

## A TREATY PROHIBITING NUCLEAR WEAPONS: WHAT FOR AND WHAT NEXT?

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**Editorial by Senior Programme Advisor Marc Finaud**

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In an historic move, more than 120 states adopted a treaty prohibiting nuclear weapons at the United Nations on 7 July 2017. This was the result of an initiative launched by civil society organizations and supported by an overwhelming majority of countries except those possessing nuclear weapons. Critics say that, as a consequence, the new treaty will have no effect on the process of nuclear disarmament because the nuclear-armed states still

consider their weapons as legitimate and want to maintain and modernize them for an indefinite future in order to protect their own security. In any case, it is time to assess whether and how the prohibition of nuclear weapons will ensure their elimination.

The adoption of the treaty dubbed as the nuclear ban treaty (<http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/documents/L3-Rev1.pdf>) (with one vote against by the Netherlands and one abstention by Singapore) in a conference convened by the General Assembly of the United Nations was met by most with joy and relief and by the nuclear-armed states with either deafening silence or dismay. The supporters of the ban had agreed to launch that negotiation after a series of international conferences on the humanitarian consequences of any nuclear explosion (in Oslo ([https://www.regjeringen.no/en/topics/foreign-affairs/humanitarian-efforts/humimpact\\_2013/id708603/](https://www.regjeringen.no/en/topics/foreign-affairs/humanitarian-efforts/humimpact_2013/id708603/)) in 2013, Nayarit (<http://www.gob.mx/sre/prensa/17145>), and Vienna (<https://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-terrorism/vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/>) in 2014) and several weeks of discussions in an Open-ended Working Group ([http://www.unog.ch/80256EE600585943/\(httpPages\)/31F1B64B14E116B2C1257F63003F5453?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/31F1B64B14E116B2C1257F63003F5453?OpenDocument)) in Geneva in 2013 and 2016. Most of the nuclear-armed states and the nuclear-umbrella states boycotted those meetings and voted against the UN General Assembly resolution that launched the negotiation of the treaty. The main bone of contention was the interpretation of the provisions of the 1968 Non-Proliferation Treaty (<http://www.un.org/en/conf/npt/2005/npttreaty.html>) (NPT): the five NPT nuclear-weapon-states argued that their legitimate right to possess nuclear weapons was enshrined in that instrument without any time constraints, while most non-nuclear weapon states considered that they had renounced such weapons in exchange for a pledge of nuclear disarmament “at an early date”. In other words, possession of nuclear weapons was not a right but a tolerance for an interim period that was intended to be as short as possible.

Speaking of time, let’s remember that the very first resolution of the UN General Assembly in 1945 precisely contained a commitment of elimination of all weapons of mass destruction. Now, 72 years after that resolution and almost half a century after the TNP was signed, most countries felt that the promise of nuclear disarmament was not fulfilled as it should have been. It is true that the nuclear arsenals of the two main possessors, the United States and the USSR/Russia have been reduced from their Cold War peak of some 90,000 to 14,000, to which another 1,000 weapons of other nuclear-armed states must be added. However, the some 3,000 strategic deployed weapons of the US and Russia alone still represent more than 700 times the total explosive power used during World War II. One single Russian intercontinental missile equals 53 Hiroshima bombs and can exterminate up to 5.3 million people. Even a limited nuclear war between India and Pakistan could lead to a world famine killing 2 billion people due to its impact on the global climate.

