

RESPONSE TO THE FIRST DRAFT TEXT OF THE CONVENTION ON THE PROHIBITION OF NUCLEAR WEAPONS

The [Reaching Critical Will](#) programme of the Women's International League for Peace and Freedom (WILPF) welcomes the [draft treaty text](#) for the Convention on the Prohibition of Nuclear Weapons prepared by Ambassador Elayne Whyte Gomez of Costa Rica on 22 May 2017. This paper reflects on some areas of the draft that could use strengthening or clarity. These suggestions are based on conversations with many interested parties including technical and legal experts, academics, and activists and should be considered evolving thoughts for consideration.¹ It can be read alongside of the [response](#) to the first draft prepared by the International Campaign to Abolish Nuclear Weapons (ICAN), of which WILPF is an international steering group member, as well as WILPF's proposed [elements](#) for the treaty (March 2017), and WILPF's paper on the [core prohibitions](#) (June 2017).

PREAMBLE

Human rights. The preamble should be mindful not only of the suffering of the victims of use and testing of nuclear weapons but also of the violation of human rights this imposes. It should also recognise human rights law as a basis for this convention along with international humanitarian law (IHL) and environmental law.

Environment. The environmental impacts of nuclear weapons are noted in terms of a nuclear weapon detonation but not the production of nuclear weapons. The environmental legacy of uranium mining, production and manufacture of nuclear weapons, testing, and waste disposal are also significant. The preamble could recognise the suffering caused not just by use and testing but also production. Furthermore, given the importance of the sea for the life of coastal and island people and the severe marine impacts of nuclear testing in the Pacific, the preamble could reference both terrestrial and marine environments.

Gender. While the draft notes the impact of ionizing radiation on maternal health and girls, nuclear weapons have far greater gendered impacts, both through physical impacts and social structures.² In addition, there exist significant challenges related to the gendered discourse and analysis of nuclear weapons and to gender discrimination in nuclear weapon-related forums.³ Thus the preamble should recognise the disproportionate impacts of nuclear weapons on women and girls. It should also highlight the need and encourage states and other entities to apply to apply a gender perspective in nuclear disarmament. Drawing on language from the 2017 NPT Preparatory Committee chair's summary, it should also encourage states parties, in accordance with their commitments under UN Security Council resolution 1325, to actively support the participation of women in their delegations and through support for sponsorship programs.⁴

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² For more information please see [Unspeakable suffering: the humanitarian impact of nuclear weapons](#), Reaching Critical Will of the Women's International League for Peace and Freedom, February 2013; Ray Acheson, [Sex, gender, and nuclear weapons](#), International Campaign to Abolish Nuclear Weapons, July 2015; and [Presentation by Mary Olson](#), Nuclear Information and Resource Service, to the Vienna Conference on the Humanitarian Impact of Nuclear Weapons, 8 December 2014.

³ In addition to high rates of stillbirths, miscarriages, congenital birth defects, and reproductive problems caused by radiation, women exposed to radiation from nuclear weapons are more likely to develop cancer than men, in part because women have more high-risk tissue. In some known cases, women have been more exposed to radiation after the use or testing of nuclear weapons due to social structures around consumption of food. Women and girls who have survived nuclear weapon tests or use also face unique social challenges related to how they are treated in societies and communities. For more information and resources please see Ray Acheson, [Gender and disarmament](#), Reaching Critical Will of the Women's International League for Peace and Freedom.

⁴ See paragraph 7 of the [chair's factual summary](#).

Indigenous communities. There have been well over 2000 nuclear explosions at more than 60 locations around the world since 1945, conducted by nine countries. Today, these sites continue to face persistent radioactive contamination. Many communities are living with the health and environmental impacts of this testing. The tests have irradiated downwind and downstream communities, increasing the risk that their people will one day develop cancers and other chronic diseases as a result. In many cases, those residing near test sites have been permanently displaced from their homes.

