CAN THE HUMANITARIAN PARADIGM BE APPLIED TO NUCLEAR WEAPONS?

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As early as in the 19th century, international efforts led to the regulation or prohibition of some means of warfare such as biological and chemical weapons because of their possible consequences on civilians and non-combatants. In the post-Cold War period similar humanitarian motivations explained initiatives from civil society organisations that convinced governments to regulate or ban some conventional weapons such as anti-personnel landmines, cluster munitions, small arms and light weapons.

Indeed, especially in internal conflicts and armed violence, civilians paid and continue to pay the highest toll to the uncontrolled spread and use of such weapons. The more recent initiative to apply the same humanitarian paradigm to nuclear weapons because of their potentially devastating consequences led to the negotiation and the adoption of the Treaty Prohibiting Nuclear Weapons (TPNW) in July 2017.

Whether it will be possible to convince the states still considering nuclear weapons as legitimate to move towards their prohibition remains to be demonstrated, but the initiators of the TPNW already succeeded in leading the international community to address nuclear weapons no longer in national security terms but through the lens of human security, and include, in particular, into that treaty considerations such as the rights of victims of nuclear weapons or the fact that "any use of nuclear weapons would. . . be abhorrent to the principles of humanity and the dictates of public conscience."

There are sufficient arguments in favour of prohibiting nuclear weapons because of their potentially catastrophic humanitarian consequences:

- In 1950 the ICRC declared, "*the suffering caused by the atomic bomb is out of proportion to strategic necessity; many of its victims die as a result of burns after weeks of agony, or are stricken for life with painful infirmities. Finally, its effects, immediate and lasting, prevent access to the wounded and their treatment*".[2]
- According to the 1996 Advisory Opinion of the International Court of Justice (ICJ), "*the threat or use of nuclear weapons should. . . be compatible with the requirements of the international law applicable in armed conflict. . .*"[3] Among those principles are those of distinction between combatants and civilians, proportionality, and prohibition on the infliction of unnecessary suffering.

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[1] Senior Programme Advisor, Geneva Centre for Security Policy (GCSP). The author expresses personal views.
[2] ICRC, "Atomic Weapons and Non-directed Missiles – ICRC Statement 1950"
<https://www.icrc.org/eng/resources/documents/article/other/5kylur.htm>
[3] ICJ, "Legality of the Use by a State of Nuclear Weapons in Armed Conflict – Advisory Opinion of 8 July 1996"
<http://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>

- The ICRC has also validated scientific studies[4] showing that only a limited nuclear war using 100 nuclear weapons would lead to massive emissions of soot in the atmosphere, causing a world famine affecting 1 billion people. A nuclear war between the US and Russia would put an end to agriculture, and lead to the collapse of ecosystems and starvation of most of the human race.

Some nuclear-weapon states reject this approach and insist that, because their own security and that of their allies are said to rely on nuclear weapons, the only possible method for reaching the common, ultimate goal of a nuclear-weapon free world is through step-by-step measures "taking in consideration the security environment". We have seen how ineffective this approach has been in the fifty years of existence of the Non-Proliferation Treaty (NPT). But even if we were to consider the rationale for nuclear deterrence not from a humanitarian point of view but from a 'realist', security-based approach, we would still find compelling arguments to prohibit and eliminate nuclear weapons. Nuclear weapons are weapons dating back to World War II and the Cold War. They are completely inadequate to respond to the security threats of the 21st century. As one good American expert put it, *"[n]uclear weapons too big, too clumsy, too outmoded, too messy for any conceivable purpose."*[5] And he debunked the five myths on which the doctrine of nuclear deterrence is based:[6]

i. Japan's leaders said that Hiroshima forced them to surrender because it made a convenient explanation for losing the war. But the historical facts demonstrate that Hiroshima did not force Japan to surrender; only the declaration of war of the Soviet Union did.

ii. Nuclear weapons are the most destructive weapons ever, but vast, general destruction, killing civilians and destroying cities do not win wars. What nuclear weapons do best matters least in war.

iii. Nuclear deterrence is said to be essential for our protection. But nuclear deterrence only protects us if it works perfectly, and nuclear deterrence has been far from perfect. President Kennedy blockaded Cuba despite Soviet nuclear threats; Sadat and Assad attacked Israel in 1973 fully aware of Israel's nuclear capability; in 1991 Saddam Hussein set oil wells on fire and fired Scud missiles onto Israel in spite of James Baker's nuclear threats; former French President Valéry Giscard d'Estaing revealed that he would have never used nuclear weapons even in case of Soviet invasion of France.[7] Today British opposition leader Jeremy Corbyn declares that in no circumstance he would use nuclear weapons.[8]

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[4] ICRC, "Climate Effects of Nuclear War and Implications for Global Food Production", Information Note No. 2, 22 May 2013.

