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Nuclear Weapons: Is It Really
Necessary

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Abstract:

The Treaty for the Prohibition of Nuclear Weapons is intended to be a legally binding instrument capable of forcing the international community to pursue widespread nuclear disarmament through the adoption of a stigmatizing strategy by the proponents of the treaty and the States that are parties to it. However, as it will be shown in this article, the treaty proves to be an extremely inadequate instrument for achieving this end due to three types of inconsistencies present in it and in its negotiation process: Normative, institutional and practical. In reviewing all the shortcomings related to these inconsistencies, we may ask ourselves to what extent the treaty is really necessary in order to achieve the end it pursues. As a contribution to both the academic debate and the practice of nuclear disarmament, the article will conclude with an original proposal to address the issue of generalized nuclear disarmament through the institutional mechanisms present in the current non-proliferation regime.

Keywords:

Nuclear weapons, United Nations, Non-Proliferation Treaty, Liberalism, NATO.

***NOTA:** Las ideas contenidas en los **Documentos de Opinión** son de responsabilidad de sus autores, sin que reflejen, necesariamente, el pensamiento del IEEE o del Ministerio de Defensa.

Introduction

The decision to start formal negotiations on a new legal instrument that would strictly prohibit the development and possession of nuclear weapons was approved on 27 October 2016. This initiative responded to a series of demands related to the denuclearisation process, which have not been satisfied through the Nuclear Non-Proliferation Treaty (NPT) of 1968, and as a result managed to unite governments, international organisations and civil society in a common front against the nuclear-weapons states. In fact, these efforts have not been joined by the nuclear powers, which are blamed for the lack of progress in global nuclear disarmament¹.

The initiative to ban nuclear weapons is based on the premise that these weapons are inhumane and indiscriminate². The use of nuclear weapons in any populated area would kill hundreds of thousands of people immediately, and many more would be injured for the rest of their life. However, even though some of the nuclear powers have shown willingness to proceed with nuclear disarmament (remember Barack Obama's speech in Prague in June 2009), this has not resulted in any real initiative to carry out such disarmament. Why? This is one of the main questions that we will try to answer in this article. Why have the nuclear powers, despite the fact of being aware of the damage that this type of weapons can cause and indicate their will to disarm, have not been part of the Humanitarian Initiative (formed by states, international organizations and civil society groups), nor have they participated in the negotiations of the Treaty on the Prohibition of Nuclear Weapons (TPNW), let alone ratified it? Answering this question is imperative because of recent developments in the field of nuclear weapons: Tensions between nuclear-weapon states are increasing and nuclear modernisation programmes are advancing at a good pace.

The argument outlined in the following pages is that the TPNW suffers from serious normative, institutional and practical inconsistencies by failing to address fundamental issues for nuclear-weapon states. Basically, the treaty does not respond to why these states perceive nuclear weapons as a valuable strategic asset destabilizes the current

¹ FIHN, BEATRICE, 2017, The Logic of Banning Nuclear Weapons. *Survival*. 2017. Vol. 59, no. 1, p. 43-50. DOI 10.1080/00396338.2017.1282671. Informa UK Limited

² *Ibid*, p. 44

non-proliferation regime. Based on this fact, the question that arises is to what extent the TPNW is really a useful and necessary instrument for achieving widespread nuclear disarmament?

The Treaty on the Prohibition of Nuclear Weapons: Motivations and negotiation process

The origins of the TPNW date back to the Final Document of the 2010 NPT Review Conference, which pointed out the deep concern of all states regarding the catastrophic humanitarian consequences of any use of nuclear weapons³. This concern was due to the fact that nine states still possess some 15,000 nuclear weapons, of which more than 4,000 are deployed. At the same time, these states continue to spend billions of dollars on modernizing and expanding the capabilities of these arsenals⁴.

Norway hosted an international conference in March 2013 to explore the humanitarian consequences of nuclear weapons. This was followed by two others in Mexico (February 2014), and Austria (December 2014), with broad participation by non-nuclear-weapon States, civil society and intergovernmental organizations. However, this sequence of conferences was characterized by low attendance by nuclear-weapon states⁵.

Evidences of the humanitarian dangers posed by the use of nuclear weapons raised the question of how better move towards widespread nuclear disarmament. The emergence, following the Vienna conference, of a consensus to "*identify and implement effective measures to fill the legal vacuum with regard to the prohibition and elimination of nuclear weapons and to cooperate with all interested parties in order to achieve this goal*"⁶ was a

³ 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons. Final Document vol I, 2010. New York.

⁴ ACHESON, RAY, AINSLIE, JOHN, DATAN, MERAV, KRISTENSEN, HANS, MELLO, GREG, MIAN, ZIAN, PODVIG, PAVEL, RAMANA, MV and ZANG, HUI, 2017, *ASSURING DESTRUCTION FOREVER: 2017 EDITION*. New York : Women's International League for Peace and Freedom

⁵ India and Pakistan attended all three meetings, while the United Kingdom and the United States participated only in the Vienna conference. France, China, Russia, North Korea and Israel did not participate in any of the conferences.

