

UN Office International Association of Lawyers Against Nuclear Arms newsletter LCNP | August 2017

On July 7, a UN negotiating conference adopted the Treaty on the Prohibition of Nuclear Weapons. As this eNews explains, LCNP contributed to the negotiations, and released a Lawyers' Letter on the Abolition of Nuclear Weapons. The United States and the other nuclear-armed states stayed away. Meanwhile, serious tensions on the Korean peninsula and elsewhere could give rise to nuclear conflict, and all nuclear-armed states are maintaining and modernizing their nuclear forces on a long-term timetable.

It is as if there are two nuclear tracks, one about disarmament, one about 'deterrence', which have little interaction and lead to very different futures. LCNP needs your support as we advocate integration of the legal vision of the nuclear ban treaty into concrete policies.

John Burroughs Executive Director

The Nuclear Ban Treaty

Approved on July 7 by a vote of 122 to 1 (Netherlands, the only NATO state to participate), with one abstention (Singapore), the nuclear ban treaty will open for signature on September 20 at the United Nations and will enter into force when 50 states have signed and ratified it.

The treaty prohibits the development, manufacture, possession, and use and threatened use of nuclear arms. There are several pathways for nuclear-armed states to join the treaty provided that they verifiably eliminate their arsenals (the US, UK, and France together declared that they will never join). There are also obligations of assistance to victims of nuclear use and testing and of environmental remediation of contaminated areas.

Origins and Significance

At a minimum, the nuclear ban treaty is a powerful and eloquent statement of the political, moral, and legal standards enjoining non-use and elimination of nuclear arms. It is grounded in an understanding of the humanitarian consequences of nuclear explosions, and innovatively acknowledges the suffering of the victims of the use of nuclear weapons (Hibakusha) and of their testing, as well as the disproportionate impact of nuclear weapons activities on indigenous peoples. At a maximum, the treaty will serve as a framework for the achievement of a world free of nuclear weapons. In this aspiration, it reflects the aim of the 1997 Model Nuclear Weapons Convention

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whose drafting LCNP coordinated. If the treaty is not itself used as such a framework, at least it points the way toward a convention - a comprehensive agreement on the permanent global elimination of nuclear arms.

The ban treaty effort grew out of conferences on the humanitarian consequences of nuclear explosions held in 2013 and 2014 in Oslo; Nayarit, Mexico; and Vienna. It has deeper roots in the formation of regional nuclear weapon free zones, starting with the 1967 Treaty of Tlatelolco establishing such a zone in Latin America and the Caribbean; in General Assembly resolutions, notably resolution 1653 of 1961, in which a sharply divided Assembly declared the use of nuclear weapons to violate the UN Charter and other international law; the General Assembly's request to the International Court of Justice for an advisory opinion on the legality of threat or use of nuclear weapons; and in persistent efforts by non-nuclear weapon states in Nuclear Non-Proliferation Treaty review meetings to extract a commitment from the nuclear weapon states to commence a concrete process of negotiating disarmament. With the nuclear ban treaty, countries largely of the nuclear-weapon-free Global South, joined by Austria and Ireland, have escalated the struggle, declaring that nuclear weapons must be legally prohibited and eliminated as has been done with biological weapons, chemical weapons, landmines, and cluster munitions.

As the Japanese affiliate of IALANA has observed a principal task now is to convince countries dependent on nuclear arms of the values and logic underlying the nuclear ban treaty. For reflections on the contradiction between the attachment of the world's major powers and their closest allies to nuclear arms and the ban treaty, see this excellent piece by Richard Falk, a member of the LCNP Board of Directors, "Challenging Nuclearism: The Nuclear Ban Treaty Assessed

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Elements

The nuclear ban treaty includes a number of the elements LCNP/IALANA advocated for in three conference working papers; in remarks LCNP Executive Director John Burroughs made when on two expert panels sponsored by the conference president, Ambassador Elayne Whyte Gómez of Costa Rica; and in civil society statements to the conference made by LCNP President Emeritus Peter Weiss, Consultative Council member Jacqueline Cabasso, and Burroughs.

