conventional military *and* a nuclear alliance – and Russia on the other side of the “deterrence divide,” together possess 96% of all nuclear weapons today. Defusing even this one confrontation is of signal importance to nuclear disarmament, human development, and climate protection. As this situation demonstrates (as does the nuclear confrontations in South Asia and East Asia), nuclear disarmament cannot be fully separated from conventional military threats and the need for general disarmament. The answer to a conventional threat can be a nuclear deterrent with deep domestic support. Nuclear weapons do not replace conventional armaments; they foster more of them. The entire nuclear weapons complex creates existential threats, exacerbates postures of confrontation, and fosters arms races of all kinds.

The Convention's Preamble should include stronger reference to human development and climate protection goals.

2. Continued financial, political, diplomatic, and military commitments to nuclear weapons, and the militaries in which they are embedded, will prevent realization of United Nations development goals. Nuclear weapons, without ever being exploded, are “anti-development” devices. They produce poverty and precarity, not security. Their destabilizing effect is the same as regards climate and other environmental goals: nuclear weapons, and the complex of existential confrontation they create and sustain, will prevent climate goals from being realized, jeopardizing humanity and countless other species in this way as well. Nuclear weapons and civilizational goals are utterly incompatible. Nuclear weapons symbolize and constantly help produce a political culture of human and environmental disposability, and despair.

The Convention should not include disarmament provisions, technical content, fissile material issues, or obligations which are onerous to potential states parties.

3. The purpose of this Conference is to produce a treaty to prohibit nuclear weapons in all their aspects. Examples of purposes *not* in the narrow but highly practical Conference mandate include:

- negotiating a treaty containing a framework or process for gradual nuclear disarmament (a complex and purely theoretical endeavor);
- establishing obligations on any parties actually using nuclear weapons in war (which could never be enforced); and
- negotiating any issues involving fissile materials (which would impossibly broaden negotiations).

4. The Convention should not contain technical content (such as inspection and verification protocols). It can and should depend upon available IAEA mechanisms and NPT requirements for these.

5. The Convention should not create onerous new obligations for states parties, to avoid creating general barriers to accession by the 156 states without nuclear weapons or nuclear alliances.

Prohibiting nuclear weapons is a political process that will be aided to a greater – or a lesser – degree by the Convention’s formal prohibitions.

6. The Convention is a big step toward banning nuclear weapons, not the conclusion of the prohibition process. The treaty’s prohibitive norms (refreshed, and new, norms -- both) will influence governments not just through the actions of other governments but also, and fundamentally, through the agencies of civil society that it strengthens. The treaty should be crafted in such a way as to strengthen popular movements against nuclear weapons, especially in the 37 states currently possessing, or otherwise assisting and supporting nuclear weapons. The treaty itself will not do the work of banning nuclear weapons, except in the (indispensable) formal sense.

Other comments

7. In the Preamble, we object to the characterization of the NPT as “an essential foundation for the pursuit of nuclear disarmament.” The provisional, temporary legitimacy accorded by the NPT to the nuclear arsenals of five states is frequently (and erroneously) cited by most of these states as evidence of unqualified, essentially permanent *de jure* legitimacy. Nuclear *might*, in other words, is now asserted as *right*, using the NPT. As a foundation of nuclear disarmament, the NPT has failed. That is why this Convention is being negotiated.

8. In the Preamble, we object to the characterization of the Comprehensive Test

Ban Treaty (CTBT) as “a core element of the nuclear disarmament...regime.” It is far from being that. First, there is no nuclear disarmament regime. Second, the CTBT has no disarmament component. Disarmament is an aspiration of the CTBT, not an obligation or operative requirement. In practice, the CTBT has not fostered nuclear disarmament.

9. Regarding Article 3 (“Safeguards”) with its associated Annex, the intent appears to be to create a nonproliferation structure within the Convention that is parallel to that of the NPT, in part to forestall any possible exodus of states from the NPT to the Convention. Three sets of questions must be asked about this.

- First, is this really necessary or valuable in any way? Why would states want to leave the NPT to join the prohibition Convention? With or without a withdrawal clause any state party could withdraw from this Convention, citing the criteria in Article 18 (if any remain) or in the Vienna Convention on the Law of Treaties, just as any state party can withdraw from the NPT at any time with appropriate notice. What added nonproliferation protection does Article 3 really add?
- Second, is the price paid for Article 3 – in terms of administration, verification, and coordination with the International Atomic Energy Agency (IAEA) really worth it? Doesn’t this Article turn the Convention into a kind of “backup NPT?” Isn’t that redundant?
- Third, don’t these Safeguards implicitly rely upon the same combination of economic, diplomatic, and sometimes military¹ sanctions for enforcement as do existing IAEA agreements? If so, don’t these implied enforcement provisions in the Convention privilege the five permanent members of the Security Council, who are also the five nuclear weapon states under the NPT? Does this Article therefore tend to reproduce the nuclear prerogatives of nuclear weapons states, instead of diminishing them? Would this Article, especially considered along with Articles 5 and 10, provide a “back door” for nuclear weapon states to influence the operation of this Convention overall?

10. We phrase these as questions because we are not experts on IAEA sanctions. Our initial judgment is that Article 3 weakens the Convention.

11. Article 4 (“Measures for States that have eliminated their nuclear weapons”) also appears unnecessary. The accession procedures of Paragraph 39 make a) accession to the Convention by former nuclear weapon states, and b) (re-)accession to the NPT by those same states as non-nuclear weapon states, much the same procedure. It makes no sense to us to allow states that have eliminated their nuclear

weapons to join this treaty without *also* joining the NPT as non-nuclear weapon

¹ E.g. Security Council Resolution 678 (29 November 1990), “Authorizes Member States cooperating with the Government of Kuwait...to use all necessary means to uphold and implement Resolution 660 and all subsequent relevant resolutions and to restore international peace and security in the area.” This was the Security Council blessing for Operation Desert Storm. At [http://undocs.org/S/RES/678\(1990\)](http://undocs.org/S/RES/678(1990)).

states.

12. Article 5 (“Measures for situations not covered by Article 4”) is unwise, as discussed above. This Convention should not try to become a disarmament convention. A universal, multilateral nuclear prohibition treaty is not the place for disarmament procedures. Article 5 is also repetitive to Article 11, which covers amendments in general.

13. By the same token, Article 9, we believe paragraph 1.(d) is unwise and destabilizing.

14. The Convention, especially the core prohibitions, should be clear, comprehensive, and explicit for the layperson as well as the specialist, given the pronounced role that civil society will play in advancing the treaty’s objectives.

15. We are pleased that the draft Convention would prohibit nuclear “possession” in addition to “stockpiling.” Possession is a simpler concept less given to technical redefinition, more inclusive of small quantities. It is more objective, lacking as it does any need to impute intent. Were possession not prohibited, states might claim that some intact warheads, ostensibly in a dismantlement queue, would not “stockpiled” even though they could be deployed and used (with or without refurbishment) if their administrative status were changed.