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

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English

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## Convention on the Prohibition of Nuclear Weapons – Peace Boat's proposals on the draft Submitted by Peace Boat

### Introduction

1. Peace Boat welcomes the Draft Convention on the Prohibition of Nuclear Weapons (CPNW), which provides a good basis for negotiation to conclude a robust instrument to prohibit nuclear weapons, leading to their total elimination. Building on the previous submission entitled “Developing a Robust Nuclear Weapons Ban Treaty,” A/CONF.229/2017/NGO/WP.19 dated 17 April 2017, Peace Boat hereby intends to make specific proposals to strengthen and improve some of the provisions of the draft, as well as to identify future tasks that the CPNW States Parties must tackle.<sup>1</sup>

### Preamble

2. Peace Boat highly welcomes the preamble's explicit recognition of Hibakusha, along with those affected by nuclear tests, both in terms of their suffering and their efforts. Hibakusha have called for a world free of nuclear weapons to be achieved in their lifetime. Their efforts have been widely endorsed, as represented in the millions of signatures in support of the Hibakusha Appeal for the Elimination of Nuclear Weapons.<sup>2</sup> This recognition in the preamble not only makes clear that it is a humanitarian-based treaty with a commitment to “No More Hibakusha,” but also adds the sense of urgency to prevent any nuclear catastrophe.

3. In this context, the preamble should be stronger in recognizing the unacceptable risks posed by the very existence of nuclear weapons, including those of accidental and unauthorized detonation of nuclear weapons. Those risks are posing a serious threat to all populations in the world for their security and survival. In light of their indiscriminate nature, inherent immorality and potential to annihilate humanity, nuclear weapons must be declared to serve no legitimate purpose.

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1 As an International Steering Group member organization of the International Campaign to Abolish Nuclear Weapons (ICAN), Peace Boat aligns itself to ICAN's briefing papers and statements that have been presented to the conference. <http://www.icanw.org/> This paper is an effort by Peace Boat to focus on and elaborate some selected elements.

2 International Signature Campaign in Support of the Appeal of Hibakusha, the Atomic Bomb Survivors of Hiroshima and Nagasaki, for the Elimination of Nuclear Weapons <http://hibakusha-appeal.net/>

## Article 1 (General obligations)

4. Article 1 of the draft provides a good list of items to be prohibited under the CPNW. However, it would be strengthened by including the following items.
5. **Military planning and preparations.** Prohibiting States Parties to engage in military planning and preparations to use nuclear weapons will be valuable for two reasons. Firstly, the CPNW envisions to be joined, on agreed conditions in the future, by those States that have possessed nuclear weapons but decided to eliminate them. Prohibiting planning and preparations is important to make sure that those States cannot reverse their course of action. Secondly, such a prohibition makes clear that States without nuclear weapons are not allowed to participate in any military activities associated with the use of nuclear weapons in the context of their security alliance with a nuclear-armed State. The Chemical Weapons Convention (CWC) sets the precedent in Article 1.1.c by including a direct obligation for States Parties not to “engage in any military preparations to use chemical weapons.”
6. **Threat of use.** The draft CPNW does not allow a State Party to threaten to use nuclear weapons, even without the specific language of “threat of use.” It is provided by the preamble that declares that any use of nuclear weapons would be contrary to the rule of international humanitarian law, Article 1 that prohibits the use of nuclear weapons “under any circumstances,” and Article 1 (f) (g) that strongly prohibits any assistance, encouragement and inducement of the use of nuclear weapons. Moreover, if military planning and preparations to use nuclear weapons are also prohibited, as discussed above, any State Party cannot threaten to use nuclear weapons in any way. Still, in order to prevent anyone claiming that threat of use is not covered by this treaty, it would be better if the CPNW explicitly prohibited threat of use. This would be consistent with the 1996 Advisory Opinion of the International Court of Justice (ICJ) that examined both use and threat of use of nuclear weapons.
7. **Delivery system.** The CWC prohibits “munitions and devices, specifically designed to cause death or other harm” through toxic chemicals, and this is understood as covering delivery systems.<sup>3</sup> Likewise, the CPNW should prohibit delivery systems specially designed for nuclear weapon missions.
8. **Transit.** Article 1. 2(a) should prohibit not only stationing, installation and deployment, but also transit of nuclear weapons. A lesson to be learned in this regard is Japan's 1967 Three Non-Nuclear Principles<sup>4</sup> that prohibited the country to possess, produce and permit the introduction of nuclear weapons. However, it appears that the Principles have been undermined by the secret agreement between the governments of Japan and the United States, that allows the interpretation that a temporary transit in territory is not regarded as “introduction.”<sup>5</sup> Permitting transit of nuclear weapons, even in a temporary manner, constitutes a part of a military operation with nuclear weapons and thus should be prohibited the same way as hosting nuclear weapons is prohibited both permanently and for a limited duration.
9. **Financing.** Assistance, prohibited under Article 1 (f) (g), should explicitly include financing. A prohibition on financing of nuclear weapons producers would increase the

