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### **NPT and UN Nuclear Ban: Friends not Rivals**

by Dr Rebecca E Johnson FRSA\*

As states parties to the [1968 Non-Proliferation Treaty \(NPT\)](#), begin their next review cycle with a Preparatory Committee (PrepCom) meeting in Vienna on 2 May 2017, what can they do about the escalation of nuclear threats and sabre rattling?

Nuclear anxieties have not been this high since the 1980s, when the US and Soviet Union faced off with wargames, nuclear tests and destabilising new missiles. Protests led by women and scientists created pressures that helped bring about the [1987 Intermediate-Range Nuclear Forces \(INF\) Treaty](#) that banned the most destabilising land-based weapons. As the world pulled back from the brink of nuclear annihilation, people demanded profound geopolitical transformation and disarmament.

Those who forget history are condemned to repeat it, and as we mourn the sad death of the first Chair of the Nuclear Test Ban negotiations, [Miguel Marin Bosch](#), it would be helpful to recall how negotiations on the [1996 Comprehensive Test Ban Treaty \(CTBT\)](#) finally got started.

At the 1990 NPT Review Conference, the Movement of Non-Aligned States (NAM) and others were advocating test ban negotiations before 1995, when the NPT would come up for renewal. At first, this was opposed by the US, UK and some NATO states. Of course they supported the long term goal of a nuclear test ban, they said, but not yet. They argued that as the language on the CTBT did not have consensus, the NPT final document should be adopted without it.

As Mexico's Ambassador, Marin Bosch stood up for the CTBT, pointing out that the majority in favour of the CTBT was so overwhelming that leaving it out would undermine the relevance and legitimacy of the NPT. The US continued to block compromise CTBT text late into the night, and in the end the 1990 NPT Review Conference was pronounced a failure.

Accused of undermining the NPT by some NATO diplomats at the time, including the US and UK, Ambassador Marin Bosch's courage and commitment were rewarded when he was appointed the Chair of the CTBT negotiations in 1994. He then played a key role in its achievement, though he continued to lament the unnecessarily stringent entry into force provision that some nuclear-armed states burdened the treaty with after he left the Conference on Disarmament, which has prevented entry into force for two decades.

This briefing draws from several articles by © Acronym Institute Director Dr. Rebecca E. Johnson FRSA and published by openDemocracy <https://www.opendemocracy.net/author/rebecca-johnson>

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The CTBT negotiations, together with the 1995 resolution supporting a Middle East zone free of nuclear and other weapons of mass destruction (WMDFZ), made it possible to extend the NPT and strengthen its five yearly review process to include meetings in Vienna, Geneva and New York.

The CTBT was concluded in 1996, but the finalised text was blocked in the Conference on Disarmament by India, which wanted to keep its nuclear testing options open unless the other nuclear-armed states committed to comprehensive nuclear disarmament. India's veto could only be bypassed by a "leapfrog" manoeuvre led by Australia and Belgium, which took the CTBT text to the United Nations General Assembly in September 1996, where it was overwhelmingly adopted by 158 votes to 3 with 5 abstentions. The CTBT was opened for signature on 24 September 1996, and at time of writing has 183 signatories, of whom 166 have ratified. But it hasn't entered into force.

Most recently, the [2015 NPT review conference collapsed](#) when the US, UK and Canada opposed a compromise text on next steps for the Middle East WMDFZ. At that time, the five nuclear-armed states and allies also tried unsuccessfully to block efforts to hold nuclear prohibition talks.

## **Reframing disarmament – humanitarian initiatives to prohibit nuclear weapons**

Although most nuclear-armed governments have made a point of publicly endorsing the goal of multilateral nuclear disarmament, they have large amounts of money and prestige invested in getting and keeping nuclear weapons. So it surprised no-one that they dismissed the idea of a humanitarian treaty process when Norway, Mexico, Ireland, Austria put it on the agenda after the 2010 NPT Review Conference

Over the next seven years the humanitarian disarmament arguments spread, as civil society in a hundred countries became mobilised by the [International Campaign to Abolish Nuclear Weapons \(ICAN\)](#). A few countries deliberately boycotted talks that took place in Oslo, Nayarit (Mexico), Vienna and Geneva, predicting that the nuclear ban process would collapse without nuclear-armed and dependent countries. They were wrong.

