

A promising beginning of negotiations of a convention banning nuclear weapons

(This reflection follows up on International Law Reflections no. 10 from November 10, 2016, and no. 1 from March 1, 2017.)

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Introduction

The first round of talks regarding the negotiations of a treaty prohibiting nuclear weapons (their use, production, ownership, etc.) took place on March 27–31, 2017, at the UN Headquarters in New York under the presidency of Ambassador Elayne Whyte Gómez of Costa Rica. The second, and final round of talks, during which the finalization and adoption of the proposed convention is expected, should take place in New York from June 15 to July 7, 2017. The aforementioned first round was preceded by an organizational meeting in New York on February 16, 2017, in the presence of representatives of more than 100 countries, at which the provisional agenda and the rules of procedure for the general meeting of the UN General Assembly were agreed. According to these rules, a two-thirds majority is necessary for decisions on important questions and a simple majority of all present members is required for procedural issues. In contrast to consensus decision-making, which is valid, for instance, for the Conference on Disarmament in Geneva, no country present at the UN conference can veto an adopted decision.

The first round of negotiations was attended by around 130 countries, and representatives of several organizations, such as the UN, the International Committee of the Red Cross, and a number of non-governmental organizations, as well as surviving victims of the US-caused nuclear explosion in Hiroshima and Nagasaki, which are called Hibakusha in Japan. All countries that own nuclear weapons, as well as a large majority of Alliance states, including the Czech Republic, and partner countries relying on nuclear protection, especially protection by the US, boycotted the meeting. From the Alliance states, only the Netherlands attended, and from the European Union states, the already mentioned Netherlands, and also Austria, Sweden and Ireland participated. From the partner countries, Japan was present.

The purpose and the unfolding of the negotiations

The talks were divided into an introductory general debate and a subsequent negotiation of specific questions. In the general debate a message of Pope Francis, delivered by a representative of the Holy See, attracted much attention. Aside from an unequivocal support for the goals of the conference and its mandate, the document stated that “international peace and stability cannot be based on a false sense of security, on the threat of mutual destruction or total annihilation, or on simply maintaining a balance of power”. Aside from mentioning the catastrophic consequences of any use of nuclear weapons, Pope Francis also mentioned his concern “when examining the waste of resources spent on nuclear issues for military purposes, which could instead be used for worthy priorities like the promotion of peace and

integral human development, as well as the fight against poverty, and the implementation of the 2030 Agenda for Sustainable Development”.

Among the main topics of the first round was the overall framework of the treaty and the content of the preamble, and the extent and language of the banning provisions and questions related to the accession of nuclear-weapon states to the agreement. Furthermore, the issue of review conferences, and the relationship of the treaty to other treaties and institutions, such as the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the Comprehensive Nuclear-Test-Ban Treaty (CTBT), the International Atomic Energy Agency (IAEA), nuclear-free zones, etc., were discussed.

Regarding the relation between the international legal instrument that is in the making and the existing NPT, the attending countries unilaterally supported the complementary character and strengthening purpose of the new instrument. The purpose is especially related to Article VI, which is the only article in the framework of the treaty provisions of the NPT that emphasizes the necessity of nuclear disarmament; however, it is rather vague and, most importantly, it does not include any time frame for the elimination of nuclear weapons. In contrast to the NPT, which bans the ownership of nuclear weapons by non-nuclear-weapon states and allows their ownership by five so-called declared nuclear-weapon states, which are the permanent members of the UN Security Council, the new banning provision would not allow any exceptions. A new convention would, however, in no way act as an alternative to the aforementioned NPT. According to the Irish proposal, every nuclear-weapon state intending to accede to the discussed treaty should provide information about its stockpiled nuclear weapons and present a time frame for removing these weapons from deployment and their subsequent destruction. In connection with this, the state should also present a proposal of measures to provide security and protection of the environment. A part of this process should be the proposed verification protocols.