⁶ DISARM CONFERENCE, 2015, Note verbal dated 25 August 2015 from the Permanent Mission of Austria to the Secretary-General of the Conference on Disarmament transmitting the joint statement on the humanitarian implications of nuclear weapons made by the Federal Minister for Europe, Integration and Austrian Foreign Affairs during the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, on 28 April 2015. New York : United Nations.

call for a legally binding international treaty for the prohibition of these weapons. However, the five nuclear-weapon states recognized by the NPT and many of their allies opposed the call for negotiations on the grounds that, in their view, it was premature and inappropriate given the current conditions of the international system, and that widespread nuclear disarmament requires a more gradual approach. This divergence of approach characterized the failed 2015 NPT Review Conference.

Finally, in December 2016, the United Nations General Assembly adopted a resolution to "*advance multilateral negotiations on nuclear disarmament*"⁷. The resolution mandated the convening of a United Nations Conference in 2017 to negotiate a legally binding instrument prohibiting nuclear weapons, with a view to their total elimination. The Conference met at United Nations headquarters in New York for two negotiating sessions, from 27 to 31 March and from 15 June to 7 July 2017. This conference did not succeed in involving the main affected states, since no nuclear power or any of its allies (with the exception of the Netherlands)⁸ participated in the treaty negotiation process. However, despite these absences, the NPT was approved and opened for signature on 20 September 2017.

The reasons why such a treaty was negotiated are because of its possible political impacts. The Humanitarian Initiative argued that a ban would create space for states, international organizations, civil society and individuals to spread the message that the possession of nuclear weapons is unacceptable. The logic followed was that the process of negotiating such a treaty would mobilize civil society and public opinion around the world. It would provide an opportunity to bring the public opinion together, engage the media and call on parliaments to act. In short, it would give visibility to the movement against nuclear weapons. Another reasoning followed by the Humanitarian Initiative is that there were precedents regarding the elimination of certain types of weapons such as biological weapons, chemical weapons, anti-personnel mines and cluster munition, which have materialized after the signing of specific treaties. That is why Beatrice Fihn⁹,

⁷ UNITED NATIONS GENERAL ASSEMBLY, 2016, *Advances in multilateral nuclear disarmament negotiations*. New York : United Nations

⁸ MARTÍN CORRALES, CRISTIAN, 2017, *Tratado sobre la Prohibición de las Armas Nucleares: ¿avance hacia el desarme nuclear?* *Instituto Español de Estudios Estratégicos*. 2017. No. 97/2017, p. 1-19.

⁹ FIHN, BEATRICE, 2017, *The Logic of Banning Nuclear Weapons*. *Survival*. 2017. Vol. 59, no. 1, p. 46. DOI 10.1080/00396338.2017.1282671. Informa UK Limited

executive director of ICAN (International Campaign to Abolish Nuclear Weapons), states that prohibition precedes elimination.

Once the treaty enters into force, they hope that there will be more opportunities to raise awareness about the possession of nuclear weapons. A signing or ratification ceremony by a state and each meeting of treaty members will be seen as an opportunity to underline that nuclear weapons are unacceptable, to pressure states to adhere to and abide by the prohibition, and to expose conduct that runs counter to the treaty's goals¹⁰.

Regime theory and the nuclear non-proliferation regime

The first reference to the concept of the international regime can be found in John Ruggie's 1975 article entitled "*International Responses to Technology: Concepts and Trends*", where he defines the international regime as: "*sets of mutual expectations, rules and regulations, plans, organizational energies and financial commitments, which have been accepted by a group of states*"¹¹. Krasner later defined it as: "*sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations*"¹². On the basis of these two definitions, an international regime must be based on expectations, causality and commitment. The rules of the regime must prescribe behaviours defined in terms of rights and obligations. And finally, it must have decision-making procedures that result in recurrent practices for collective decision-making and implementation. There are, in general terms, three theoretical approaches to international regimes: the realist one, the liberal and the constructivist. For realism, power (understood in material terms) and considerations of the relative position of power condition the content and circumscribe the effectiveness and solidity of an international regime. Liberalism emphasizes collective and individual interests as the *raison d'être* of cooperation among states and, in the same way, for the creation and fulfilment of international regimes. Finally, constructivism points

¹⁰ *Ibíd.* p. 47

¹¹ RUGGIE, JOHN GERARD, 1975, *International responses to technology: Concepts and trends.* *International Organization.* 1975. Vol. 29, no. 03, p. 557-583. DOI 10.1017/s0020818300031696. Cambridge University Press (CUP)

¹² KRASNER, STEPHEN D., 1983, *International Regimes.* Cornell: Cornell University Press. p 2

out that both the perception of interests and the meaning of power capacities depend on the social relationship of the agents involved and that regimes are the possible result of that social relationship.