When the UN convened negotiations in March 2017, on a ["legally binding instrument to prohibit nuclear weapons, leading towards their total elimination"](#) over [130 states](#) participated. With further negotiating sessions scheduled for June and July, it's very possible that a nuclear ban treaty will be adopted by the UN this year.

As delegates began debating what precisely the treaty should cover, some basic, shared aims came to the fore: to strengthen existing international law and achieve an unequivocal prohibition on the use, deployment, development and possession of nuclear weapons, with clear obligations to eliminate all nuclear arsenals. But some wanted to go further than others and there are some difficult devils in the detail that will need to be resolved.

The most challenging questions so far include: the relationship between the new treaty and earlier agreements such as the NPT and CTBT; whether to be explicit about banning not just the use but also threats to use nuclear weapons, which are currently the basis for nuclear deterrence doctrines; and how to address actions that induce and

assist states to violate the treaty, such as financing nuclear weapons production and facilitating their deployment.

Inevitably, there were a few who argued for a different kind of legal instrument – hoping either to accomplish everything in one long negotiating process or to provide loopholes to let certain nuclear-armed states or military alliances off the disarmament hook.

Most who are engaged in the humanitarian process see the nuclear ban treaty as the next viable step in a disarmament process that began 70 years ago, and which needs to enact clear and necessary prohibitions and obligations under international law. They want to avoid the fate of treaty efforts in recent decades that were blocked or lost in procedures and technicalities. So, they argue, tasks like verification or timetables to eliminate existing stockpiles will be more effectively addressed in subsequent talks.

**But what can it achieve if the [UN envoys](#) for Donald Trump, Theresa May and François Hollande have dismissed it in advance, and the nuclear-armed governments refuse to come to the table?**

First, getting rid of nuclear weapons is not just a security matter for the nine states that possess them. Preventing nuclear use and catastrophe are fundamental security concerns for countries that have chosen not to equip themselves with such weapons, and who want to avoid having to deal with the aftermath if others are mad, bad or stupid enough to unleash them. With the UN's arms control machinery blocked by nuclear-armed states' vetoes and languishing in decades of procedural paralysis, the most achievable strategy for disarmament is to bring into force a good strong ban treaty in accordance with international humanitarian law.

Such an instrument is a starting point. It won't remove nuclear weapons overnight. Nothing can do that except nuclear war. Critically, however, the treaty will ban nuclear weapons use and other activities that have not been clearly prohibited before. This step alone will greatly reinforce global efforts to stigmatise and eliminate the weapons.

As the treaty takes legal effect it will provide much stronger tools than we have today to criminalise and deter nuclear threats and uses. The nuclear ban treaty will establish more effective legal means to hold to account the leaders and industries that fund, facilitate and profit from such weapons. If done right, it will add to and reinforce existing legal instruments like the NPT, CTBT, regional nuclear weapon free zone agreements, and relevant UN Security Council resolutions, including UNSCR 1540.

The first step is to get the best possible treaty. The chair of the UN talks, [Ambassador Elayne Whyte](#), discussed the main points from the first week of negotiations when she spoke to UN media. There were high levels of support for "prohibitions against the acquisition, possession, stockpiling, production, manufacture, development, testing, use and threat of use".

In addition, she noted that some delegations advocated banning the deployment or stationing of nuclear weapons, their delivery and transit through national territory and space, and that some wanted the treaty to clearly ban activities that assist, encourage or induce others to acquire, develop or use such weapons. Whyte also highlighted the support for including positive obligations to ensure the rights of victims of nuclear weapons, including testing, and to address and clean up any environmental harm.

When the negotiations resume in June, we should expect a process of argument and persuasion on some if not all these elements, so it is useful to think through what the legal and political implications are if they are explicitly included or omitted.

All seem to agree that the use of nuclear weapons must be prohibited. But some lawyers are arguing that it would not be necessary to mention the threat of use of nuclear weapons, as that would be covered under other laws, most notably the UN Charter, which states in its Article 2(4): "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state..." They also rely on the legal principle that if a certain act is unlawful then threatening to commit that act is also unlawful.

