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

9 June 2017

Original: Russian

English

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

Proposals

Center for International Security and Policy to the draft Convention on the Prohibition of Nuclear Weapons

I. General comments on the document structure

1. The authors of the proposed draft Convention on the Prohibition of Nuclear Weapons seek to address issues of **prohibition and elimination** of nuclear weapons in one document.

In our opinion, this causes a lot of ambiguity (*for example, connection between the draft Convention and the NPT, attracting the IAEA, etc.*), can drag out the negotiation process for an indefinite period and distract from the very idea of developing and adopting the Convention – **filling the legal gap on prohibition of nuclear weapons**.

We think it is important to stress that, in our opinion, the **draft Convention is aimed at formalizing the “point of no return” – signing and entry into force of the first international treaty on legal prohibition of nuclear weapons**.

2. The document’s structure does not also answer the question of how the authors see connection between the Treaty on the Non-Proliferation of Nuclear Weapons and draft Convention.

The participating states of the first negotiations session this March stressed that adoption of the Convention will be aimed at strengthening and developing Article VI of the NPT.

Nuclear states and their allies, on the contrary, are convinced that the Convention can be harmful to the NPT and disturb the current international security architecture.

At the same time, it seems that the authors of the draft document see the adoption of the Convention not as the development of Article VI of the NPT, but parallel to the NPT.

3. Taking into account the above-mentioned, we think that a legally binding instrument on the prohibition of nuclear weapons should include several parts

(*treaties, conventions*). It is proposed to be as follows:

- complete and comprehensive **prohibition** of nuclear weapons (*Convention 1*);
- **elimination** of nuclear weapons, timeframe and mechanisms of verification as well as establishment of a specialized Agency for these purposes (*Convention 2*).

Probably it is worth considering issues related to rights of survivors and victims of nuclear weapons' use/testing, education and raising awareness issues, issues of environment and rehabilitation of territories in a separate Convention.

II. Preamble

The preamble is important because it sets the tone of the document and reflects the significance the states parties attach.

The draft Convention does not convey the historical importance of the document and the breakthrough in the nuclear disarmament sphere.

As a result, the authors failed to reflect global importance of the draft Convention in the sphere of international security and great efforts made by the global community.

On the current wording of the preamble

1. The first paragraph "The States Parties to this Convention" is proposed to be **rephrased** to "*We the people of the Earth, through the States Parties to this Convention*" (*Model Nuclear Weapons Convention of 2007*).

2. Paragraph 3 "*Cognizant...*" is proposed to be **deleted**. It is too detailed and "*reduce*" the significance of the nuclear weapons problem against the background of relentless calls of the global community that nuclear weapons threaten the very survival of humankind.

3. Paragraphs 5-7 clearly show the language of the Geneva Conventions, which, in our opinion, does not correspond to the spirit of the draft Convention. We think that the wordings using such expressions as an armed conflict; means of warfare; in warfare; combatants, etc. are **not acceptable**.

In this regard, we think it is necessary to **delete** paragraphs 5-7 of the preamble.

4. Paragraph 8 "*Determined...*" is proposed to be **enhanced and replaced** with the following: "*Reaffirming that any use of nuclear weapons will be in contravention of the spirit of the Charter of the United Nations and will be a violation of international law, in particular international humanitarian law, and also reiterating that nuclear weapons pose a serious threat to the very survival of humankind*" (*UNGA resolution A/RES/70/57*).

5. Paragraph 9 “*Bearing in mind...*” is proposed to be **enhanced and replaced** with “*Reiterating grave concern at the danger to humanity posed by the existence of nuclear weapons, and reaffirming that their total elimination remains the only absolute guarantee against their use or threat of use*” (UNGA resolution A/RES/70/57).

6. Paragraphs 12-13 and partially paragraph 14 refer to the NPT. In this regard, it is proposed to have the following sequence that will stress that this Convention is aimed at strengthening the Treaty.

- Reaffirming the conviction of the States parties to the Treaty on the Non-Proliferation of Nuclear Weapons that the Treaty is a cornerstone of nuclear disarmament and nuclear non-proliferation (UNGA resolution A/RES/71/63).

