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The UN Nuclear Ban Treaty and the NPT: Challenges for Nuclear Disarmament

by Carlo Trezza

On 7 July this year, well over a hundred countries voted in favour of the Treaty on the Prohibition of Nuclear Weapons (TPNW) at a United Nations conference in New York. More recently, on 9 August, the UN Secretary General, acting in his capacity as depositary of the treaty, communicated that starting on 20 September the treaty would be open for signature by all member states, with fifty signatures necessary for the treaty's entry into force.

In spite of this evident success, it is unlikely that the treaty will lead to the elimination of nuclear weapons given that none of the countries possessing such weapons took part in the voting procedure.¹ This applies to the five states (China, France, the Russian Federation, the United Kingdom and

United States) recognized by the Nuclear Non-Proliferation Treaty (NPT) as possessing nuclear weapons as well as the four (India, Israel, Pakistan and North Korea) which have acquired such weapons without being party to the NPT. Most of these states did not even participate in the treaty negotiations. The same goes for the so-called "umbrella states", those countries whose security is guaranteed by the US's nuclear deterrent. These include all NATO countries (only the Netherlands participated in the conference, voting against the treaty) and three countries of the Asian Pacific region: Japan, the Republic of Korea and Australia.

It is doubtful, as some claim, that the TPNW can be considered as constituting customary law. The fact that one country, the Netherlands, is on record voting against the treaty indicates a lack of full consensus. Furthermore, over thirty countries did

¹ United Nations General Assembly, *Voting results on L.3/Rev.1*, New York, 7 July 2017, https://s3.amazonaws.com/unoda-web/wp-content/uploads/2017/07/A.Conf_.229.2017.L.3.Rev_.1.pdf.

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not participate at all in the negotiations. Some, like India, the UK, France and the US, explicitly declared that the treaty “in no way constitutes or contributes to the development of any customary international law”.²

The analogy often made with the successful precedent of humanitarian conventions such as the Ottawa Convention on landmines and the Oslo Convention on Cluster Munitions, is not fully pertinent: most states that became party to these conventions possessed such weapons, which they in fact totally eliminated.

The preamble to the TPNW pays tribute to the continued role of the NPT, reaffirming its “vital role [...] in promoting international peace and security”.³ Article 18 of the treaty further notes that the TPNW “shall not prejudice obligations undertaken by States Parties with regard to existing international agreements”, but adds that such obligations have to be “consistent” with the TPNW. Yet, some of the provisions of the TPNW are not consistent with NPT. The most conspicuous example relates to one of the pillars of the NPT, that is, the distinction between states entitled to possess such weapons and

non-nuclear weapon states, which is not contemplated by the TPNW. A series of other contradictions are also present:

- in principle, states party to the TPNW may question the privileged status granted to the five nuclear armed states by the NPT as well as the negative security assurances given by the nuclear five to the countries belonging to nuclear weapons free zones;
- the TPNW also forbids states party to the treaty from allowing “any stationing, installation or deployment” 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, while the Comprehensive Nuclear Test-Ban Treaty (CTBT) has not yet entered into force;
- Iran, seen as a nuclear and ballistic culprit by some, voted in favour of the TPNW while countries accusing Iran were themselves not ready to subscribe to the treaty.

These discrepancies are particularly serious for the European Union. A dividing line between countries for and against nuclear energy has long existed in Europe. Disagreements have also been present between EU NATO and non-NATO members regarding the concepts of nuclear disarmament and deterrence. This was evident during the 2016 UN General Assembly vote on a resolution (A/RES/71/258) calling for the organization of a UN conference

² Indian Ministry of External Affairs, *Response by the Official Spokesperson to a Media Query Regarding India's View on the Treaty to Ban Nuclear Weapons*, 18 July 2017, <http://www.mea.gov.in/media-briefings.htm?dtl/28628>; Joint Press Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption of a Treaty Banning Nuclear Weapons, New York, 7 July 2017, <https://usun.state.gov/remarks/7892>.

³ United Nations, *Treaty on the Prohibition of Nuclear Weapons (A/CONF.229/2017/8)*, 7 July 2017, <http://undocs.org/A/CONF.229/2017/8>.

to negotiate the TPNW.⁴ Some EU members were among the resolution's staunchest supporters, others among its staunchest opponents; most EU NATO members voted against the resolution while EU countries with a neutral background either voted in favour or abstained. Further divergences emerged at the moment of deciding whether to participate in the 2017 negotiating conference in New York.

In sum, while NPT provisions were the only universal creed for the overwhelming majority of states, from now on a large number of NPT members will be bound by contradictory obligations since a new "doctrine" has become part of the game.

Like it or not, the TPNW is now a reality. States would be ill advised to try to delegitimize the treaty as it is a reflection of the deep frustration of a large majority of non-nuclear armed states over the lack of progress in the field of multilateral nuclear disarmament. The TPNW also represents a response to the inability of the international actors to finalize consensual agreements in multilateral fora. Furthermore, by emphasizing the humanitarian dimension in the discourse on nuclear weapons and disarmament, the TPNW legitimizes a principle that is widely shared by the international community: that of achieving a world free of nuclear weapons.

⁴ See voting results on resolution 71/258 (New York, 23 December 2016) in United Nations Office for Disarmament Affairs (UNODA), *The United Nations Disarmament Yearbook, Vol. 41 (Part I): 2016*, p. 290, <https://www.un.org/disarmament/publications/yearbook/volume-41-2016>.

It should not be difficult to reach the fifty signatures needed for the TPNW's entry into force. It was however surprising that not all participants at the conference were present at the moment of voting. It is premature to speculate on how the ratification and implementation process will fare. Much will depend on which countries effectively sign and ratify the treaty. Financial hurdles might also complicate the process further.

Clearly, the TPNW will not be the final word on nuclear disarmament: the idea of achieving nuclear prohibition in one go is far from being realized. The controversial concept of a step-by-step approach towards nuclear disarmament still remains on the table. More efforts will be necessary and all possible avenues – be they multilateral, regional or bilateral, humanitarian, environmental, military or doctrinal – should now be proactively pursued.

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