That principle may be legally correct, but given the state of nuclear politics, it doesn't do much for international security.

First, the UN Charter's proscription against the use of force is breached more often than it is honoured. Regrettably, threatening other countries with force appears politically normal. Clearly this normalising of threats and force in international relations needs to be tackled. But if we want to prohibit nuclear weapons effectively and bolster UN credibility, then we need an explicit prohibition on the threat of use of nuclear weapons, along with their use.

Second, the extraordinarily destructive power of nuclear weapons provoked deep public fear and revulsion, leading to calls to ban the Bomb from the mid 1940s onwards. So academics came up with a unique formulation of deterrence to legitimise the acquisition and deployment of such weaponry by their governments. The doctrine of "nuclear deterrence" that was promoted from the 1950s sanitised nuclear expenditure and policies in nuclear-armed states and enabled the US to deploy nuclear bombs across Europe and enter into nuclear alliances with NATO members, Japan, South Korea and Australia. President Eisenhower's promotion of 'Atoms for Peace' was part of this public relations rebranding.

In essence, nuclear deterrence promises that security can be assured by deploying these weapons of mass destruction in a state of readiness that signals an ever-present threat and capability to use them. The posture is presented as a way to ensure the non-use of nuclear weapons. It relies on making, deploying, transporting and threatening to use them. And if having nuclear weapons doesn't actually deter someone, leaders like [Theresa May](#) are required to be willing and able to fire nuclear weapons in a punishing retaliation, regardless of the futility of such a murderous act or its humanitarian consequences.

Paradoxically, nuclear deterrence also promotes the narrative that "we" don't intend to use them, while having them keeps us safe. This elevation of threatened use into military doctrine is different from other kinds of weapons.

Some think it would be enough now to declare "no first use" or "no use" commitments as steps towards disarmament instead of the ban treaty. The time for purely declaratory promises is past. The reason [why the nuclear ban treaty needs to go further](#) is because the NPT and previous commitments left in place the justifications, policies and drivers that maintain nuclear threats and arsenals.

Manufacturing, developing, testing, deploying, transporting, stockpiling and threatening to use nuclear weapons are the physical and operational activities that make nuclear detonations possible. [Financing](#) those activities encourages, assists and normalises nuclear weapons production as an investment opportunity for banks, companies and pension funds. The more weapons are produced, the higher the risks of accidental or intentional detonations. For these reasons, the treaty will be more effective if these activities are clearly banned.

Learning lessons from earlier treaties, it is not enough to get the basic obligations right; the legal and institutional requirements must also avoid saddling the treaty with commitments or linkages that might look good now but could be dangerous hostages in the future.

With regard to the NPT, this includes the privileges accorded to five nuclear weapon states with pre-1968 arsenals, and the counterproductive promotion of nuclear technologies "for peaceful purposes" that feed and supply nuclear weapons ambitions. Amending the NPT is not feasible, even if it is legally possible. Even as the nuclear ban treaty gathers adherents it will be important for NPT states to continue to review and where relevant strengthen implementation of this important treaty. In many of its provisions, especially Articles I, II, III, VI and VII, the NPT's role must still be strengthened pending the complete elimination of all nuclear arsenals. This bridging between past and future obligations remains important as the treaty will continue to bind most if not all the nuclear-capable states.

Learning lessons from past negotiations, there seemed to be broad agreement that in order to join, states would need to accept all provisions of the ban treaty without reservations. It will be adopted as an indefinite (i.e. permanent) legal instrument, but provided with the possibility of being amended if all or a significant majority of states parties consider this necessary and strict procedures are met. There is general support for establishing regular meetings of states parties to review and take the treaty forward, as well as an organisation to act as the treaty's secretariat and oversee its implementation.

### **The CTBTO will be strengthened by including testing in the nuclear ban treaty**

Vienna is the home of the International Atomic Energy Agency (IAEA) and CTBT Organisation, and it is expected that discussions will carry on in the margins of the NPT meeting. Hopefully this will focus diplomats' minds on what is necessary and what is not. Nuclear ban treaty advocates do not want to over-complicate negotiations or freeze the treaty inappropriately with detailed technical or legal elements that could become out-dated or hostage to changing times.

