

THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

Analysis and Perspectives



**ROSA
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The Start of the End of Nuclear Weapons

“Global anxieties about nuclear weapons are at the highest level since the end of the Cold War,” warned Mr. António Guterres, the UN Secretary-General in his opening address to the UN General Assembly in September 2017, although a world free of nuclear weapons is one of the United Nations’ oldest goals: the very first resolution adopted by the UN in January 1946 called for the “elimination from national armaments of atomic weapons.”

Of course, there has been progress over the years. The Non Proliferation Treaty (NPT), signed 50 years ago and still considered the “cornerstone” of the global non-proliferation regime, commits the five States possessing nuclear weapons at the time “to pursue negotiations in good faith relating to cessation of the nuclear arms race and to nuclear disarmament” (Article VI), while the non-nuclear weapon States renounced the military use of nuclear facilities. But even though this “grand bargain” did manage to prevent nuclear proliferation, it did not bring disarmament. Indeed, at the end of the Cold War, global arsenals decreased drastically, but nine countries still possess over 15,000 nuclear weapons, and experts estimate that even if only 100 were detonated, that would be sufficient to kill millions of people and to affect the climate on the planet: the world as we know it would never be the same.

Since 2010 a new approach to nuclear weapons, based on their catastrophic consequences, has gained momentum and changed the scenario. A broad alliance of governments, International Organizations and civil society, gathered mostly under the banner of the International Campaign to Abolish Nuclear weapons (ICAN), succeeded in July 2017 in getting a Treaty on the Prohibition of Nuclear Weapons (TPNW) approved. Despite all sorts of pressure from the nuclear weapons possessors, the TPNW was adopted by 122 States and stands as an impressive achievement in favor of human security and global justice, putting an end to “nuclear apartheid,” as the Ambassador of South Africa called it during the negotiations. Finally, the world addressed the outrageous privilege of a few to eradicate life on earth. The TPNW outlaws the development, possession, use, and threat of use of nuclear weapons and paves the way toward the total elimination of nuclear weapons. Following this achievement, the Nobel Peace Committee, recognizing the decisive contribution of the work of civil society, decided to award ICAN the Nobel Peace Prize.

The TPNW is a historic victory achieved jointly by the vast majority of countries, working in alliance with civil society: it will change forever the political, social and legal landscape of nuclear weapons by creating a new norm and a strong stigma against the worst weapons ever produced.

In this publication, we will go through the genesis of the TPNW; examine its content; give the floor to major actors and assess its potential to lead the world towards the complete elimination of nuclear weapons.

The TPNW

A Clear Sign of the Repudiation of Nuclear Weapons

H.E. Mr. Sergio Duarte, a Brazilian diplomat, has been in charge of disarmament issues at the highest level for many years. He served as United Nations High Representative for Disarmament Affairs up to 2012, chaired the NPT Review Conference in 2005, and participated in the Board of Governors of the IAEA. Passionate about nuclear disarmament issues, he followed closely the TPNW negotiations and here provides us with key perspectives to understanding the process in the context of the major global challenges.

Q.: Do you share Mr. Guterres's assessment that "Global anxieties about nuclear weapons are at the highest level since the end of the Cold War"? What is your perception of the global nuclear weapon context?

S.D.: The Secretary-General of the United Nations is absolutely correct in his assessment of the global concern about nuclear weapons. During the Cold War the two most heavily armed countries in the world, the Soviet Union and the United States, threatened each other with mutual assured destruction and the rest of the international community could only pray that this would not happen, since the destruction would not be limited to the two belligerents. Although nuclear arsenals have been reduced since the height of the Cold War, the number of atomic weapons remaining is still enough to blow each other up, together with the rest of the world, several times over. The trend toward further reductions seems now

exhausted. Tensions between Russia and the United States, as well as in other parts of the world, have gradually increased. All possessors are currently busy increasing the accuracy and destructive power of their arsenals and refining new technologies for waging war, under the pretext of "modernization". The Democratic People's Republic of Korea continues its nuclear weapon build-up and a dangerous rhetorical escalation between this country and the United States brought the fear that war might break out in Northeast Asia with the use of nuclear weapons. None of the nine States that possess atomic arsenals seem willing to start meaningful steps toward disarmament. Reflecting the heightened anxiety, the Bulletin of Atomic Scientists has advanced its "Doomsday Clock" to two minutes before midnight. Multilateral disarmament efforts came to a halt in the last few years of the 20th century and do not seem capable of producing early concrete results, despite a recent procedural breakthrough in the Committee on Disarmament. The leadership of the Secretary-General is crucial to promote progress in this area.

