EDITORIAL: HOW TO BE UNACCEPTABLE IN AN NPT OUTCOME DOCUMENT
Ray Acheson | Reaching Critical Will of WILPF

In their reactions to the draft text from Subsidiary Body 1 (SB 1) on forward-looking commitments for nuclear disarmament, most of the NPT nuclear-armed states argued that the text was “unacceptable”. They demanded that the entire text be scrapped and that the outcome from Main Committee I (MC I) draw exclusively on a revised version of the MC I draft. This is an unacceptable approach to this Review Conference outcome. The overwhelming majority of states parties have demanded further, faster, more concrete, more transparent, verifiable, irreversible, and time-bound actions on nuclear disarmament. To reject everything in SB 1, which is already a weak text, is a straightforward assertion of power by a few states over the rest of the world.

During the public meeting of MC I on Monday afternoon, France, the UK, and the US all said SB 1 does not provide a basis for consensus. China and Russia spoke out against this draft as well. These states, as wielders of nuclear weapons, clearly do not want to accept any language suggesting that their weapons are unacceptable or that exposes their failure to fulfill the legal obligation to eliminate them.

The nuclear-armed states all rejected the notion that they are not in compliance with their article VI obligations, highlighting their arsenal reductions over the years. This argument conveniently ignores the plans and programmes for nuclear weapon modernisation ongoing in all of their countries. France and Russia also rejected the notion that the pace of disarmament is too slow—even though this has been lamented even by the staunchest nuclear-dependent allies. Ambassador Simon-Michel seemed to think this was absurd, wishing that efforts to combat climate change or tax evasion were going as well as nuclear disarmament.

More broadly, there was push back against the language on new legal instruments. During the debate on effective measures on Friday, the US firmly argued that there is no legal gap in the NPT and that effective measures are not limited to multilateral, legally-binding actions. Instead, the US argued, effective implementation of article VI should be achieved through what the 1995 outcome described as “systematic and progressive efforts” by the nuclear-armed states with the “ultimate goal” of elimination. “We can accept that the final phase in the nuclear disarmament process should be pursued within an agreed legal framework,” conceded Ambassador Wood. But “nothing in Article VI requires time frames or specific requirements for achieving the final elimination of nuclear weapons.” The US reiterated this view in its statement in MC I on Monday, where it, and France, rejected any attempts to include timeframes for disarmament in the outcome document.

The majority of delegations, however, seemed to find the nuclear-armed states’ approach to this document unacceptable. Most states argued that the outcome text on disarmament would have to reflect most if not all of the existing SB 1 text, and that the commitments contained within this draft document should be strengthened. There were calls for explicit language challenging nuclear sharing arrangements, modernisation, the slow pace of disarmament, and the distinct lack of timeframes contained in the draft. Costa Rica, calling for the reference to the “slow pace” of nuclear disarmament to be changed to “lack” of disarmament, also emphasised that the outcome must highlight the legal gap with respect to the prohibition and elimination of nuclear weapons.

The nuclear-armed states also pushed back against the idea that any new evidence has been presented on the humanitarian impact of nuclear weapons, or that the risk
of the accidental or intentional use of nuclear weapons has increased. This is an interesting assertion, given that only two of them attended one of the three conferences. In an attempt to delink the humanitarian impact of nuclear weapons from the demand for disarmament, the nuclear-armed states called for the paragraphs on the humanitarian impact to be moved from the disarmament-related portion of the outcome document to a more general chapeau.

The Austrian delegation welcomed the suggestion of including the humanitarian considerations in the outcome’s chapeau, in addition to its retention in the disarmament portion of the text. Ambassador Kmentt pointed out that the only reason to reject the idea that there is new evidence or increasing risks is because it entails policy implications—which is exactly why these considerations must be discussed in the context of disarmament. “If we have a security system based on nuclear deterrence,” argued Austria, “this becomes a suicidal, irresponsible position in light of the global consequences and risks.”

