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The Treaty on the Prohibition of Nuclear Weapons: Its Significance and Challenges

*Mitsuru KUROSAWA**

Abstract

The Treaty on the Prohibition of Nuclear Weapons was adopted at the United Nations Conference by 122 affirmative votes with one opposition and one abstention on July 7, 2017. The Treaty was open for signature from September 20, 2017. The initiative for this treaty emerged from international civil society groups and many non-nuclear-weapon states that supported the idea. The conference to negotiate a treaty was held in 2017 to successfully conclude a treaty through the collaboration of these two groups and states, after a discussion held at the United Nations on this issue in 2016. This paper first examines the background and negotiation process, then surveys the content of the treaty as a central issue, next introduces opposing opinions and clarifies the significance of this treaty, and finally points out future challenges.

I Background of the Treaty

The three most important elements of the many elements to the background of this Treaty are the adoption of a humanitarian approach to nuclear disarmament, the reality of a lack of progress in nuclear disarmament, and the initiatives taken by international civil society groups in collaboration with non-nuclear-weapon states.

1 Humanitarian Approach to Nuclear Disarmament

The traditional approach to nuclear disarmament has been based on how to improve and strengthen the national and military security of states. However, the Foreign Minister of Switzerland argued at the 2010 Nuclear Non-Proliferation Treaty (NPT) Review Conference that nuclear weapons had no use, they were immoral and illegal, and proposed that as a nuclear war would threaten the very survival of our common humankind, a debate should be launched concerning the legitimacy of the use of nuclear weapons. In addition to military and political

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considerations, Switzerland's aim was to bring a humanitarian aspect to the heart of the current debate on nuclear disarmament.¹⁾ Switzerland emphasized to take a humanitarian approach to nuclear disarmament and many non-nuclear-weapon states expressed their strong support of this approach. Sixteen states led by Switzerland submitted a Joint Statement on the Humanitarian Dimension of Nuclear Disarmament²⁾ at the first Preparatory Committee for the 2015 NPT Review Conference in 2012, which stated "It is of utmost importance that these weapons never be used again, under any circumstances. The only way to guarantee this is the total, irreversible and verifiable elimination of nuclear weapons, under effective international control. All states must intensify their efforts to outlaw nuclear weapons and achieve a world free of nuclear weapons." Similar statements have been continuously made at NPT Preparatory Committees and the United Nations General Assembly that have increased the number of supporting states. A Joint Statement was announced by Austria on behalf of 159 states at the 2015 NPT Review Conference.

International Conferences on the Humanitarian Impact of Nuclear Weapons were held three times to demonstrate other concrete progress made by this approach. Their main objective has been to present a facts-based understanding of the humanitarian impacts of nuclear weapon detonations and to facilitate an informed discussion of these effects with stakeholders from states, the United Nations, other international organizations, and civil society. Delegations representing 127 states, the United Nations, the International Committee of the Red Cross and civil society participated in the first conference held in Oslo in March 2013. One hundred forty six states participated in the second Conference held in Nayarit, Mexico in February 2014, and 158 states including the United States and the United Kingdom participated in the third Conference held in Vienna in December 2014.

Some key points from the presentations and discussions at these Conferences included that it would be unlikely that state or international body could address

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- 1) Statement by Micheline Calmy-Rey, Head of the Federal Department of Foreign Affairs, 8th Review Conference of the States Parties to the Nuclear Non-Proliferation Treaty, General Debate, New York, 4 May 2010. <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2010/statements/3May_Switzerland.pdf>
 - 2) First Session of the Preparatory Committee for the 2015 NPT Review Conference, "Joint Statement on the Humanitarian Dimension of Nuclear Disarmament," 2 May 2012. <<http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom12/statement/2May.IHI.pdf>>

the immediate humanitarian emergency caused by a nuclear weapon detonation, that historical experience from the use and testing of nuclear weapons have demonstrated their devastating immediate and long-term effects, that the effects of a nuclear weapon detonation would not be constrained by national borders, and that beyond the immediate death and destruction caused by a detonation, socio-economic development would be hampered and the environment would be damaged.