The issue of banning the financing of nuclear-weapons programmes

The treaty's ban on the financing of nuclear-weapon programmes was one of the few points on which the views of the participant states differed. Some supported the inclusion of an explicit ban on financing into the agreement, while others believe that such a ban is already included in the ban on assistance of nuclear-weapon-related activities. There was a consensus, however, that the aforementioned regulation should not restrict the financing of activities supporting nuclear disarmament, such as the dismantling and destroying of these weapons, fulfilling agreements on the verification of disarmament or cleaning up the environment in nuclear-weapon production facilities.

It is a key legal argument in the framework of the ban on any support of production and ownership of these weapons. Prohibiting the financing of nuclear-weapons production would, however, also have a significant political impact. It would help delegitimize nuclear weapons production, and it would represent a significant restriction of the influence and power of nuclear-weapon corporations. On the other hand, it could strengthen the prestige of civil society in nuclear-weapon states, and on a global scale it would present a challenge to the current factories producing nuclear weapons, which are the main driving force behind the financing of nuclear weapons.

According to estimates of various non-governmental organizations, over the next ten years governments in nuclear-weapon states will spend approximately 1 trillion USD, that is, about 100 billion USD annually, on nuclear weapons. For the sake of comparison, the biennial UN Core Budget (excluding the peace operations budget) amounts to only 5.1 billion USD, which is approximately 5% of the aforementioned global nuclear weapons budget. Yet a significant amount of this sum could be re-directed towards decreasing the negative impacts of climate change, and reducing world poverty, and it could also help fulfil other global social and economic needs.

The majority of this money is being poured into private companies in the form of lucrative contracts for the production, modernization and maintenance of nuclear weapons and their delivery systems. The bloated military budgets are thus in their interests. This is why they endorse various think tanks and other public initiatives supporting the perceived necessity of maintaining nuclear weapons, and their modernization and expansion. To reach these goals, they strive for an overestimation of the threats presented by potential nuclear challengers and lobby for improving nuclear weapons

systems, using the alleged necessity to face these challenges as a justification. However, this situation increases the threats and conflicts among nuclear-weapon states as well as the risks, such as the risks of actually using these weapons, be it as a result of a technical malfunction, poor judgment regarding a situation or an intentional detonation. In his farewell address to the nation in 1961, former US President Dwight D. Eisenhower already warned against the threat of an increased influence of a military-industrial complex and its impact on governments and parliaments, with the implication being that such an influence leads to a heavy focus on high military expenditures to the detriment of other areas.

A formulation of the ban on financing could include either a simple ban on nuclear-weapons production, possibly leaving the preferred means of realization of this provision up to the individual parties to the agreement, or it could formulate detailed measures required for the restriction of financing of these weapons in the framework of national legislation. Even before the adoption of an aforementioned convention, there are already states that have experience with restriction of financing nuclear weapons. These countries are New Zealand, Norway and Switzerland, which have all previously accepted the relevant policies and amended their national legislation to restrict business contacts with nuclear-weapons corporations.

Conclusions and the expected development

A characteristic aspect of the first round of negotiations was a friendly cooperation of the representatives of states and non-governmental organizations together with a wide consensus on the majority of elements of the proposed convention, including the principles and goals of the international legal instrument. The main motivating factors for creating a categorical and absolute international legal instrument banning nuclear weapons are the humanitarian consequences of their use, the risks of their use and the enormous resources expended on these weapons, including their modernization, and the related arms race.

Differences of opinion do remain, however – for instance, on the issue of inclusion of a treaty ban on the threat of use of nuclear weapons, which is the core of the nuclear deterrence policy, testing and the above-mentioned financing in the framework of an unequivocal ban on and stigmatization of these weapons. Differences are also seen in the various positions regarding the means of resolving problems of the rights of victims of the nuclear explosions in Hiroshima and Nagasaki, as well as the solving of the problems of the testing of these weapons in various countries and the related rectification of damages to the environment.

In the next few weeks, the participating states and non-governmental organizations should strive to unify their views on problematic questions and submit their agreed upon proposal of the text of the treaty to the Costa Rican Ambassador Elayne Whyte Gómez. The chairwoman of the first round of negotiations should present a proposal of the final text to the participating countries for consideration by the beginning of June of this year. On June 15, 2017, the second and final round of the negotiations of the proposed text of the treaty will commence, and it should finish by July 7, 2017.

Miroslav Tůma

tuma@iir.cz

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