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3 Organization for the Prohibition of Chemical Weapons, “Brief description of chemical weapons.” <https://www.opcw.org/about-chemical-weapons/what-is-a-chemical-weapon/>

4 Japan's 1967 Three Non-Nuclear Principles <http://www.mofa.go.jp/policy/un/disarmament/nnp/>

5 Press conference by Japan Foreign Minister Katsuya Okada on the examination of the so-called secret agreements, 19 March 2010, [http://www.mofa.go.jp/announce/fm\\_press/2010/3/0319\\_01.html](http://www.mofa.go.jp/announce/fm_press/2010/3/0319_01.html)

stigmatizing and norm-building role of this treaty, generate socio-economic impacts to promote nuclear disarmament, and provide an additional mechanism for civil society to play positive roles to that end.

#### **Article 3-5 (Stockpile destruction, verification and safeguards)**

10. Peace Boat welcomes the fact that the draft provides the possibility for States with nuclear weapons to join under a set of further agreed obligations. However, Articles 3-5, as currently spelled out, are weak and pose problems. Thus, the three clauses should be rewritten as a ‘package’ to provide a simpler and more straightforward framework under which plans for stockpile removal, destruction and elimination can be negotiated and approved, in line with the objectives of the treaty.

11. Based on a straightforward obligation of stockpile destruction, a set of questions needs to be answered: (1) How to engage nuclear-armed States to facilitate their accession to the treaty?; (2) How to verify their stockpile destruction in confidence?; and (3) How to make sure the absence of nuclear weapons or programs is eventually sustained forever? These questions pose multiple difficult challenges that can hardly be solved by the CPNW alone. These must be long-term, sustained and interlinked processes. Nonetheless the CPNW should define key elements and a framework, so that practical details can be completed in future processes, including in the form of protocols. Below are some points for consideration in that regard.

##### ***(i) Creating a mechanism for future accession of nuclear-armed States***

12. The CPNW should provide a mechanism for nuclear-armed States to accede to the treaty on the basis of irreversible, concrete, time-bound, verifiable plans of action to meet their obligation of stockpile destruction and elimination, which must be accepted by State Parties. In doing so, the acceding States with nuclear weapons must fully comply with Article 1 obligations and not undertake any preparation or threaten to rearm themselves with nuclear weapons.

13. Verification and enforcement would be the two key components of such a mechanism, in order to facilitate the accession of nuclear-armed States. Verification and enforcement should be credible enough for both those States that are acceding to the CPNW through implementing stockpile destruction, and for the CPNW States Parties that do not possess nuclear weapons in the first place. Any breach of the core prohibitions shall be detected so that the international community can swiftly and collectively respond to such a threat.

##### ***(ii) Verifying stockpile destruction***

14. The CPNW eventually requires a multilateral nuclear disarmament verification regime in which nuclear-armed States and States without nuclear weapons cooperate. Nuclear-armed States may not want to have States without nuclear weapons take part in verification, on the grounds that they want to protect sensitive information. Therefore establishing a mechanism for effective international cooperation is key.

15. Some initiatives are underway in the search for effective international cooperation on disarmament verification, including the International Partnership for Nuclear Disarmament Verification (IPNDV). The States leading these initiatives shall be encouraged to participate in the process of the CPNW. In this context, Article 9 on Meetings of State Parties could refer

to the potentially positive roles to be played by States not party to the CPNW, international organizations, technical experts and civil society organizations.

*(iii) Sustaining the absence of nuclear weapons – strong safeguards*

16. As the world gets closer to zero nuclear weapons, safeguards measures to prevent (re-)armament of nuclear weapons will have to be much stronger than today's standards. Envisioning that goal, the CPNW should adopt as high a standard of safeguards as possible as of today. It should also encourage States Parties to work to develop and adopt higher standards in a continuous manner. Having higher standards should not be understood as an additional burden on States. Rather, it is a requirement in the process leading to the total elimination of nuclear weapons. Once the complete elimination of nuclear weapons has been achieved, universal safeguards must cover both the States that had nuclear weapons in the past, and the States that have never had nuclear weapons, without discrimination.<sup>6</sup> The CPNW should provide such a basis.