2 No Progress on Nuclear Disarmament

President Obama made a historical address at Prague in 2009 on pursuing a world without nuclear weapons to reset the US's relations with Russia and concluded the New Strategic Arms Reduction Treaty (START), which required both countries to reduce their number of nuclear warheads down to 5500 within seven years. This undertaking is still in the process of being fulfilled by the two countries. Obama proposed to further reduce the number of nuclear warheads by one third at his Berlin address in June 2013, but Russia did not respond. In addition, Russia invaded and occupied the Crimean Peninsula in 2014. That made the situation much worse and the friendly relations between the two became impossible. Consequently, there have been no bilateral negotiations on nuclear disarmament.

In addition, the United States had been arguing during this time that Russia had been violating the undertakings under the Intermediate-range Nuclear Forces (INF) Treaty signed in 1986, and the Special Verification Commission established for consultation under the INF Treaty was not able to function. Bilateral nuclear disarmament talks completely stopped after the ratification of the New START Treaty.

However, the Comprehensive Nuclear Test-Ban Treaty (CTBT) in multilateral nuclear disarmament efforts has not yet entered into force even after more than 20 years have passed and the prospect for its entry into force seems to be very low and remote. The United States and China, India and Pakistan in South Asia, Israel, Egypt, and Iran in the Middle East, and North Korea must ratify the treaty for the CTBT to enter into force.

No negotiations have occurred for more than 20 years on a Fissile Material Cut-Off Treaty (FMCT), which were supposed to start just after the CTBT was signed in 1996. The forum for its negotiation is believed to be the Conference on Disarmament (CD), i.e., the only multilateral disarmament negotiation forum, which consists of 65 states and functions according to the rule of consensus. As

some states including Pakistan strongly oppose the start of negotiations on an FMCT, there is no prospect for negotiations to start.

In addition to the lack of progress on nuclear disarmament, which is the main reason for the new approach, the fact that nuclear-weapon states are increasing and strengthening or modernizing their nuclear arsenals has had a strong impact on support for a new treaty on the prohibition of nuclear weapons. These states are doing something that is completely opposite to nuclear disarmament. Donald Trump has called for the U.S. to greatly strengthen and expand its nuclear capabilities and said that the U.S. would outmatch rivals in a new nuclear arms race. Vladimir Putin says that Russian military power is stronger than that of its foes and has called for nuclear weaponry to be reinforced. Russia has further expanded the situations in which nuclear weapons could be used. These events seem to have led frustration by non-nuclear-weapon states to its peak.

3 Campaign by International Civil Society

First, the International Campaign to Abolish Nuclear Weapons (ICAN) is a global coalition of non-governmental organizations working for a nuclear-weapon-free world. It has urged all nations to start negotiations now on a treaty completely banning nuclear weapons and has explained its purposes and content as follows³⁾:

Negotiations on a treaty banning nuclear weapons should be undertaken by committed nations even without the participation of those armed with nuclear weapons. A nuclear weapons ban would globalize what nuclear-weapon-free zone treaties have done regionally. The prohibition of weapons typically precedes and stimulates their elimination. Underpinning the growing call for a ban is a firm belief that changing the “rules” regarding nuclear weapons would have a significant impact. A ban treaty would powerfully challenge any notion that possessing nuclear weapons is legitimate for certain states.

Nuclear-free nations could initiate a negotiating process and even adopt the final treaty text without having all or indeed any of the nuclear-armed nations on board. A ban treaty would complement and reinforce the NPT and would be a step towards implementing this fundamental provision of the treaty. The practical benefits of stigmatizing nuclear weapons would strengthen the global taboo against the use and possession of nuclear weapons. A ban on nuclear weapons would enhance everyone’s security.

3) The International Campaign to Abolish Nuclear Weapons (ICAN), *Ban Nuclear Weapons Now*, July 2013, <<http://www.icanw.org/wp-content/uploads/2012/08/BanNuclearWeaponsNow.pdf#>>

Second, Article 36 and Reaching Critical Will explains that as the possible principles and elements for a treaty, it would entail the development of an international legal instrument prohibiting the use, development, production, stockpiling, transfer, acquisition, deployment and financing of nuclear weapons. It could recognize the responsibilities of states to ensure the rights of victims of nuclear weapon use or testing, and it could provide a framework for the elimination of nuclear weapons within agreed timeframes. How a ban treaty can be done is the responsibility of all states. A treaty could be developed and adopted even without the participation of the nuclear-armed states. Such a treaty should not be seen as antagonistic towards nuclear-armed states. By contribution to international stigmatization and rejection of these weapons, it should be seen as supportive to all disarmament and arms control efforts. Banning nuclear weapons is a pragmatic way to confront the risk posed by nuclear weapons⁴).