In the case of the nuclear non-proliferation regime, we can see that it meets all the requirements to be an international regime since it comprises a set of rules, principles, treaties and procedures by which countries agree to not acquire nuclear weapons or to assist other States in acquiring them. International and bilateral safeguards verify these commitments and thus prevent their abandonment and non-compliance. The NPT and the International Atomic Energy Agency (IAEA), which administers the safeguards system, are the main legal and institutional components of the regime. The fundamental normative principle of the regime is that the spread of nuclear weapons is a threat to international security, while its underlying norm is that non-nuclear members of the regime should not develop nuclear weapons and that all members should desist from assisting other countries to build such weapons^{13 14}. Regarding the issue of nuclear disarmament, its normative basis is found in article 6 of the NPT, which states that widespread nuclear disarmament is the normative objective of the treaty. It is evident that the regime is constituted under a liberal logic, since normatively this regime is based on the collective interests of its members, which are basically to prevent the spread of nuclear weapons due to their possible pernicious effects on international security, and to proceed to a generalized nuclear disarmament in order to guarantee such security.

¹³ PAUL, T. V., 2003, Systemic Conditions and Security Cooperation: Explaining the Persistence of the Nuclear Non-proliferation Regime 1. *Cambridge Review of International Affairs*. 2003. Vol. 16, no. 1, p. 137-138. DOI 10.1080/0955757032000075753. Informa UK Limited

¹⁴ SCHEINMAN, LAWRENCE, 1987, *The International Atomic Energy Agency and World Nuclear Order*. Washington D.C. : Taylor and Francis

The normative and institutional inconsistencies of the Treaty on the Prohibition of Nuclear Weapons

Turning now to the TPNW, Daniel Rietiker¹⁵ indicates that the treaty clearly presents a different normative basis from the NPT, based on the ideals of humanitarianism. This normative basis would be reflected in the second paragraph of the treaty which states that "*States parties to this treaty (...) 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,*"¹⁶. This new rule would expressly prohibit nuclear weapons, which the NPT did not. However, the Humanitarian Initiative indicates that such a ban seeks renewed progress towards widespread nuclear disarmament, thus indicating that in reality the normative goal of the TPNW is not prohibition *per se*, but disarmament. In this sense, the adoption of the TPNW is significant since it supposedly seeks to generate a new normative system based on the same normative base as the NPT, i.e. that the normative goal of the treaty is a generalized nuclear disarmament, and frames it within the same institutional system as the current non-proliferation regime (United Nations System), thus wanting to generate a non-proliferation regime parallel to the already existing one but articulated normatively and institutionally in the same. This has resulted in substantial contradictions: First, for the defenders of the TPNW the only way to obtain disarmament is through a prohibition of nuclear weapons¹⁷, while the NPT indicates that disarmament will proceed in good faith among the parties to the treaty. Therefore, what we observe is that there is a discrepancy regarding the way to obtain disarmament, not

¹⁵ RIETIKER, DANIEL, 2017, New Hope for Nuclear Disarmament or "Much Ado About Nothing?" Legal Assessment of the New "Treaty on the Prohibition of Nuclear Weapons" and the Joint Statement by the USA, UK, and France Following its Adoption. *Harvard International Law Journal*. 2017. Vol. 59, p. 1-11

¹⁶ UNITED NATIONS GENERAL ASSEMBLY, 2017, *Treaty on the Prohibition of Nuclear Weapons*. New York: United Nations.

¹⁷ This prohibition, as already pointed out in the first section of the article, would follow a logic of stigmatization of those countries that possess and their allies, through social mobilizations, positions of member states of the TPNW, and parliamentary acts of condemnation each time nuclear tests are carried out, deployments of nuclear warheads, manoeuvres that simulate reactions to nuclear tacks, etc.

regarding the norm of disarmament. This makes it a logical absurdity to want to generate a non-proliferation regime parallel to the current one that pursues the same normative goal.

At the same time, it is striking that the preamble to the TPNW, which is supposed to replace the norms derived from the NPT, reaffirms the supremacy of the NPT in ensuring international peace and security. It therefore assumes that, in the hierarchy of the regime's norms, the NPT is above the TPNW. In fact, article 18 of the treaty states that the TPNW "*shall not prejudice obligations undertaken by States Parties with regard to existing international agreements, to which they are party*". In other words, signing the TPNW should not impede compliance with the obligations of the NPT, but adds that these obligations must be "*consistent*" with the TPNW¹⁸, thus contradicting the treaty itself since some of the provisions of the TPNW are not compatible with the NPT: For example, the TPNW does not recognize the fundamental pillar on which the NPT is founded, the existence of nuclear-weapon states and non-nuclear-weapon states; the states parties to the TPNW can question the privileged status granted to the five nuclear-armed states by the NPT, as well as the security assurances given by the five nuclear states to countries belonging to nuclear-weapon-free zones; the TPNW also prohibits states from allowing "*any emplacement, installation or deployment*"¹⁹ of nuclear weapons on their territory, a prohibition that is not explicitly included in the NPT; states party to the TPNW are prohibited from conducting nuclear tests, even though the Comprehensive Nuclear-Test-Ban Treaty (CTBT) has not yet entered into force²⁰, etc...