17. The CPNW must clearly provide that States Parties are not allowed to weaken, or seek to weaken, safeguards standards to which they are already bound elsewhere. It is reasonable that the draft requires States Parties the INFCIRC/153 (corrected) type agreement or its equivalent. However, this is the minimum standard as of today, and should not be interpreted as being sufficient.

18. The CPNW States Parties can further agree to the following measures:

- requiring all State Parties to have the 1997 Additional Protocol (INFCIRC/540 (corrected)) agreements with the International Atomic Energy Agency (IAEA)
- strengthening international control of all weapons-usable fissile materials, with a view to prohibiting the production of high enriched uranium and the separation of plutonium for any purpose

19. Along with safeguards on fissionable materials provided in the current draft, the CPNW should also obligate State Parties to fully accept and cooperate with the Comprehensive Nuclear Test Ban Treaty (CTBT) verification regime. The active role of the CTBTO Preparatory Commission is encouraged in this regard.

20. Further development of technology and capacity would be required to fully verify the absence of those acts prohibited under Article 1 of the draft CPNW. For example, “development” of nuclear weapons can be understood as including at least the following, each of which has verification challenges to be tackled.

- production of fissile materials for weapons purposes;
- design of nuclear explosive devices or computer models to simulate them;
- subcritical testing, computer modeling, and hydrodynamic trials.

21. As the CPNW is expected to prohibit not only the “use” of nuclear weapons but also “military preparations” to use nuclear weapons, verification measures for this purpose also need to be developed. Transparency measures on the operational status of nuclear weapons that are currently undertaken by States must be the basis for developing such measures.

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<sup>6</sup> Action 30, Final Document of 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) NPT/CONF.2010/50 (Vol. I)

**Article 6 (Victim assistance and environmental remediation)**

22. Peace Boat welcomes that the draft provides a reasonably wide range of areas where the victims of nuclear weapons need assistance, including medical care, rehabilitation and psychological support, as well as social and economic inclusions, with a particular note on age- and gender- sensitive approaches. Indeed, many Hibakusha and other survivors and victims of the nuclear chain have suffered not only from direct physical effects but also from various social, economic, cultural and psychological impacts. Such multidimensional and cross-generational impacts of nuclear weapons can also be added to the preamble.

23. As a basis of victim assistance and environmental remediation, further research on the multidimensional damages caused by the use, testing and other activities related to nuclear weapons should take place and be promoted. The CPNW should institutionalize such a research process, which can become the basis of defining who is considered a victim and assessing needs and how to address them. The people in affected areas and communities must be at the center of all such processes. In the cases of Hiroshima and Nagasaki, as well as Fukushima, the arbitrary determination by the government over who is considered a victim who receives assistance, and which areas undergo remediation, has generated ongoing discrimination and social division. Lessons from these experiences should be learned and redressed.

**Article 11-21 (Final provisions, including reservation and withdrawal)**

24. **Reservation.** Not only the Articles but also the Annex(es) of the treaty shall not be subject to reservation (Article 17).

25. **Withdrawal.** Article 18.1 now provides that each State Party retains the right to withdraw if it decides that the “supreme interests of its country” have been jeopardized. The CPNW is a treaty to prohibit nuclear weapons, which pose fundamental risks to human survival, on the basis of universal principles of humanitarian law and inherent human rights. Therefore, such a withdrawal provision is not acceptable as it implies nuclear weapons could serve the “supreme interest” of a country.

26. **Institutional support.** The CPNW should aim to establish a treaty body to assist with implementation of the treaty, organization of Meetings of States Parties and encouragement of ratification. It should also promote education, both to the public and to States, about the treaty and the humanitarian impact of nuclear weapons. Civil society organizations should also be actively involved.

**Conclusion**

27. The primary objective of the CPNW should be to establish a categorical, comprehensive and unambiguous legal prohibition of nuclear weapons. The challenges of disarmament, verification and enforcement need to be further negotiated and established in the process after the treaty's adoption. Nonetheless, the CPNW should define the basic framework and components of such disarmament mechanisms, to which nuclear-armed States could eventually adhere. This paper examined those challenges in order to help articulate how the CPNW will lead the world toward the total elimination of nuclear weapons. The CPNW should institutionalize the processes to develop such mechanisms and to promote the treaty itself, as well as understanding of the humanitarian impacts of nuclear weapons. All States claiming to be committed to the goal of a world free of nuclear weapons are encouraged to participate in these processes in good faith.