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

8 June 2017

English only

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

**Comments on the Draft Convention on the Prohibition of Nuclear Weapons**

**Working paper submitted by International Physicians for the Prevention of Nuclear War (IPPNW)**

1. IPPNW welcomes the Draft Convention on the Prohibition of Nuclear Weapons submitted by conference President Whyte on May 22. The draft embodies most of the elements related to the goals and purposes of the Convention on which there was broad agreement during the first week of negotiations in March, including core prohibitions and obligations. While there are ways in which the draft can and should be strengthened when negotiations resume in June, we believe the draft provides a strong foundation for that work.
2. We concur with Ambassador Whyte that concluding the negotiations by the scheduled end of the conference on 7 July 2017 and producing an agreed Convention text is both feasible and important.
3. We are especially pleased that the Preamble of the Draft Convention firmly establishes the humanitarian basis for prohibiting nuclear weapons as an urgent step toward their elimination, and that reference is made to the unacceptable health, environmental, economic, and societal impacts of nuclear weapons. We recommend that the Preamble cite explicitly the three international conferences on the Humanitarian Impact of Nuclear Weapons as the source of the compiled scientific and humanitarian evidence on which this Convention is based.
4. Perhaps the single most important conclusion of these conferences was their affirmation that the resources of national, regional, and international health and relief agencies would be overwhelmed by the detonation of nuclear weapons and that they would be unable to mount any kind of effective response. We recommend that language to this effect be added to the Preamble. As we have stated previously, such language will reinforce an understanding of the compelling need for this Convention and will empower the States Parties and civil society to engage effectively in the public communication and public education work to which they will be obliged once it is adopted.
5. We fully support the inclusion of language recognizing the Hibakusha and the victims of nuclear testing, whose testimony has made an invaluable contribution to this conference. In this same vein, we recommend that the treaty preamble further

recognize the disproportionate vulnerability of women—especially girls—to lifelong increased cancer risk as a result of exposure to ionizing radiation, as well as intergenerational effects and the disproportionate health risks and harm suffered by indigenous, minority, and rural people as a consequence of nuclear test explosions.

6. We are concerned that the Preamble does not adequately affirm that the mere possession of nuclear weapons by any State or non-state actor constitutes an unacceptable, existential threat to humanity. Since the ultimate goal of the Convention is the elimination of nuclear weapons, the text needs to include an explicit statement that the possession of nuclear weapons by anyone is an existential threat and is, therefore, prohibited. Such a clause will provide crucial support to States Parties and civil society in the essential task of promoting universality of the Convention by pressuring nuclear-armed States to disarm and nuclear-dependent States to withdraw from extended deterrence arrangements.

7. The Draft makes no mention of the very real and increasing risks of nuclear weapons being used, as identified during the Humanitarian Impact of Nuclear Weapons conferences. UNIDIR has elaborated on the nature of these risks, particularly the ways in which substantial investments in the modernization of nuclear weapons systems “have enhanced rather than decreased the likelihood of an intentional or inadvertent detonation event.”<sup>1</sup> The Preamble, and the Convention as a whole—would be strengthened by making an explicit connection between unacceptable consequences of nuclear weapons use and unacceptable risks posed by the continued possession of and reliance upon nuclear weapons by any State.

8. We are disappointed that the Draft Convention does not include a specific prohibition against threat of use. We understand that there was a divergence of views expressed on this point during the March session, and that debate will continue over threat of use when negotiations resume. While we respect the arguments of those who believe that threat of use is covered under other provisions of international law, by the UN Charter, or by other prohibitions listed in this Convention, we continue to believe—as do many State delegations who spoke to this issue in March—that the threat of use of nuclear weapons is distinctly and uniquely related to the paramount concern with humanitarian consequences, is inadequately addressed in the existing body of international law, and has been a significant motivating factor in the process that has led to these negotiations. Therefore, we would like to reaffirm three paragraphs from our intersessional working paper, dated 20 April 2017:<sup>2</sup>

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

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<sup>1</sup> Borrie J, Caughley T, Wan W. (editors) Understanding nuclear weapon risks. Geneva: UNIDIR. 2017.

<sup>2</sup> A/CONF.229/2017/NGO/WP.21

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.

9. The addition of a prohibition on transit would also strengthen the draft. Specifically, we support a provision that would require each Member State to prohibit and prevent the transit of nuclear weapons in its territory or at any place under its jurisdiction or control. This would help limit the ability of non-parties to engage or assist in military preparations for nuclear war. An exception to this prohibition for the purposes of dismantling nuclear weapons would be appropriate and could be made explicit.

10. We will not specifically address the weaknesses in the draft language regarding accession by nuclear-armed and nuclear-dependent States, but wish to note our agreement with other NGOs who have pointed out ways in which these provisions need to be clarified and strengthened, not by imposing unhelpful layers of technical detail on this Convention, but by articulating clear norms and expectations related to those States not currently in compliance with the prohibitions established by the Convention. As we have said previously, nuclear-armed States, at a minimum, should be required to submit plans for the verified, irreversible and time-bound elimination of their nuclear weapons stockpiles, while nuclear-dependent States should provide clear evidence that they have separated themselves from all nuclear weapons entanglements before being permitted to accede to the Convention.

11. While we are pleased that the Draft Convention includes a provision for an amendment process—which should only be used to further strengthen the Convention—and is not open to reservations—which can only be used to undermine it—we urge the conference to remove the withdrawal provision in the draft and replace it with a “no withdrawal” provision. There should be no circumstances under which a State should have an exit strategy from an international agreement that categorically prohibits weapons that pose an existential threat. The references to “extraordinary threats” and “supreme interests,” repeat the problems of the ICJ judgment and contradict the recognition in the preamble that nuclear weapons themselves are extraordinary threats that inherently violate the supreme interests of

the entire world. The UN Charter and key human rights instruments, such as the International Covenant on Social, Economic and Cultural Rights and the Convention on the Elimination of all forms of Discrimination against Women, do not allow withdrawal. Nor, in our view, should the Convention on the Prohibition of Nuclear Weapons.

12. Support for implementation of the Convention is crucial, and we urge that the Convention identify and/or establish an agency or organization, preferably under the auspices of the UN, responsible for facilitating regular meetings of states parties, civil society, and international organisations; addressing matters related to implementation and compliance; and settling disputes.