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The nuclear ban treaty : a sign of global impatience

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## **The Nuclear Weapons Prohibition Treaty: A Heart-felt Cry by the World (Paul Meyer and Tom Sauer)**

Future historians may designate the summer of 2017 as the beginning of the end of the nuclear age. The significance of this moment seems to be overlooked by many foreign relations experts.<sup>1</sup> Seventy two years after the invention and use of nuclear weapons, a majority of the states in the world have concluded an international legally binding treaty that provides for a comprehensive ban on nuclear weapons.<sup>2</sup> The treaty text was adopted by 122 states on 7 July 2017 and was opened for signature on 20 September 2017. At the time of writing, 56 states have signed and four have ratified.

The nine nuclear weapon possessing states and their allies are still in a state of denial.<sup>3</sup> They have consistently resisted the very idea of a treaty banning nuclear weapons. This rejection has been maintained by the nuclear weapon states despite their legal obligations under the 1970 Nuclear Non-Proliferation Treaty (NPT) to start multilateral negotiations on the elimination of nuclear weapons.<sup>4</sup> They have ridiculed the Humanitarian Initiative that was the driving force behind the Prohibition Treaty. They were convinced that it would fail, just like previous disarmament efforts by NGOs and likeminded states. They regarded these states as “unimportant”, an expression used by a former high-level arms control expert of the US in a track II workshop. The nuclear weapon states and the NATO member states (except the Netherlands) have boycotted the multilateral negotiations that took place in 2017, something that was never seen before with respect to a UN General Assembly authorized negotiation. By doing so, they have ignored a basic obligation of the NPT and responsible multilateralism, and have missed the chance to shape the Prohibition treaty to their own wishes.

Critics of the Treaty point out that it is very unlikely that any of the nuclear weapon states or their allies will be part of the first group of signatories.<sup>5</sup> But treaty advocates took that for granted right from the beginning. Just like slavery was not abolished through the efforts of slave owners, it is hard to expect that the initiative for the abolition of nuclear weapons will come from the possessors of these arms.

What is the scope of the Prohibition Treaty? The Prohibition Treaty will forbid the development, production, testing, acquisition, stockpiling, transfer, possession, stationing, and both the use and threat of use of nuclear weapons. Consequently, the decades old doctrine of nuclear deterrence will become illegal, at least for the signatory states and for hundreds of millions of citizens around the world that support the treaty. Whether it will eventually gain the status of customary law will depend on state practice in the future, but a major normative step has been taken towards that goal. At the very least, the nuclear “taboo” – against the use<sup>6</sup>, now extended to the possession of nuclear weapons – will be strengthened.

The Treaty will enter into force once 50 states have ratified it, thus ensuring that it commands wide support while avoiding the pitfall of requiring ratification by specific states, which has prevented the Comprehensive Test Ban Treaty (CTBT) from entering into force. Given that 122 states voted in favor of the adoption of the treaty, the agreement is likely to enter into force sooner rather than later although this will require sustained political action and advocacy on the part of its supporters.

The nuclear weapon states and their allies have two options available under the Treaty: they can either destroy their nuclear weapons and then join the treaty, or join the treaty and at the same time make a clear commitment as to when and how they will eliminate their nuclear weapons. For the nuclear dependent allies this will require disavowal of the doctrine of nuclear deterrence and its enabling systems, such as providing basing or aircraft for the delivery of nuclear weapons. Of course, there is a third option as well for this minority faction of NPT states parties. They can persist in their rejection of the Treaty, retain and modernize their nuclear weapons at a cost of tens of billions of dollars as they are planning to do. Such a stance would however guarantee an immense schism between non-nuclear weapon states and nuclear weapon states that threatens the core foundations of the nuclear non-proliferation regime established by the NPT.