Q.: Mr. Trump has referred to the agreement with Iran as "a direct national security threat," and a "catastrophe that must be stopped." What could be the consequences of a US withdrawal from the agreement?

S.D.: The painstakingly negotiated JCPOA is seen by the international community as a welcome accomplishment that averted the possibility of further proliferation of nuclear weapons. A

unilateral withdrawal by any of its Parties, particularly the United States, would be a major blow to the credibility of formal international agreements and may increase insecurity in the Middle East and in the rest of the world. Every nation has an interest in the preservation of this agreement.

Q.: On July 7, 2017 122 states agreed on a Treaty on the Prohibition of Nuclear Weapons, how do you perceive this achievement?

S.D.: Nearly two-thirds of the membership of the United Nations pushed forward the start of negotiations on the Treaty on the Prohibition of Nuclear Weapons in spite of the fierce opposition of the main possessors of nuclear weapons and their allies. The negotiating process was open and inclusive, but those countries preferred to denounce the effort as “naïve” and “counterproductive” without bothering to participate so that their concerns could be reflected in the final product. Even so, 122 States proceeded to finalize the text of the treaty, which had been under examination by States and non-governmental organizations for several years since the first proposals were presented. The Prohibition Treaty reinforces the Treaty on the Non-Proliferation of Nuclear Weapons and provides nuclear weapon States with a clear path to relinquish their atomic arsenals, in fulfilment of their own commitments and of the wishes of the international community as a whole. The TPNW is an integral part of the existing corpus of international law in the field of arms control and disarmament.

Q.: You witnessed the negotiations: how did it go without the presence of the nuclear weapon States and what was the role of civil society?

S.D.: It was unfortunate that the nuclear weapon States did not find it in their interest to participate in the negotiation of the TPNW, but decided instead to proclaim its uselessness even before a final text took shape. The inevitable conclusion is that there is no will on the part of those States to fulfil the promises contained in several international instruments, particularly Article VI of the NPT. Had they decided to take part in the negotiation, their concerns could have been reflected to their satisfaction. The claim that their security concerns were not taken into account seems to imply that such concerns stand at a higher plateau, above the security concerns of the rest of the international community.

Civil society played a decisive role not only in the successful run-up to the negotiation of the TPNW and its outcome, but also by contributing with its invaluable support and substantive suggestions, during the several years along which the possibility of negotiating such a treaty was being contemplated. It is important that civil society organizations continue to be active in promoting the treaty within their constituencies in order to reach the necessary number of signatures and ratifications for its entry into force.

Q.: What can be the driving effect of this TPNW when it comes to opening the way towards the total elimination of nuclear weapons?

S.D.: The effect of the TPNW is already being felt in public opinion in several parts of the world, including in nuclear weapon countries or in countries that depend on such weapons for their security. Non-governmental organizations are actively educating the public on the social, political, environmental and humanitarian consequences of any use of nuclear weapons and promoting campaigns against the continuing production and modernization of arsenals. Parliamentarians in several States are increasingly aware of the need to adopt measures to reduce reliance on nuclear weapons and to promote peace and

understanding. The signature and ratification process continues despite the active opposition of the nuclear-armed States. Notwithstanding the ongoing campaign of disparagement of the TPNW its impact will be increasingly felt as civil societies in more and more non-nuclear States come to the realization that the efforts toward a world free of nuclear weapons must continue, and as they complete their constitutional requirements to ratify it. Regardless of the number of Parties, the TPNW will remain a clear sign of the repudiation of nuclear weapons both on moral and on humanitarian grounds.

The Prohibition of Nuclear Weapons: A Humanitarian Concern

“First they ignore you, then they laugh at you, then they fight you, then you win,” Gandhi allegedly said.

On 7 July 2017, the Treaty on the Prohibition of Nuclear Weapons (TPNW) was adopted at the United Nations by 122 states. It reflects the frustration of years of vain discussions with the nuclear weapon States to free the world from this deadly threat, but it also illustrates a major shift in the last decade, framing the argument in a way that considers humanitarian concerns and international law of growing importance, and fostering the development of a new multilateralism. From its genesis to its Preamble and its content, the TPNW carries a vision of collective security and justice with social, environmental and humanitarian concerns at its heart. It is a typical illustration of the humanitarian approach to disarmament. It has

also been an exemplary joint effort by governments, International Organizations and civil society in an area where very little multilateral progress had occurred since 1996 and the Comprehensive Test Ban Treaty.