Finally, another conceptual flaw of the TPNW is the absence of a definition of what a nuclear weapon is, an element present in other arms reduction treaties such as START I and the new START²¹.

¹⁸ UNITED NATIONS GENERAL ASSEMBLY, 2017, *Treaty on the Prohibition of Nuclear Weapons*. New York : United Nations

¹⁹ *Ibíd*

²⁰ TREZZA, CARLO, 2017, The UN Nuclear Ban Treaty and the NPT: Challenges for Nuclear Disarmament. *Instituto Affari Internazionali*. 2017. p. 2.

²¹ FITZPATRICK, MARK, IFFT, EDWARD and GOLDRING, NATALIE, 2017, In : *Prohibiting Nuclear Weapons: What Now for the Ban Treaty?* [online]. 2017. [Accessed 25 September 2018]. Available from: <https://www.iiss.org/events/2017/08/nuclear-ban>

Second, the treaty has left institutional questions unresolved, which has generated multiple criticisms regarding the speed of the negotiation process (3 months). For example, the nuclear states were absent from the treaty negotiations arguing that the treaty does not have a detailed institutional framework on how to deal with the issue of verification with respect to non-nuclear states, nuclear states that intend to get rid of their arsenal once they become party to the treaty, and nuclear states with latent capabilities after ratifying the treaty²². The absence of technical and institutional elements relating to the verification and disarmament process in a treaty whose ultimate goal is disarmament is quite striking.

There are also gaps regarding the IAEA safeguards. With regard to states parties to the treaty, the issue of safeguards was not included in the treaty, thus calling into question (implicitly) the current IAEA safeguards system. On the other hand, the treaty presents no mechanism to enforce its obligations, which, should a possessor state ratify the treaty there would be no way to oblige it to dispose its nuclear arsenal. Article 4 stipulates that, if a nuclear-weapon state wishes to accede to the treaty, it must cooperate with the competent international authority for the elimination of its nuclear arsenal. But, at this stage, it is impossible to identify an organization that can verify the destruction of nuclear weapons, or determine the role that the IAEA²³ would play in this process. Some argue that potential treaty members should disarm at a later date²⁴. Others are concerned that the lack of a disarmament deadline diminishes the treaty's ability to meet its objectives by giving states the ability to adhere to the treaty's goals without real disarmament obligations. Some observers²⁵ argue that it is appropriate for the treaty not to define disarmament measures, since none of the states concerned have participated in the

²² POTTER, WILLIAM C., 2017, Disarmament Diplomacy and the Nuclear Ban Treaty. *Survival*. 2017. Vol. 59, no. 4, p. 75-108. DOI 10.1080/00396338.2017.1349786. Informa UK Limited

²³ YOSHIDA, FUMIHIKO, 2018, UN on Nuclear Disarmament and the Ban Treaty: An Interview with Izumi Nakamitsu. *Journal for Peace and Nuclear Disarmament*. 2018. Vol. 1, no. 1, p. 93-101. DOI 10.1080/25751654.2018.1436385. Informa UK Limited

²⁴ UNITED NATIONS, 2017, *Member States Consider How to Improve Draft as Conference Continues Debate on Legally Binding Instrument to Ban Nuclear Weapons* [online]. [Accessed 25 September 2018]. Available from: <https://www.un.org/press/en/2017/dc712.doc.htm>

²⁵ WOLFSTHAL, JON, 2017, Second Time is NOT a Charm for the Nuclear Ban Treaty. *Armscontrolwonk.com* [online]. 2017. [Accessed 25 September 2018]. Available from: <http://www.armscontrolwonk.com/archive/1203455/second-time-is-not-a-charm-for-the-nuclear-ban-treaty/>

negotiations, and it would be more effective for each state to determine its own disarmament agenda. Ultimately, there is no consensus on the issue of the disarmament procedure and verification of treaty members due to its absence in the final text.

Finally, it is striking that even though the United Nations General Assembly recognized the need for the treaty negotiations to indicate a path for the complete elimination of nuclear weapons²⁶, none has been indicated in the treaty other than forcing nuclear powers, if they finally decide to ratify the treaty, to eliminate their nuclear arsenal; which highlights the treaty's lack of attractiveness to any nuclear power wishing to join since it would be "forced" to dispose its nuclear arsenal. As Gaukhar Mukhatzhanova²⁷ rightly points out: "*It seems unlikely that any nuclear-armed state will use this option*".