Before looking to the future, let us look back to how the Prohibition Treaty came about. As the mainstream media largely ignored the negotiations many observers may be surprised to learn that a majority of NPT states had decided that nuclear weapons should be banned. A few more attentive followers of multilateral security affairs would have known that a major challenge to the existing nuclear order has been in the making for some time.<sup>7</sup> The underlying driver behind the Treaty is the frustration by the non-nuclear weapon states over the unfulfilled promises of the nuclear weapon states with respect to nuclear disarmament. There remain currently some 15,000 nuclear weapons on earth. Most of these weapons have a destructive capacity that is ten or even a hundred times more powerful than the Hiroshima bomb that wiped out a complete city. The use of only a fraction of the total arsenals could render the planet inhabitable. Unless one is absolutely sure that nuclear deterrence will always work, the risks associated with these weapons spread over more and more states (such as Pakistan, North Korea and undoubtedly others in the future) are unacceptably high.

For decades the NPT was seen as the primary legal framework for managing the risks represented by nuclear weapons. This widely supported treaty (191 states parties) codified a “grand bargain” in which the non-nuclear weapon states promised never to obtain nuclear weapons, the five existing nuclear weapon states at that time committed to get rid of their nuclear weapons, and all NPT signatories pledged to cooperate on the peaceful uses of nuclear energy.

Probably the greatest lacuna of the NPT is the absence of a deadline for realizing nuclear disarmament required under Article VI of the treaty. While the nuclear weapon states point

to the many thousands of nuclear weapons that have been reduced from their operational arsenals, the standard for the non-nuclear weapon states has always been zero. Only the complete elimination of nuclear weapons would remove the discriminatory feature of the NPT with its two categories of “haves” and “have not’s”, and put all parties on an equal footing. Over the years, the frustration of the non-nuclear weapon states over the limited progress being made on the nuclear disarmament obligation increasingly mounted. These frustrations were especially evident during the NPT Review Conferences convened every five years.<sup>8</sup>

The origins of the Humanitarian Initiative can be directly linked to the failure of the 2005 NPT Review Conference. Other explanatory factors are the stagnation in multilateral arms control in the preceding decade (1995-2005) and the successful campaigns against landmines (1997) and cluster munitions (2008) that resulted in what became known as “humanitarian disarmament” accords. These successes triggered ideas for launching a new campaign with the ambitious goal of eliminating nuclear weapons – the only weapon of mass destruction not covered by a comprehensive prohibition agreement. NGOs like the International Physicians for the Prevention of Nuclear War (IPPNW) that had received the Nobel Peace Prize in 1985 were in the forefront of establishing a new global civil society movement: the International Campaign to Abolish Nuclear Weapons (ICAN) that included more than 400 NGOs from over 100 states around the world.<sup>9</sup> For its advocacy and lobbying efforts on behalf of the Prohibition treaty, ICAN would later on receive the 2017 Nobel Peace Prize. At the same time, the International Red Cross and Red Crescent movement put the abolition of nuclear weapons higher on its agenda. Together with Switzerland, they were able to include a reference to the catastrophic humanitarian consequences of the use of nuclear weapons in the final document of the 2010 NPT Review Conference. That language was agreed by all member states, including the nuclear weapon states. In all likelihood, they were not aware that this phrase would constitute the starting point of the road towards the Prohibition Treaty.<sup>10</sup>

The main idea behind the Humanitarian Initiative is to change the narrative from a focus on nuclear deterrence, a strategic rationalization for not having to use nuclear weapons while simultaneously threatening to employ them if deterrence fails, to a concern with the dangers attendant upon actual use of nuclear weapons. The former is an abstract theory that is used by defense intellectuals to legitimize the maintenance of nuclear arsenals. Nuclear deterrence rhetoric and practice dominated the Cold War. Advocates of the theory believe that the absence of a Third World War is mainly due to the existence of nuclear weapons. As nuclear weapons have not been used since the end of World War II supporters of these arms attribute this record to the positive influence of nuclear deterrence.<sup>11</sup> Critics pointed out that it is impossible to prove that nuclear deterrence actually worked.<sup>12</sup> Other factors can explain the absence of another major war as well: the memory of the two world wars with tens of millions of people killed, European integration, economic interdependence, etc. In fact, nuclear deterrence sometimes blatantly failed (e.g. in the Yom

Kippur War in 1973, during the Gulf War of 1991 or Pakistan's Kargil incursion in 1999). Nuclear abolitionists also pointed to the dangers of having nuclear weapons on high alert ready to be launched in a few minutes, let alone the massive waste of resources entailed by the nuclear arms race. This debate between the advocates and the critics of nuclear weapons was on-going in international security circles but was structured in a way that essentially favored the status-quo.

