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THE REAL "PROBLEM" WITH A BAN TREATY? IT CHALLENGES THE STATUS QUO

By Nick Ritchie

In a recent essay, Matt Harries argued that the negotiation of a nuclear-weapon-ban - treaty would have a disproportionate effect on the nuclear-weapon policies of democratic nuclear-armed states and their allies. Perhaps more importantly, he argues that this is a serious problem.
Harries is right on his first claim, but not on his second.

U.S. extended nuclear deterrence commitments would be challenged by a ban treaty, as would the national deterrence commitments of all nuclear-armed states. In fact, that is the point of the proposed treaty: to comprehensively delegitimize and stigmatize nuclear weapons because, as long as those weapons exist, there is a risk they will be used—resulting in foreseeable and unacceptable humanitarian effects.
To be sure, some states would be more susceptible than others to the type of legal-normative pressure that a ban treaty would generate. The DPRK, for example, seems most impervious of all to social stigmatization. In contrast, countries with democratic polities based on broadly liberal principles are likely to be more susceptible to transnational advocacy movements that are rooted in those same principles, namely the equal moral standing of people and a shared interest in the rule of law, including the criminalization of egregious violence.

The extent to which the governments, legislatures, and publics of nuclear-armed states and U.S. treaty allies are susceptible to changes in the global politics of nuclear weapons envisaged by a ban treaty is likely to be uneven. But if a ban treaty's impact would be initially felt by non-nuclear NATO states and other U.S. treaty allies—and subsequently by NATO and other nuclear-armed states through the changed global context for nuclear weapons that results from a ban—then so be it. A ban treaty is not intended to terminate U.S. security guarantees to its allies, only to delegitimize the role of nuclear weapons, the practice of nuclear deterrence, and planning for the possibility of nuclear war. The vast majority of states have learned to live without nuclear weapons. They have not succumbed to what Michael MccGwire termed "deterrence dogma," but instead have developed national and regional security strategies that don't rely on threats of unrestricted nuclear violence. The ambition of a ban treaty is to encourage those that continue to place a high value on nuclear weapons to do the same, and this includes the richest, most powerful, most privileged group of states in the West.
Harries argues that Russia and China are unlikely to take nuclear disarmament commitments seriously absent changes—by the United States in particular—in nonnuclear military systems and deployments. He might well be right, in which case this issue would be a legitimate focus for dialogue and negotiation between nuclear-armed states to facilitate elimination of their arsenals. But that doesn't mean Russia and China would be impervious to a ban treaty's effects. China has been steadily socialized into the

global nonproliferation regime's norms and institutions. Russia, meanwhile, has been central to the development of that regime and the strategic nuclear-arms reduction process with the United States. A ban treaty would not call for any state to disarm unilaterally; rather its aim would be for nuclear-armed states and their allies to accept—to internalize—the reality that nuclear weapons are no longer acceptable and that national and global security is ultimately better served without them.

"Moral suasion may come up short," or a ban treaty "may prove to be an exercise in futility," as Paulina Izewicz of the International Institute for Strategies Studies puts it, or it might not. As an important study by the International Law and Policy Institute and the United Nations Institute for Disarmament Research observed last year, if a ban treaty proves ineffective, the global disarmament picture would look much the same as it does now, but if it were effective, it could catalyze further disarmament steps. History shows how states that initially resist a global norm can be socialized into the new legal-normative order over time—termination of the slave trade and colonialism being the two most important examples.

What makes the ban treaty process legitimate is that its focus is indisputably on the weapons themselves rather than on this or that state or a particular category of states. The intention is to create what has been termed a "crisis of legitimacy" around the continued possession of all nuclear weapons and the practice of nuclear deterrence by any state. It is, more broadly, about the majority of states—most non-Western and non-nuclear-armed—claiming the power to speak authoritatively about the future of global nuclear politics; about what counts as "security for all;" the "security conditions" needed for disarmament; and "responsible" state behavior when it comes to nuclear weapons. It is an active step in what former UN High Representative for Disarmament Affairs Sergio Duarte described as the democratization of disarmament.

What Harries' concerns do highlight, however, is that it is incumbent upon ban treaty negotiators, practitioners, and advocates to adhere to its core tenet of universalism. Equality is a foundational part of the ban treaty's claim to legitimacy and what differentiates it from the Nuclear Non-Proliferation Treaty (NPT). That equality must extend to critiques of nuclear-weapon practices. This means condemnation of North Korean nuclear testing, of nuclear safeguards transgressions, and of Russia's recent explicit nuclear threats. Criticism cannot—and must not—be reserved for the United States, the United Kingdom, France, and NATO. These specific critiques are, however, part of a much deeper critique from the humanitarian initiative of the practice of nuclear deterrence, of the massive investment in recapitalizing nuclear arsenals, and of the continuing commitment to what Robert Lifton and Richard Falk have termed "nuclearism." In their own ways, China, India, Pakistan, Israel, Russia, and North Korea are just as complicit as their NATO counterparts in maintaining political and military systems capable of administering horrific levels of indiscriminate violence with nuclear weapons. A ban treaty that unconditionally prohibits all nuclear weapons—whoever possesses them —is a necessary step towards their elimination.

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REPLY: TAKING DETERRENCE SERIOUSLY

By Matthew Harries

Nick Ritchie's response is thoughtful and fair-minded, and his emphasis on the ban treaty's universalism is welcome. But he, like the broader ban movement itself, glosses over two questions that will need to be answered for nuclear disarmament to become a reality.

The first question is why exactly, as Ritchie notes, the "vast majority of states have learned to live without nuclear weapons." Part of the answer, however awkward it may be to acknowledge, is that extended-nuclear-deterrence guarantees have been crucial in dampening U.S. allies' enthusiasm for developing nuclear weapons of their own. Ritchie's reference to "deterrence dogma" suggests he thinks that this is a kind of false consciousness. But it is not clear how delegitimization alone would persuade such states that nuclear deterrence is not a useful defense against belligerent, nuclear-armed adversaries. Another part of the answer is the NPT. This is why many observers worry that, by challenging the authority of the NPT, a ban could in the long term perversely contribute to global proliferation risks.

The second question is how disarmament driven by delegitimization is actually supposed to happen. Ritchie suggests that a "ban treaty would not call for any state to disarm unilaterally," and that states will at some point simply realize that nuclear weapons are no longer acceptable. Yet states that rely on nuclear weapons for their security are unlikely to relinquish them without verifiable assurances that their nuclear-armed rivals are doing so too. The ban's core supporters explicitly do not try to solve this problem, instead seeking prohibition first; the practicalities of elimination will be left for another day.

At the root of both questions is another, more fundamental one: can nuclear weapons ever have utility? Ban supporters are so convinced of the illegitimacy of nuclear weapons that, for them, the answer is obvious: if the threat of nuclear use is illegitimate in all circumstances, then nuclear weapons are useless. For others, however, nuclear deterrence—whatever its moral dilemmas—is not simply dogma, but reflects the way states behave when they are under threat. The awfulness of nuclear weapons, in other words, is what makes states believe they are a powerful inhibitor against potential aggression. It is not unreasonable to argue that nuclear weapons are illegitimate. But doing so while rejecting any notion of their utility, however unpalatable that might be, means ducking crucial questions about the road to a nuclear-weapons-free world.

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