These two sets of reasons (normative and institutional) significantly discredit the TPNW and the Humanitarian Initiative in their efforts to achieve generalised nuclear disarmament since they have ignored fundamental elements of the non-proliferation regime both in terms of the norms that make it up and how to incorporate the NPT into those norms without contradicting them (or contradicting itself), as well as in terms of institutions and above all in terms of the institutional articulation of the treaty.

The practical inconsistencies of the Treaty on the Prohibition of Nuclear Weapons

States possess nuclear weapons for a variety of reasons, but of all possible reasons, the most pressing one is security. This inevitably leads us to analyse the main obstacle of the treaty: The fact that the strategic and security imperatives of nuclear-weapon states and their allies have not been taken into consideration²⁸. Already in the run-up to the negotiation process, several countries indicated their scepticism about the initiative to ban nuclear weapons. For example, Pakistan stated at the Vienna summit in 2014 that "*We believe that this humanitarian process should also strive for the elimination of the underlying security reasons for the possession of nuclear weapons in order to achieve its*

²⁶ UNITED NATIONS GENERAL ASSEMBLY, 2016, Resolution adopted by the General Assembly on 23 December 2016. New York: United Nations.

²⁷ MUKHATZHANOVA, GAUKHAR, 2017, The Nuclear Weapons Prohibition Treaty: Negotiations and Beyond. *Arms Control Association* [online]. 2017. P. 8. [Accessed 20 September 2018]. Available from: <https://www.armscontrol.org/act/2017-09/features/nuclear-weapons-prohibition-treaty-negotiations-beyond>

²⁸ *Ibid.* pp. 1-12.

goals"²⁹. Germany pointed out that "*Nuclear disarmament takes place in a strategic context (...) it is fair to say that this strategic context should not serve as a pretext for not engaging in disarmament negotiations (...) But neither can we expect substantial progress if the context is ignored.*"³⁰ And Ukraine said, "*We regret that our community pays more attention to consequences but forgets about the reasons which bring nuclear threats so close to our lives*"³¹. We can understand the positions of these three states due to the insecurity generated by their immediate strategic environment (i.e. India, Russia, and the end of the use of nuclear energy in Germany).

On the first day of the treaty negotiation, representatives of states opposed to the treaty expressed firm opposition to the initiative to draft such a treaty. For example, UK ambassador Matthew Rycroft said his country would not participate in the talks "*because we do not believe that these negotiations will lead to effective progress in global nuclear disarmament*"³². Japan's ambassador, Nobushige Takamizawa, explained to conference members Japan's non-participation in the negotiations as follows: "*A ban treaty, if it does not lead to the actual reduction of a single nuclear warhead, would be of little significance. In fact, efforts to make such a treaty without the participation of nuclear-weapon states will only deepen the schism and division not only between nuclear-weapon states and non-nuclear-weapon states but also among non-nuclear-weapon states, which will further divide the international community. (...) Even if such a ban treaty is agreed upon, we do not believe that it would lead to the solution of real security issues*"³³. To this must be added the joint communiqué issued by the United States, the United Kingdom and France on the day the treaty was adopted: "*France, the United Kingdom and the United States have not taken part in the negotiation of the treaty on the prohibition of nuclear weapons.*

²⁹ Statement by the Pakistani government at the Third Conference on the Humanitarian Impacts of Nuclear Weapons, Vienna, Austria, 9 December 2014.

³⁰ Declaration of the German Government at the Third Conference on the Humanitarian Impacts of Nuclear Weapons, Vienna, Austria, 9 December 2014.

³¹ Declaración del gobierno ucraniano en la Tercera Conferencia sobre los Impactos Humanitarios de las Armas Nucleares, Viena, Austria, 9 de diciembre de 2014

³² SENGUPTA, SOMINI and GLADSTONE, RICK, 2017, United States and Allies Protest U.N. Talks to Ban Nuclear Weapons. *The New York Times* [online]. 2017. [Accessed 25 September 2018]. Available from: <https://www.nytimes.com/2017/03/27/world/americas/un-nuclear-weapons-talks.html>

³³ PERMANENT REPRESENTATION OF JAPAN TO THE CONFERENCE OF DISARMAMENT, 2017, *Statement by H.E. Mr. Nobushige Takamizawa* [online]. [Accessed 25 September 2018]. Available from: <http://statements.unmeetings.org/media2/14683256/japan.pdf>

We do not intend to sign, ratify or ever become party to it. Therefore, there will be no change in the legal obligations on our countries with respect to nuclear weapons. (...) This 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. This treaty (...) does not address other security challenges that make nuclear deterrence necessary"³⁴. These three countries also justified their opposition to the treaty on the basis of the possible negative impact it would have on the non-proliferation regime, the NPT review process, the lack of consideration for the security requirements of possessor states, and the possible increased division between possessor and non-possessor states. All three re-emphasized a gradual approach to disarmament³⁵.