In many places, due to racist and colonial policies and attitudes, indigenous communities have borne the brunt of this deadly experimentation. At all of the testing sites around the world, indigenous communities have suffered profound physical, psychological, social, and cultural impacts that have disconnected many people from their traditional way of life.⁵ So-called “minor trials,” for example those conducted in Australia by the British, have also resulted in radioactive contamination even though they did not involve explosive nuclear testing. Uranium mining, nuclear weapon production facilities, and nuclear waste storage sites have also historically impacted indigenous communities disproportionately due to targeting of politically disenfranchised communities.

Thus the preamble should recognize the disproportionate impact of nuclear weapons on indigenous communities around the world.

Immorality. A clear rejection of nuclear weapons in the preamble is important for increasing the stigma. There is an apparent consensus amongst non-nuclear-armed or -supportive states that nuclear weapons have no role in providing “security” to populations anywhere. On this basis, the possession of nuclear weapons, as well as the policies and practices of nuclear “deterrence”, are illegitimate and contrary to our collective security and survival. Drawing upon the UN General Assembly resolution on “Ethical imperatives for a nuclear-weapon-free world,” the preamble should state that nuclear weapons serve no legitimate purpose given their indiscriminate nature, inherent immorality and potential to annihilate humanity.

Criminal law. The draft preamble declares that “any use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.” It should also declare that any such use would constitute a war crime or crime against humanity. This would enhance the stigmatising power of the treaty, serving as an important reminder to those in positions of power in nuclear-armed states, or those down the chain of command, that their contemplated acts would likely result in prosecution and criminal sanction under international law.

Socioeconomic development. Trillions of dollars are being invested in nuclear weapon arsenals by the states that possess them. We are in the midst of a nuclear arms race at a time of great social injustice and inequality and while we face collective crises such as climate change. In addition to recognising the implications for socioeconomic development, the preamble should also highlight the resources spent on the development, maintenance, and modernization of nuclear weapon systems.

Education. Recognising the importance of education for disarmament as pursuant to the UN Study on Disarmament and Non Proliferation Education, and its 34 recommendations unanimously adopted by the General Assembly in 2002, current and future generations should be educated about the history of nuclear weapon development, policies, and the ongoing environmental and humanitarian consequences of nuclear weapons use and threat of use. The preamble could stress the importance of diffusing the laws and norms of this treaty and of nuclear weapon legacies to people and communities.

Norms against other weapons. The preamble should welcome the broad support for the international norms prohibiting other indiscriminate and inherently inhumane weapons, including biological and toxin weapons, chemical weapons, anti-personnel landmines and cluster munitions. This is important for situating the ban treaty within broader efforts to reduce suffering in war, and for

⁵ For details please see the working paper prepared for the ban treaty conference by Mines Action Canada in consultation with ICAN Australia, “The disproportionate impact of nuclear weapons detonations on indigenous communities,” June 2017, forthcoming.

challenging the perception that nuclear weapons are merely “political” tools rather than devices capable of inflicting harm to civilians on a massive scale.

ARTICLE 1: GENERAL OBLIGATIONS

Design. In addition to undertaking never to “develop, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices,” states parties should also undertake never to “design” nuclear weapons. Design and research are arguably part of development, however, it may be possible to “design” nuclear weapons without entering into the development or production phases. Design includes research and the creation of concepts while development includes the execution or engineering of those designs. In addition, former nuclear-armed states may try to retain nuclear weapon design capabilities intact to assist in potential future reconstitution on their arsenals, which this treaty should seek to maximally inhibit to the extent possible. If negotiating states want development to include design, they should make that explicit in the negotiating record. Or they could add the word design to the list of prohibited activities.