After the successful process leading to the Landmine Convention (1992) and the Cluster Munitions Convention (2008), building also on years of advocacy for a Nuclear Weapons Convention, and using the window of opportunity opened by Obama’s Prague Speech¹, ICRC, ICAN and other proponents

¹ « One nuclear weapon exploded in one city -- be it New York or Moscow, Islamabad or Mumbai, Tokyo or Tel Aviv, Paris or Prague -- could kill hundreds of thousands of people. And no matter where it happens, there is no end to what the consequences might be -- for our global safety, our security, our society, our economy, to our

started to reframe nuclear weapons as a humanitarian rather than a national security issue. History will surely remember the simple statement on which much was built, when governments at the 2010 NPT Review Conference expressed *“deep concern at the continued risk for humanity represented by the possibility that these weapons could be used and the catastrophic humanitarian consequences that would result from the use of nuclear weapons and reaffirms the need for all States at all times to comply with applicable international law, including international humanitarian law.”*² This was the starting point for a new advocacy which convinced an ever-growing group of forces that the humanitarian impact of nuclear weapons was unacceptable and that the legal gap of their prohibition as weapons of mass destruction needed to be filled.

ICAN, as the major civil society partner, opened a new office in Geneva and developed its activities around a strong and clear political demand: the prohibition of nuclear weapons based on their catastrophic humanitarian consequences. In November 2011, a resolution adopted by the International Red Cross and Red Crescent Movements also called for a prohibition of nuclear weapons and strengthened the efforts to empower this major humanitarian network.³

On the diplomatic side, at the 2012 Non Proliferation Treaty Preparatory Committee

ultimate survival... So today, I state clearly and with conviction America's commitment to seek the peace and security of a world without nuclear weapons.” President Obama, April 5, 2009.

² 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons Final Document, Vol. 1.

³ Council of Delegates 2011: Resolution 1, 26-11-2011 Resolution, Working towards the elimination of nuclear weapons.

(NPT PrepCom), speaking on behalf of 16 States, Switzerland delivered the 1st Statement⁴ on the Humanitarian Impact of nuclear weapons, urging “all nations to intensify their efforts to prohibit nuclear weapons.” This diplomatic surge, soon called the “Humanitarian Initiative” on nuclear weapons, gained further momentum through the NPT process and the UNGA First Committee meetings to the point that around four fifths of all UN members signed onto this declaration at the UNGA in 2015.⁵

A New Narrative for Nuclear Weapons

A strong political space developed, building the new narrative and strengthening the impetus for the TPNW. Three international conferences on the Humanitarian Impact of nuclear weapons were organized. The first ever international conference addressing the impact of nuclear weapons, organized by the Norwegian Government in March 2013, convened 128 States alongside UN agencies (UNDP, OCHA), International Organizations and civil society representatives. New facts and studies were presented. IPPNW (International Physicians for the Prevention of a Nuclear War) demonstrated that over one billion people⁶ would surely die and the world climate would be completely changed if just 100 nuclear bombs were to be used in a regional war. The Norwegian Foreign

⁴ First Session of the Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons. Joint Statement on the humanitarian dimension of nuclear disarmament by Austria, Chile, Costa Rica, Denmark, Holy See, Egypt, Indonesia, Ireland, Malaysia, Mexico, New Zealand, Nigeria, Norway, Philippines, South Africa, Switzerland.

⁵ 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons. Joint Statement on the Humanitarian Consequences of Nuclear Weapons, delivered by H.E. Sebastian Kurz, 28 April 2015.

⁶ Physicians for Social Responsibility, www.psr.org.

Minister in his conclusions stated clearly that “no State or international body could address the immediate humanitarian emergency caused by a nuclear weapons detonation.” This was the first time in nuclear weapons history that governments discussed these issues and heard the victims of the nuclear bombs in Hiroshima and Nagasaki, as well as the victims of nuclear tests. At the end of the Conference, the Mexican government announced their will to organize a follow-up conference.

