

The draft 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, has been released by the President of the negotiations, Ambassador Elayne Whyte of Costa Rica. The draft is based on the discussions and inputs made at the first session of the conference to negotiate this treaty, held on 27-31 March 2017 at the United Nations in New York.

The negotiations will resume on the basis of this draft text on 15 June at the United Nations in New York, with the aim of concluding the negotiations by 7 July 2017.

The institutional part of the treaty is important, because it will affect the effectiveness of the instrument. Ensuring that there is a solid and effective structure in place will be essential for the treaty's impact and success.

National Implementation

Implementation legislation is a mechanism for national interpretation of the treaty. Implementation legislation should apply to all necessary measures to implement the treaty, and not be restricted only to the prohibitions. In addition, implementation should put as a priority the safety of people and protection of the environment, as well as cooperation with other states to achieve the objects and purpose of the treaty as a whole.

International Cooperation and Assistance

International cooperation and assistance is particularly important for the Convention on the Prohibition of Nuclear Weapons, because the scale of the effects of these weapons makes it difficult for states to manage these alone.

States should ensure that the treaty details the areas in which parties will have a right to seek and receive assistance, and elaborates the areas in which those in a position to do so shall provide assistance as well as cooperation to help other states meet their responsibilities under the treaty. Currently draft Article 8(1) only refers to cooperation.

The types of assistance to be sought and provided should also be described, such as legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance, as well as relevant information for affected states parties.

The international cooperation and assistance provision should specify, as Article 6(3) does currently, how assistance can be provided. Clarity would be gained by placing all international cooperation and assistance provisions in Article 8 (and placing states' obligations to victims and the environment in areas under their jurisdiction or control in another article or articles).

Meeting of States Parties

Meeting of states parties will be a crucial tool for the treaty's success.

Article 9 proposes regular meetings of states parties, review conferences, and outlines the tasks of such meetings. In order to ensure efficiency as well as consistency with other weapons treaties, a few modifications may be necessary.

- The text should ensure that a objective of meeting of states parties is to discuss measures to support the objects and purpose of the treaty.
- The treaty should allow for annual meetings of states parties, in order to ensure regular discussions on the prohibition of nuclear weapons and progressing their elimination. The length of the meetings can be established by states parties, so as not to incur increased financial burdens. Annual meetings are an important way to continue momentum towards universalisation, assess progress on achieving the treaty goals, and review assistance best practices, provisions, and needs.
- The treaty should specify that international organisations and civil society will be invited to not only attend but also participate in the meetings of states parties and review conferences, at least in the same manner as international organisations and civil society are participating in the negotiations of the treaty.
- The treaty should also establish a treaty body to assist with implementation of the treaty, organization of meetings of states parties, encouraging ratification, developing verification and enforcement mechanisms, and educating the public about the treaty and about the humanitarian impact of nuclear weapons.

Amendments

The text could be adjusted to require that proposed amendments be circulated to states parties, and require a time frame for review before decisions are taken to amend the text. In addition, no amendments should be proposed that would contravene the objects and purpose of this treaty.

Universality and norm dissemination

The text should impose an affirmative duty on all states parties to the treaty to promote the norms it establishes, including by disseminating information about its content, purpose, and basis to their militaries, public, and other states, to encourage states outside the treaty to sign, ratify or otherwise accede to it, and to follow its provisions even if they have not yet joined. This would follow and build on the example of the Convention on Cluster Munitions.

Withdrawal

The consequences of the use of nuclear weapons are so significant that no state should be permitted to withdraw from the treaty, and this should be clearly stated. Any withdrawal would be considered a threat to international peace and security and require emergency action by states parties.

Relations with other international legal agreements

The treaty prohibiting nuclear weapons builds on previous legal instruments, both those preventing the proliferation of nuclear weapons and those prohibiting indiscriminate or inhumane weapons. Many of these instruments, to which the ban treaty is complementary, are rightly recognized in the preamble.

However, Article 19 of the current draft treaty text should be removed: it refers to just one of these instruments, and the current text could generate confusion for states parties.