The Humanitarian Initiative radically changed the prevailing nature of this debate. It sought to change the narrative by emphasizing what would happen if nuclear weapons were actually *used* (e.g. in case nuclear deterrence failed), something that was rarely discussed. What would be the physical consequences in terms of heat, blast, and radio-active fall-out? Are societies ready to deal with a nuclear explosion, let alone a limited nuclear war? What would be the environmental consequences of a large-scale nuclear war for the planet? The Initiative wanted to enlarge the debate about the future of nuclear weapons by introducing practical realities instead of abstract strategic concepts. The hope was that once people were aware of the dangers represented by nuclear weapons and the inadequacy of any humanitarian response to their use they would become more active in promoting nuclear disarmament.

The Humanitarian Initiative invited scientists to present updated studies on the phenomenon of "nuclear winter", an atmospheric condition that had been studied in the 1980s on the premise of a major nuclear exchange between the USSR and the USA. One updated study was based on a scenario of a "limited" nuclear war between India and Pakistan involving the use of only 100 nuclear weapons. The study found that even such a restricted nuclear exchange would directly kill 30 million people, and would cause a lowering of the temperature due to the fall-out's blocking of sunlight, which in its turn would eradicate grain crops causing hunger and disaster for hundreds of millions of people.<sup>13</sup> Other experts showed the virtual impossibility of employing even a single nuclear weapon pointed at a military installation without killing large numbers of civilians. This analysis reinforced the view that basically any use of nuclear weapons would inherently contradict international humanitarian law with its principles of proportionality, discrimination and precaution.

In brief, the goal of the Humanitarian Initiative was to demonstrate that nuclear weapons are simply too destructive to be used. Their use would be immoral and illegitimate, and therefore their employment and very existence should be made illegal, just as chemical and biological weapons, and even landmines and cluster munitions, which are much less destructive, have been the subject of prohibition treaties, and have or are being eliminated. A major interim goal of the Initiative is to declare nuclear weapons illegal by way of an international treaty. That absence of a treaty prohibiting the possession and use of nuclear weapons was the key remaining 'legal gap' that had to be closed. The negotiation of such a treaty was regarded as an achievable short-term goal that would constitute the first step towards the complete elimination of nuclear weapons.

The Humanitarian Initiative organized three international conferences in the period 2013-2014 (in Norway, Mexico, and Austria) bringing together ever more numerous representatives of governments and NGOs. The Initiative received increasing support in terms of votes for UN General Assembly (GA) resolutions and statements at NPT meetings. The 2016 session of the UN GA adopted a resolution authorizing the convening of multilateral negotiations in 2017 to develop a legally-binding agreement to prohibit nuclear weapons.<sup>14</sup> Importantly the resolution specified that UNGA rules of procedure would apply, which meant decisions would be taken by majority vote instead of consensus. The latter condition had been used too often by nuclear weapon possessing states to stymie nuclear disarmament-related initiatives in multilateral forums in the past. This time the non-nuclear weapon states would prevent the possibility of such obstruction. With this means of blocking an eventual outcome denied to them, the nuclear weapon possessing states and their allies (with the notable exception of the Netherlands) opted to boycott the proceedings. The fact that in the end the Netherlands decided to cast the sole negative vote against adoption of the prohibition treaty demonstrated the wisdom of the participating states in circumventing the consensus trap.

