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Beatrice Fihn

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The Logic of Banning Nuclear Weapons

Beatrice Fihn

On 27 October 2016, member states of the United Nations adopted a decision in the General Assembly to convene in 2017 negotiations for a new legally binding instrument to prohibit nuclear weapons – or, as it is widely known, a ban treaty.

This is a genuine opportunity for the international community, at long last, to break the logjam in multilateral nuclear-disarmament efforts and to make real progress towards a world free of nuclear weapons. An understanding of the need for a ban has emerged through the so-called ‘humanitarian initiative’, a movement led by governments, international organisations and civil-society groups to make humanitarian consequences the focus of discussions about nuclear weapons.

Many believe that the effort to prohibit nuclear weapons is a result of frustration with nuclear-armed states and their lack of progress in disarmament.¹ They are right that frustration runs high at the lack of implementation of Non-Proliferation Treaty (NPT) review-conference agreements and the deadlock in the Conference on Disarmament – and that this frustration has helped the ban treaty’s cause – but this is not why nuclear weapons are being banned.

Rather, this effort is about determining which weapons the international community deems unacceptable, and preventing catastrophic humanitarian harm. It reflects a shift in security and development policies towards a more central role for humanitarian concerns and humanitarian law. It also

Beatrice Fihn is Executive Director of the International Campaign to Abolish Nuclear Weapons (ICAN).

reaffirms multilateralism, and the understanding that problems with global impact mean all regions of the world – not just the permanent members of the UN Security Council – must have a say in the solutions.

The case for prohibiting nuclear weapons is clear: they are by nature inhumane and indiscriminate. The use of a nuclear weapon on a populated area would immediately kill tens – if not hundreds – of thousands of people, with many more injured. As Norway's then-foreign minister Espen Barth Eide said at the 2013 Conference on the Humanitarian Impact of Nuclear Weapons: 'It is unlikely that any state or international body could address the immediate humanitarian emergency caused by a nuclear weapon detonation in an adequate manner and provide sufficient assistance to those affected.'² The long-term impact would significantly harm survivors and their descendants for decades to come. Yet, somehow, several states, including some who see themselves as champions of humanitarian principles and law, stand ready to use these weapons and unleash inhumane suffering on civilians as a result. Such states claim that they are weapons to deter war, rather than to fight it, a claim that can only be true, if at all, until deterrence ultimately fails – which, one day, it will.

Negotiating a treaty prohibiting nuclear weapons will codify the stigma against causing such inhumane consequences. Weapons that cause unacceptable harm to civilians cannot remain legal or be considered legitimate options for states in warfare.

The risk is increasing

Unfortunately, as the campaign for a prohibition of nuclear weapons has evolved, so too has a more challenging international-security environment. Nationalism is overtaking international cooperation and threatening international institutions. Tensions between nuclear-armed states are rising, involving threatening rhetoric associated with nuclear weapons, and nuclear-modernisation programmes are proceeding apace. Experts have argued that the risk of a nuclear detonation is now the highest it has been since the Cold War – and that was before Donald Trump was elected president of the United States.³ Trump has announced he will 'greatly strengthen and expand' America's nuclear capabilities, echoing Russian President

Vladimir Putin's promise to 'strengthen the military potential of strategic nuclear forces';⁴ between them, the US and Russia control more than 90% of the world's nuclear weapons. Ensuring that nuclear weapons are never again used has become a yet more urgent task.

As long as nuclear weapons continue to be valued as strategic assets necessary for security, significant nuclear disarmament will be extremely difficult, if not impossible. In order to get rid of nuclear weapons, the international community must declare these weapons no longer acceptable or desirable. For the majority of states in the world, the time to do that has come.

Possible legal impact

It is possible that none of the nuclear-armed states will participate in the ban-treaty negotiations, and it is unlikely that any of them will sign a finished treaty in the near future. Yet that does not diminish the treaty's value. The reaction of some nuclear-armed states to the idea of negotiations shows that the legal delegitimisation of nuclear weapons is, to put it mildly, making them nervous.⁵

Past experience in the development of international norms strongly suggests a ban treaty would affect the behaviour even of states that do not join. A treaty prohibiting nuclear weapons without the signature of nuclear-armed states does not, in and of itself, constitute disarmament. But it directly challenges the acceptability of nuclear-weapon use and possession by any state under any circumstances, thereby providing further impetus for concrete legal, political and normative measures to eliminate nuclear weapons. Other nuclear-weapon-related treaties, such as the Comprehensive Nuclear Test-Ban Treaty (CTBT) and even the NPT, have not themselves achieved nuclear disarmament either – but they have provided the impetus for making progress. A prohibition delegitimising nuclear weapons would significantly contribute to a strengthened norm against the weapons, at a time when the world desperately needs it.

Norms take time to develop, of course, and it is safe to say that a treaty prohibiting nuclear weapons will not lead to nuclear-armed states eliminating their nuclear arsenals immediately. But for other prohibited weapons,

such as biological and chemical weapons, landmines and cluster munitions, prohibition has been the necessary starting point for elimination. Prohibition precedes elimination – not the other way around.

