

Banning nuclear weapons without the nuclear armed states

There is growing recognition that a treaty banning nuclear weapons can and should be agreed even without the participation of nuclear armed states. This briefing paper argues that such an instrument would strengthen protection from the humanitarian threat of nuclear weapons by reinforcing norms against them and making their use less likely. Simply banning nuclear weapons will not guarantee their elimination, but it will serve as a necessary and practical next step towards a world in which all weapons of mass destruction have been outlawed, and are being eliminated.

At first it seems counterintuitive to think a treaty banning nuclear weapons would be effective without the participation of nuclear armed states. However, the idea of such a treaty is gaining momentum precisely because with some further thought it can be seen to be both achievable and transformational. Achievable because it does not give the nuclear armed states the power to block its development (which they otherwise would). Transformational because it will set nuclear weapons clearly alongside the other weapons of mass destruction – chemical and biological weapons – both prohibited under international law because of the unacceptable humanitarian consequences that they cause.

“International law won’t uninvent the weapon, but will contribute to accelerating its marginalisation as an instrument of policy or defence. [It] will change ... the calculus of political and military decision-making about acquiring, replacing, keeping, modernising nuclear weapons [and] give the world better tools to prevent the rogues or extremists at the margins from ever getting hold of these weapons of mass destruction.”¹

Even without the participation of the nuclear armed states, a ban treaty would make the use of nuclear weapons less likely, it would work against their further proliferation and strengthen movement towards their complete elimination. It would work through the following mechanisms:

- × The **legal clarity** of such an instrument would increase political pressure for the complete elimination of nuclear weapons.
- × A **greater stigma** against nuclear weapons will increase the political costs of keeping such weapons and reduce the political incentives to acquire such weapons.
- × **Restricting investment** in companies profiting from nuclear weapons would reduce commercial pressures to keep these weapons.
- × Nuclear weapons would become more problematic within the framework of **military cooperation** and joint exercises.
- × Meeting under the framework of the treaty, a **more powerful community** will develop, working for the complete elimination of nuclear weapons.

Over time, such forces will bear not only on the few nuclear armed states but also on states that are dependent in their current security policies on the nuclear weapons of others.

The first lines of both the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention affirm that states are determined to act to achieve “the prohibition and elimination of all weapons of mass destruction.” A treaty banning nuclear weapons would act on that determination.

The pressure of legal clarity

A simple ban treaty would draw a clear line rejecting nuclear weapons, but it is not a radical proposition. The other weapons of mass destruction – chemical and biological – are already illegal under international treaties. A ban treaty would simply put nuclear weapons on the same footing, addressing what is currently a legal gap. It would also build upon the rejection of nuclear weapons already formalised by the 115 countries that are members of Nuclear Weapon Free Zones.

A nuclear ban treaty would be complementary with existing legal instruments such as the 1968 Nuclear Nonproliferation Treaty, 1972 Biological Weapons Conventions, 1993 Chemical Weapons Convention and the 1996 Comprehensive Nuclear-Test-Ban Treaty. It would also resolve the relationship between nuclear weapons, the humanitarian consequences that they threaten, and international humanitarian, human rights and environmental law. A ban treaty would allow states to formalise their rejection of nuclear weapons on an equal basis. Rather than allowing nuclear weapons for some but not for others, it would set a common standard that these weapons are unacceptable.

In 1998, the UK Government put in place a ‘reservation’ from its international humanitarian law obligations, claiming that these rules of law don’t apply to nuclear weapons. This stands as a recognition that these weapons are incompatible with the standards that humanitarian law enshrines.²

A ban treaty should clearly state the obligation to achieve the complete elimination of nuclear weapons and can provide **a simple framework for their safe elimination**. However, it will not need to anticipate all of the detailed steps that a state with nuclear weapons would need to go through. As with similar ban treaties, states do not need to get rid of the weapons before joining the treaty, and states with foreign nuclear weapons on their territory would not have to remove them before coming on board.

The existence of a ban treaty would offer states opposed to nuclear weapons an opportunity to formalise their commitment to a world free of nuclear weapons in the form of a multilateral legally binding agreement. States opposed to the ban will have to justify their failure to join to domestic and international publics. The treaty and its meet-

ings will create an ongoing pressure for them to explain why they will not accept the illegality of weapons of mass destruction that threaten the gravest humanitarian consequences.