II Negotiation Process of the Treaty

1 2016 Open-Ended Working Group

The UN General Assembly adopted resolution 70/33 “Taking forward Multilateral Nuclear Disarmament” in December 2015 and decided to convene an Open-Ended Working Group (OEWG) to substantively address effective legal measures, legal provisions and norms that would need to be concluded to attain and maintain a world without nuclear weapons. The Working Group was held in February, May, and August 2016, where four proposals for a treaty banning nuclear weapons were discussed.

First, a majority of states including 54 African states, 10 ASEAN states, 33 Latin American states as well as states from Asia and the Pacific, and Europe expressed support for the commencement of negotiations in the General Assembly in 2017 on a legally-binding instrument to prohibit nuclear weapons. Possible measures of such an instrument could include: (a) prohibitions on the acquisition, possession, stockpiling, development, testing, and production of nuclear weapons, (b) prohibitions on participating in any use of nuclear weapons, (c) prohibitions on permitting nuclear weapons in national territories, (d) prohibitions on financing nuclear weapon activities, (e) prohibitions on assisting any activity prohibited by the treaty, and (f) recognition of the rights of victims and a commitment to provide assistance. It would be an interim or partial step toward nuclear

4) Ray Acheson, Thomas Nash, and Richard Moyes, *A Treaty Banning Nuclear Weapons*, Article 36 and Reaching Critical Will, May 2014. <<http://www.reachingcriticalwill.org/images/documents/Publications/a-treaty-banning-nuclear-weapons.pdf>>

disarmament as it would not include measures for elimination and would leave measures for destruction as a matter for future negotiations. It would also contribute to the progressive stigmatization of nuclear weapons⁵⁾.

Second, many states supported a comprehensive nuclear weapons convention, which would set out general obligations, prohibitions, and practical arrangements for time-bound irreversible and verifiable nuclear disarmament. These states considered that the process for negotiating and bringing it to a conclusion should include a phased program for the complete elimination of nuclear weapons within a specified timeframe. It was noted that it would be technically difficult to negotiate detailed provisions for the verified elimination of nuclear weapons without the involvement of states possessing nuclear weapons.

Third, some states described as a possible option a framework agreement, which would comprise either a set of mutually reinforcing instruments dealing progressively with various aspects of the nuclear disarmament process, or a chapeau agreement followed by subsidiary agreements or protocols for flexibility. It would not necessarily include a specific timeframe for accomplishing the elimination of nuclear weapons. It was proposed that a first subsidiary agreement or protocol could be a prohibition on the use or threat of use of nuclear weapons.

Fourth, a number of states expressed support for a “progressive approach” that focused on the importance of the existing global regime, in particular the NPT. Within the framework of the treaty, both non-nuclear-weapon states and nuclear-weapon states are needed to work together on building blocks consisting of parallel and simultaneous effective legal and non-legal measures that are mutually enforcing. An important landmark would be a “minimization point” where weapon numbers are reduced to very low numbers. When global zero becomes within reach, additional legal measures would be needed to achieve and maintain a world without nuclear weapons. States supporting this approach list, as effective legal measures, the early entry into force of the CTBT, negotiation of an FMCT, negotiations on a post-New START Treaty, and strengthening nuclear-weapon-free

5) See “Nuclear Weapons and Security: A Humanitarian Perspective,” submitted by Austria, A/AC.286/WP.4, 22 February 2016. <<http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/OEWG/2016/Documents/WP.4.pdf>>; “Proposals by the Community of Latin America and Caribbean States (CELAC) on effective legal measures to attain and maintain a world without nuclear weapons, submitted by the Dominican Republic in its capacity of President pro tempore of CELAC, A/AC/286/WP.15, 12 April 2016. <<http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/OEWG/2016/Documents/WP.15.pdf>>

zones⁶).