While the content of the ban treaty has not yet been negotiated, it is likely that by signing, governments would refrain from possessing and using nuclear weapons, as well as assisting prohibited acts. Joining a treaty banning nuclear weapons would not mean that NATO members have to leave the Alliance, but it would have policy implications for NATO and its member states, in particular for hosting nuclear weapons on national territories and participating in nuclear planning. In a letter from the United States to NATO member states, the US government outlined a list of concrete potential impacts of a ban treaty, including that the treaty would limit the United States' ability to use nuclear weapons on behalf of other states.⁶

A treaty prohibiting nuclear weapons could also include provisions prohibiting the financing of nuclear-weapons production. The annual *Don't Bank on the Bomb* report tracks financial institutions and their investments in nuclear-weapons production. The report notes that a treaty prohibiting nuclear weapons would significantly impact investment decisions.⁷ Divestment campaigns are effective tools for stimulating change on the business side of weapons production. The bans on landmines and cluster munitions were followed by divestment and removal of funds available for companies involved in such production. In August 2016, Textron – the last US-based producer of sensor-fused cluster munitions – announced it would cease production. The company cited a decline in orders and 'the current political climate' as motivation, an indication that the cluster-munition convention constitutes a global norm and that the stigma associated with cluster bombs is growing. One financial analyst also noted that ceasing production of cluster munitions could allow the company to gain access to funds from potential investors that had previously avoided them.⁸

A treaty prohibiting nuclear weapons would also be an extra non-proliferation measure, strengthening the commitment by non-nuclear-weapon states to remain nuclear-weapons-free forever. The NPT has been instrumental in preventing the spread of nuclear weapons, but a ban treaty would be an opportunity to move away from the NPT 'bargain', instead

committing states to an unequivocal undertaking never to acquire nuclear weapons under any circumstances. It could strengthen trust among governments that non-nuclear-weapon states will not break out from established non-proliferation regimes.

Possible political impact

A treaty prohibiting nuclear weapons is not only a legal tool. A ban will also create space for states, international organisations, civil society and individuals to carry out the political work necessary to spread the common-sense understanding that possessing nuclear weapons is unacceptable. The process of negotiating a treaty itself will mobilise civil society and public pressure around the world. It provides a concrete opportunity to rally the public, engage media and ask for action in parliaments. In short, it gives the anti-nuclear-weapons movement focus.

A treaty will empower communities within nuclear-armed states and nuclear-alliance states to influence change from within. It could give strength to arguments by Scottish parliamentarians who want UK nuclear weapons removed from Scotland, and provide opportunities for progressive politicians in nuclear-hosting states in Europe to take bold decisions.

Once the treaty is in place, there will be further opportunities to raise awareness of behaviour that contravenes the growing norm against nuclear weapons. A signing ceremony or ratification by a state party, the entry into force of the treaty and every meeting of treaty members will be an opportunity to highlight that nuclear weapons are unacceptable, to pressure outlier states to join and comply with the prohibition, and to expose behaviour that runs counter to the treaty's aims.

Conducting nuclear exercises, approving modernisation programmes or launching nuclear-capable missiles, for example, could be targets for criticism of nuclear-armed and nuclear-alliance states as they engage in preparations to use an inhumane, indiscriminate and soon-to-be-illegal weapon of mass destruction.

Whether they admit it or not, governments care about how they are perceived in the international community. Stigmatising weapons creates perceptions of unacceptability which can be incompatible with the

identity a state wishes to hold in the world. The behaviour of the United States and Russia regarding landmines and cluster munitions highlights that while these countries are not party to the treaties, they are no longer fully comfortable with being seen as users of the weapons. Russia has repeatedly disputed claims that it has used cluster munitions in the war in Syria, for example, despite the fact that neither Russia nor Syria is party to the treaty.⁹

* * *

A ban treaty cannot guarantee the elimination of nuclear weapons – but neither can the NPT, the CTBT or other arms-control treaties. The real question in judging its worth is whether elimination can ever be achieved while nuclear weapons are still perceived as central to states' security.

With a strong, committed group of governments engaged in the process, together with key international institutions such the United Nations, the International Committee of the Red Cross and national Red Cross and Red Crescent societies, as well as civil-society groups, a treaty prohibiting nuclear weapons will make it more difficult for nuclear-armed states to continue to justify possessing and planning to use nuclear weapons.

A nuclear-weapons prohibition will not magically make nuclear-armed and nuclear-alliance states give up the bomb – but it will make it a less attractive weapon to maintain or pursue, and provide states with more incentives for elimination. When nuclear weapons are finally eliminated, there will almost certainly have been more than one cause, including a multitude of treaties, initiatives, cost-benefit analyses and other reasons for disarmament. But a prohibition of nuclear weapons is a necessary condition to achieve their elimination.

Humanitarian law has evolved since the Second World War, and carpet-bombing and killing hundreds of thousands of civilians is no longer considered an acceptable method of warfare. If this is a global norm to which states are committed, nuclear weapons can no longer be accepted either. And if the international community is ever going to get rid of these weapons, it must start by clearly rejecting them.

Notes

- 1 See, for example, Jenny Nielsen and Paul Ingram, 'Opportunities for Effective Strategic Dialogue: Bridging the Nuclear Deterrence and Disarmament Constituencies', BASIC, 1 January 2017, <http://www.basicint.org/blogs/jenny-nielsen-paul-ingram-executive-director/01/2017/opportunities-effective-strategic/>; and Kingston Reif, 'UN Weighs Nuclear Weapons Ban Talks', *Arms Control Today*, October 2016, https://www.armscontrol.org/ACT/2016_10/News/UN-Weighs-Nuclear-Weapons-Ban-Talks.
- 2 Espen Barthe Eide, 'Chair's Summary Humanitarian Impact of Nuclear Weapons', 5 March 2013, https://www.regjeringen.no/en/aktuelt/nuclear_summary/id716343/.
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