Threat of use. The International Court of Justice (ICJ) determined that “if an envisaged use of weapons would not meet the requirements of humanitarian law, a threat to engage in such use would also be contrary to that law.” However, banning threat of use could be useful to help clarify and reinforce the law and to prevent specific threats of use of nuclear weapons from being made on states parties’ behalf.⁶

Prohibiting threat of use could arguably also contribute to stigmatising the practice of nuclear “deterrence”. There are differing opinions on whether deterrence doctrines constitute a permanent threat of use, though it should be noted that in their submissions to the ICJ, some states, “which assert the legality of the threat and use of nuclear weapons in certain circumstances, invoked the doctrine and practice of deterrence in support of their argument.”⁷ Regardless, in the context of the ban treaty, states parties “could undertake never to threaten use of nuclear weapons, including through security doctrines providing for use of nuclear weapons.”⁸

Alternatively, treaty negotiators may determine that a prohibition on the threat of use is included in a prohibition on use and/or in a prohibition on assistance, encouragement, or inducement with prohibited acts. If this is the case, those states need to make this clear in the negotiating record. The prohibition against threat use, threat of use, and possession of nuclear weapons could also be reinforced in the preamble with language drawing from the UN General Assembly resolution on “Ethical imperatives for a nuclear-weapon-free world” stating that nuclear weapons serve no legitimate purpose given their indiscriminate nature, inherent immorality, and potential to annihilate humanity.

Planning and preparations to use. In order to most effectively challenge nuclear “deterrence” concepts, doctrines, and policies, the ban treaty should prohibit the actions that facilitate those practices—foremost of which is the planning and preparation to use nuclear weapons. As with threat of use, such a prohibition could arguably be included within a broader prohibition on providing assistance with prohibited acts, but it would be useful for clarity to explicitly prohibit both planning and preparations to use nuclear weapons.

Existing nuclear alliances vary in terms of the level of cooperation and coordination in planning and preparation activities.⁹ Any activities related to planning or preparing to the use of nuclear weapons—

⁶ Some have argued that the UN Charter’s call on states to “refrain from the threat or use of force against the territorial integrity or political independence of any state” is sufficient. However, the threat or use of nuclear weapons goes well beyond territorial integrity or political independence. Furthermore, a treaty-based prohibition in this regard could help to counter the apparent normalisation of threats and force in international relations. Also see Rebecca Johnson, “[NPT and UN Nuclear Ban: Friends Not Rivals](#),” Acronym Institute for Disarmament Diplomacy, May 2017.

⁷ See <http://icnp.org/wcourt/opinion.htm>.

⁸ See IALANA’s working paper on the prohibitions and preamble of the draft treaty.

⁹ For example, the bilateral relationships between the United States and Australia, Japan, and Republic of Korea include ministerial consultations that provide political guidance for cooperation on matters related to extended deterrence in all its aspects and publicly signal the resolve of the parties to use force in the exercise of collective self-defence. Within NATO, policy planning relating to extended nuclear deterrence takes place at multiple levels,

such as planning operations (strike plans, training, exercises), policy (declaratory policy, strategy), and infrastructure (installations, functions)—would not be compatible with states parties' obligations under the ban treaty. The US government has explicitly acknowledged the impacts of a nuclear ban treaty on "extended nuclear deterrence" and "joint defence operations". In a memo distributed to North Atlantic Treaty Organisation (NATO) allies in October 2016, the US government noted that many potential elements of a future treaty, in particular those related to nuclear war planning; targeting; use or threat of use; training personnel for use; assisting, encouraging or inducing prohibited actions; and other elements of a possible draft treaty, would "make it impossible" for the US or other nuclear-armed states to "defend" their allies with nuclear weapons. The memo notes that such prohibitions would "destroy the basis for US nuclear extended deterrence".¹⁰

While joining the ban treaty would not require any state to exit any particular military alliance, a prohibition on the planning and preparation for use *would* require them to ensure that their participation in any alliance is compatible with their commitments and policies under the ban treaty. This may not be as difficult politically as it seems. No mutual defence policy requires its parties to retain a nuclear posture, nor do they require the use of nuclear weapons in any circumstance.

Transit. The deployment or preparation for use of nuclear weapons may entail the transit of such weapons through others' airspace and waters. Ending the possibility of nuclear forces, including dual-capable aircraft, to be temporarily present in or to transit through national territory and airspace could curtail some avenues in which nuclear-armed states are able to engage in nuclear brinkmanship. It could also end a means by which non-nuclear-armed states can assist nuclear weapon programmes by facilitating training activities of nuclear-capable military units. Thus prohibiting transit of nuclear weapons may be one of the few ways in which non-nuclear-armed states can most effectively impact operational practice related to the unfettered global exercise of "extended nuclear deterrence".