The Working Group adopted the report on the final day, on August 19, which provided in its conclusions and agreed recommendations that it recommended with widespread support for the General Assembly to convene a conference in 2017, open to all states, with the participation and contribution of international organizations and civil society, to negotiate a legally-binding instrument to prohibit nuclear weapons, leading towards their total elimination.

Based on this recommendation, the UN General Assembly adopted resolution 71/258 with 113 states approving, 35 states opposing and 13 states abstaining, on December 23, 2016, the main part of which provides for as follows;

8. *Decides* to convene in 2017 a United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination;

9. *Encourages* all Member States to participate in the conference;

10. *Decides* that the conference shall convene in New York, under the rules of procedure of the General Assembly unless otherwise agreed by the conference, from 27 to 31 March and from 15 June to 7 July, with the participation and contribution of international organizations and civil society representatives;

12. *Calls upon* States participating in the conference to make their best endeavours to conclude as soon as possible a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination.

2 The Conference for Negotiating a Treaty

In accordance with the UN General Assembly resolution, the first session of the negotiation conference was held from March 27 to 31. On the first day, the representatives of the opposing states, including the United States, the United Kingdom, France, and others, expressed their opposition outside of the General Assembly Hall. U.S. Ambassador Nikki R. Haley said, "There is nothing we want more for my family than a world with no nuclear weapons. But we have to be realistic. Is there anyone who thinks that North Korea would ban nuclear weapons?" U.K. Ambassador Matthew Rycroft said his country was not participating in the talks "because we do not believe that those negotiations will lead to

6) See "A Progressive Approach to a World without Nuclear Weapons: Revisiting the Building Blocks Paradigm," submitted by 24 states under the nuclear umbrella of the U.S., A/AC.286/WP.9, 24 February 2016. <<http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/OEWG/2016/Documents/WP.9.pdf>>

effective progress on global nuclear disarmament⁷⁾.”

Japanese Ambassador, Mr. Nobushige Takamizawa, attended the conference on the first day and explained Japan’s no-participation in the negotiation as follows;

A ban treaty, if it does not lead to an actual reduction of a single nuclear warhead, would be of little significance. In fact, efforts to make such a treaty without the involvement 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 don’t think that it would lead to the solution of real security issues, such as the threat by North Korea. Regrettably, given the present circumstances, we must say that it would be difficult for Japan to participate in this Conference in a constructive manner and in good faith⁸⁾.

The first session was a good opportunity for the participating states to explain their general opinions on a prospective treaty, and in particular, active discussions were conducted on the principles and purposes, which should be included in the preamble to a treaty, and the main and principal activities, which should be prohibited in connection with nuclear weapons. In addition, other issues, which should be included in a treaty, such an institutional arrangement and final clauses were debated. The civil societies were also given the opportunity to express their opinions. The President of the conference, based on the discussions in the first session, submitted her first version of the Draft Convention on the Prohibition of Nuclear Weapons⁹⁾ on May 22, 2017. It consisted of 14 preambular paragraphs and 21 articles. It is prohibited under Article 1 on general obligations, to develop, produce, manufacture, otherwise acquire, and possess or stockpile nuclear weapons. Further, it is prohibited to transfer and receive, or use nuclear weapons, and carry out nuclear weapon test explosions. It is also forbidden to assist any activities prohibited by the treaty and stationing of nuclear weapons.

The second session started on June 15, and the President submitted a revised

7) Somini Sengupta and Rick Gladstone, “United States and Allies Protest U.N. Talks to Ban Nuclear Weapons,” *New York Times*, March 27, 2017. <<https://nyti.ms/2nF0fUu>>

8) Statement by H.E. Mr. Nobushige Takamizawa, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Japan to the Conference on Disarmament at the High-level Segment of the United Nations Conference, 27 March 2017, New York. <<http://www.statement.unmeetings.org/media2/14683256/japan.pdf>>