Already in 1996, the International Court of Justice (<http://www.un.org/law/icjsum/9623.htm>) had declared that “the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.” Indeed it is inconceivable that the use of nuclear weapons could be compatible with the duty to distinguish civilian from military targets, or to refrain from causing “superfluous injury or unnecessary suffering”. This is why, since 1945, the International Committee of the Red Cross had been calling for the prohibition of nuclear weapons. This call was finally heard, first by civil society organizations that had campaigned for the prohibition of other weapons considered as inhumane such as antipersonnel landmines (<https://www.un.org/disarmament/geneva/aplc/>) or cluster munitions (<http://www.clusterconvention.org/>), and for the fight against illicit trafficking in small arms and light weapons (<https://www.un.org/disarmament/convarms/salw/programme-of-action/>) and the regulation of the international trade in conventional arms (<https://www.un.org/disarmament/convarms/att/>). Those organizations found champion states that promoted the negotiation and the adoption of international treaties to that end. In a similar process, based on the same humanitarian approach (*News-Knowledge/Publications/Humanitarian-Disarmament-Powerful-New-Paradigm-or-Naive-Utopia*), the movement to ban nuclear weapons rallied a large majority of states. Their frustration from the slow pace of nuclear disarmament was aggravated by the refusal of the nuclear-armed states even to engage in any serious dialogue.

What main result will the new treaty achieve? It will be open for signature on 20 September 2017 and will enter into force after 50 ratifications. This new stage should occur fairly soon, possibly in less than two years. Once the treaty is in force and widely supported, it will be increasingly difficult for the nuclear-armed states to continue arguing that their possession of nuclear weapons is legitimate and can continue indefinitely. On their part, the states that are party to the new treaty will be bound by its article 3 to maintain at least the same level of existing safeguards against any activity incompatible with the treaty obligations. The fear of some hesitant countries that the new treaty could be used as a loophole to escape their verification obligations under the NPT and with the IAEA safeguards (<https://www.iaea.org/topics/safeguards-and-verification>) is therefore now unfounded. Moreover, to the accusation of undermining the NPT from the nuclear-weapon states, the supporters of the ban can argue that it is perfectly in line with the NPT article VI that calls for “negotiations in good faith” to advance nuclear disarmament.

How can the new treaty convince the reluctant countries to join it and promote nuclear disarmament? The prohibition treaty, apart from reaffirming humanitarian norms, will certainly have an impact on the policy of the states that currently accept a nuclear umbrella or the stationing of foreign nuclear weapons on their soil, and even those that accept the transit of such weapons over their territories as well as those whose banks, corporations or individuals invest in companies that contribute to the manufacturing or development of nuclear weapons. If they want to join the treaty, such states will have to adjust their policies. The treaty also allows states that possess nuclear weapons to join it with two options: either “destroy and join” (as South Africa did by eliminating its nuclear weapons before acceding to the NPT) or “join and destroy” (on the model of the biological ([http://www.unog.ch/80256EE600585943/\(httpPages\)/04FBBDD6315AC720C1257180004B1B2F?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/04FBBDD6315AC720C1257180004B1B2F?OpenDocument)) or the chemical weapons (<https://www.opcw.org/chemical-weapons-convention/>) convention, that provide for the elimination of prohibited weapons within an agreed timeframe).

At this stage, it seems unlikely that the nuclear-armed states will dramatically shift their positions. They will most probably continue to argue that they subscribe to the distant goal of nuclear disarmament but that they are ready to move towards it only in a ‘step-by-step’ approach. Such possible steps do not lack: the entry into force of the 1996 Comprehensive Nuclear Test Ban Treaty (<https://www.ctbto.org/the-treaty/>) (still delayed

by a handful of states including the US and China); the negotiation of a treaty to prohibit the production of weapons-grade fissile material; bilateral reductions by the two main possessors (the US and Russia); multilateral measures to be negotiated at the Geneva Conference on Disarmament (<http://www.unog.ch/cd>), unable even to adopt a programme of work for two decades; the extension of the current outdated assurances of non-attack of non-nuclear weapon states with nuclear weapons ('negative security assurances'); the promotion of a new zone free of weapons of mass destruction in the Middle East; etc. If they are really committed to demonstrating their sincerity in pursuing the goal of nuclear disarmament for a more secure world for all, they have plenty of opportunities to get down to work. Continuing to affirm that nuclear weapons are necessary for their own security but unacceptable for the rest of the world will only encourage proliferation as shown in the case of North Korea.

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