The division between those with nuclear weapons and those without has never been more stark. The idea that the SB 1’s minimalist and at times unhelpful language is “unacceptable” to the nuclear-armed states highlights this acutely.

What is truly unacceptable is the idea that five countries can dictate to the rest of the world what is “acceptable” when it comes to nuclear weapons. What is truly unacceptable is the reality of the humanitarian and environmental consequences caused by the use, testing, and production of nuclear weapons. What is truly unacceptable is the risk of the deliberate use of nuclear weapons or the risk of potential accidents or mishaps that result in the detonation of a nuclear weapon. The threat of use of nuclear weapons is also unacceptable, dependent as it is on the willingness to inflict massive nuclear violence against the rest of the world.

It is clear that, as in 2010, the nuclear-armed states will reject anything resembling an effective measure for nuclear disarmament in the NPT outcome document. Thus non-nuclear-armed states that are truly committed to achieving a nuclear weapon free world must consider how best to reach that goal in this context.

The US delegation argued that that the “history of nuclear disarmament shows that each step we take helps to create the conditions and opportunities for subsequent steps,” and that these conditions and opportunities are the products of “vision and realism”.

The commitment to pursue effective measures for the prohibition and elimination of nuclear weapons, which has been endorsed by over 80 states in the pledge from the Vienna conference on the humanitarian impact of nuclear weapons, is just such an opportunity. Endorsing the pledge and negotiating a legally-binding instrument to prohibit nuclear weapons is a realistic step that can be achieved (because it doesn’t rely on the willful intransigence of the nuclear-armed states) and that would help create the conditions for elimination. It is 70 years since the bombing of Hiroshima and Nagasaki. It is 45 years since the entry into force of the NPT. Failure to move forward to negotiations on a ban is unacceptable.
The News in Brief is not a comprehensive summary of all statements. It highlights positions on a few critical issues covered during plenary discussions.

Main Committee I
Humanitarian impact of nuclear weapons (HINW)
- Austria, Chile, Costa Rica, Iran, Marshall Islands, Mexico, NAC, South Africa, Sweden, and Switzerland welcomed the references to HINW.
- US, France believe the paras on HINW in the MCI draft are “unacceptable”.
- US and UK suggested these paragraphs should be moved to the chapeau section and be deleted in the second part of the report.
- Austria, Switzerland called for HINW to be included in both sections.
- Costa Rica, Egypt, Mexico, NAC, Sweden called for the inclusion of a reference to the Humanitarian Statement delivered on behalf of 159 states.
- Australia, Canada, Hungary, and Spain called for a balanced reflection of all views on this issue.
- Marshall Islands, Sweden called for the inclusion of a reference to the trans-boundary nature of the humanitarian consequences of a nuclear detonation.
- NAC, Sweden, Switzerland suggested moving P23-26 to a more prominent place in the document.
- Slovenia thought they should not be moved.
- France stressed that there has been no new information on the humanitarian impact or risk of nuclear weapons use for decades.
- Austria strongly disagreed and highlighted the findings of the three conferences on HINW.
- Costa Rica noted that P29 does not include a reference to the HI of nuclear testing and the disproportionate effects on women.

Risk
- US, France do not believe that there is an increased risk of the use of nuclear weapons.
- Sweden stressed the risk of high alert levels.

Reporting
- NAC suggested merging P35b with P15.
- Netherlands called for a more extensive para on reporting, highlighting the quality, elements, clarity, and frequencies of such reporting.
- Japan said it should be added to P15 that a standard reporting form should have been agreed to in accordance with the 2010 Action Plan.
- Further it should include an assessment that reporting varies substantially in degree of depths.
- Switzerland suggested that P15 and 16 should emphasize the importance of transparency.
- Hungary called for a stand-alone para on reports.

De-alerting
- The US does not believe that lowering alert levels will contribute to the enhancement of security as referred to in P18.
- NAC highlighted that progress on de-alerting so far is lacking and called for stronger language in P19.
- Switzerland suggested adding a reference to the connection between de-alerting and risk reduction.
- Switzerland highlighted that in line with the 13 steps from 2000, de-alerting is a concrete disarmament step.