The pressure of stigma

By establishing the clear rejection of nuclear weapons the ban treaty will enhance the stigma that already exists against these weapons. For individuals and for states, ‘stigma’ shapes how certain weapons are recognised as unacceptable and incompatible with the identities we wish to hold in the world.³ Chemical and biological weapons are already clearly stigmatised, such that only a pariah state would endorse their development, possession and use. The recent use of chemical weapons in Syria has been denied by all parties to the conflict.

“The Non-Proliferation Treaty ... makes it absolutely clear that Britain has the right to possess nuclear weapons,” Tony Blair, as UK Prime Minister, February 2007.

For nuclear weapons stigma is not as straightforward due to the group of countries that continue to claim that these weapons are acceptable and vital for their national safety. These states often hide behind the fact that the use of these weapons is not clearly prohibited to justify their support for these weapons.

A binding multilateral treaty would bolster the existing norm against the use of nuclear weapons to include other aspects (production, possession, transfer, etc.) that contribute to the overall stigma against the weapons. Based on a realistic appraisal of the horrific consequences that nuclear weapons are designed to cause, it will increase the political cost for those keeping such weapons and reduce the political incentives for others to acquire such weapons.

Whilst it should not be expected that the existence of a treaty banning nuclear weapons will transform the policies of nuclear armed states immediately, it will ensure that both domestic and international discussions regarding these weapons are conducted with a clear recognition that they are widely considered morally and legally unacceptable because of the catastrophic humanitarian consequences that they cause.

The pressure of international connections

As well as prohibiting the use, production, stockpiling and transfer of nuclear weapons, a ban treaty should also prohibit direct or indirect assistance with such acts, including by way of investment in companies that produce or otherwise carry out commercial activities involving these weapons.

Despite the stark humanitarian issues at stake, commercial factors also contribute to some states clinging to nuclear weapons.⁴ By limiting international investment in the companies that produce and maintain nuclear weapons the commercial value of that work, and its impact on the brand image, will be reconsidered by those involved.

A recent report by IKV Pax Christi detailed the financial investments

of 298 financial institutions in 27 companies involved in the production of nuclear weapons. Many of the financial institutions listed in the report are based outside nuclear armed states including in Australia, Austria, Bahrain, Canada, Denmark, Germany, Indonesia, Ireland, Japan, Jordan, Kuwait, The Netherlands, Norway, Saudi Arabia, Singapore, Spain, South Africa, Sweden, Switzerland and the United Arab Emirates.⁵

“The few countries that keep these weapons of mass destruction are planning to spend more than USD 1,000,000,000,000 over the next decade to maintain, and modernize them. While the majority of that comes from taxpayers in the nuclear armed countries ... the private sector is investing over USD 314,349,920,000 in the private companies that produce, maintain, and modernise the nuclear arsenals in France, India, the UK and the US.”⁶

The prohibition on assistance would also imply that nuclear armed states that have not joined the ban treaty would not be able to fully participate in military cooperation arrangements if nuclear weapons are involved. For example, they could not transport nuclear weapons through the territories of states parties to the treaty, or access their ports. Enacted through national legislation, the treaty would open up the possibility of individual criminal responsibility for assistance in prohibited activities involving nuclear weapons.

Building a strong community that rejects nuclear weapons

Working together to develop such a treaty, and then regularly reconvening under its framework, a group of committed states would build a stronger community that rejects nuclear weapons and works for their complete elimination. This community would be able to engage substantively and constructively with those states with nuclear weapons towards the shared goal of guaranteeing their elimination. In the same way, the treaty would facilitate greater and more effective mobilisation by civil society, including in the nuclear armed states. Such partnerships, between states, international organisations like the International Committee of the Red Cross, UN agencies and civil society, have the capacity to set the standards for what is considered acceptable and unacceptable in the world of weapons.⁷

Nuclear armed states often argue that they are committed to getting rid of nuclear weapons, but that they just need to keep hold of them until world peace has been achieved and all uncertainty removed regarding possible future security threats (including all other nuclear armed states having got rid of their weapons first). Set against that plan, the practical step of agreeing an international legal instrument that makes it clear that these weapons are unacceptable seems both more realistic and urgently needed. Negotiating a treaty banning nuclear weapons should be a straightforward task to address a legal anomaly that has been allowed to persist for too long.