The Prohibition Treaty, like any treaty, is of course not without its flaws, also because it was negotiated in a very short time span. One of the flaws is that it is a mixture of a prohibition and an elimination treaty. While many had expected that it would have been limited to a simple prohibition statement in the form of a Prohibition Treaty that later on would be complemented with a more extensive Nuclear Weapon Convention detailing the process of elimination, the actual Treaty contains both elements and can therefore be best regarded as a framework agreement. As a result, the elimination provisions (like verification) are very basic, and will have to be supplemented later on.

Furthermore, while its adoption at the close of negotiations by 122 states certainly represents a major diplomatic achievement, it is fair to ask what will be the Treaty's impact on global nuclear affairs. Skeptics point out that the treaty is only of symbolic importance and that the nuclear weapon possessing states and their allies, the main targets of the Prohibition treaty, will not change their policies as they continue to assert that nuclear deterrence is "essential" for their security. As stated above, advocates of the Treaty are not naïve in the sense that they hope that the nuclear weapon states will radically change course in the short-term. They believe however, that there are two mechanisms that may have an eventual effect on the behavior of the nuclear weapon states and their allies in the foreseeable future.

One mechanism that may be triggered by the Prohibition Treaty is enhanced restraint by the private sector (e.g. banks and investment funds) with respect to financial exposure in the nuclear weapons industrial sector.<sup>15</sup> Banks and investment funds care about their reputation. Ethical standards for investments become the new norm. Once nuclear weapons are declared illegal, many financial institutions will think twice before funding or investing in

firms that are doing business in the nuclear weapons sector. Already a large Norwegian and Dutch pension fund has changed its policy in this regard, respectively before and after the Treaty conclusion. Many banks may come under pressure to follow suit. The latter may cause problems for nuclear weapons-related business, which may help put pressure on states to change policy.

Second and more fundamentally, the Treaty will demonstrably strengthen the anti-nuclear weapon norm. By so doing it will provide another mechanism for eventually influencing the behaviour of nuclear-armed states and their allies. The remaining states with weapons of mass destruction will be stigmatized in light of the norm enshrined in the Prohibition Treaty.<sup>16</sup> It is possible that as support for the treaty grows it will trigger a new societal and political debate about the future of nuclear weapons *within* the nuclear weapon states and their allies. Ultimately it is the leaders and citizens of the nuclear-armed states that will determine the future of nuclear weapons.

The questioning of the nuclear weapon status-quo can be anticipated in some of the non-nuclear states within nuclear alliances, especially the five basing states for NATO's nuclear forces in Europe.<sup>17</sup> The Netherlands is already an example of a country in which official policy has been influenced by civil society activism. Pax, the main peace movement in the Netherlands, successfully collected 40,000 signatures on a petition against nuclear weapons. That achievement led automatically to a debate on the subject being held in the Dutch parliament. That four hour long debate on 28 April 2016 was attended by the Dutch Minister of Foreign Affairs Bert Koenders and resulted in motions approved by both opposition and governmental parties that called upon the Dutch government to at least attend the Prohibition Treaty negotiations. Despite enormous pressure from the US, the UK and France, as well as other allies, Dutch diplomats did attend and contributed to the negotiations (although finally they were the only delegation voting against adoption). Also in Norway, the parliament has increased pressure on the government since the launch of the negotiations. In fact, in many NATO non-nuclear weapon states the Prohibition Treaty negotiations has prompted eminent members of society to speak out in favour of their government adopting a positive stance towards the treaty. Once the Prohibition Treaty enters into force, pressure will grow on at least some of these governments (e.g. the Netherlands, Norway, Canada, Belgium and Germany) to sign the Treaty and/or align their security policies with its goals.

There is even a nuclear weapon state that may feel the near term consequences of the Prohibition Treaty. The nuclear weapon state that is most likely to change its policy is the UK, where the costly renewal of the Trident submarines that comprise the British nuclear forces has already triggered a societal debate. Most Scottish politicians (including the nationalist party SNP) are against retention of nuclear weapons, reflecting in part the geographic reality that the only British nuclear base is just 40 miles from Glasgow. Labour leader Jeremy Corbyn is a lifelong member of CND and even attended the Humanitarian Conference in Vienna. He was elected as Labour leader partly on the basis of an anti-Trident campaign.