Prohibition and elimination
- The Marshall Islands welcomed the Austrian Pledge.
- NAC regretted that references to the unequivocal undertaking for total elimination of nuclear is not mentioned until P22 and not properly anchored in the text.
- NAC highlighted that concern expressed in P20 is irrespective of the increasing international tensions.
- NAM called for including a reference to UNGA Res 68/32 in P21.
- France suggested deleting reference to the 1996 ICJ opinion in P36.
- France suggested deleting reference to the 1996 ICJ opinion in P36.
- Austria highlighted that urgent policy considerations should follow from new evidence on risks and impact of nuclear weapons.

FMCT
- France, Netherlands, ROK, and Slovenia called for stronger language on the GGE on the FMCT in P31.
- France, Slovenia suggested the conference should welcome the French draft for an FMCT.
Modernisation

- Chile, Costa Rica, Cuba highlighted the need to include a reference to the adverse effect of modernization programmes on nuclear disarmament.

Step-by-step

- Netherlands, Hungary called for more ambition in P16 e.g. to include a call on further action towards disarmament.
- ROK suggested adding that the process should be strengthened to expedite nuclear disarmament.
- Hungary missed references to the building block approach to nuclear disarmament.

Reductions

- Costa Rica, Cuba, Iran, Sweden suggested deleting significant from P17.
- On P18 Sweden called for the inclusion of the current stockpile levels and highlighting the number of those weapons on high alert.
- Costa Rica and Iran suggested deleting significant from P18.
- The US does not agree with the benchmarks or timelines referred to in paragraph 22.
- The Netherlands suggested including a call for deeper cuts in P17.
- France and Russia called for references to general and complete disarmament.

Disarmament education

- Ireland called for the inclusion of nuclear in P35 a.
- Japan welcomed support for P35.

Verification

- NAC stressed that OP 34 should underline the need of further additional nuclear disarmament verification.
- Norway welcomed the para on verification and the reference therein to the on-going partnership on verification.

Review Conference outcome

- Canada, Chile, Costa Rica, and Ireland welcomed paragraph 12.
- Chile suggested including a reference to the significant role of civil society.

- Costa Rica, Ireland highlighted the importance of including women in all aspects of nuclear disarmament, including education.
- Sweden called for P8, 11, 12, 22-27, and 36 to be reflected in the merged document.
- France called for highlighting the signing of the protocols to the CANWFZ by the nuclear-armed states.
- Iran had suggestions for specific wording of P2-5, 8, 13, 17-22, 26, 27, 29, and 31.
- Australia will submit suggestions on behalf of a group of like-minded states.
- Germany highlighted that welcome, reflects a consensus word and called for a streamlined use of that word in the outcome document.
- China, Cuba, Germany, Iran, NAM, South Africa will submit more extensive comments in writing.

Other

- The draft report of SBI and MCI will be merged into a comprehensive draft.
- NAC, Austria would welcome a call for additional meaningful engagement with civil society in all disarmament forums.
- Mexico highlighted the unimplemented commitments and obligations from previous review conferences.
- NAM highlighted several of its recommendations as contained in WP.24.
- France thought that only conferences attended by all states parties of the NPT should be included.
- Iran agreed and suggested deleting references to the nuclear-armed states meetings, the Nuclear Security Summits, the GGE on FMCT, and UNSC.

Main Committee II

General

- Egypt and NAM stated that the report should reflect the priority of universalization.
- Canada and United Kingdom believes that language taken directly from the 2010 Action Plan should not be up for negotiations or changes since this is already agreed upon and would weekend the Action Plan.
- United States did not support the competing language on non-proliferation and peaceful use of nuclear energy.

