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

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

Agenda item 8 (b)

General exchange of views on all matters**Elements of a treaty to prohibit nuclear weapons****Submitted by the International Committee of the Red Cross**

The International Red Cross and Red Crescent Movement, of which the International Committee of the Red Cross (ICRC) is a part, has been calling for the elimination of nuclear weapons since 1945, when we witnessed first-hand the unspeakable suffering caused by the atomic bombings. In 2011, the International Red Cross and Red Crescent Movement appealed to all States to “pursue in good faith and conclude with urgency and determination negotiations to prohibit the use of and completely eliminate nuclear weapons through a legally binding international agreement, based on existing commitments and international obligations”. The ICRC welcomes that such negotiations are now taking place, through an inclusive process in the framework of the UNGA.

This paper outlines the views of the International Committee of the Red Cross (ICRC) on key elements of a treaty to prohibit nuclear weapons. It identifies issues that the ICRC believes States should consider as they develop their views and proposals on the treaty’s core components.

Like other treaties, a legally binding instrument to prohibit nuclear weapons should set out its **underlying principles**. The ICRC believes that the treaty should clearly indicate that it is based on a recognition of the catastrophic humanitarian consequences of nuclear weapons and the imperative to prevent their use, the difficulty of reconciling the use of these weapons with international humanitarian law, the growing risks of intentional, miscalculated or accidental use of nuclear weapons, the lack of adequate humanitarian response capacity to assist the victims of nuclear weapons, and that nuclear weapons are abhorrent to the principles of humanity and the dictates of public conscience. The nuclear weapon prohibition treaty should also reaffirm the importance of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), recall the obligations of Article VI of the NPT and recall the commitments made in the action plans adopted by NPT Review Conferences.

The treaty should also set out its **object and purpose**. In the view of the ICRC, the object and purpose of the global prohibition on nuclear weapons include: to protect humanity from the catastrophic humanitarian consequences that any use of nuclear weapons would

have; to establish a prohibition at the global level; to advance towards the total elimination of nuclear weapons and to help bring the era of nuclear weapons to an end once and for all time.

As stated in the conference's mandate, the primary goal of the negotiation is to establish a prohibition of nuclear weapons, leading to their total elimination.¹ To be effective the treaty's **prohibitions** must be clear and robust and this would require specific prohibitions on use and on key activities that support use. In the view of the ICRC, the range of prohibitions listed in Article 1(1) the Chemical Weapons Convention – namely to prohibit the use, development, production, acquisition, stockpiling, retention or transfer of nuclear weapons, and to prohibit to assist, encourage or induce, in any way, anyone to engage in any of these activities – would suffice to achieve the purposes of the nuclear weapon ban treaty. These essential prohibitions employ well understood terminology, which also served as the basis for the prohibitions set out in other international conventions prohibiting weapons.

The conference's mandate provides that the prohibition of nuclear weapons is to lead “towards their total elimination”. Indeed, the elimination of nuclear weapons is essential to ensure that they are never again used. The treaty should therefore contain a clear commitment regarding **the elimination of nuclear weapons**.

In particular, in addition to the prohibition on stockpiling nuclear weapons, the treaty could contain an obligation for a State Party to declare, remove from operational status and destroy any nuclear weapons that it may possess at the time of its adherence to the treaty. Such a commitment to eliminate nuclear weapons would allow a State that possesses nuclear weapons to join the treaty without needing to wait for the completion of its stockpile destruction.

The time-frame and details for the eventual elimination of a State's nuclear arsenal and its verification could be left for discussions between the nuclear weapon possessing State and other States Parties and detailed in subsequent agreements or protocols.

The treaty should also include an obligation that each State Party take the **measures required at the national level** to implement its obligations, including the imposition of penal sanctions to prevent and suppress violations.

States should consider how best to ensure that the needs of the **victims of nuclear weapon detonations** are recognized and advanced and to consider the most suitable approach to facilitate **assistance and cooperation** for the implementation of the treaty's obligations and to further its goals.

¹ Taking forward multilateral nuclear disarmament negotiations, A/Res/71/258, adopted 23 December 2016, OP 8.