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Direct from New York: the UN Conference for a Treaty to Ban Nuclear Weapons

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Today, 15 June 2017, the UN Conference tasked with creating a "judicial instrument" (treaty or convention) for a ban on nuclear weapons with a view to their total elimination, starts its second and final session in New York (15 June to 7 July). It is open to all member states whether nuclear-armed or not, and also to representatives of Civil Society. The text resulting from this conference will then be submitted to the 2017 UN General Assembly in New York in the Autumn.

The first session had brought together 132 government delegations, from 27 to 31 March. We were represented and we made a statement (see video clip). Since then, the Conference President, after diplomatic consultations, elaborated and submitted to the whole conference a first draft of a convention - this will be the focus of discussions during the present session.

Several international organisations have sent the President detailed remarks about this draft, including ICAN (International Campaign to Abolish Nuclear weapons) and today Reaching Critical Will (an organ of WILPF, the Women's League for Peace and Freedom, which regularly follows international meetings on disarmament in general and nuclear in particular). We will comment on these later in the session. For our part, we wrote yesterday to the President to draw her attention to two specific points - that letter is reproduced below.

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Letter to the Conference President

Saintes, 14 June 2017

Her Excellency Elayne Whyte-Gomez
Ambassador of Costa-Rica
President of the UN Conference
for a Treaty to Ban Nuclear Weapons

Copies to :
H.E. the Ambassador of Austria
H.E. the Ambassador of Chile

Your Excellency,
Madame President,

Now that the Conference which you chair will open its second and final session tomorrow in New York, allow me to thank you warmly for the way you have chaired it so far and for giving the floor to all participants without discrimination, including representatives of civil society - and in particular for giving us a day for open debate, without taboos or censorship, on 30 March.

I wish also to thank the Ambassador of Austria, who chaired that session, for allowing me to speak on that occasion, and to the Ambassador of Chile for kindly lending me his seat and his microphone for as long as I spoke, partly in English, partly in French.

Lastly I wish to thank you for the draft Convention you have circulated: it constitutes a solid and almost comprehensive base to work from. Furthermore I rejoice to see that this draft makes no mention of any "indefeasible right to nuclear energy".

However, I would like to read your replies to some questions which French colleagues and I are asking concerning two points:

1°) Article 2 .1 stipulates that:

« Each State Party shall submit to the Secretary General of the United Nations, not later than 30 days after this Convention enters into force for it a declaration in which it shall declare whether it has manufactured, possessed or otherwise acquired nucle ar weapons or other nuclear explosive devices after 5 December 2001. »

What does that date of 5 December 2001 refer to? Why should not the other States Parties that obtained nuclear weapons before that date be required also to make such a declaration? Does that mean, for example, that France - if she decided to sign the treaty - would not need to declare the weapons she possesses? Or any other state known to be nuclear-armed, except for North Korea?

2°) Concerning the right to withdraw, Article 18.2 sets out that :

« Each State Party shall in exercising its national sovereignty have the right to withdraw from the Convention if it decides that extraordinary events, related to the subject matter of this Convention, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Convention and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests. »

When it invokes the defense of "supreme interests" (which French doctrine calls "vital interests") in "extreme circumstance" ("extraordinary events"), is it not accepting the motive invoked by France to push the International Court of Justice to that conclusion: « However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake »? Is it not true that it was that very concession made to France (and to the other nuclear-armed states) which enabled them, under the cover of deterrence, to never apply Article VI of the NPT... and which froze out any ban on nuclear weapons since the advisory opinion of the Court on 8 July 1996? And is it not true that the treaty now under discussion is destined to supersede that very "exception" by elaborating a universal, unconditional and definitive ban, valid at all times and places for all States Parties and even for states that are not parties? Adherence to such a ban is not dependent on circumstances. It rests on the recognition that nuclear weapons are instruments for crimes against humanity. It amounts to requiring the abolition of the threat which these weapons constitute: a collective and indiscriminate capital punishment. No circumstance could legitimize these arms.

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Admittedly, **article 18.3** seems to limit the reach of that "right to withdraw" when it states that:

« Such withdrawal shall only take effect three months after the receipt of the instrument of withdrawal by the Depositary. If, however, on the expiry of that three month period, the withdrawing State Party is engaged in the situations referred to in Article 2 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, including any situation described in paragraph 4 of Article 1 of Additional Protocol I to these Conventions, the Party shall continue to be bound by the obligations of this Convention and of any annexed Protocols until the end of the armed conflict or occupation. »

But given that nuclear weapons obviously infringe the Geneva Conventions, at the point where the States Parties withdraw from the ban treaty by arguing that they confront exceptional circumstances, they would not thereby obtain any new freedoms - in particular they would not gain the right to use their nuclear weapons or even threaten an enemy with them. In that case what use would this right to withdraw be to them, except to preserve in their minds the idea (which nuclear states keep having) that the ban on possessing and using nuclear weapons is neither unconditional nor absolute, and that in an emergency they could use them and threaten with them, if they still had some - or more generally the idea that states waging war could break away from the treaty and its prohibitions *after* "the end of the armed conflict or occupation". In that case, why not also *during* the war?

It seems to us therefore that these provisions are mutually contradictory and are also contrary to the very objective of the ban treaty - and that for these reasons they should need to be reconsidered during the current session of the Conference.

Your sincerely,

Jean-Marie Matagne
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President of ACDN
Administrator of « Sortir du nucléaire », the Nuclear Phase-out Network

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