Cluster 1: Preamble

Let me first say clearly that the draft preamble is already in very good shape and has a number of essential elements which should be retained. We would, however, suggest several additional elements. I refer you for more detail to IALANA Working Paper 37, Prohibitions and the Preamble.

Regarding the 4th preambular paragraph on principles of international humanitarian law, we urge reference to the principle of distinction and the associated prohibition of indiscriminate attacks, and to the principle of precaution. See our Working Paper for a proposed paragraph. We are doubtful about referring to rules involving a balancing test such as proportionality in attack and the prohibition of the infliction of unnecessary suffering. They open the way to making the case for the lawfulness of particular attacks.

A preambular paragraph should be added, “Recalling the duty of States to respect and ensure respect for international humanitarian law.” This principle is drawn from common Article 1 of the Geneva Conventions and is today considered customary in nature. It applies not only to actual armed conflict, but also to the planning or preparatory phases. It additionally weighs against threat of nuclear attack, which negates respect for IHL whether or not a nuclear attack is executed.

We very strongly support including a prohibition of threat of use of nuclear weapons in the obligations. This is should be reflected in the preamble as well. The illegality of threatened use is well grounded in existing law, as explained in our Working Paper.

We also recommend a preambular paragraph on international human rights law, for example: “Recognizing that the use of nuclear weapons would violate fundamental human rights, above all the right to life.” The catastrophic consequences of use of nuclear weapons vastly exceed the ordinary boundaries of armed conflict. Reference to human rights as well as IHL is highly appropriate, and would help with public education.

In the third preambular paragraph of the draft convention, IALANA suggests addition of a reference to production of nuclear weapons, as the effects of the entire life cycle of producing nuclear weapons, as well as testing and using them, have harmed people in large numbers.
IALANA suggests addition of the word “climate” to the second preambular paragraph of the draft convention on catastrophic consequences of nuclear weapons, for example “pose grave implications for human survival, the environment and climate …” This would link to the evidence presented at the conferences on humanitarian impact of the global cooling and consequent famine that would result from a large-scale exchange of nuclear weapons devastating many cities, and facilitate public education on the subject.

Thank you for your attention.