In this vein, the memo to NATO allies cited above specifies that a number of the treaty's proposed prohibitions related to transit, port visits, overflights, deployment, and stationing "could make it impossible to undertake ... nuclear-related transit through territorial airspace or seas." It also admits that because the United States "neither confirms nor denies the presence or absence of nuclear weapons on U.S. naval ships," such prohibitions "could make it impossible for these ships to conduct port calls in signatory countries."¹¹ Some countries did this during the Cold War, which actually helped facilitate the elimination of nuclear weapons from many warships and was eventually part of what pushed France, Russia, and the United States to offload naval nuclear weapons.

There are also key national security and public safety arguments for prohibiting the transit of nuclear weapons. If a transit or visitation occurs during a period of hostilities between nuclear-armed states, allowing transits could result in non-nuclear-armed states being targeted with nuclear weapons.¹² Furthermore, any accident involving transiting nuclear weapons could have sudden and devastating consequences for local populations, especially given the lack of transparency with respect to these movements and the policy of nuclear-armed states not to disclose the presence of nuclear weapons on their ships and aircraft.

The ban treaty should thus prohibit the transit of nuclear weapons through the territories of state parties, and obligate states parties to prevent the transit of nuclear weapons through their territories. This understanding of transit should include the transit of nuclear weapons through airspace and territorial waters, visits to ports by foreign ships carrying nuclear weapons or visits to airfields by foreign aircraft carrying nuclear weapons.¹³

including in the Strategic Concepts adopted by state leaders and in the Nuclear Planning Group. Some states are involved in forward deployment or nuclear stationing relationships with nuclear-armed states. Training or targeting exercises, port visits, overflights, declarations and doctrines, etc. are all part of the planning or preparation for use of nuclear weapons that constitute these arrangements.

¹⁰ "United States Non-Paper: 'Defense Impacts of Potential United Nations General Assembly Nuclear Weapons Ban Treaty'," 17 October 2016.

¹¹ Ibid.

¹² The negative security assurances contained in the NWFZ treaty protocols may offer no legal protection in such a circumstance, especially if the local country is in an alliance with the state that is transiting nuclear weapons through its territory.

¹³ There is precedent in national legislation for the prohibition of transit, as well as porting, of nuclear weapons. The 1987 New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act prohibits emplacement or

As with planning and preparations to use nuclear weapons, such a prohibition could possibly be included within a broader prohibition on providing assistance with prohibited acts. However, this would require an understanding of assistance that includes the absence of an act. That is, it would have to determine that by not preventing a nuclear-armed submarine or aircraft to enter a state party's territory, that state party is assisting in the deployment, preparation for use, use, or possession of nuclear weapons. It would be useful for legal clarity to explicitly prohibit transit.

Financing. An explicit prohibition on financing would build upon the understanding that providing financial services to companies and state organisations involved in the production of key components that play a direct role in the development, manufacture, or testing of inhumane weapons constitutes a form of assistance.¹⁴ A prohibition on financing would help provide clarity and guidance towards treaty implementation, which could include national prohibitions on financial or material support to public and private enterprises involved in any of the activities prohibited by the treaty. It would help states parties to prevent direct or indirect investments in entities materially involved in nuclear weapon programmes, and to prevent such investment by companies or other entities within their jurisdiction.¹⁵

This could reduce the incentives for private companies to accept any work related to nuclear weapons. It could also compel public funds controlled by the state, the financial industry, and foundations from supporting any entity involved in nuclear weapons activities.¹⁶ In this regard, this treaty could raise the political and economic costs of maintaining nuclear weapons. It could also help remove the influence of private interests from any decision-making processes related to nuclear weapons production and disarmament. It could also increase the societal stigmatisation of nuclear weapons, including through public divestment programmes.