9) Draft Convention on the Prohibition of Nuclear Weapons, submitted by the President of the Conference, A/CONF.229/2017/CRP.1, 22 May 2017. <<http://www.s3.amazonaws.com/unoda-web/wp.content/uploads/2017/05/A-CONF.229-CRP.1.pdf>>

version of the Draft Treaty on the Prohibition of Nuclear Weapons¹⁰⁾ on June 27. The title was changed from a Convention to a Treaty, and the number of preambular paragraphs was increased from 14 to 24 by including many new ideas proposed by the participants. The number of Articles remained the same and the content of Article 1 on general obligations was also the same as that in the previous one. The third version of the Draft Treaty¹¹⁾ was submitted by the President on July 3, and the preambular paragraphs were the same as those in the previous one. However, the title of Article 1 was changed to “prohibitions” and “nuclear weapons test explosions” was changed into “test of nuclear weapons” and “threaten to use nuclear weapons” was newly included. A slightly changed version¹²⁾ was submitted on July 6, and finally the treaty¹³⁾ was adopted on July 7 with 122 states approving, one state, the Netherlands, opposing, and one state, Singapore, abstaining.

On the day of the adoption of the Treaty on the Prohibition of Nuclear Weapons, the United States, the United Kingdom, and France submitted a Joint Press Statement, explaining their strong opposition to the Treaty as follows:

France, the United Kingdom and the United States have not taken part in the negotiation of the treaty on the prohibition of nuclear weapons. 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 offers no solution to the grave threat posed by North Korea’s nuclear program, nor does it address other security challenges that make nuclear deterrence necessary. A ban treaty also risks undermining the existing international security architecture which contributes

10) Draft Treaty on the Prohibition of Nuclear Weapons, submitted by the President of the Conference, A/CONF.229/2017/CRP.1/Rev.1, 27 June 2017. <<http://www.s3.amazonaws.com/undoca-web/wp-content/uploads/2017/06/A-CONF.229-2017-CRP.1-Rev.1.pdf>>

11) Draft Treaty on the Prohibition of Nuclear Weapons, submitted by the President of the Conference, A/CONF.229/2017/L.3, 3 July 2017. <<http://www.undocs.org/en/a/conf.229/2017/L.3>>

12) Draft Treaty on the Prohibition of Nuclear Weapons, submitted by the President of the Conference, A/CONF.229/2017/L.3/Rev.1, 6 July 2017. <<http://www.undocs.org/en/a/conf.229/2017/L.3/Rev.1>>

13) Treaty on the Prohibition of Nuclear Weapons, A/CONF.229/2017/8, 7 July 2017. <<http://www.undocs.org/A/CONF.229/2017/8>>

to the maintenance of international peace and security¹⁴⁾.

III The Contents of the Treaty

1 Preamble

The contents of the preamble of a treaty do not have a legally binding force, but they are very important to understand the purposes and background of a treaty, and constitute an indispensable part in the interpretation of a treaty. Fourteen paragraphs were included in the first draft convention by the President, but with increasing demands from the participants the treaty finally included 24 paragraphs.

The first characteristic of the preamble is that this Treaty, by adopting the humanitarian approach to nuclear disarmament, pursues the process of nuclear disarmament from the humanitarian point of view. State Parties in preambular paragraph 2 are deeply concerned about “the catastrophic humanitarian consequences that would result from any use of nuclear weapons”, and recognize “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.” They are mindful in paragraph 3 of “the risks posed by the continued existence of nuclear weapons” and emphasize that “these risks concern the security of all humanity.” Paragraph 6 also refers to “the victims of the use of nuclear weapons (Hibakusha)”.

The second characteristic is concerned with an emphasis on legal prohibition. Paragraph 8 states the need to comply with applicable international law be reaffirmed, paragraph 9 states participants base themselves on the principles and rules of international humanitarian law, and paragraph 10 declares they consider that any use of nuclear weapons would be contrary to the rules of international law. Paragraph 11 reaffirms that any use of nuclear weapons would be abhorrent to the principles of humanity, and paragraph 12 recalls that states must refrain from the threat or use of force.

The third characteristic in paragraph 14 is concerned with, as one of the fundamental reasons to proceed with this treaty negotiation, “the slow pace of nuclear disarmament, the continued reliance on nuclear weapons in military and security concepts, doctrines and policies, and the waste of economic and human resources on programs for the production, maintenance and modernization of

14) United States Mission to the United Nations, 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 City, July 7, 2017. <<http://www.usun.state.gov/remarks/7892>>

nuclear weapons. This paragraph not only emphasizes that Article 6 of the NPT has not been implemented, but also nuclear modernization programs have been promoted.