Many of his young followers are fervent critics of nuclear weapons. As party leader, he has declared that if he would become Prime Minister he will never push the nuclear “button”. Although the official party line (under pressure of the Unions and members of parliament) is still in favor of Trident renewal, the influence of Brexit and the current economic stagnation may work to overturn that earlier decision. In addition to the Greens the Lib-Dems are also lukewarm about maintaining nuclear weapons, and have suggested a virtual nuclear deterrent instead. This leaves only the Conservative Party as fully in favor of renewing Trident. The entering into force of the Prohibition Treaty may help the many advocates of nuclear disarmament in the UK to make their point even more vehemently. If Labour wins the next elections, the renewal of Trident may be rejected, and the UK could become a state without nuclear weapons.

If the UK signs the Prohibition Treaty, a positive domino effect may follow. At a minimum it will press the remaining nuclear weapon states to explain how specifically they intend to achieve the world without nuclear weapons that they have espoused, at least rhetorically, as a goal.

Advocates of the Prohibition Treaty hope that the Treaty will be a “wake-up call” for the nuclear weapon states and their allies. If they did not realize previously that nuclear disarmament is viewed as a priority for the rest of the world, they should have got the message now. The Prohibition Treaty can indeed be regarded as a heart-felt cry for nuclear weapon elimination. Neglecting further this new imperative for nuclear disarmament could be a recipe for disaster down the road. Concretely, if the nuclear weapon states and their allies do not take substantial steps towards elimination (in the form of deep cuts of arsenals, adopting no first use policies, effecting de-alerting of deployed forces, withdrawing nuclear weapons stationed abroad, and halting modernization) before the next NPT Review Conference in 2020, the probability of failure of that conference will be extremely high. The failure of two Review Conferences in a row would further erode the authority of the then 50-year old NPT, and could well lead some of its non-nuclear weapon state members to abandon it in favour of the more comprehensive provisions of the Prohibition Treaty.

Again, the best way to prevent this scenario of regime erosion from happening is for the nuclear weapon states to take substantial steps in the direction of nuclear weapon elimination in the near term.<sup>18</sup> The Prohibition Treaty serves as a stark reminder of the unfinished business of the NPT goals of nuclear non-proliferation and nuclear disarmament.

The prospect of defections from the NPT is certainly not foreseen in the prohibition treaty, which in a preambular paragraph reaffirms “the full and effective implementation” of the NPT. At the same time if nuclear weapon states party to the NPT are judged not to be implementing their treaty obligations, non-nuclear weapon states may begin to lessen their engagement with that treaty regime, especially if they are party to a treaty with higher disarmament standards. The weakening of the global nuclear nonproliferation regime that

might result from this process would not be in the interest of the nuclear weapon states, but their conduct over the decades would have contributed to bringing it about.

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<sup>1</sup> For an exception, see: Shatabhista Shetty and Denitsa Raynova (eds), *Breakthrough or Breakpoint ? Global Perspectives on the Nuclear Ban Treaty*, ELN Global Security Special Report, December 2017, 65 p.

<sup>2</sup> <https://www.un.org/disarmament/ptnw/>

<sup>3</sup> See for instance the joint statement by the US, the UK and France on 7 July 2017, <https://usun.state.gov/remarks/7892>

<sup>4</sup> <https://www.un.org/disarmament/wmd/nuclear/npt/text>, see especially article 6.

<sup>5</sup> Benjamin Valentino and Scott Sagan, 'The Nuclear Weapons Ban Treaty: Opportunities Lost', in: *The Bulletin of the Atomic Scientists*, 16 July 2017. <http://thebulletin.org/nuclear-weapons-ban-treaty-opportunities-lost10955>

<sup>6</sup> Nina Tannenwald, *The Nuclear Taboo*, Cambridge University Press, 2007.