The five nuclear powers recognized by the NPT issued a joint communiqué indicating their deep concern about efforts to apply approaches to nuclear disarmament that do not consider the global strategic context. These states argued that such efforts would jeopardize the consensus-based approach used for decades to strengthen the non-proliferation regime and enhance the NPT's contribution to international security, and could negatively affect future NPT Review Conferences. The five nuclear powers reiterated a call to all members of the international community to engage in an open and constructive dialogue on nuclear disarmament, international security and stability issues that are common to all states and focused on practical steps leading to a world without nuclear weapons³⁶.

Other evidence of rejection of the TPNW was the US communiqué to non-nuclear-weapon NATO members of 17th October 2016 indicating that efforts to negotiate an immediate ban on nuclear weapons are fundamentally in contradiction with NATO's basic policies on deterrence and shared security interests. The US called on all allies and

³⁴ *Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption of a Treaty Banning Nuclear Weapons* [online]. [Accessed 25 September 2018]. Available from: <https://usun.state.gov/remarks/7892>

³⁵ FRANCE, UNITED KINGDOM & THE UNITED STATES, 2016, *France, United Kingdom & United States. Explanation of vote* [online]. [Accessed 25 September 2018]. Available from: <http://www.icanw.org/wp-content/uploads/2016/10/France-UK-and-US-EOV.pdf>

³⁶ KUROSAWA, MITSURU, 2018, *The Treaty on the Prohibition of Nuclear Weapons: Its Significance and Challenges*. *OSAKA UNIVERSITY LAW REVIEW*. 2018. Vol. 65, p. 1-24.

partners to vote against the TPNW negotiations³⁷. As a result of this demand, allied states argued their rejection of the treaty based on a lack of consideration of strategic and security imperatives³⁸.

Russia also opposed the treaty stating that "*First of all, this kind of a hasty initiative undermines and erodes the existing mechanism for multilateral initiatives in the sphere of nuclear disarmament. This also undermines the NPT, the sole effective international treaty in effect stipulates progress towards full and comprehensive disarmament and this includes nuclear disarmament (...) Second, a hasty adoption of an agreement on a prohibition is at odds with the provisions of the consensus-based plan of action of the 2010 NPT Review Conference. (...) Thirdly (...) without the participation of nuclear powers this conference loses all practical purpose*"³⁹.

I believe that all the communiqués and positions presented above evidence the scepticism of these states regarding the treaty and its ability to achieve its ultimate goal, generalized nuclear disarmament.

The evolution of nuclear arsenals and the decisions of nuclear-weapon states cannot be understood without knowing why it is necessary to develop and preserve them. The strategic goals or security imperatives of each state influence the position to be adopted in the face of any international disarmament initiative⁴⁰. The Humanitarian Initiative must therefore focus its efforts on studying the nuclear doctrines of these states if widespread nuclear disarmament is to take place, since nuclear doctrines derive from the security imperatives of each country. Therefore, if these imperatives are known and understood, it will be easier to address them and seek shared solutions to overcome them and move towards widespread nuclear disarmament. As Martín Corrales points out: "*the decisions of the nuclear powers regarding non-proliferation and disarmament cannot be influenced without taking into account the strategic reasons that have led these states to dispose of nuclear weapons*"⁴¹. Neglecting these strategic and security imperatives is what makes

³⁷ *Ibíd.* p. 16

³⁸ General Statement, 2016, Germany on behalf of 26 states.

³⁹ RUSSIA, 2016, *Explanation of vote* [online]. [Accessed 25 September 2018]. Available from: <http://www.icanw.org/wp-content/uploads/2016/10/Russia-EOV.pdf>

⁴⁰ MARTÍN CORRALES, CRISTIAN, 2017, Tratado sobre la Prohibición de las Armas Nucleares: ¿avance hacia el desarme nuclear? *Instituto Español de Estudios Estratégicos*. 2017. No. 97/2017, p. 1-19.