The 2nd International Conference on the Humanitarian Impact of nuclear weapons took place in Nayarit (Mexico) in February 2014. Apart from exploring further the impact of nuclear weapons, the conference also focused on the risks of accidental detonations and of the use of nuclear weapons by miscalculation, which has always been dramatically underestimated. The risk of nuclear weapons’ use is growing globally as a consequence of proliferation, of the vulnerability of nuclear command and control networks to cyber-attacks and to human error, as well as of potential access to nuclear weapons by non-state actors, in particular terrorist groups. As more countries deploy more nuclear weapons at higher levels of combat readiness, the risks of accidental, mistaken, unauthorized or intentional use of these weapons grow significantly, as was stated by the Conference. Apart from the permanent danger of their voluntary use, there have been many accidents and near misses during the production, testing or transportation of nuclear weapons. Known as the “point of no return” for the Humanitarian Initiative, the Chair of the Nayarit Conference called upon “*States and civil society to reach new international standards and norms, through a legally binding instrument.*”

Eight months later, in December 2014, the Austrian government hosted the 3rd International Conference on the Humanitarian Impact of nuclear weapons. Up to this point, most of the nuclear weapon States had boycotted the whole process and fought openly against it in international fora. Vienna, at the heart of the European Union could not be ignored: the US and the UK decided to attend, China sent an observer, while India and Pakistan had already attended the prior meetings; but France and Russia refused to participate.

Alongside the 158 States participating in the conference, civil society came to add further pressure. ICAN organized a 2-day Forum with 500 participants. Religious groups from all over the world including Pope Francis, scientists, (retired) high-ranking military personal, Nobel laureates, artists, etc. seized this opportunity to call for the elimination of nuclear weapons.

While reiterating the scientific evidence and the important studies presented in the previous conferences on the impact of nuclear weapons, the Vienna Conference focused on the legal status of nuclear weapons, within the context of international law, including International Humanitarian Law (IHL), environmental law and the Geneva Conventions.

At the end of the Conference⁷, the Austrian government issued a Pledge acknowledging the existence of a “*legal gap for the prohibition and elimination of nuclear weapons.*” Based on this, Austria pledged “*to cooperate with all relevant stakeholders, States, international organisations, the International Red Cross and Red Crescent Movements, parliamentarians and civil society, in*

⁷ Vienna Conference on the Humanitarian Impact of Nuclear Weapons, 8-9 December 2014, www.bmeia.gv.at/en.

efforts to stigmatize, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks." Several months before the 2015 NPT Review Conference, this Pledge, supported in the end by 127 governments throughout the world, stimulated the diplomatic momentum towards the prohibition of nuclear weapons.

At the NPT Review Conference in May 2015, although 160 states endorsed the Humanitarian Initiative, the conference failed to adopt a consensus final document. Many countries were frustrated and dissatisfied with this outcome and sought to increase efforts to advance the disarmament agenda through the approval of an Open-Ended Working Group (OEWG) on nuclear disarmament within the United Nations General Assembly.

In December 2015, the UN General Assembly established an OEWG with the mandate to address "concrete effective legal measures, legal provisions and norms" for attaining and maintaining a nuclear-weapon-free world⁸. Backed by 138 nations, it convened for 3 sessions at the UN in Geneva, and focused its efforts on elaborating the elements for a global treaty prohibiting nuclear weapons. The nuclear weapon States again boycotted this working group; some of the nuclear-reliant States opposed this fast-track approach and spoke in favor of a "building-blocks," or "progressive," approach; but the proponents of a ban were successful in keeping the momentum going. At the third session⁹ of the OEWG, a majority of

States voted to adopt a report with recommendations to the UN General Assembly to start negotiations in 2017 on a treaty prohibiting nuclear weapons. In October 2016, the First Committee of the UN General Assembly acted upon this recommendation by adopting a resolution (L41) that established a mandate for nuclear-weapon-ban treaty negotiations in 2017: 123 States voted in favor, 38 against, and 16 abstained.¹⁰

⁸ Pursuant to resolution 70/33.

⁹ Report of the open-ended working group taking forward multilateral nuclear disarmament negotiations, www.reachingcriticalwill.org/images/documents/Disarmament-fora/OEWG/2016/Documents/OEWG-report-final.pdf.

¹⁰ www.icanw.org/campaign-news/results.

History in the Making: The Treaty on the Prohibition of Nuclear Weapons

The TPNW was negotiated in 2017 in two rounds, March 27-31 and June 15-July 7, at the United Nations in New York with the participation of over 135 States. Many sessions were opened to the contribution of experts, international organizations and civil society representatives. The President, H.E. Ms. Elayne Whyte Gomez from Costa Rica, chaired the debates with great wisdom and effectiveness.