Those elements include:

- * a preambular reaffirmation of the need for all states at all times to comply with international humanitarian law (IHL) and international human rights law
- * a preambular recitation of relevant principles and rules of IHL, including the rule of distinction, the prohibition of indiscriminate attacks, the requirements of proportionality and precaution in attack, the prohibition of weapons that cause unnecessary suffering, and rules for protection of the environment
- * a preambular recognition of the existing illegality of use of nuclear weapons under international humanitarian law;
- * a prohibition of threatened use as well as use of nuclear weapons
- * a preambular reaffirmation of the disarmament obligation as formulated by the International Court of Justice - "pursue in good faith and bring to a

conclusion negotiations leading to nuclear disarmament"

It is likely that our advocacy made a difference as to inclusion of some elements, in particular the prohibition of threatened use. In his statement, Weiss observed: "Threat is the twin sister of deterrence. For what is deterrence, but the threat to use? ... It cannot hurt to reaffirm a prohibition that would ensure the survival of the human race."

In a piece in the Nuclear Ban Daily published by Reaching Critical Will, Burroughs wrote: "As is the case with the prohibition of use of nuclear weapons, inclusion of a prohibition of threat of nuclear weapons would apply, reinforce, and specify existing law set forth in the UN Charter and international humanitarian law treaties and elaborated by the International Court of Justice in its advisory opinion on nuclear weapons. However, the application of existing law is complicated because it is not spelled out comprehensively in the UN Charter and in IHL treaties. Inclusion of a prohibition of threat of nuclear weapons would therefore provide desirable clarity." Jonathan Granoff, President of the Global Security Institute and a member of the LCNP Board of Directors, also made compelling comments on the immorality and illegality of using and threatening to use nuclear arms in a statement and in working papers.

Especially with the threat prohibition included, read as a whole the treaty repudiates ongoing reliance on 'nuclear deterrence' as an alleged basis for international security. For more on threat and deterrence, see this Japan Times story. For background on issues before the negotiators, see Burroughs' June Arms Control Today article.

The adoption of the treaty generated some mainstream news coverage, including this New York Times story, "A Treaty Is Reached to Ban Nuclear Arms. Now Comes the Hard Part"

Lawyers' Letter on the Abolition of Nuclear Weapons

At a nuclear ban treaty conference side event we released the Lawyers' Letter on the Abolition of Nuclear Weapons.

It declares that "the nuclear ban treaty effort constitutes an important affirmation of the norms against nuclear weapons" and that the treaty will be a "major step towards negotiation of a comprehensive agreement on the achievement and permanent maintenance of a world free of nuclear arms." It also observes: "People are capable of good-faith, law-guided, problem solving at all levels of society: family, neighborhood, national, international. Cooperative global systems have been devised for the protection of human rights, protection of the environment and prevention of climate change, prohibition of specific weapons, and more. These skills must now be applied to the next obvious step: the prohibition and elimination of nuclear weapons."

The now more than 500 signatories from more than 40 countries include Geoffrey Palmer, former Prime Minister of New Zealand; Herta Däubler-Gmelin, former Minister of Justice of Germany; and Phon van den Biesen, counsel before the International Court of Justice in Bosnia's genocide case and the Marshall Islands' nuclear disarmament cases. The letter has relevance beyond the negotiations, and we continue to urge members of the legal profession to sign it.

Looking Ahead

In the weeks and months to come, LCNP will analyze and publicize the principles and objectives of the nuclear ban treaty and support the efforts of the International Campaign to Abolish Nuclear Weapons to promote its early entry into force. And we will advocate vigorously with respect to US policy, including for:

* Reaffirmation in the new Nuclear Posture Review now under preparation of US legal and policy commitments to the achievement of a world free of nuclear weapons, and endorsement of corresponding measures, including ending plans for acquisition of new, more capable, air-launched cruise missiles and land-based missiles. For our initial comment, see the IALANA statement made at this spring's NPT PrepCom in Vienna, "Defend the Unequivocal Undertaking to Eliminate Nuclear Arsenals"

* Peaceful resolution of the US-North Korean confrontation, as set out in an LCNP statement

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authored by LCNP President Guy Quinlan. It calls on the United States to drop its insistence on a North Korean commitment to denuclearization as a precondition for negotiations. See also this insightful piece in Truthout by Andrew Lichterman, Senior Research Analyst, Western States Legal Foundation, and a member of the IALANA Board of Directors, "As the US Threatened North Korea, 122 Countries Voted to Ban Nuclear Weapons".