⁴¹ *Ibíd.* p. 10

the TPNW so limited. Now, exactly what strategic imperatives are we referring to? Where should the Humanitarian Initiative focus its efforts? The possible implications of signing this treaty, both for the nuclear powers and for their allies, are obvious. For example, in a letter from the US to NATO member states, the US government outlined a list of possible concrete impacts of a prohibition treaty, including that the treaty would limit the US ability to use nuclear weapons on behalf of other states⁴². Another impediment to the treaty is the fact that it includes provisions prohibiting the financing of nuclear weapons production. The 2016 *Don't Bank on the Bomb* report points out that a treaty banning nuclear weapons would have a significant impact on investment decisions⁴³. Finally, the Humanitarian Initiative failure to address the issue of nuclear deterrence shows a total ignorance of the logics of nuclear strategy. A ban treaty will not eliminate the most ominous threats to nations that currently rely on nuclear deterrence as a defensive mechanism. Few people are convinced that adversaries with nuclear weapons would launch a large-scale nuclear attack. Rather, the main concern is that some form of non-nuclear aggression might be initiated, particularly against a weaker state, and that, for proponents, nuclear weapons might, in extreme circumstances, be the only way to prevent such aggression. If a hypothetical situation were to arise in which a state or alliance could not defend itself from an act of aggression through non-nuclear means, what is the Humanitarian Initiative proposing? To accept its destruction? Is that plausible in political or legal terms?⁴⁴ Does this mean that nuclear deterrence is the only acceptable mechanism for avoiding large-scale nuclear war? Certainly not, but ignoring the reason for the need of nuclear deterrence does not help to bridge the position of parties involved in such deterrence. The failure to take all these issues into account significantly discredits the treaty in the eyes of the nuclear powers and their allies as it demonstrates that its proponents have not taken into consideration either the interests of these states or the

⁴² COMMITTEE ON PROLIFERATION, 2016, *United States Non-Paper: Defense Impacts of Potential United Nations General Assembly Nuclear Weapons Ban Treaty*. North Atlantic Council.

⁴³ PAX & ICAN, 2016, *Don't Bank on the Bomb. A Global Report on the Financing of Nuclear Weapons Producers* [online]. Utrecht. [Accessed 23 September 2018]. Available from: https://www.dontbankonthebomb.com/wp-content/uploads/2016/12/2016_Report_final.pdf

⁴⁴ It is worth recalling the advisory opinion issued on July 8, 1996 by the International Court of Justice. In its pronouncement, the court established the illegality of the first use of the nuclear weapon, but did not go so far as to affirm that its use contravened the principles of international law. Nor did it pronounce itself with respect to the legality of the use of the nuclear weapon in the case of an extremely serious situation of self-defense.

norms of the non-proliferation regime. The existence of a ban treaty could undermine the credibility of nuclear deterrence and favour armed aggression. This is the terrible paradox of nuclear deterrence. Advocates of a treaty of prohibition tend to minimize the threats of such aggression. On the other hand, logically, they highlight the serious risks of large-scale nuclear war⁴⁵.

It is for these reasons that the ban does not enjoy the support of nuclear-weapon states or states with nuclear security assurances. The nuclear-weapon states and their allies are not prepared to abandon the security assurances given to them by nuclear weapons unless their strategic and security imperatives are addressed by states and groups that advocate nuclear disarmament, which is precisely what the Humanitarian Initiative does not do.

On the basis of all the reasons and comments referred to in this section, it is clear that in practical terms the treaty is inadequate for its intended purpose and could even undermine the prospects for widespread nuclear disarmament. The interests and positions of possessor states must be addressed if the Humanitarian Initiative is to achieve more than symbolic results.

An Institutional Alternative to the Treaty on the Prohibition of Nuclear Weapons

For those who advocate the need to ban nuclear weapons, literature on international regimes and liberal institutionalism can help them understand the usefulness of the current non-proliferation regime in achieving the goal of disarmament.

The roots of institutional liberalism come from the liberal tradition, which recognises that states follow a self-help logic and competitiveness to certain extent, but also believes that states share many interests and that they can therefore develop cooperative actions that result in benefits for the states involved in such actions⁴⁶. For institutional liberalism, then, international regimes, and the institutions that make them up, serve to overcome the problems of collective action, promote efficiency and transparency and develop

⁴⁵ PERKOVICH, GEORGE, 2017, *The Nuclear Ban Treaty. What Would Follow?* Washington D.C. : Carnegie Endowment for International Peace. p.11.

⁴⁶ JACKSON, ROBERT H and SØRENSEN, GEORG, 2003, *Introduction to International Relations, Theories and Approaches*. Oxford: Oxford University Press. p. 106

reciprocity, and provide information about the preferences, capabilities and intentions of others. All these factors help to generate certainty and predictability in relations between states^{47 48}.

The Humanitarian Initiative can have an impact on nuclear disarmament, but not through a prohibition such as that proposed in the TPNW. Instead of seeking to ban nuclear weapons, the Humanitarian Initiative can bridge the gap between nuclear-weapon and non-nuclear-weapon states by addressing more directly the strategic and security reasons why states develop nuclear weapons, as discussed in the previous section. For example, if we adopt NATO's point of view and observe Russia's recent movements and positions with regard to the possible nuclearization of the Crimean Peninsula⁴⁹ or its involvement in the War in Donbass, we could conclude that nuclear deterrence is useful in order to avoid an attempt of conventional attack on NATO targets in Central and Eastern Europe. Russia's nuclear signalling has cast doubt on the credibility of NATO's deterrence policies. What we observe in this situation is that one nuclear power (Russia) conceives nuclear significance in its relationship with another nuclear power (US and NATO) as acceptable. Studying why this happens is the key point on which the Humanitarian Initiative should focus. The mechanism for carrying out this study already exists, and that is the United Nations system. Unlike the multiple reductions of nuclear weapons, which have been carried out progressively and bilaterally (often after lengthy "dog-face" negotiations between states whose mutual trust was non-existent), the United Nations could favour *ad hoc* spaces where the nuclear powers could transparently negotiate their progressive disarmament. However, this disarmament requires collective action, transparency and reciprocity, maintaining a constant flow of information among the States involved in order to know the capabilities and intentions of others, in order to generate certainty and predictability in the disarmament process. This should take the form of a general disarmament plan in which strategic and security imperatives are