For everyone participating in the negotiations, the feeling in the room was really exciting: history was in the making. The past generations who suffered the effects of nuclear weapons and fought against them, as well as the future generations that need to be freed from these threats, were present in the participants' words and minds. In the end, even if none of the nuclear weapon States participated in the discussions, the Treaty is a groundbreaking event creating a new international norm and providing a strong anchor for further steps. Most of the weapons that have been eliminated have first been prohibited. The TPNW is the first treaty clearly stating the illegality of nuclear weapons, on a par with other weapons of mass destruction – chemical and biological weapons – and provides a real opportunity to reach the longstanding goal of their total elimination.

The Preamble

The 24-paragraph Preamble of the Treaty acknowledges the existential threat and the catastrophic humanitarian consequences of any use of nuclear weapons, and points to the

dangers and risks of nuclear weapons being detonated by accident or miscalculation. It links the unacceptable impact of the weapons to their very existence and underscores that their elimination is the only guarantee that they will never be used again.

The TPNW reinforces the other legal obligations of existing international agreements, including the Non-Proliferation Treaty (NPT), the Comprehensive Test Ban Treaty (CTBT), and nuclear-weapon-free-zone (NWFZ) agreements, as well as the “right” of States Parties to peaceful uses of nuclear energy.

The final paragraphs emphasize the importance of women’s “equal participation and full involvement in all efforts for the maintenance and promotion of peace and security” and mentions the disproportionate impact of nuclear explosions on women and girls. The Preamble also underlines the disproportionate impact that nuclear weapons tests have had on indigenous peoples around the world. It ends by stressing the role of the “public conscience” and salutes the contribution of the Red Cross and the Red Crescent Movements, NGOs, parliamentarians, religious leaders and the Hibakusha (the survivors of Hiroshima and Nagasaki nuclear bombs), as well as the importance of a continuing inclusive process engaging civil society.

A Clear and Complete Prohibition

The Treaty contains 20 Articles stating the obligations of ratifying States Parties, the

ratification process, and the procedures for enforcement and withdrawal from the Treaty.

Under Article 1 the States Parties undertake never to develop, test, produce, manufacture, acquire, stockpile, use or threaten to use, receive the transfer of, or control nuclear weapons. Any assistance for any of these activities is also prohibited.

The Treaty clearly prohibits the stationing, deployment or installation of nuclear weapons belonging to other States on a State Party's territory.

Under Article 2, States Parties must submit a declaration to the UN Secretary-General no later than 30 days after the Treaty enters into force, documenting their history of ownership, possession, and control of nuclear weapons or nuclear explosive devices, and verifications of the elimination of any nuclear programs, and declaring whether there are nuclear weapons belonging to another country on their territory.

Under Article 6, each State Party is obliged to provide assistance to individuals affected by the use or testing of nuclear weapons in its jurisdiction. They must also conduct activities to remedy any environmental contamination caused by the testing or use of nuclear weapons.

The TPNW will enter into force 90 days after the 50th State Party has completed its ratification process. At the date of writing this chapter (March 2018), 57 States have signed the TPNW and 7¹¹ have ratified it. During the negotiations, a final vote showed the support of 122 countries: it might not take too long before the

¹¹ Cuba, Thailand, Mexico, Holy See, Guyana, Palestine, Venezuela.

50th ratification is obtained, although this will require the sustained political effort of all TPNW advocates and supporters.

Nuclear Weapon States and the TPNW

The TPNW offers States possessing nuclear weapons two ways to join it. They can either join the Treaty as soon as they agree to destroy their nuclear arsenals, pursuant to a legally binding and time-bound plan agreed by the TPNW States Parties; or they can destroy their nuclear arsenal and join the TPNW after the elimination is completed.

The attitude of the nuclear weapon States during the whole process bears witness to their reluctance to fulfill what has been their longstanding obligation through Article VI of the NPT: to pursue in good faith multilateral negotiations on nuclear disarmament. Over the years nuclear weapon States have systematically blocked any progress on disarmament in multilateral negotiations, but this was not possible during this last process, since the negotiation rules were based on the UNGA majority system. Nevertheless, nuclear weapon States and their allies did their best to dismiss and ridicule the Humanitarian Initiative, and even threaten those participating in it. For the first time in the history of multilateral negotiations, despite strong encouragement from many stakeholders, including the European Parliament¹², all nuclear weapon States boycotted the negotiations except the Netherlands¹³. After the TPNW was adopted, the US, UK and France jointly declared that: *"This*

¹² European Parliament Resolution - Oct 17th 2016/2936.

