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Ban the Bomb? Or Bomb the Ban? Next Steps on the Ban Treaty

GLOBAL SECURITY

POLICY BRIEF

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March 2018

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The Treaty for the Prohibition of Nuclear Weapons (TPNW) sits in limbo, with many signatories but not enough states so far depositing instruments of ratification to enable entry into force. Accordingly, the debate about the ban has shifted from the corridors of the United Nations to national capitals, where politicians, political parties, and parliaments must now decide whether to pursue ratification and entry into force of the treaty. Their decisions are the focus of a campaign by the International Coalition Against Nuclear Weapons (ICAN) and a few key states to pressure them to join the effort.¹ What should this political class make of what the disarmers have wrought?

Understanding the ban as crafted

First, political actors in national capitals should understand that the ban is not a ban but a commitment to create a ban sometime in the future. Matters central to the effectiveness of a ban, such as the responsibilities and authorities of a “competent international authority” for verification and compliance, are specifically left for future negotiations.

It is hardly surprising that the treaty drafters set this aside for a later time, as an effective solution to the global nuclear disarmament problem has eluded us since the earliest days of the nuclear era and the failure of the Baruch plan in 1946. A solution requires solving two distinct problems. One is on the pathway from

here to zero, where nuclear-armed states must be made to feel that some credible guarantee of their security can adequately substitute for the value they attach to nuclear weapons. The other is stability at zero, where all states must be made to feel that their vital interests cannot be jeopardized by a state (or non-state actor) that covertly creates and deploys nuclear weapons.

For the first problem, some international mechanism, presumably the United Nations Security Council (UNSC), must be able to act to protect the disarming nations, including in the face of threats by nuclear-armed states. So far at least, the UNSC has fallen well short of the requirement for the nine states now armed with nuclear weapons and the one that opted out for regime-change reasons (South Africa).

For the second problem, some international mechanism must be in place to detect, in a timely manner, cheating that is militarily or otherwise significant and to act, in a timely manner, to restore compliance. Here too, the UNSC’s track record has fallen well short. Its record in detecting cheating and restoring compliance is at best mixed. It has utterly failed on North Korea. Its full success with Iran is yet to be determined. Its record on Iraq is mixed (success in round 1 in the 1990s, failure in round 2 in the next decade). Its future effectiveness in this role would seem to require that the permanent members of the council relinquish their right to veto. That won’t happen. No other breakthrough ideas on this topic have emerged since the first disarmament plan was rejected in 1946.

Some leading ban advocates dismiss the requirement for compliance and enforcement

¹ Beatrice Fihn, Nobel Lecture, Oslo, December 10, 2017. See also Fihn, “Time to Step Off the Nuclear Tightrope,” *Financial Times*, January 7, 2018.

mechanisms—on the argument that cheating would not occur or would not matter because there is no gain that a cheater could hold for the long term against determined opposition by that “competent authority.” We should perhaps recall that the one time in history that a state enjoyed a nuclear monopoly it used that weapon to compel unconditional surrender by an enemy and then to help remake the world according to its preferences. A future nuclear monopolist may not be seeking to end a war or create a United Nations based upon democracy and the rule of law.

Second, politicians considering the fate of the TPNW should appreciate that the pressure campaign of ban advocates will not have an equal impact on all nuclear-armed states. Democracies will feel the pressure, others won't. Progressive political parties have been singled out in the pressure campaign, with an eye on out of power parties and the platforms they would try to implement when returned to power.

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Take letter-writing, for example. ICAN's website provides a pro-ban letter for voters to download, sign, and send to elected officials. What influence will a letter-writing campaign have in Moscow, Pyongyang, or Beijing? The effort to pressure Russia to come back into compliance with its INF treaty obligations has gotten nowhere over a decade. If Vladimir Putin and Kim Jong Un are not shamed by their need to kill to maintain power, they are hardly likely to be shamed by such public pressure. After all, as they have made clear repeatedly, their commitment to their nuclear weapons is deep. Those weapons are not merely tools to deter U.S. nuclear attack (and

thus wouldn't go away if U.S. nuclear weapons were to disappear). They are tools to counter American military supremacy, conventional power projection capabilities, alliances, and a foreign policy aimed at advancing globally the American vision of human rights and democracy. As President Putin has argued, nuclear weapons are essential to Russia's great power status, to its sovereignty and integrity, and to his ambition to re-make the regional and global order.

