

Briefing paper | 15 June 2017

General obligations in the Convention on the Prohibition of Nuclear Weapons

The draft text of the Convention on the Prohibition of Nuclear Weapons, which provides the basis for a prohibition of nuclear weapons, was released by the President of the negotiations, Ambassador Elayne Whyte of Costa Rica on 22 May.

ICAN welcomes the release of a draft treaty to ban nuclear weapons as an essential milestone in the years-long effort to ban nuclear weapons because of their inhumane and indiscriminate impacts. This paper provides background and justification for two of ICAN's recommendations for the General Obligations section of the treaty- Military Planning and Preparations and Financing.

Military Planning and Preparations

ICAN welcomes the comprehensive prohibitions to use, develop, produce, manufacture, otherwise acquire, possess, stockpile, transfer, and test nuclear weapons as well as assist, encourage, or induce anyone in such activities presented in the draft text.

In order to ensure the general obligations are both comprehensive and in line with other weapons prohibitions, ICAN urges states to consider an explicit reference to military preparation and planning, in order to prevent any state party from using or threatening to use nuclear weapons.

Currently, there are a number of states that do not stockpile or retain nuclear weapons, yet provide significant military support preparing for their use. This takes a number of forms. It can include the purchase of specific equipment to ensure the ability to carry and drop nuclear bombs (so called 'dual-capable-aircraft'). Military preparations can also include participating in exercises by providing overflight or communications support designed explicitly to get ready to use nuclear weapons. Generally, states require certification (of equipment, facilities, or personnel) to be able to engage in these activities.

At the same time, being in a military partnership or alliance with a nuclear-armed states does not automatically require engagement in preparations for the use of nuclear weapons. There are already wide variations in regards to the engagement of a number of states that have security arrangements with nuclear-armed countries, and there is nothing in existing security treaties that would prevent states from continuing military cooperation while excluding the preparation for use of nuclear weapons.

The Chemical Weapons Convention sets the precedent in Article 1.1.c, by including a direct obligation for states parties not to "engage in any military preparations to use chemical

weapons;”. States joining the convention on the prohibition of nuclear weapons already will reject any activities related to the use, stockpiling, retention or assistance with nuclear weapons, and therefore should welcome that this language removes ambiguity in regards to permitted activities under the treaty.

Financing

The draft prohibition on assistance is strong, but could be stronger by making a specific reference to a prohibition on financing of nuclear weapons production. Such an explicit prohibition builds on the growing understanding that providing financial services to companies involved in the production of key components that play a direct role in the lethality of inhumane weapons constitutes a form of assistance. All financing provided to nuclear weapon producing companies assists them in the production of key components of weapons that are designed to violate international humanitarian law. In keeping with the spirit of the nuclear ban treaty, financing is a logical term to include.

A significant number of states indicated during the first week of negotiations that they want financing to be included as one of the core prohibitions, while others raised some questions. Some states questioned what financing might include or how it could be correctly implemented. Financing and investing are done with the intention of making a profit. In practical terms, a prohibition on financing would apply to all types of investments and financing, including providing loans, investment banking services such as underwriting bond or share issuances, and asset management activities such as shareholding. It is different than boycotting, and a prohibition on financing would not automatically imply a prohibition on purchasing goods not related to nuclear weapons, from these same companies.

Previous experiences have shown states are well-placed to implement general prohibitions that relate to financing. For example, research by PAX shows that 10 states have already adopted national legislation prohibiting investments in cluster munitions, understood to be prohibited by the ‘assistance’ provision in the Convention on Cluster Munitions. Some states have also already prohibited the financing of nuclear weapons. In Australia and New Zealand it is a crime for a person or company to facilitate nuclear weapons manufacture anywhere in the world. In both countries a company is also prohibited from providing services, including lending money, to another company if it can reasonably suspect that the services provided will contribute to a WMD program. In Switzerland, the Swiss War Materials Act prohibits direct investment in nuclear weapons producers. Liechtenstein implements the same legislation.

The provision included in the treaty could be simple, in line with the way ‘assistance’ has been included in other treaties. Implementation should be left up to states parties, who would be best equipped to do so in a way suited to their national contexts. Best practices on national implementation could be shared at meetings of states parties and assistance could be asked for and provided with implementation measures should States choose to do so. Including ‘financing’ as a named part of assistance therefore strengthens the overall text and provides clarity and guidance towards treaty implementation. Any signatory country to the treaty involves itself in efforts for a nuclear weapons free world. Signatories can no longer use nuclear weapons, can no longer develop, produce, acquire, stockpile, retain or transfer nuclear weapons. Wouldn’t it be a strange idea if banks, pension funds, insurance companies, local governments and citizens from a signatory country can still invest money in nuclear weapons producers?