

IALANA Statement Regarding the Treaty on the Prohibition of Nuclear Weapons on the Occasion of its Opening for Signature on 20 September 2017

IALANA – the International Association of Lawyers Against Nuclear Arms – welcomes the adoption on 7 July 2017 of the Treaty on the Prohibition of Nuclear Weapons. The nuclear weapons ban treaty is a powerful and eloquent statement, grounded in an understanding of the catastrophic humanitarian consequences of nuclear explosions, of the political, moral, and legal standards enjoining non-use and elimination of nuclear arms and of the need to redress the damage wrought by the nuclear age to people and the environment. At the same time, it must be acknowledged that trends in the wider world are negative, as threats of use of nuclear weapons are made in the Korean context and elsewhere, and as all nine nuclear-armed states proceed with long-term programs for the maintenance and modernization of their nuclear arsenals. It is imperative that the nuclear-armed states and their allies be persuaded of both the humanitarian values and the disarmament logic underlying the treaty.

IALANA is particularly pleased that the treaty – as we strongly advocated – robustly recognizes and reinforces existing treaty- and custom-based international law requiring the non-use and elimination of nuclear weapons. That law applies to states whether or not they join the treaty. That includes the nuclear-armed states, which did not participate in the negotiations, as well as states in nuclear alliances, most of which likewise did not participate.

Considerations relevant to all states are set out in the treaty’s preamble, whose legal elements:

- *Reaffirm* the need for all states at all times to comply with international humanitarian law and international human rights law;
- *Identify* key principles and rules of international humanitarian law, including the rule of distinction between civilians and combatants and civilian objects and military objectives; the prohibition of indiscriminate attacks; the rule of proportionality; the rule of precaution; the prohibition of infliction of unnecessary suffering; and the rules for the protection of the environment;
- *Consider* that any use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, in particular the principles and rules of international humanitarian law;
- *Recall* the UN Charter prohibition of the threat or use of force;
- *Reaffirm* the obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control. That obligation was set forth in a unanimous conclusion of the International Court of Justice in its 1996 Advisory Opinion, based on Article VI of the Nuclear Non-Proliferation Treaty and UN practice going back to the very first General Assembly resolution, in 1946.

The treaty’s core prohibitions, set out in Article I, bar states parties from developing, testing, producing, and possessing nuclear weapons, and from using and threatening to use such weapons. At least the latter prohibitions, of using and threatening to use nuclear weapons, apply to all states whether or not they are party to the treaty, as a matter of universal law rooted in international humanitarian law, the UN Charter, and principles of humanity and dictates of public conscience.

We emphasize that the use and threatened use of nuclear weapons is presently incompatible with international humanitarian law regulating the conduct of warfare. Above all, due to their uncontrollable blast, heat, fire, and long-lasting radiation effects, nuclear weapons cannot meet the requirement of distinguishing between the civilian population and combatants and between civilian objects and military objectives. Indeed, the catastrophic consequences of use of nuclear weapons vastly exceed the ordinary boundaries of armed conflict and adversely impact populations in third-party states, the natural environment necessary to sustain human life, and future generations. The use and threatened use of nuclear weapons accordingly also violates international human rights law, most centrally the right to life. It is therefore appropriate that the preamble to the nuclear weapons ban treaty invokes international human rights law as well as international humanitarian law.

In view of the centrality of threat to now decades-old reliance on nuclear weapons in military and security postures, IALANA also emphasizes the importance of the explicit inclusion of the prohibition of threatened use in the treaty. It will be an important tool in the ongoing campaign to delegitimize 'nuclear deterrence' as contrary to international law as well as common sense in view of the immense risks involved. Delegitimization of nuclear deterrence is essential to success in achieving the global abolition of nuclear arms.

The treaty's preamble refers to the "unacceptable suffering of and harm caused to the victims of the use of nuclear weapons (hibakusha), as well as of those affected by the testing of nuclear weapons." IALANA welcomes the human-rights based obligation on all states parties in a position to do so to assist affected states parties with victim assistance and environmental remediation. There is still much to do to help victims of the use and testing of nuclear weapons, and clean-up or other appropriate management of contaminated areas remains a daunting task. IALANA urges all states to take seriously the obligation of assistance to affected states, with special emphasis on the responsibility of states having used or tested nuclear weapons.

IALANA hopes that the several pathways created by the treaty for nuclear-armed states to verifiably and irreversibly dismantle their arsenals will serve as a framework for global nuclear disarmament. 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.

Finally, the nuclear weapons ban treaty is the product of a participatory, conscience-driven and non-discriminatory movement of states taking responsibility for the future of humanity working together with civil society. It is a harbinger of the democratization of disarmament and of the United Nations, and of a paradigm shift toward human security, placing the individual at the centre rather than considerations guided only by states' interests.

We accordingly call on all states to sign the treaty and then soon to ratify it in order to bring it into legal force at the earliest possible date. We urge states in nuclear alliances to modify their national policies appropriately so that they can sign the treaty and act consistently with its object and purpose as required of signatories by international law, and to ratify the treaty when they are in a position fully to comply with it. We call on nuclear-armed states to, now, adopt policies and to, now, effectively engage in disarmament negotiations, which are required by international law, so that they too are able to join the treaty or to engage in a parallel process for ending the spectre of use of nuclear arms and achieving a world free of nuclear weapons. In this regard, the treaty provides confirmatory evidence of the utmost importance of existing international law in requiring that nuclear weapons be banned from the face of the earth; it is a powerful call to the nuclear-armed states, and to the world, to effectively honor the obligations of nuclear disarmament.