The impact of the pressure campaign will fall squarely on the democratic states, where policy debates are open to NGO influence and to moral and other forms of pressure. The expectation of this lopsided result is reinforced by the distribution of ICAN affiliated NGOs. As of winter 2018, 468 NGOs are affiliated with the network.² Well over 200 of those are in countries allied with the United States, whereas there is a total of 9 ICAN NGO partners in all of the other nuclear-armed states (and none in North Korea).

This lopsided result does not promise a general relaxation of international tensions or a building of trust among nations—conditions explicitly identified in the Nuclear Non-Proliferation Treaty (NPT) as essential for progress toward disarmament. Lopsided pressure can only result in lopsided implementation, with democracies accordingly disadvantaged. They may weaken their defensive posture in critically consequential ways. And their actions on the TPNW may encourage leaders in Moscow, Pyongyang, and Beijing in their belief that democracies are weak, easily divided, and unwilling to defend their interests, except perhaps in very extreme circumstances.

Third, politicians considering the fate of the TPNW should understand that actual entry into force of the TPNW with any U.S. allies among the states parties would do significant

² See: <http://www.icanw.org/campaign/partner-organizations/>

damage to the U.S. nuclear umbrella and the practice of extended deterrence.

Although the ban is sketchy on how compliance and enforcement would work, it is very specific on how to end cooperation among nuclear-armed states and their allies. All states parties accept an obligation to terminate “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.” No countries allied with nuclear-armed countries other than allies of the United States engage in such activities.³ ICAN executive director Beatrice Fihn has described the ban as providing “opportunities for progressive politicians in nuclear-hosting states in Europe to take bold decisions.”⁴ She has specifically catalogued the kinds of activities that could be targets for criticism, including nuclear exercises, modernization programs, and the launch of nuclear-capable missiles.⁵

Although the withdrawal of U.S. nuclear weapons would be welcomed by many in Europe, it is also deeply opposed by many. NATO leaders have had many opportunities in the last two decades to end the sharing arrangements and remove U.S. nuclear weapons from Europe — and on each occasion have chosen not to do so. In fact, extended deterrence has become more important to NATO members (and to U.S. allies in Northeast Asia), not less. Many European states are under intense military pressure from Russia, nuclear and otherwise. Some

feel the weight of potential future nuclear dangers from the Middle East. Accordingly, NATO has regularly renewed its commitment to the U.S. umbrella. At least three times over the last decade NATO heads of state or government have unanimously endorsed a continued role for nuclear weapons in the alliance’s deterrence and defense posture.

“Extended deterrence has become more important to NATO members (and to U.S. allies in Northeast Asia), not less.”

In doing so, they rejected the view of one German foreign minister that these weapons are merely “cold war relics”.⁶ Rather, alliance leaders have expressed their assessment that these capabilities are a necessary and appropriate part of the alliance’s deterrence posture in the 21st century security environment. Why? Because the sharing arrangements are directly relevant as part of a solution to NATO’s two main strategic challenges: (1) convincing a potential enemy that an attack on one will in fact be treated as an attack on all and (2) convincing a potential enemy that the United States will not simply stand aside from a war in Europe. NATO’s nuclear sharing arrangements make it impossible to eliminate a significant risk of collective nuclear reaction to nuclear attack. And they provide a direct link to the U.S. nuclear deterrent. The collapse of these sharing arrangements could have a dramatic, negative impact on European security, signaling a weakening of ‘the link’ and an unwillingness among the allies to bear nuclear risk for collective security benefits. This could embolden Mr. Putin to undertake additional steps to challenge the regional

3 For more on this topic, see Matthew Harries, “The ban treaty and the future of U.S. extended nuclear deterrence arrangements,” in Shatabhisha Shetty and Denitsa Raynova, editors, *Breakthrough or Breakpoint? Global Perspectives on the Nuclear Ban Treaty* (European Leadership Network, 2017), pp. 50-57.