- Mindful of the solemn obligations of States made in Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons to end the nuclear arms race at an early date and achieve nuclear disarmament, agreed to at the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons and reaffirmed by the 2010 Review Conference (*Model Nuclear Weapons Convention of 2007 and UNGA resolution A/RES/70/57*).

- Convinced that the elimination of nuclear weapons is an important step towards the goal of general and complete disarmament under strict and effective international control (*Model Nuclear Weapons Convention of 2007*).

7. The rest part of paragraph 14 “*Reaffirming...*” to be outlined in the following sequence in separate paragraphs.

- Reaffirming the vital importance of the Comprehensive Nuclear-Test-Ban Treaty as a core element of the nuclear disarmament and non-proliferation regime.

- Recognizing that numerous regions, including Antarctica, Outer Space, Latin America, the Sea Bed, the South Pacific, Southeast Asia, Africa, and Central Asia have already been established as nuclear weapon free zones, where possession, production, development, deployment, use and threat of use of nuclear weapons are forever prohibited, and desiring to extend this benefit to the entire planet for the good of all life (*Model Nuclear Weapons Convention of 2007*).

Additional wordings to the preamble

Below there are additional wordings to the preamble of the draft Convention that, in our opinion, will enhance the tone of the document and show great work done by the global community towards the prohibition of nuclear weapons.

1. Convinced that the existence of nuclear weapons poses a threat to all humanity and that their use would have catastrophic consequences for all the creatures of this Earth (*Model Nuclear Weapons Convention of 2007*).

2. Noting that the destructive effects of nuclear weapons upon life on earth are uncontrollable whether in time or space (*Model Nuclear Weapons Convention of*

2007).

3. Aware that amongst weapons of mass destruction, the abolition of which is recognized as being in the collective security interest of all people and States, nuclear weapons are unprecedented and unequalled in destructive potential (*Model Nuclear Weapons Convention of 2007*).

4. Acknowledging the ethical imperatives outlined in the provisions of resolutions and reports of the General Assembly of the United Nations and those of other related international initiatives on the catastrophic humanitarian consequences and risks posed by a nuclear weapon detonation, including the declaration that the use of nuclear weapons would cause indiscriminate suffering and as such is a violation of the Charter of the United Nations and the laws of humanity and international law, the condemnation of nuclear war as contrary to human conscience and a violation of the fundamental right to life, the threat to the very survival of humankind posed by the existence of nuclear weapons, the detrimental environmental effects of the use of nuclear weapons, and the disquiet that was expressed at the continued spending on the development and maintenance of nuclear arsenals (*UNGA resolution A/RES/71/55*).

5. Gravely concerned that the use of nuclear weapons may be brought about not only intentionally by war or terrorism, but also through human or mechanical error or failure, and that the very existence and gravity of these threats of nuclear weapons use generates a climate of suspicion and fear which is antagonistic to the promotion of universal respect for and observance of the human rights and fundamental freedoms set forth in the Charter of the United Nations and the Universal Declaration of Human Rights (*Model Nuclear Weapons Convention of 2007*).

6. Recalling Resolution 1(I), adopted unanimously on January 24, 1946 at the First Session of the General Assembly of the United Nations, and the many subsequent resolutions of the United Nations which call for the elimination of atomic weapons (*Model Nuclear Weapons Convention of 2007*).

7. Welcoming the advisory opinion of the International Court of Justice of July 8, 1996, which concluded “*that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law*”, and concluded unanimously that “*there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control*” (*Model Nuclear Weapons Convention of 2007*).

8. Welcoming the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (*Biological*) and Toxin Weapons and on Their Destruction and the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, as indications of a progression toward the elimination of all weapons of mass destruction (*Model Nuclear Weapons Convention of 2007*).

9. Emphasizing the fundamental role of the agreement on the Final Document

of the Tenth Special Session of the General Assembly of 30 June 1978, in which it is stated, *inter alia*, that “*effective measures of nuclear disarmament and the prevention of nuclear war have the highest priority*” (UNGA resolution A/RES/70/57).

10. Noting the successful convening of the first, second and third Conferences on the Humanitarian Impact of Nuclear Weapons, in Oslo on 4 and 5 March 2013, in Nayarit, Mexico, on 13 and 14 February 2014, and in Vienna on 8 and 9 December 2014 (UNGA resolution A/RES/71/63).