ARTICLES 2–5

Consideration of these articles should be taken together. Overall it will be necessary to clearly establish that the treaty is open to all states on an equal basis and that there is an obligation to destroy stockpiles, as this treaty is intended to lead to the elimination of nuclear weapons. Within that framing, the following are some thoughts on the current draft.

Article 2: Declarations

The declarations described in this article should be subject to the IAEA's verification agreement with the state in question, as per article 4 of the draft convention.

In addition, states that host nuclear weapons belonging to other states on their territories or in their jurisdiction at the time this treaty is adopted should also have to submit declarations on the removal of these weapons.

transport of nuclear weapons within New Zealand. The Philippine constitutional amendment from 1987 adopts a policy of "freedom from nuclear weapons in its territory." This amendment means that "the government may not store or allow anyone to store nuclear weapons inside the national territory, and nuclear-armed aircraft and vessels may not be allowed to enter." Austria's 1999 constitutional law prohibits amongst other things the transport of nuclear weapons.

¹⁴ Such a prohibition can be designed in such a way that it does not limit investment in activities deemed necessary to meet other obligations under the treaty, such as disarmament and securing weapons and related facilities and materials, while meeting stockpile elimination obligations.

¹⁵ There is already an obligation not to "support" and to not "participate... as an accomplice, assist or finance" any "attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery" by non-state actors, under UN Security Council resolution 1540. A ban treaty could adopt this language and expand it to cover any such activities undertaken by states as well as non-state actors. Also useful is that the Norwegian Government Pension Fund adopted ethical guidelines in 2004, which exclude investment in companies that "develop and produce key components to nuclear weapons". This is particularly significant because nuclear weapons are treated by the Fund as "weapons that violate fundamental humanitarian principles" in the same way as other weapons prohibited under international law, including landmines and cluster munitions.

¹⁶ There is already evidence of financial institutions shunning producers of nuclear weapons. In Norway for example the sovereign wealth fund rejects investment in nuclear weapon producing companies. See [Don't Bank on the Bomb](#), PAX, 2016. These practices of avoiding investment would be likely to increase once a treaty prohibition has been put in place at the national level.

For clarity sake, the date in this article (5 December 2001) could be changed to the date of adoption of this treaty. Alternatively, the convention could require those states that have destroyed or returned their nuclear weapon stockpiles to resubmit the IAEA declaration on the correctness and completeness of the removal or destruction of their stockpiles. This would have the advantage of establishing a baseline of such declarations for accession of states joining in the future that have destroyed their stockpiles.

Article 3: Safeguards

In order to ensure that states are held to the standards of safeguards they have agreed to elsewhere and to encourage the adoption of higher standards, the annex related to safeguards could use the phrase “safeguards system” rather than referring explicitly to INFCIRC153. Thus, it could specify that each state party undertake to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency (IAEA) in accordance with the Statute of the IAEA and the Agency’s safeguards system.

Article 4: Measures for states that have eliminated their nuclear weapons

In order to understand article 4 as it is currently drafted, it is necessary to read a non-paper prepared by the President of the conference, which sets out the example of the “South Africa-plus” model for verifying nuclear weapon stockpile destruction. For the sake of legal clarity, it would be beneficial to include a fuller set of objectives as indicated in this model in article 4 of the treaty itself.

In particular, article 4(1) only mentions verification of the “completeness” of the declared inventory of nuclear material and installations, while the non-paper notes the objective of determining both the completeness and the correctness of the information provided by a state party “with respect to the timing and scope of its nuclear weapon programme and the development, manufacture and subsequent dismantlement of nuclear weapons.” Other objectives listed in the non-paper would also seem to be crucial for effective verification of the complete destruction of a nuclear arsenal and thus should be incorporated into the convention. An additional objective should include verification that the stockpile destruction has been undertaken in observance with environmental norms.¹⁷

The convention should also specify that the IAEA shall be provided with full access to any location or facility “at any time”.