4 Beatrice Fihn, “The Logic of Banning Nuclear Weapons,” *Survival*, Vol. 59, No. 1 (February-March 2017), p. 47.

5 Ibid.

6 “U.S. plans help German nuclear arms removal: minister”, Reuters, 07 April 2010; <https://www.reuters.com/article/us-germany-nuclear/u-s-plans-help-german-nuclear-arms-removal-minister-idUSTRE63621W20100407>

security order he detests. Alternatively, it could lead to further nuclear proliferation in Europe, as new forms of deterrence come to be seen as necessary in the context of American retreat.

Moreover, retention of U.S. nuclear weapons in Europe is essential to the alliance's strategy for an eventual renewal of arms control with Russia in Europe. As agreed by NATO members in 2010, that strategy calls for an agreement with Russia to reduce non-strategic weapons in Europe but in a manner taking account of the grossly disproportionate size of the U.S. and Russian arsenals of those weapons. Without NATO bargaining chips, Russia would have no incentive to come to the table.

There would be an additional, major consequence of ending U.S. extended deterrence in Europe that has so far received very little attention. The end of those sharing arrangements would likely end the associated transatlantic nuclear consultations. The alliance's nuclear consultative processes were set up in the 1960s to meet the demands of U.S. allies for a seat at the nuclear table whenever the U.S. president might be considering whether and how to employ nuclear weapons in Europe. Europeans were anxious about two possibilities: (1) that the United States might employ its nuclear weapons in a way that could needlessly damage allied interests and (2) that it might not employ its nuclear weapons, even when allied vital interests were at risk. Those anxieties remain, albeit in new guise. But if NATO's nuclear sharing arrangements were to end, there would be no basis for continued consultations on their employment.

Gaining that seat at the nuclear table was considered a major victory by Europeans six decades ago. Are they now prepared to abandon that seat? Is this a good time to do so, with rising concerns in Europe about wars of miscalculation by Moscow, Pyongyang, and even Washington?

Changing the narrative and disarmament re-education

To be fair, many of the advocates of the ban don't claim that it is a solution to the problem of nuclear weapons. They convey no concern about the deficiencies identified above, because their near-term objective is not to create an effective treaty regime. Instead, their near-term is to re-focus and re-energize the anti-nuclear movement in response to the disappointment they feel about the pace of movement toward zero by the nuclear weapons states.

It's all about changing the historical narrative, argues John Borrie: "[C]hanging the discourse—the manner in which things are talked about, including which questions are asked and answered—must be a goal for campaigning."⁷ Similarly, as ban advocate Nick Ritchie has argued, "the purpose of the treaty is to challenge and destabilize the acceptability of nuclear violence, to create a 'crisis of legitimacy' for nuclear weapons and nuclear deterrence."⁸

The purpose of changing the narrative is to mobilize opinion against nuclear weapons. To cite Beatrice Fihn:

"The process of negotiating a treaty itself will mobilize 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."⁹

⁷ John Borrie, *Changing the Discourse on Nuclear Weapons: What it Means for Campaigners and Why it's Important*.

⁸ Nick Ritchie, "The Treaty on the Prohibition of Nuclear Weapons: delegitimizing unacceptable weapons," in Shetty and Raynova, *Breakthrough or Breakpoint?*, p. 44.

⁹ Fihn, "The Logic of Banning Nuclear Weapons," pp. 44-45, 47.

According to this way of thinking, the result will be broad, perhaps ultimately universal agreement that nuclear weapons are illegitimate weapons because of the barbarous humanitarian consequences of their use. At that point, it should be simple to dispense with them. As the ICAN website argues, “weapons that are outlawed are increasingly seen as illegitimate, losing their political status and, along with it, the resources for their production, modernization, and retention.”¹⁰

“The TPNW is not a nuclear ban. It’s a tool for campaigning, to be used at least in part to attack ‘vested interests’.”