<sup>7</sup> Rebecca Johnson, 'Banning Nuclear Weapons', in: *OpenDemocracy*, 26 February 2013; Beatrice Fihn (ed), *Unspeakable Suffering*, Reaching Critical Will and ICAN, 2013; John Borrie, 'Humanitarian Reframing of Nuclear Weapons and the Logic of a Ban', in: *International Affairs*, vol.90 (3), 2014, pp.625-646; Tom Sauer and Joellen Pretorius, 'Nuclear Weapons and the Humanitarian Approach', in: *Global Change, Peace and Security*, vol 26 (3), 2014, pp.233-250; Tom Sauer, 'It's Time to Outlaw Nuclear Weapons', in: *The National Interest*, 28 April 2016.

<sup>8</sup> Tom Sauer, 'The Nuclear Nonproliferation Regime in Crisis', in: *Peace Review*, vol.18 (3), 2016; Paul Meyer, 'Saving the NPT', in: *Nonproliferation Review*, vol.16 (3), November 2009, pp.463-472; Alexander Kmentt, 'How Divergent Views on Nuclear Disarmament Threaten the NPT', in: *Arms Control Today*, vol.43 (10), December 2013; Paul Meyer, 'The Nuclear Nonproliferation Treaty: Fin de Régime?', in: *Arms Control Today*, vol 47 (3), April 2017, pp.16-22.

<sup>9</sup> <http://www.icanw.org/>

<sup>10</sup> William Potter, 'Disarmament Diplomacy and the Nuclear Ban Treaty', in: *Survival*, vol.59 (4), 2017, pp.75-108.

<sup>11</sup> Some go even further by advocating the spread of nuclear weapons, see for instance Kenneth Waltz, *More May Be Better*, in: Scott Sagan and Kenneth Waltz, *The Spread of Nuclear Weapons*, W.W.Norton & Company, 2003 (second edition), esp. chapter 1, pp.3-45.,

<sup>12</sup> John Mueller, 'The Essential Irrelevance of Nuclear Weapons', in: *International Security*, vol 13 (2), Fall 1988, pp.55-79; Tom Sauer, *Nuclear Arms Control*, Macmillan, 1998; Ken Berry (and others), *Delegitimizing Nuclear Weapons*, CNS, Monterey, 2010; Ward Wilson, *Five Myths about Nuclear Weapons*, Houghton Mifflin Harcourt, 2013.

<sup>13</sup> Owen Toon (and others), 'Atmospheric Effects and Social Consequences of Regional Scale Nuclear Conflicts and Acts of Individual Nuclear Terrorism', in: *Atmospheric Chemistry and Physics*, vol.7, 2007, pp.1973-2002; Michael Mills (and others), 'Multidecadal Global Cooling and Unprecedented Ozone Loss Following a Regional Nuclear War', in: *Earth's Future*, vol.2 (4), 2014, pp.161-176.

<sup>14</sup> <http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/resolutions/L41.pdf>

<sup>15</sup> *Don't Bank on the Bomb*, report by Pax and ICAN, December 2016, [https://www.dontbankonthebomb.com/wp-content/uploads/2016/12/2016\\_Report\\_final.pdf](https://www.dontbankonthebomb.com/wp-content/uploads/2016/12/2016_Report_final.pdf)

<sup>16</sup> Patricia Shamai, 'Name and Shame: Unravelling the Stigmatization of Weapons of Mass Destruction', in: *Contemporary Security Policy*, vol 36 (1), 2015, pp.104-122.

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<sup>17</sup> Tom Sauer, 'How Will NATO's Non-Nuclear Members Handle the UN's Ban on Nuclear Weapons', in: *The Bulletin of the Atomic Scientists*, vol.73 (3), May/June 2017, pp.171-181.

<sup>18</sup> For a limited agenda, see Lewis Dunn, 'After the Prohibition Treaty: a Practical Agenda to Reduce Nuclear Dangers', in: *Arms Control Today*, vol 47 (6), July/August 2017, pp.6-12.