The CTBT provides another example of a good and necessary legal instrument weakened by an institutional Achilles heel. In so many ways the CTBT is a successful treaty, but it cannot be denied that as North Korea gears up for another nuclear test, the CTBTO's verification and implementing powers are severely hamstrung.

Rivalries among certain nuclear-armed states in 1996 resulted in a rushed compromise in the treaty known as "Article XIV", which made entry into force dependent on getting

44 states with nuclear capabilities on board. So as long as North Korea wants to continue with explosive nuclear tests, as it has done since 2006, Kim Jong-un can hold the CTBT hostage by refusing to sign. The seven hold-outs playing this veto game are: China, Egypt, Iran, Israel, India, North Korea, Pakistan and the United States.

During the [first week of the UN negotiations](#) to prohibit nuclear weapons, the desire to avoid repeating such mistakes was made clear. The entry into force provision is likely to be robust but practical, requiring, for example, the signatures and ratifications of 60 or some other reasonable number of countries. This formula has worked well for other treaties.

Care must also be taken to ensure that the treaty covers all the activities that it needs to address, whether or not they are deemed to be dealt with in other legal instruments.

In well-meaning but misguided attempts to support the CTBT, some governments have suggested that nuclear [testing doesn't need to be explicitly included](#) in the nuclear ban treaty. Such an approach risks the unintended consequence of undermining both the nuclear ban treaty and the CTBT.

The CTBT is already vulnerable because of the structural and political barriers to its entry into force. Despite this, multilateral political and economic support have enabled the CTBTO to establish its important international monitoring system and scientific and outreach programmes. Being unable to take full legal effect, however, has left the CTBT vulnerable, and the longer this continues, the more likely it becomes that a US leader like Donald Trump will want to pull the plug.

Since the nuclear ban treaty will probably enter into force much earlier than the CTBT, banning testing explicitly in its text will help to strengthen efforts to maintain funding and legal authority for the CTBTO's comprehensive verification regime. Far from harming the CTBT, the overlap would prove mutually beneficial. Omitting testing from the prohibited activities would, on the other hand, send misleading signals to states that want to undermine or block the CTBT.

### **Bridging past and future obligations for effective disarmament and nonproliferation**

In the event that any key activities do not make it into the explicit scope prohibitions, as has happened in other treaties, there are ways to ensure that the preamble and negotiating record make clear that all relevant prohibitions and obligations are covered as part of the purpose and objectives of the treaty.

It was appropriate, therefore, that the talks in March started with the preamble, where treaties enshrine context, objectives, connections with existing laws and norms, and aspirations for future peace and security objectives that are not yet deemed achievable. The new treaty needs to strengthen international humanitarian law, relevant legal instruments and agreements, and look to the future by promoting environmental protection and human rights, including the rights and needs of people harmed by nuclear weapons.

There appeared to be widespread support for the preamble to underline the treaty's humanitarian aims, the long-lasting and global health and environmental impacts of

nuclear weapons, the imperative to protect civilians and prevent further detonations and suffering caused by nuclear use, development and testing - perhaps using the Japanese term 'hibakusha'. There is growing interest in proposals from [Ireland](#) and [Sweden](#) to recognise the gendered impacts of nuclear weapons, and also support for a preambular commitment to the ultimate goal of [general and complete disarmament](#).

Some governments argued for the preamble to underscore the obligations in the NPT. The question is how to reflect the positive commitments and aspects of the NPT regime without adversely tying the more universal nuclear prohibition regime to out-of-date and unhelpful aspects. For example, the special privileges accorded to five Cold War "nuclear-weapon states" (China, France, Russia, the UK and US), are routinely evoked to justify their endless nuclear modernization programmes.

In today's world the 1950s commitment to "atoms for peace" looks hollow to many, but is still enshrined in the NPT's problematic "inalienable right" to "peaceful" nuclear energy, which allows for the production of the fissile materials – plutonium and enriched uranium – that are used for nuclear bombs. These aspects of the NPT have made it easier for states with nuclear weapons and ambitions to carry on with proliferation, while also providing excuses for states outside the 1968 treaty – India, Israel, Pakistan and North Korea – to reject relevant disarmament agreements that mention the NPT.