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Draft review, continued

- Cuba highlighted the importance of stressing the link between non-proliferation and nuclear disarmament.
- Cuba and NAM also stated that safeguards agreement should have no influence on the right of PUN.
- France called on non-compliance with proliferation obligations to be criminalized.
- Egypt and Iran stressed that the draft is very detailed on additional commitment of non-nuclear-armed states but not for the nuclear-armed. The draft should therefore include nuclear-armed state commitments such as vertical proliferation, and cooperation with non-NPT state parties.

Articles I and II and first to third preambular paragraphs

- Canada, Netherlands, Canada, Vienna Group of 10, France, UK, New Zealand, UAE stressed the importance of stronger language on non-compliance since the situation is more serious now than it was in 2010.
- France wanted to add a paragraph stating that violations should have immediate responses and therefore be referred to the UNSC.

Article III and fourth and fifth preambular paragraphs, especially in their relationship to article IV and sixth and seventh preambular paragraphs

- NPDI and Switzerland called for a wider scope on safeguards to include nuclear material no longer used for military.
- Mexico called for the inclusion of all non-military purposes and nuclear installations by nuclear-armed states to be included under the safeguards agreement.
- NAM stressed that paragraph 19 should call on NPT nuclear-armed states to accept IAEA safeguards.
- Vienna Group of 10 stressed that urgency to underline the important of physical protection of nuclear materials.
- Russia called on paragraph 10 to be more accurate on the link between the IAEA and the UNSC
- Cuba wanted a reference in accordance with paragraph 33 on export controls, that a reference should be added calling on nuclear-armed states to put their nuclear material under safeguard agreements.
- France wanted to strengthen language on paragraph 33 on export control.
- New Zealand and NPDI called for a reference to the Nuclear Suppliers Group and Zannger Committee in the export control reference.
- Brazil, NAM, Egypt, Argentina, Egypt, Syria called for the draft to make it clear that the Additional Protocol is voluntary and should not be included in the safeguards legally obligations reference.
- France, UK, Japan, Sweden and UAE believe that safeguards and the Additional Protocol make up the safeguards system and this should be reflected in the draft.
- Algeria stated that paragraph 17 on safeguards and AP is not sufficient and that the draft should go back to the 2010 text.
- Brazil called for the removal of the word “system” in paragraph 8, 9 and 21 in relation to safeguards and that it should be kept in line with language used by the IAEA.
- Cuba stressed that references to the Nuclear Security Summit should not be included in the draft because that process is not transparent.
- Iran called for deletion of paragraph 30 due to the lack of any agreed definition of the concept of non-state actors.
- UK, Argentina, Switzerland supported the state-level safeguards approaches in paragraph 21.
- Iran stated that the state-level safeguards approach is still under negotiation in the IAEA and should therefore not be included.

Article VII

- Argentina, Cuba, Mexico and NAM, in relation to paragraph 37, called for the inclusion of language for the NPT nuclear armed states to withdraw any reservations they have done under NWFZs.
For the first time in the NPT context, the draft outcome document includes language on gender diversity in disarmament processes and the gendered impacts of nuclear weapons. This marks important progress in addressing these long-ignored aspects of this field. It is also important to highlight the effects of a gendered discourse on disarmament and non-proliferation, as this perspective can help illuminate new opportunities for concrete progress on both.

The subsidiary body 1 draft bears in mind “the legacy of health and environmental consequences resulting from nuclear tests and the disproportionate effects on children’s and women’s health.” This recognition stems from the evidence presented at the Vienna conference on the humanitarian impact of nuclear weapons, which demonstrated the particular effects of ionizing radiation on women’s and children’s bodies. These studies were presented at the NPT Review Conference last week during a side event organised by the Irish government (see NPT News in Review Vol. 13 No. 4 for a report on the event).