⁴⁷ MARTIN, LISA L., 1999, An Institutional View: International Institutions and State Strategies. In: *International Order and the Future of World Politics*. Cambridge: Cambridge University Press. p. 91.

⁴⁸ KEOHANE, ROBERT O., 1986, Reciprocity in international relations. *International Organization*. 1986. Vol. 40, no. 01, p. 1-27. DOI 10.1017/s0020818300004458. Cambridge University Press (CUP)

⁴⁹ PIFER, STEVEN, KULESA, LUKASZ, BAHR, EGON, NEUNECK, GÖTZ, TROITSKIY, MIKHAIL and KROENIG, MATTHEW, 2015, Forum: NATO and Russia. *Survival*. 2015. Vol. 57, no. 2, p. 135-139. DOI 10.1080/00396338.2015.1026090. Informa UK Limited

treated, negotiated and mediated in order to put an end to them. There are no better mechanisms for obtaining these results than international institutions. Therefore, the debate should not focus on the TPNW and the prohibition of nuclear weapons, but on addressing strategic and security imperatives through multilateral and institutional negotiating spaces.

Many members of the Humanitarian Initiative may not like the idea of having to renounce to the ban on nuclear weapons and adopt a more institutionalist approach. However, continuing to force a general ban on nuclear weapons can have serious consequences: As noted in the previous section, it would deepen the division between possessors and non-possessors, as well as undermine the credibility of the NPT and other multilateral non-proliferation mechanisms and disarmament efforts. It would divide the members of the Humanitarian Initiative, slowing its momentum and denying much of the authority of the initiative itself that comes from its broad membership. It also diverts attention away from other efforts, such as pressuring Russia to return to arms control talks. On the other hand, the United Nations views widespread nuclear disarmament as an important mandate of the organization; it is therefore preferable for possessor states to discuss their differences and strategic and security imperatives within the United Nations system. It is true that it has become evident that certain forums of that system have not allowed significant progress to be made (i.e., the Conference on Disarmament), which obliges us to rethink and reconceptualize the forums that must be created and used within the system itself in order to achieve the goal of generalized nuclear disarmament.

Conclusions

For many supporters of the TPNW, the real goal of the treaty is to put pressure on nuclear-weapon states to make further progress towards widespread nuclear disarmament. However, prohibition is an inefficient instrument for achieving this end. Why? Because forcing a ban ignores the strategic and security imperatives of states. If the Humanitarian Initiative is serious about widespread nuclear disarmament, they must pay greater attention to and better understand the security imperatives of states that oppose the ban⁵⁰.

⁵⁰ WILLIAMS, HEATHER, 2016, Why a Nuclear Weapons Ban is Unethical (For Now). *The RUSI Journal*.

It is unlikely that the TPNW will lead to the elimination of nuclear weapons because none of the possessor states took part in the vote that adopted the treaty⁵¹ and all of them have subsequently indicated that they were not prepared to ratify it. In fact, most of the possessor states and their allies did not even participate in the negotiation of the treaty. Without the participation of possessor states, the TPNW is nothing more than an idealistic statement by non-possessor states and civil organizations. The TPNW will not convince possessor states to disarm, and will damage the existing legal framework governing the non-proliferation regime as it undermines the centrality of the NPT as the cornerstone of the regime.

In short, the nuclear-weapon states and their allies have adopted positions close to realism regarding the NPT since they prioritise the need to guarantee their strategic and security imperatives before proceeding to disarm, while the supporters of the NPT move within more constructivist parameters as shown by their attempt to alter the interests of the nuclear-weapon states through a stigmatization strategy.

Faced with all these limitations and disfunctionalities, a response to the question of generalised nuclear disarmament cannot be a strict prohibition, but requires institutional mechanisms present in the current non-proliferation regime to address and investigate the genesis of the strategic and security imperatives of the nuclear-weapon states.

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2016. Vol. 161, no. 2, p. 44. DOI 10.1080/03071847.2016.1174481. Informa UK Limited

⁵¹ UNITED NATIONS GENERAL ASSEMBLY, 2017, *United Nations conference to negotiate a legally-binding instrument to prohibit nuclear weapons: Second session*. New York: United Nations.