11. Recalling the United Nations Millennium Declaration, in which Heads of State and Government resolved to strive for the elimination of weapons of mass destruction, in particular nuclear weapons, and to keep all options open for achieving that aim (UNGA resolution A/RES/71/63).

12. Convinced that a legally binding instrument prohibiting nuclear weapons would be an important contribution towards comprehensive nuclear disarmament, and required to abolish these weapons from the Earth (UNGA resolution A/RES/71/258 and Model Nuclear Weapons Convention of 2007).

III. General provisions

1. On additions to Article 1 of the draft Convention:

- paragraph 1 subparagraph **d**) to outline as subparagraph **a**) with the following wording: “*to use or threaten to use nuclear weapons*”;
- paragraph 1 to be added with subparagraph **b**) with the following wording: “*to engage in any military or other preparations to use nuclear weapons*”;
- paragraph 1 to be added with a subparagraph with the following wording: “*to develop, test, produce, otherwise acquire, deploy, stockpile, maintain, retain, or transfer nuclear weapons delivery vehicles*”;
- paragraph 1 to be added with a subparagraph with the following wording: “*to develop, test, produce, otherwise acquire, stockpile, maintain, retain, or transfer nuclear weapon components*”;
- paragraph 1 to be added with a subparagraph with the following wording: “*to fund nuclear weapons research, with the exception of nuclear disarmament research*”.
- paragraph 2 subparagraph **a**) to be added with the word “*transit*”.

2. On Article 1 paragraph 1 subparagraph e) of the draft Convention

There is a risk that a state that becomes a party to the Convention on the Prohibition of Nuclear Weapons but has not ratified the Comprehensive Nuclear-Test-Ban Treaty may state that its obligations are covered by the Convention.

This can be harmful to the CTBT, particularly, to the International Monitoring System.

In this regard, we should consider an opportunity of reflecting in the draft

Convention a provision that a state party to the Convention should also be a party to the CTBT.

3. Based on the fact that this Convention, as it was mentioned earlier, is aimed at strengthening and developing Article VI of the NPT, we think it is appropriate to provide in the draft Convention for a provision that a state party to the Convention should also be a party to the NPT.

4. We think it is appropriate to **exclude** articles 2, 3, 4, 5, 9, 10 and Annex from the draft Convention.

As it was mentioned above, it is more appropriate to reflect these provisions related to issues of elimination of nuclear weapons and verification in a separate Convention.

5. We think it is possible to outline **Article 6** of the draft Convention in a separate Convention, as it was mentioned earlier.

These issues can be considered in more details in this document. For example, establishment of a separate UN Fund on issues related to assistance to victims of the use or testing of nuclear weapons.

IV. Other provisions

1. Based on proposals to the draft Convention outlined above, we think appropriate to reflect in the draft document a provision that after the entry into force of the Convention on the Prohibition of Nuclear Weapons, a Convention on the Elimination of Nuclear Weapons or Comprehensive Nuclear Weapons Convention will be developed and signed.

2. We think it is appropriate to **include** in the draft Convention an **additional article** that *“nothing in this Convention shall be interpreted as affecting the inalienable right of all the Parties to the Convention to develop research, production and use of nuclear energy for peaceful purposes” (NPT language).*

3. In **Article 11** we propose to make amendments adopted by **consensus**, not by two-thirds of votes.

4. The title of **Article 18** is proposed to be outlined with the wording *“Duration and Withdrawal from the Convention”*

Moreover, paragraphs 2 and 3 are proposed to **be deleted and outlined in one paragraph** with the following wording: *“Withdrawal from this Convention shall not be permitted”*

Taking into account that nuclear weapons threaten the very survival of humankind, the proposed standard wording on the right of a state to withdraw from the Convention to protect the supreme interests of the country seems rather absurd.

5. It is proposed to **exclude Article 19** because it is unclear what the authors of the draft Convention mean. Or additional explanations should be obtained.

The NPT legalized the status of the five nuclear powers – permanent members of the UN Security Council, and this is in direct contradiction with the very spirit of the draft Convention.