2 Prohibitions

Under Article 1 on prohibitions, each state party undertakes never under any circumstances to:

- (a) Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons¹⁵⁾,
- (b) Transfer to any recipient whatsoever nuclear weapons,
- (c) Receive the transfer of or control over nuclear weapons,
- (d) Use or threaten to use nuclear weapons,
- (e) Assist, encourage or induce anyone to engage in any activities prohibited,
- (f) Seek or receive any assistance from anyone to engage in any activities prohibited,
- (g) Allow any stationing, installation or deployment of any nuclear weapons in its territory.

The contents of Article 1 on prohibitions are almost the same as those in the first draft by the President and only small changes were introduced. One of the changes was to alter “carry out any nuclear weapon test explosions” to “test nuclear weapons”. The old version was based on the provisions of the CTBT, which prohibit test explosion that can be verified, but the new version was to prohibit the testing of nuclear weapons, which could be interpreted to include the prohibition of computer simulations or sub-critical tests. The other change was the inclusion of “threaten to use nuclear weapons” in addition to “use nuclear weapons”. There was opposition to its inclusion by some states that claimed that it would not be necessary because the UN Charter provides for refraining from the use or threat of use of force. However, states that supported the treaty argued that the prohibition of the threat of use of nuclear weapons was indispensable to delegitimize the theory of nuclear deterrence.

Other issues on which confronting arguments were developed were the prohibition of “transit of nuclear weapons” and “financing to nuclear weapon related activities.” There were some opinions that the prohibition of transit could

15) Activities under the formal text of the Treaty are not only concerned with “nuclear weapons” but also “other nuclear explosive devices”. However, I have only referred “nuclear weapons” in the paper, which mean “nuclear weapons or other nuclear explosive devices”, for the sake of convenience.

not be possible from a physical point of view and from the point of view of enforcement and verification. There was opposition on financing in that its definition was ambiguous, and its effectiveness was difficult to maintain. As a result, these two proposals were not accepted.

The central obligations for NPT, which has similar provisions with the Prohibition Treaty, are the prohibitions by nuclear-weapon states to transfer nuclear weapons and by non-nuclear-weapon states to receive them as well as to manufacture or otherwise acquire them. The concept of nuclear-weapon-free zones (NWFZs) include prohibitions by non-nuclear-weapon states from permitting to deploy nuclear weapons in addition to their obligations under the NPT. The Prohibition Treaty includes all these obligations by non-nuclear-weapon states, which strengthen the NPT and NWFZ treaties.

One of the main obligations of the Prohibition Treaty is for states not to use or threaten to use nuclear weapons, as the original idea for a new treaty emphasized the prohibitions to use or possess nuclear weapons. The NPT neither includes any references to the prohibition of the use of nuclear weapons, nor includes prohibition of the use of nuclear weapons against non-nuclear-weapon states, i.e., negative security assurances. NWFZ treaties, on the other hand, include negative security assurances.

Finally, the Prohibition Treaty prohibits to assist, encourage, or induce anyone to engage in any activities prohibited under the Treaty as well as to seek or receive any assistance. As these provisions are not very precise, they may permit a very wide range of flexible interpretations.

3 Declarations and Measures towards the Total Elimination of Nuclear Weapons

Although the initial principal focus of the Treaty was on the prohibition of the use and possession of nuclear weapons, arguments to provide ways of totally eliminating nuclear weapons intensified during the negotiations, and Articles 2 and 4 stipulate how to declare and take action towards total elimination so that nuclear possessing countries could join the Treaty. Article 2 stipulates three types of declarations, i.e., (a) declare whether a state owned nuclear weapons and eliminated their programs, (b) declare whether it owns nuclear weapons, and (c) declare whether there are any nuclear weapons in its territory that is owned by another state.

Article 4 provides for ways by which a state that had nuclear weapons, has nuclear weapons, or permits the deployment of nuclear weapons could join the Treaty. First, a state that possessed and eliminated nuclear weapons prior to the

entry into force of this Treaty shall cooperate with the competent international authority. Second, a state that owns nuclear weapons shall immediately remove such weapons, and destroy them not later than a deadline to be determined by the first meeting of States Parties. Third, a state that has nuclear weapons in its territory that are owned by another state shall ensure the prompt removal of such weapons not later than a deadline to be determined by the first meeting of States Parties.