There have been cases in the past where the IAEA and states have struggled with challenges of incomplete declarations, verification of declarations, and the resolution of questions regarding completeness and correctness. To mitigate such challenges, the convention should not permit entry into force of this treaty for states joining under article 4 parameters until stockpile elimination has been verified to the satisfaction of the IAEA Director General.

Article 5: Measures for situations not covered by article 4

As currently drafted, article 5 does not constitute a so-called “join and destroy” model of accession for states possessing nuclear weapons, as is permitted under other treaties prohibiting weapons. Instead, states possessing nuclear weapons can submit proposals to states parties for additional protocols “for further effective measures relating to nuclear disarmament.”

While this allows flexibility and opens new space for states to pursue disarmament measures in concert with ban treaty states parties, which is beneficial, it also may leave open the potential for ban treaty states parties to engage in the negotiation of protocols with nuclear-armed or nuclear-supportive states that only partially address activities or policies on which states parties have already accepted full prohibitions.¹⁸

¹⁷ This additional objective would be in line with the annual UN General Assembly resolution on “The observance of environmental norms in implementing disarmament and arms control regimes.”

¹⁸ For example, a protocol related to no-first-use may be in contention with the prohibition on use.

In order to address this concern, article 5 should be limited to protocols that directly relate to the verified and irreversible elimination of nuclear weapon programmes under strict and international control. This would not necessarily exclude protocols on partial measures such as fissile material production and stockpiling, but would prevent partial measures that could undermine the convention.

Article 5, in this case, should include an explicit obligation of stockpile destruction with agreed timeframes and verification measures, and in observance of environmental norms. These timeframes and measures should be left to the negotiation of the protocol, as requirements may vary amongst states eliminating their nuclear weapon programmes in this manner. While implementing these protocols, the states engaged in stockpile destruction would be subject to the general obligations of the treaty, with an understanding that certain prohibitions (e.g. stockpiling) would only be fulfilled with the verified completion of their destruction programmes.

ARTICLE 6: ASSISTANCE

Victim assistance. Currently, article 6(1) suggests that only states “in a position to so,” i.e. presumably with certain resources, have responsibilities towards their citizens. This is inconsistent with the rights-based approach to victim assistance that has been established by other treaties, and with states’ general human rights obligations. It should thus specify that this obligation is applicable to all states parties.

The formulation of the range of assistance that should be provided to victims in article 6(1) and the reference to legal frameworks is strong and should be retained. However, as other groups have pointed out, specific guidance and obligations on implementing victim assistance could be included, drawing on other instruments. For example, it should reflect the principle of nondiscrimination—meaning that assistance must be provided on the basis of need, not the origin of the need, and also that victims of nuclear weapons should not be discriminated against. It should also reflect the principles of providing assistance tailored to victims’ needs, of involving victims in decision making, of enacting national plans in accordance with best practices and standards and mobilization of resources, etc.¹⁹

Environmental remediation. Currently, article 6(2) only refers to the right of parties to request assistance with environmental remediation. In order to strengthen this provision and bring it more in line with and improve on standards for other weapons, the text should also articulate the responsibility of states to take steps to remediate both terrestrial and marine environments under their jurisdiction or control to the extent possible. As already articulated, those that require assistance to do so must have the right to request this.

The text should outline in more detail principles for environmental remediation and ways in which it can be undertaken, as well as the protection of populations from associated threats, and provide guidance and provision for reporting. For example, these could include requirements for measures to assess threats and contamination, to reduce risks of exposure, to rehabilitate contaminated areas, and to enact national laws and policies and a national action plan.²⁰

The convention could also be strengthened with a reference to elements of the nuclear chain beyond use and testing by including “production” of nuclear weapons. This would extend the principle of assistance to communities affected by uranium mining and other parts of the nuclear weapon production and waste process.²¹

ARTICLE 7: NATIONAL IMPLEMENTATION

¹⁹ For additional details and suggestions, please see [“Victim Assistance in the Nuclear Weapon Ban Treaty: A Comprehensive and Detailed Approach,”](#) Article 36 and International Human Rights Clinic at Harvard Law School, June 2017.