¹³ A petition of over 40,000 names led to a debate in the Parliament that mandated the government to participate in the negotiations. Nederland has been the only State to vote against the TPNW.

initiative clearly disregards the realities of the international security environment. Accession to the ban treaty is incompatible with the policy of nuclear deterrence, which has been essential to keeping the peace in Europe and North Asia for over 70 years.”¹⁴

Global Pressure

One main criticism of the TPNW process has been that nuclear weapons possessors would never be among the first group to join the Treaty, so what was the point? Proponents of the Treaty have always been aware of such a problem: smokers are not the ones that usually promote and design the non-smoking laws! They point out that implementing such a new norm creates a new political environment and addresses one of the core arguments for maintaining nuclear arms, as mentioned above: nuclear deterrence. The TPNW declares it illegal to threaten to use nuclear weapons.

Of course, it will take some time for the nine nuclear weapon States to join the TPNW, but from now on, this new norm stigmatizes nuclear weapons and gives a strong legal foundation to millions of people in the world, humanitarian, religious groups, scientists, women's rights and environmental advocates, together with the majority of States. The TPNW has united a strong worldwide pressure group that intends to pave the way towards the total elimination of nuclear weapons.

Umbrella States

The TPNW challenges the status quo that fixed the nuclear weapons order for years through the NPT, dividing the world into States possessing nuclear weapon, the *haves*, and the others, the *have-nots*. The TPNW challenges this approach in that it obliges all State Parties to observe the same provisions: nuclear weapons must be immediately removed from operational status and destroyed in an agreed time frame.

It becomes illegal for any State to rely on nuclear weapons for their protection. It makes it illegal to threaten to use nuclear weapons, and further to assist, encourage or induce a State Party to depend on nuclear weapons, even provided by a State that is not Party to the Treaty. Depending on nuclear weapons for national security is prohibited because it indicates that a State agrees to have nuclear weapons used on its behalf. This provision will make it increasingly difficult for nuclear umbrella states to justify their reliance on a forbidden weapon. As for States that host nuclear weapons on their soil¹⁵ – especially as these weapons are undergoing modernization – the TPNW can be another argument to prevent this further step.

Financial Pressure

Nuclear weapons are extremely costly: 120 billion US\$ are invested every year in their production. The TPNW prohibits any kind of assistance for actions relating to the possession of nuclear weapons. This puts the pressure on the whole military-industrial complex and the financial system that is investing and providing funds to these now illegal activities.

¹⁴ UN News Center (2017). UN conference adopts treaty banning nuclear weapons, www.un.org/apps/news/story.asp?NewsID=57139#.WcyBqmiCxPZ.

¹⁵ Belgium, Germany, Italy, Netherlands, and Turkey.

Banks and companies are concerned about their reputation and citizens have the means to exert pressure on them. The 'Don't Bank on the Bomb' Campaign (DBOTB)¹⁶ is a project promoted by PAX, a Dutch NGO: every year it provides the only (and definitive) report detailing the global investments by financial institutions in companies producing nuclear weapons. Some 329 investors provided \$525 billion (through shares and bonds, loans or credit facilities) to nuclear weapon producing companies between January 2014 and October 2017. But the 2018 report points out that "more and more financial institutions have policies in place to not invest in nuclear weapon producers. Since the adoption of the UN Treaty on the Prohibition of Nuclear Weapons," it adds, "30 financial institutions have ceased investing in nuclear weapon producers." The major Norwegian and Dutch pension funds have recently announced that they will no longer invest in nuclear weapon producers. This campaign is gaining momentum and has benefited directly from the adoption of the TPNW.

Setsuko Thurlow, after the text of the TPNW was adopted at the negotiating conference: *"I've been waiting for this day for seven decades. And I am overjoyed that it has finally arrived. This is the beginning of the end of nuclear weapons. To the leaders of countries across the world, I beseech you: if you love this planet, you will sign this treaty. Nuclear weapons have always been immoral. Now they are also illegal. Together, let us go forth and change the world."*

¹⁶ www.dontbankonthebomb.com.

Treaty on the Prohibition of Nuclear Weapons Extracts

Preamble

The States parties to the Treaty

- Determined to contribute to the realization of the purposes and principles of the Charter of the United Nations,
- Deeply concerned about the catastrophic humanitarian consequences that would result from any use of nuclear weapons, and recognizing the consequent need to completely eliminate such weapons, which remains the only way to guarantee that nuclear weapons are never used again under any circumstances,...
- Cognizant that the catastrophic consequences of nuclear weapons cannot be adequately addressed, transcend national borders, pose grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations, and have a disproportionate impact on women and girls, including as a result of ionizing radiation,...
- Concerned by the slow pace of nuclear disarmament, the continued reliance on nuclear weapons in military and security concepts, doctrines and policies, and the waste of economic and human resources on programmes for the production, maintenance and modernization of nuclear weapons,...
- Recognizing that a legally binding prohibition of nuclear weapons constitutes an important contribution towards the achievement and maintenance of a world free of nuclear weapons, including the irreversible, verifiable and transparent elimination of nuclear

weapons, and determined to act towards that end,...