Unfortunately, this reference is contained within a paragraph about the Comprehensive nuclear Test Ban Treaty. But the disproportionate effects of nuclear weapons on children and women’s bodies results not just from their testing but also their use in conflict, in Hiroshima and Nagasaki. There are also serious socioeconomic implications, particularly for women, resulting from the stigma of surviving the atomic bombings. The text would be stronger if it referred to the various physical, social, cultural, and economic impacts from both nuclear weapon use and testing and directly linked this to ongoing work to understand the humanitarian impacts of nuclear weapons. More broadly, and as reflected in the outcome of the Vienna conference, the rights of victims and survivors of nuclear weapons use and testing should also be acknowledged and upheld.

Meanwhile, paragraph 12 of the Main Committee I draft report emphasises “the importance of ensuring that men and women can participate equally and at all levels in the process of nuclear disarmament and non-proliferation.” This reflects the demands of many states and civil society groups across many disarmament fora and processes and recognises the importance of gender diversity to enhance discussions and perspectives on nuclear weapons.

However, it is also important to note that dominant perceptions of gender hierarchies affect the quality of women’s participation and the quality of the debate around nuclear weapons. Power structures are gendered and rooted in the most political, economic, religious, and cultural power.

The traditional nuclear weapon discourse is full of terms with loaded meanings. This discourse continues to be mined in dichotomies such as hard versus soft security, strong versus weak, active versus passive, and national security versus human security. With remarkable consistency, the masculine-identified sides of these pairs are tacitly attributed more value than the other.

As the Reaching Critical Will team wrote recently for the blog effectivemeasures.org hosted by UNIDIR and ILPI, “Nuclear weapons are themselves loaded with symbolism—of potency, protection, and the power to ‘deter’ through material ‘strength’. For many, such symbolism obscures the real point of the existence of these arms—to destroy—and their horrendous effects.”

Taking a human-focused approach to disarmament, as has been done through examining the humanitarian impact of nuclear weapons, challenges a state-centered approach to international peace and security. This is a good first step. Building up an understanding of the gendered meanings and characterisations embedded in the discourse and politics of nuclear weapons will support that process.

“Just as the humanitarian discourse undermines the perceived legitimacy of nuclear weapons, a gender discourse undermines their perceived power and currency,” wrote the Reaching Critical Will staff. “It also helps illuminate possible solutions. By challenging the discursive equation of nuclear weapons with masculine strength and power, we confront approaches to nuclear governance that work in favour of the indefinite retention of nuclear weapons by a handful of states,” or that promote proliferation. •
EVENT: FORGING CO-OPERATION ON NUCLEAR DISARMAMENT BETWEEN RELIGIOUS LEADERS, LEGISLATORS, AND THEIR COMMUNITIES

Emily Watson | Reaching Critical Will of WILPF

Moderated by Rev. Kyoichi Sugino of Religions for Peace (RFP), this event on 8 May brought together religious leaders from Jewish, Islamic, Christian, and Buddhist traditions, in partnership with Parliamentarians for Non-Proliferation and Disarmament (PNND) and Mayors for Peace.

Dr. William Vendley of RFP explained that whilst RFP has always regarded the use of nuclear weapons as immoral, the “realistic approach” held some appeal for years. In light of stalled progress on disarmament, possessing nuclear weapons is now seen as “morally fraught”. It is arrogant for humans to believe they can control the hazards posed by weapons.

Ven. Gijun Sugitani, Tendai Buddhism, promoted the new Resource Guide on Nuclear Disarmament, for Religious Leaders and Communities. The guide has been endorsed by UN Secretary-General Ban Ki-moon, who states that all great religions share core values of peace. Gijun Sugitani was clear that basic human rights demand the elimination of nuclear weapons.

Alyn Ware, PNND, noted that RFP and the World Council of Churches helped bring about the successful ICJ advisory opinion. Religious principles underlying international law include reverence for life, reciprocity, and guardianship of the environment. It makes sense for parliamentarians and religious groups to co-operate, as both have responsibilities to future generations. Faith communities can highlight ethical imperatives for disarmament and facilitate discussions between states. It is significant that the Vatican has helped improve relations between the US and Cuba.