One way to connect with the good legacy from previous treaties without saddling the new treaty with needless baggage would be to have language that echoes the earlier treaties rather than directly attaching to them. It would not be appropriate to mention [President Obama's Prague speech](#) directly, but his ringing call for the "peace and security of a world without nuclear weapons" was subsequently adopted by the [2010 NPT Review Conference](#) and UN Security Council and General Assembly resolutions, and would fittingly frame the nuclear ban treaty.

### **The NPT, CTBT and Nuclear Ban Treaty all have vital roles in our security**

As NPT diplomats start a new review cycle in 2017, the ratcheting up of nuclear sabre-rattling from the [United States](#), [Russia](#), [North Korea](#) and [Britain](#) is causing concerns around the world.

Faced with the UK's worst political, security, economic and social crisis for decades, due to the hubris and miscalculations of Conservative politicians, it was astonishing to see how quickly [new Prime Minister Theresa May](#) chose to claim a right [to fire Trident and kill](#) innocent men, women and children.

Two weeks ago, Defence Secretary Sir Michael Fallon pledged that May would launch Trident in a [pre-emptive first-strike](#) if required. His statement came shortly after she called a snap election on 8 June. Ostensibly her motivation was a bigger mandate for "Brexit means Brexit", whatever that turns out to be. She also wanted to [crush and marginalise any opposition](#). As with Kim Jong-un, Donald Trump and Vladimir Putin, May is a weak and insecure leader who thinks that threatening to launch nuclear weapons makes her look strong and stable.

Such posturing is, unfortunately, widely regarded as part of nuclear deterrence – show you are willing, capable and dangerous while relying on taboos and norms to prevent

the weapons actually being launched. But it is also dangerous and destabilising. What happens when someone miscalculates and the taboos and norms are breached?

The UN started negotiations in March on a nuclear ban treaty to prohibit not just the use of nuclear weapons, but their deployment, production, testing and financing. The envisaged legal instrument would also protect the rights of victims, create obligations to assist any country threatened or attacked with nuclear weapons and hold the perpetrators accountable for the suffering, humanitarian and environmental harm caused by the use of nuclear weapons.

Such a treaty will have fundamental normative impact on the current political and military value attached to nuclear weapons. As such it offers the best hope for strengthening the NPT, CTBT and other disarmament and security measures. But it is opposed by certain states who want to hang onto privileges associated with the NPT that for many years have enabled nuclear-armed states to retain atomic arsenals that they claim provide security and deterrence for themselves and allies.

There is a window of opportunity now to conclude a legally effective nuclear prohibition treaty that would add clear prohibitions and obligations to the body of international humanitarian law. For this it needs to be short and clear. But where there are existing monitoring and verification regimes, such as provided by the [IAEA and CTBTO](#), it would be useful for the treaty's future sustainability and effectiveness to engage with such organisations in mutually reinforcing ways.

In addition the preamble should reference the International Committee of the Red Cross and Red Crescent ([ICRC](#)), International Criminal Court, International Court of Justice, and other institutions that monitor and support international law, including International Humanitarian Law. Either formally or informally these international organisations can play important roles in monitoring and taking the nuclear ban treaty forward.

The nuclear ban treaty is clearly consistent with Article VI of the NPT, which enshrines the long-standing commitment to pursue nuclear disarmament in good faith, as well as the NPT preamble and Articles I, II and VII. The majority of states want it to provide strong legal and normative obligations and non-discriminatory prohibitions that will outlaw nuclear threats and prevent nuclear use. It's the missing link to fulfil and implement existing agreements such as the NPT, CTBT and nuclear-weapon-free zones, as well as relevant UN Security Council resolutions.

As NPT governments meet in Vienna it is time to look on the nuclear ban treaty as a friend, not a rival.



Rebecca Johnson and Clare Conboy are attending the NPT PrepCom and UN negotiations on a Nuclear Ban Treaty on behalf of the Acronym Institute for Disarmament Diplomacy, founding partner on ICAN's International Steering Group. Contact us at [info@acronym.org.uk](mailto:info@acronym.org.uk) or on +44 77 3336 0955. Website [www.acronym.org.uk](http://www.acronym.org.uk) Twitter @acronyminst