[5] Ward Wilson, *Five Myths about Nuclear* Weapons, First Mariner Books, New York, 2013.

[6] Carnegie Council for Ethics in International Affairs, "Five Myths about Nuclear Weapons", Transcript, 16 Jan. 2013.

[7] Valéry Giscard d'Estaing, *Le pouvoir et la vie,* Volume II, Compagnie 12, Paris, 1991, p. 210.

[8] Greg Heffer, "Jeremy Corbyn says he would NEVER press nuclear button to protect Britain from attack", *express*, 30 September 2015.

iv. Nuclear weapons are said to keep the peace, but the proof that peace between the US and Russia and the absence of major war in Europe since 1945 is the result of nuclear deterrence is proof by absence. We don't rely on proof by absence in any circumstance where there is real risk involved. Why would we rely on it where the lives of millions of people are at stake?

v. Finally, nuclear weapons allegedly cannot be dis-invented; but technology goes out of existence all the time because better technology comes along or people realise it was inadequate technology to begin with. The question is whether or not nuclear weapons are useful military technology: no one has found a situation in which they really wanted to use nuclear weapons in the last 70 years. Nuclear weapons are clumsy, blundering, overly large, expensive, outmoded dinosaurs. You drop a bomb on the enemy's troops and the radiation can blow back on your own troops. The trend in warfare is towards smaller, more intelligent, more precise weapons. Precision-guided munitions are the future in warfare, not big, blundering weapons from the past.[9]

The proponents of nuclear deterrence argue that the main difference between nuclear weapons and the other weapons of mass destruction (chemical and biological) as well as conventional weapons is that, while nuclear weapons have not been used since 1945, all the other categories of weapons have been or are still used, causing mass casualties. Nuclear-weapon states, especially during the Cold War, used to refer to nuclear weapons as 'weapons of non-use' to stress the political nature of nuclear deterrence, based on the assurance that the adversary would refrain from aggression threatening the vital interests or the very existence of a state because of the fear of unacceptable retaliation ('second-strike' capability). The so-called 'strategic stability' that allegedly resulted from this balance of terror excluded decapitating first strikes targeting the retaliatory capabilities of the adversary. Today, although this reassuring doctrine is still claimed by most nuclear-armed states, reality shows that the threshold of use of nuclear weapons has been dangerously lowered:

- There have been recently direct threats of use of nuclear weapons between the United States and North Korea;
- Military doctrines include nuclear response in case of conventional, chemical, biological or even cyberattacks including by non-nuclear weapon states;
- Some 1,900 nuclear weapons are still on hair-trigger alert allowing for their use within 15 minutes;
- Ballistic missiles are increasingly being replaced with less detectable and less likely to be intercepted cruise missiles;
- The yield of individual nuclear warheads is being reduced, making them more 'useable' (but not capable of preventing escalation to large-scale nuclear war);
- To circumvent antiballistic missile defence (which in itself is evidence that nuclear deterrence may not always work), some nuclear powers invest massively in long-distance hypersonic

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[9] Ibid.

missiles or non-nuclear precision-guided missiles that can be mistaken for nuclear missiles; this can be an incentive for first strikes or a cause for unjustified retaliation;

-   Not to mention the ongoing risks of miscalculation or accidental, unauthorized, or terrorist use of nuclear weapons as well as the potential impact of cyberattacks against command-and-control systems.[10]

How can we thus still pretend that nuclear weapons are not meant to be used when everything, from doctrines to technological evolutions and choices, tends to make their use more likely if not inevitable?

To some "realists" the humanitarian approach may seem utopian or naive if not risky. It has however already led the international community to address nuclear weapons no longer from a zero-sum-game national security viewpoint only but increasingly through a human security lens because any use of nuclear war would affect the whole planet. Some experts go as far as claiming that this process gave rise to "*humanitarian security regimes*", which they define as "*driven by altruistic imperatives aiming to prohibit and restrict behaviour, impede lethal technology or ban categories of weapons through disarmament treaties*". Such regimes "*embrace humanitarian perspectives that seek to prevent civilian casualties, precluding harmful behaviour, protecting and ensuring the rights of victims and survivors of armed violence.*"[11]

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[10] See in particular: Andrew Futter, *Hacking the Bomb: Cyber Threats and Nuclear Weapons* (2018) and Beyza Unal, "Cyber Security of Nuclear Weapons Systems: Threats, Vulnerabilities and Consequences", Chatham House (January 2018).

[11] Denise Garcia, "Humanitarian Security Regimes", *International Affairs*, 91: 55–75, 2015.