Given that his mother was seven years old when she witnessed the destruction of Nagasaki, Kenzo Fugisue of the Japanese House of Councilors has made it his mission to ensure the Nagasaki bomb is the last to ever be dropped. Kenzo appreciates the joint statement of PRF and PNND and proposed that such statements be produced in every country.

Aaron Tovish of Mayors for Peace asked, how could a mayor be in favour of a weapon that has the power to destroy their entire city? Around 6700 mayors worldwide support nuclear weapon elimination. Mayors and parliamentarians together can interact with both the general public and the government.

Imam Shamsi Ali, Jamaica Muslim Center, explained that nuclear weapons are counter to Islamic values. Islam requests that the “purity of God influences our daily actions.” Nuclear weapons “conflict with God’s purity as they do not protect life or respect God’s property.” Islamic rules of war prohibit killing women, children, and the elderly, as well as destroying wells, trees, and animals. Nuclear weapons break these rules and would obliterate every sacred part of being.

Maharat Rori Picker Neiss, Jewish Orthodoxy, stated that the power to destroy should be transformed into the power to create. The “Arms Down” advocacy campaign of RFP and PNND calling for peace and development gathered 20 million signatures in just one year. It asked that 10% of money spent on nuclear weapons redirected to Millennium Development Goals.
Banning nuclear weapons
Wednesday, 13 May, 13:15-14:30
Conference Room C

Speakers:
Ray Acheson, Reaching Critical Will of WILPF
Elizabeth Minor, Article 36

A treaty banning nuclear weapons would represent an effective measure to advance nuclear disarmament, and would complement states’ existing obligations and commitments. Over 80 states have now endorsed Austria’s pledge to work on the “legal gap for the prohibition and elimination of nuclear weapons” in the context of NPT article VI obligations. This event will examine what the current legal gaps are, and the elements and principles that should be included in a ban treaty. We will also look at how a ban treaty relates to current discussions at the NPT, and what the next steps should be.
The event was organised by the Norwegian Ministry of Foreign Affairs in collaboration with the International Law and Policy Institute (ILPI). The panel consisted of legal experts examining the issue of “What the law actually can tell us about nuclear weapons”.

While many lawyers will no doubt speak at length if given the opportunity to assess the legal status of nuclear weapons, existing international law itself is less loquacious and usually less unequivocal.

Are nuclear weapons illegal? The short but insufficient answer to that question is that it depends. It depends on which body of law you refer to, whether you talk about use, possession, transfer, or some other aspect of nuclear weapons, and indeed, whether you refer to one of the NPT’s 185 non-nuclear-armed states or one of the five states categorised as nuclear weapons possessors under the NPT. Many of these factors were discussed at the side event, and several others are raised in the weighty tome published by Cambridge University Press.

What seems to be clear is that there is currently no specific or explicit prohibition on nuclear weapons as such. Although their use would be covered by the general rules of the international humanitarian law, no clever interpretation of the law will itself lead us closer to a world without nuclear weapons. Indeed, one of the main conclusions of the book presented by the two editors Gro Nystuen and Stuart Casey-Maslen is that it is not clear that nuclear weapons are unequivocally illegal.

Yet, that conclusion is not necessarily unhelpful. Quite the contrary, if there is an identifiable gap in the international framework regulating nuclear weapons, this gap could—indeed, should, according to many states and civil society actors—be filled by developing new legal instruments. From this perspective, nuclear weapons constitute not first and foremost a legal problem, but a political challenge.

Such a realization should be encouraging to actors working to move the nuclear disarmament agenda forward. Policy can, after all, to a much larger degree than legal interpretation, be influenced and changed. •

EDITORS:
Gro Nystuen, International Law and Policy Institute, Oslo
Stuart Casey-Maslen, Geneva Academy of International Humanitarian Law and Human Rights
Annie Golden Bersagel, International Law and Policy Institute, Oslo

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### CALENDAR OF EVENTS

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<td>Simulating negotiations on a Nuclear Weapons Convention</td>
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