- Stressing the role of public conscience in the furthering of the principles of humanity as evidenced by the call for the total elimination of nuclear weapons, and recognizing the efforts to that end undertaken by the United Nations, the International Red Cross and Red Crescent Movement, other international and regional organizations, non-governmental organizations, religious leaders, parliamentarians, academics and the hibakusha.

Art 1. Prohibitions

Each State Party undertakes never under any circumstances to:

- (a) Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices;
- (b) Transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly;
- (c) Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly;
- (d) Use or threaten to use nuclear weapons or other nuclear explosive devices;
- (e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty;

(f) Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under this Treaty;

(g) Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.

Art. 4. Towards the elimination of nuclear weapons

4.2 Notwithstanding Article 1 (a), each State Party that owns, possesses or controls nuclear weapons or other nuclear explosive devices shall immediately remove them from operational status, and destroy them as soon as possible but not later than a deadline to be determined by the first meeting of States Parties, in accordance with a legally binding, time-bound plan for the verified and irreversible elimination of that State Party's nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons-related facilities.

Art. 6 Victim assistance and environmental remediation

6.1. Each State Party shall, with respect to individuals under its jurisdiction who are affected by the use or testing of nuclear weapons, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-

sensitive assistance, without discrimination, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.

Art. 12 Universality

Each State Party shall encourage States not party to this Treaty to sign, ratify, accept, approve or accede to the Treaty, with the goal of universal adherence of all States to the Treaty.

Art. 15 Entry into force

15.1. This Treaty shall enter into force 90 days after the fiftieth instrument of ratification, acceptance, approval or accession has been deposited.

Multilateral Nuclear Disarmament Treaties

I. The Non Proliferation Treaty (NPT)¹⁷

The NPT is a landmark international treaty whose objective is to prevent the spread of nuclear weapons and weapons technology, to promote cooperation in the peaceful uses of nuclear energy and to further the goal of achieving nuclear disarmament and general and complete disarmament. The NPT represents the only binding commitment, undertaken within a multilateral treaty, to achieve the goal of disarmament by the nuclear weapon States. Opened for signature in 1968, the Treaty entered into force in 1970. On 11 May 1995, the Treaty was extended indefinitely. A total of 191 States have joined the Treaty, including the five nuclear weapon States.

The Treaty has been reviewed every five years since 1995. At the last Review Conference in 2015, the Conference did not agree on a final resolution, due to the lack of implementation of the resolutions taken in 2010, especially the one on the creation of a Zone Free of Weapons of mass destruction in the Middle East.

II. The Comprehensive Test Ban Treaty (CTBT)¹⁸

States Parties to the CTBT undertake to refrain from carrying out any nuclear weapon test explosions. The CTBT also prohibits any encouragement or participation in the carrying out of any nuclear explosion. The Treaty was opened for signature in September 1996. Before the CTBT was adopted, more than 2000 nuclear

tests had occurred. The Treaty, although not yet entered into force, has created a stigma against nuclear tests.

III. Nuclear-Weapon-Free Zones (NWFZ)¹⁹

The establishment of NWFZs is a regional approach to strengthen global nuclear non-proliferation and disarmament norms and consolidate international efforts towards peace and security. 111 States are signatories of NWFZ Treaties.

¹⁷ www.un.org/disarmament/wmd/nuclear/npt/text.

¹⁸ www.ctbto.org/the-treaty/treaty-text.

¹⁹ www.un.org/disarmament/wmd/nuclear/nwzfz.

«The end of nuclear weapons or the end of us»

The contribution of civil society

The International Campaign to Abolish Nuclear Weapons (ICAN) has been the major civil society actor to achieve the Treaty on the Prohibition of Nuclear Weapons (TPNW). ICAN is a coalition of more than 450 member organisations in 100 countries and was awarded the Nobel Peace Prize in 2017. Born in 2007, ICAN managed to reshape the strategy and the actions of the nuclear disarmament movement and changed the discourse on nuclear weapons. As said Beatrice Fihn, the Executive Director of ICAN in her Nobel speech: « Together we have brought democracy to disarmament and reshaped international law. » Beatrice Fihn speaks about civil society contribution to achieve the TPNW and the next steps toward the complete elimination of nuclear weapons.