How do ban supporters imagine dealing with the arguments of those “outlier states” not ready to abandon nuclear deterrence? One answer is to circumvent those outliers, for now. Rebecca Johnson, for example, has written about the possibility of cooperation between progressive states and “charismatic norm entrepreneurs” to by-pass or “leap-frog” the policies she sees as rooted in the past and policymakers she deems incapable of fresh thinking.¹¹ Nick Ritchie takes a different tack, calling for direct work against “powerful vested interests in nuclear weapons” and against a realist security paradigm he deems “woefully inadequate.”¹² Or as John Borrie argues, campaigners should seek “to introduce doubt into the minds of policy makers about things they had simply assumed to be true. It’s then that such people can be

(re) educated, empowered, and enlisted.”¹³

In short, the TPNW is not a nuclear ban. It’s a tool for campaigning, to be used at least in part to attack “vested interests” and the realist paradigm and to re-educate those possible of re-education.

To advance the re-education effort, ban supporters make numerous claims about nuclear weapons, their role in world politics, and the disarmament project. Four such claims merit attention here.

The first is the claim is that nuclear deterrence doesn’t work. To cite the ICAN website:

“Far from keeping the peace, they [nuclear weapons] breed fear and mistrust among nations. These ultimate instruments of terror and mass destruction have no legitimate military or strategic utility and are useless in addressing any of today’s real security threats....Nations still cling to the misguided idea of nuclear deterrence, when it is clear that nuclear weapons only cause national and global insecurity.”¹⁴

Or, from John Borrie:

“Nuclear deterrence is a belief system based on assumed relationships between particular causes and effects.... yet studies show that, historically, ‘official’ experts assessments on matters like security policy have a predictive success rate that is only slightly more accurate than random chance.”¹⁵

Not only is deterrence, in this view, just a belief system; it is a system that is only marginally

10 See: <http://www.icanw.org/why-a-ban/the-case-for-a-ban-treaty>.

11 Johnson, “Arms Control and Disarmament Diplomacy,” in *The Oxford Handbook of Modern Diplomacy* (Oxford: Oxford University Press, 2013), p. 599.

12 Ritchie, “The Treaty on the Prohibition of Nuclear Weapons,” pp. 48-49.

13 Borrie, *Changing the Discourse on Nuclear Weapons*.

14 Accessed February 12, 2018.

15 Borrie, *Changing the Discourse on Nuclear Weapons*.

better than a flip of the coin.

Let's set aside the question of whether it makes sense to launch a re-education campaign with a direct attack on one's students as close-minded. In making the claim about the disutility of nuclear deterrence, ban campaigners are taking one side in a long-running debate about whether nuclear weapons contributed to the "long peace" through the second half of the 20th century. An intellectually rigorous assessment conducted in 1996 (and thus not skewed by the need to align arguments with the case for or against the TPNW) concluded that "the jury is still out" because of "a mass of contradictory evidence."¹⁶ Ban supporters will tell you that the jury is in. And they ignore a good deal of hard evidence, even from critics of deterrence, that the presence of nuclear weapons had both a direct effect on political-military crises during the Cold War and a generally restraining effect on modes of thinking and broader political-military strategies. The evidence is also clear that nuclear deterrence is not fully reliable and involves huge risks. But national political leaders need to understand that ban supporters are whitewashing the messy history of nuclear deterrence so that it aligns with their narrative.

A second claim is about the morality of nuclear deterrence. The moral argument against nuclear weapons is that their employment would be a humanitarian catastrophe beyond history. None of us should ever forget this possibility. This is part of what gives nuclear weapons a potent deterrent effect. But this is both the beginning and end of the ban movement's moral argument. A much broader moral discourse is required of us. By denying the efficacy of nuclear deterrence, ban advocates dodge one of the main moral issues long in debate: whether deterrence might be moral even if the weapons

themselves, and the manner of their use, might not be. This is a topic on which the Catholic Church has flip-flopped over the years. Other churches, including especially the Orthodox Church, have been consistent in their support for the morality of nuclear deterrence. A broader discourse would have to consider also the moral consequences of the lives saved by wars that are prevented or that end without escalation because of nuclear deterrence.

"A broader discourse would have to consider also the moral consequences of the lives saved by wars that are prevented or that end without escalation because of nuclear deterrence."