END NOTES

- 1 Dr Rebecca Johnson, Acronym Institute for Disarmament Diplomacy, statement to the Open-ended Working Group on Nuclear Disarmament, May 21, 2013, Palais des Nations, Geneva
- 2 See UK Government, Geneva Conventions Act (First Protocol) Order 1998.
- 3 See for example Nina Tannenwald, “The Nuclear Taboo: The United States and the Normative Basis of Nuclear Non-Use” in *International Organization* 53.3 (Summer 1999): 433-468 and Richard Price, “A Genealogy of the Chemical Weapons Taboo” in *International Organization* 49.1 (Winter 1995): 73-103.
- 4 On the range of drivers behind the UK’s orientation towards remaining a nuclear power see Nick Ritchie, “Relinquishing nuclear weapons: identities, networks and the British bomb” in *International Affairs* 86:2 (2010), 465-487.
- 5 IKV Pax Christi and ICAN, “Don’t Bank on the Bomb: A Global Report on the Financing of Nuclear Weapons Producers” October 2013.
- 6 *ibid.*
- 7 Analysis of past instruments has concluded that rigorous treaties, even with incomplete membership, offer a pathway to generating widely respected international norms. See Adam Bower, “Moral Mission Accomplished? Assessing the Landmine Ban” with Richard Price, in *Justice, Sustainability, and Security: Global Ethics for the 21st Century*. Edited by Eric A. Heinze. New York: Palgrave Macmillan, 2013.

Some questions and answers

1. Where would a ban leave existing treaties?

Treaties are a means to an end, not an end in themselves. The ban treaty would strengthen the normative pull towards compliance with and full realisation of the disarmament goals identified in the Non Proliferation Treaty (NPT), the UN Charter, the Comprehensive Test Ban Treaty (CTBT), the treaties prohibiting the other weapons of mass destruction and elsewhere. The ban treaty would strengthen and complement these existing instruments, helping states to live up to their existing commitments. For those that dismiss the NPT as fundamentally inequitable because of the status of the five designated “nuclear weapon states” there would be no real reason not to join a ban treaty that is open to all on the same basis. At the same time, states currently wielding nuclear weapons would have particular obligations under a ban treaty to eliminate these weapons.

2. What will happen between the entry into force of a ban without nuclear armed states on board and the elimination of nuclear weapons?

Examples of other disarmament treaties suggest that even powerful states that do not initially accept the treaties face informal pressures to comply with their rules. The ban treaty will set the framework for concerted diplomatic efforts toward treaty universalization, towards the extension of nuclear weapon free zones, for multilateral and bilateral assistance and cooperation to help nuclear dependent states to move forward, and for other measures that diminish the role of nuclear weapons in the world and remove the value that certain states attach to them.

The main difference between the world today and the world with a ban on nuclear weapons would be the broader international context in which these weapons are viewed and discussed. Outside the treaty, nuclear armed states would be under no more direct legal obligation to disarm than they are already. But that should not stop the rest from asserting the illegal nature of these weapons, which the vast majority of people abhor.

3. Would a nuclear weapons treaty with a significant number of non-parties be more harmful than the current NPT which has only a small handful of outliers?

The ban treaty would not be there to compete with the NPT, it would fulfill a complementary role. Therefore it should not be judged on the basis of its universality vis-a-vis the NPT (a treaty that was brought into existence more than 45 years ago.)

Even if there were 50 states or more outside the treaty, however, it would still be a strong reaffirmation by the international community that nuclear weapons are illegal weapons and that they must be eliminated.

That said, a ban treaty may be more popular when it opens for signature than it might appear now. The logical and moral authority of such a treaty will make it hard for many states to resist once a political process forces governments to take a clear position. The ban treaty is not going to happen in a vacuum. Its development will influence the world around it. The pressure on nuclear armed states

to fully implement their obligations will rise. Nuclear weapons will be less and less desirable. Nuclear dependency will be seen increasingly as weakness rather than strength.

“It took many years before nuclear-armed China and France joined the NPT, but when they eventually did, they quickly became two of the most prominent supporters of the Treaty. History shows that membership of treaties grows over time as international norms are established.”

Reaching Critical Will, “Preventing collapse: the NPT and a ban on nuclear weapons,” October 2013.

4. Can we declare something illegal and at the same time engage in good faith negotiations about reductions and disarmament?

If the goal of those negotiations is security and peace in the sense of a nuclear free world through disarmament there should be no problem in having states declare nuclear weapons illegal while still challenging other states to adopt progressive steps toward that goal. States have already agreed that the goal is a world free of nuclear weapons and that their use would cause catastrophic humanitarian consequences. States frequently adhere to different legal regimes and move at different speeds on the road towards the implementation of international norms. Having a strong standard helps pull others up towards it, especially if that standard is supported by the weight of most of the world’s nations.

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