Q.: ICAN was awarded the Nobel Peace Prize, how did this impact ICAN work so far?

B.F.: The Nobel Peace Prize has been a real surprise, although with the unprecedented tensions since the cold war involving nuclear weapons armed States, ICAN struggle was getting more attention. But definitely, and in some aspects more than the TPNW, the Nobel Prize opens doors and reintroduces the nuclear weapons threat into the conversation. It puts the nuclear weapons states on notice. It begs the question “if the rest of the world thinks nuclear weapons are unacceptable and illegal, why are you investing in them?” Now, ICAN is putting all efforts to work for the rapid implementation of the TPNW. This needs light and means to encourage more states to join the

treaty and the lights and means provided by the Nobel Peace Prize are a great support.

Q.: How do you see civil society contribution all along these last years?

B.F.: The problem with the nuclear disarmament is that it's been a very small community, a part of the peace movement sort of marginalized. By talking about the humanitarian consequences, we tried to broaden it and to involve organizations that worked with humanitarian affairs, human rights, emergency relief and the environment. We tried to break away from the traditional codes of the Cold War style activism and to prove that it's not only a political issue, it's a humanitarian issue. Violating the Geneva Conventions, which are a major part of international humanitarian law that regulates the conduct of parties engaged in an armed conflict to protect war victims, should not be something you support. In broadening the scope, we could also engage a new generation who could then connect to it. Nuclear weapons are not a Cold War issue, this is an issue of today.

The humanitarian aspects have always been a part of the civil society advocacy, big progress has always happened because of the human impact. ICAN has been inspired by the Landmines and Cluster Munitions campaigns especially for this idea of a normative treaty. It was the first time in the nuclear weapons field that we ever tried to do something that didn't need the participation of nuclear-armed States. All past efforts had been directed towards

nuclear-armed states. We want them to come on board, we have tried to get them to come, but they weren't the most important ones. The most important thing was to get it moving and the TPNW is a major step in this regard.

Moving the world in consensus today is impossible, there are just too many conflicts, too many regional dynamics. We have to work with small groups of States and push, because they move in different places. I wouldn't say that – I'm Swedish – Sweden can't sign a convention for women's rights until Saudi Arabia is just as good as Sweden. It's impossible. We have to work with our State and push each one a little bit further. You drag everyone up a step. And wherever they start, if everyone goes up a step, that's progress!

Q.: So what are the ICAN plans for the coming period?

B.F.: We have launched a 1000 days campaign to get the TPNW ratified, and we collect funds on top of the Nobel award to support campaigners all over the world to get their country ratify the TPNW. In some countries, it is easier, because they are part of the 122 States that voted for it at the UN on July 7, 2017 and if we want to have the TPNW ratified as soon as possible, this is where we mainly focus our efforts.

In every country, people's involvement is key and in every country politicians are very sensitive to changes in public opinion. We have to start making it cost the politicians that are not doing it. It has to be a burden on them, and that's the same thing with the nuclear-armed states: they will get rid of their nuclear weapons when it is not in their interest to have them anymore. It's about political will, they don't want to get rid of them because right now it benefits

them. The whole treaty is about making nuclear weapons less attractive, less of a positive or a powerful thing to have nuclear weapons. Their rational thinking around this weapon is going to change when we make it more of a burden to have nuclear weapons. In a way, we are very pragmatic and realists: they're not going to give it up just because we asked them nicely; they're going to give them up when it's suddenly a problem to have them. We're trying to make it a problem, make it difficult to have them, make it uncomfortable to have them, make it a political cost to defend nuclear weapons.

It is the same with non-democratic states, new norms in international law impact them also. It shapes their policies and behaviour. We do work with these states that don't have democratic systems, though it's a bit different. Instead of big public movements and kind of demonstrations or social media activism, it has to be a little bit more quiet, under the radar. But I think that there is still the possibility to impress these countries as well. It comes naturally that the people working on this issue influence their own government. We can't ask our German campaigners to fix North Korea. It's not their responsibility. We can't wait to question our own governments just because we have to wait for revolution in other countries before we can start working. So, I think we have to work where we can and we need to, of course, still push those countries. And the people that live in non-democratic countries are also looking to us to use our methods to change their governments. Russian people very simply cannot demonstrate on this issue, or criticize the government. So, we have to make our governments work with Russia to change it. That's also our responsibility to help them in that way.



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