A broader discourse would also reflect the fact that the humanitarian element is not the only element of the moral discourse about nuclear weapons. That discussion has many currents. ICAN represents one, with a vision of putting "an end to fear."¹⁷ It lives by a pure ethic of absolutism. Writing a century ago about morality and politics, the sociologist Max Weber made a critical distinction that bears on our contemporary debate. He argued that:

"All ethically oriented conduct may be guided by one of two fundamentally differing and irreconcilably opposed maxims: conduct can be oriented to an 'ethic of absolute ends' or to an 'ethic of responsibility.'...The believer in an ethic of ultimate ends feels 'responsible' only for seeing to it that the flame of pure intentions is not quenched."¹⁸

In contrast, the believer in an ethic of respon-

16 Jørn Gjelstad and Olav Njolstad, eds., *Nuclear Rivalry and International Order* (Oslo: PRIO, 1996).

17 Fihn, Nobel lecture.

18 Max Weber, "Politics as Vocations," in David Owen and Tracy B. Strong, eds., *The Vocation Lectures*

sibility must “give an account of the foreseeable results of one’s actions.” The foreseeable results of the ban are a weakening of nuclear security and nuclear order. The ban’s moral discourse simply discounts them. The ban movement rightly claims a moral high ground. It cannot claim *the* moral high ground.

“Rather than strengthen international law, the ban may debase it.”

A third claim is that the TPNW strengthens international law. Let’s recognize that it may have precisely the opposite effect. Occasionally lawmakers create laws that simply do not align with the world as it is, and especially with the interests of main actors, such that those actors make choices contrary to the intent of the law. Think of the Kellogg-Briand Pact of 1928 to renounce the use of force as an instrument of policy. Or think of the 18th amendment to the U.S. constitution, which prohibited alcohol consumption (and which was repealed after broad public disdain). These may be better analogies for the TPNW than the Ottawa land-mine ban. Rather than strengthen international law, the ban may debase it.

The final claim discussed here is that the NGO community speaks for the people of the world. To again cite Ms. Fihn:

“Today we have brought democracy to disarmament and are reshaping international law....ICAN’s duty is to be that voice—the voice of humanity and humanitarian law, to speak up on behalf of civilians....We are representatives of the moral majority: the billions of people who choose life over death.”¹⁹

This too is a whitewash if one recalls the

(Indianapolis, In.: Hacket Publishing Company, 2004).

With thanks to Paul Schlulte.

19 Fihn, Nobel acceptance speech.

lopsided distribution of ICAN’s network members. The people are perfectly capable of speaking for themselves on such matters—at least those who live in open societies. And when they do, their views are more complex than ICAN suggests. For example, citizens of five NATO allies and Israel were asked in 2007 if they would favor an enforceable ban on nuclear weapons, and huge majorities did so. But they also displayed low confidence in the effectiveness of the multilateral treaty regime. And they conveyed ambivalence rather than clarity about nuclear abolition. In the words of a summary, “the poll reveals a challenging ambivalence toward nuclear weapons: it seems people in states that have them think they make the world more dangerous but make themselves safer.”²⁰

In my view, this fourth claim is especially troubling. NGOs are self-appointed, not elected. Their strength derives from their ability to mobilize opinion and political focus; but even if their spirit is public, their identity is private. They are supported by private resources, not public ones. They are not accountable, except to their funders. All of this raises a fundamental question about the political legitimacy of those NGOs, like ICAN, making very broad political claims.²¹ As Gary Johns has argued:

“Activists who can bypass public scrutiny have a lesser burden of proof than the elected official....NGOs clamor for access to the UN and the UN Secretariat is keen to accommodate them. Moreover, Northern NGOs are a special subset of

20 Ernie Regeher, “Nuclear disarmament or nuclear ambivalence?”, Survey conducted by the Simons Foundation and the Angus Reid Strategies Corporation, 2007, <http://ploughshares.ca/wp-content/uploads/2007/10/brf074.pdf>.