²⁰ For additional details and suggestions, please see [“Environmental Remediation in the Nuclear Weapon Ban Treaty: A Comprehensive and Detailed Approach,”](#) Article 36 and International Human Rights Clinic at Harvard Law School, June 2017.

²¹ For examples of Doug Weir, [“The nuclear ban treaty needs work if it's to deliver on the environment,”](#) Toxic Remnants of War Project, 25 May 2017.

The section on national implementation should include **protection of whistleblowers**. Information provided by non-state actors, as a form of “societal verification,” might assist in the detecting of undeclared nuclear weapon related activities. Ensuring that individuals within states parties have the safety to report on their governments or relevant agencies they work for if they see violations of the treaty is important. The treaty should reflect the need for witness protection and other relevant measures. There is a precedent in the field of human rights, with obligations of the International Criminal Court to protect witnesses.²²

This section could also include transparency and reporting obligations. Article 9 on meetings of states parties suggests that such meetings could elaborate reporting requirements. However, obligatory reporting requirements in the convention itself would help ensure accountability in implementation, even if the nature of those reports are left to development in future meetings of states parties.

ARTICLE 8: INTERNATIONAL COOPERATION

Article 8 currently obligates states parties only to cooperate, not to provide assistance. The obligation to provide assistance should be added.

It is good that this draft article specifies that each state party has a right to seek and receive and assistance in fulfilling its obligations under the convention, though this could also be strengthened by specifying types of assistance to be provided and/or institutional mechanisms to facilitate such assistance.²³ Article 6(3) does indicate some mechanisms for provision of assistance—combining articles 6 and 8 could help increase clarity and consistency.

ARTICLE 9: MEETING OF STATES PARTIES

Meetings of states parties should be **annual** rather than biennial as specified in the current draft in article 9(2).

Article 9(4) should specify that civil society and international organisations et al **will be invited to participate** in meetings of states parties (rather than “may be invited to attend”), in keeping with the spirit and language of the negotiations of this treaty and previous meetings leading up to its negotiation.

This article should specify that an additional **objective** of meetings is to discuss measures to support the object and purpose of the treaty.

The convention should also establish a **treaty body** to assist with implementation of the treaty, organization of meeting of states parties, encouraging ratification, developing verification and compliance mechanisms, and educating the public about the treaty and about the humanitarian impact of nuclear weapons.

ARTICLE 12: SETTLEMENT OF DISPUTES

This article could be expanded—or an additional article added—to provide for facilitation or clarification of compliance with the treaty. States parties should agree to consult and cooperate with each other regarding the implementation of the provisions of the treaty, and to work together in a spirit of cooperation to facilitate compliance with their obligations. The treaty should outline steps that a state party, or a group of states parties, could take to clarify or seek to resolve questions relating to a matter of compliance. This should include the possibility of fact-finding missions on the territory of a state party.

ARTICLE 13: UNIVERSALITY

²² For more information and history about societal verification, see [Global Fissile Material Report 2009: A Path to Nuclear Disarmament](#), International Panel on Fissile Materials, 2009, pp. 114–123.

²³ For examples from other weapons-related treaties, please see Matthew Bolton, “[Improving Positive Obligations in the Draft Convention on the Prohibition of Nuclear Weapons](#),” International Disarmament Institute, Pace University, May 2017.

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.

ARTICLE 18: DURATION

There should be no justification for withdrawing from this treaty. The process for withdrawal should be as onerous as possible, extending the notice of withdrawal to twelve months, consistent with the Vienna Convention on the Law of Treaties. Any such withdrawal should be considered a grave threat to international peace and security and should trigger a meeting of states parties. Alternatively, no withdrawal should be permitted from this treaty.

ARTICLE 19: RELATIONS WITH OTHER AGREEMENTS

This article should be deleted, as the ban treaty should not be subject to any other treaty. Article 30(2) of the Vienna Convention on the Law of Treaties notes that, "When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of the at other treaty prevail." Whilst the nuclear weapon ban treaty is complementary to the NPT, the NPT's provisions must not prevail over the ban treaty's.