21 Hugo Slim, “By What Authority? The Legitimacy and Accountability of Non-governmental Organizations,” paper prepared for the International Council on Human Rights Policy, January 10-12, 2002.

the international electorate. They seek to turn their minority opinion into majority opinion, through intergovernmental institutions. The effect is to distort priorities and to replace constituencies with lobbies."²²

Moreover, the people already have representatives — at least those living in democracies. And their elected representatives have moral and political responsibilities that NGOs do not. In taking the oath of public office, they are called to live by Weber's "ethic of responsibility." Recall the cautionary note struck by President Barack Obama in his Nobel acceptance speech:

"As a head of state sworn to protect and defend my nation, I cannot be guided by their examples alone [in reference to Mohatma Gandhi and Martin Luther King and their commitment to non-violence]... ..I face the world as it is and cannot stand idle in the face of threats to the American people."²³

However worthy their aspirations, NGO leaders take no oath to protect the people and/or the constitution of a state. They can afford the luxury of the single-minded pursuit of their vision of the world, whereas the elected politician must try to deal with the world in all of its complexity and to fulfill a role in protecting those whom he or she represents. For this group, deterrence arguments are not so easily set aside.

22 Gary Johns, "Relations with Nongovernmental Organizations: Lessons for the UN," *Seton Hall Journal of Diplomacy and International Relations* (Summer/Fall 2004), p. 56.

23 President Barack H. Obama, *A Just and Lasting Peace*, Nobel Lecture by Barack H. Obama, Oslo, Norway, December 10, 2009.

Turning stalemate to advantage

The ban treaty does not deserve the political support that would broaden its membership and enable its entry into force. It should be left in limbo, as a protest vote for those with nothing to lose. Even those countries without nuclear weapons or in alliance with nuclear-armed states might, however, be cautious in casting that protest vote, bearing in mind the damage that the ban might yet do to the security of vulnerable states and to international order more generally.

But how might stalemate be turned to the advantage of all of us concerned about nuclear security and nuclear order? A substantive dialogue about nuclear deterrence and disarmament, as opposed to one designed to pressure, shame, and re-educate, could have a number of salutary benefits.

Such dialogue could renew thinking about what conditions need to be created to enable further progress toward the ultimate goal of abolition, and of the means to create those conditions. This landscape is cluttered with hard problems and having some clarity about them is essential to getting beyond the allure of quick fixes. A renewal of political focus on these matters could help to renew a measure of consensus sufficient to pursue coherent strategies on the needed long-term basis.

Such dialogue could also renew thinking about the actual roles of nuclear weapons in providing for the safety and security of our societies. In most Western countries, a taboo has emerged to inhibit such thinking. That taboo owes something to the energetic stigmatization done by the ban campaigners. It also owes something to a lack of courage among political leaders not ready to give up on nuclear deterrence but mindful of the unpopularity of nuclear weapons. The result is toxic to the needed public discourse.

Such dialogue could also build new communities of interest in both the

governmental and non-governmental worlds. In my experience, many young people are unimpressed by the venomous battles between the disarmers and the deterrers and their enthusiasm for bringing pitch forks and torches to every exchange. We would all be well served by an influx of open minds and pragmatic spirits. If the TPNW and ICAN prove to be unwittingly helpful in changing the narrative in these unintended ways, we should be grateful.

Recommendations

What should our elected politicians do when faced with a decision about what to do about ratification and entry into force of the ban? They should reject both.

A vote for the ban may look like an easy anti-nuclear protest vote to many, but its actual impact could be far-reaching and dangerous. The ban does not provide a viable solution to the nuclear problem. The ban will likely be lopsided in its effects, disadvantaging the democracies in various ways small and large. Extended deterrence may well be put in jeopardy. A protest vote may end up harming much more than it helps.

But having said “no” to TPNW, our elected politicians should go on to examine what leadership they might want to exercise on this matter. Let’s hope they put away the whitewash, dial back the rhetoric, set aside the moralizing, look beyond the quick fixes, and help to lead a broad, pragmatic, but principled exploration of the challenges in front of us with the goal of building a practical agenda for nuclear risk reduction and nuclear order in the years ahead. They can start by asking the hard questions.

The views expressed here are the personal views of the author and should not be attributed to any institution with which he is affiliated.

The author is grateful for commentary on earlier drafts of this essay by Ivanka Barzashka, Godfried van Benthem van den Bergh, Linton Brooks, Madelyn Creedon, Lewis Dunn, Ronald Lehman, Frank Miller, Paul Schulte, Bruno Tertrais, and Heather Williams. He alone is responsible for the arguments presented here.