Two ways were earlier discussed, i.e., to join the Treaty after the destruction of nuclear weapons or to destroy nuclear weapons after joining the Treaty. However, the three ways above were later provided for in the Treaty. However, there are no provisions on ways states like Japan that have no nuclear weapons but are under the nuclear umbrella could or should join the Treaty. Such states seem to be in a much easier position than nuclear-possessing states or countries that permit the deployment of nuclear weapons to join the Treaty and such states should be recommended to join the Treaty.

Under Article 3 on safeguards, each State Party shall maintain its International Atomic Energy Agency (IAEA) safeguards obligations in force, without prejudice to any additional relevant instruments. Many states argued that the safeguards system under the Treaty should be one under the IAEA Additional Protocol, but a few states were strongly opposed to this idea and it was not adopted.

4 Implementation and Victim Assistance

Each State Party under Article 5 is required to adopt necessary measures to implement its obligations and take appropriate legal, administrative, and other measures to prevent and suppress any prohibited activities.

One of the most important characteristics of this Treaty is that it includes obligations to assist victims from the use or testing of nuclear weapons and to provide environmental remediation. The supporting states call this “positive obligations” in comparison with “negative obligations” under Article 1. Article 6 provides that each State Party shall, with respect to individuals under its jurisdiction who are affected by the use or testing of nuclear weapons, adequately provide assistance, and with respect to areas under its jurisdiction contaminated as a result of activities related to the testing or use of nuclear weapons, take necessary measures towards environmental remediation. These are domestic measures.

Article 7 provides for international cooperation and assistance. Each States Party in a position to do so shall provide technical, material, and financial

assistance to States Parties affected and shall provide assistance to victims from the use or testing of nuclear weapons, and assistance may be provided through the United Nations system and others. A State Party that has used or tested nuclear weapons shall have the responsibility to provide adequate assistance to affected States Parties. The last item was finally inserted after many active discussions.

5 Institutionalization and Final Clauses

Article 8 provides for the Meeting of States Parties to consider and take decisions with regard to the application or implementation of this Treaty. The first meeting of States Parties shall be convened within one year of the entry into force of this Treaty, and further meetings shall be convened on a biennial basis. Extraordinary meetings shall also be convened. The review conference shall be convened after five years following the entry into force of this Treaty and further conferences at intervals of six years. States not party to the Treaty shall be invited to attend the meetings as observers. The implementation and status of this Treaty, and measures for the verified, time-bound, and irreversible elimination of nuclear-weapon programs are mentioned as measures that should be considered and decided.

The cost shall be borne in Article 9 in accordance with the UN scale of assessment that is appropriately adjusted. Article 10 provides for amendments that any State Party may propose amendments, and if a majority of States Parties notify that they support these, then the proposal shall be considered at the next meeting of States Parties or review conference. Amendment shall be adopted by a positive vote of a two thirds majority, and the amendment shall enter into force for each State Party that deposits its instrument of ratification.

The concerned parties under Article 11 on the settlement of disputes shall consult to settle disputes by peaceful means in accordance with Article 33 of the UN Charter. Article 12 on universality provides that each State Party shall engage States not parties to sign and ratify the Treaty.

Regarding the process of its entry into force, Article 13 stipulates that the treaty shall be open for signature to all States at UN Headquarters in New York as from 20 September 2017. Article 14 provides that this Treaty shall be subject to ratification, and Article 15 states that this Treaty shall enter into force 90 days after the fiftieth instrument of ratification has been deposited. The initial President's draft provided that the fortieth instrument of ratification shall be necessary for the entry into force of the Treaty, but after hot discussions the ratification by fifty states became the condition.

Article 16 prohibits reservation to the articles of the Treaty. Article 17 provides that this Treaty shall be of unlimited duration, and each State Party shall have the right to withdraw from the Treaty under some conditions and such withdrawal shall take effect 12 months after notification. The condition of withdrawal is the same as that in the NPT that “if it decides that extraordinary events related to the subject matter of the Treaty have jeopardized the supreme interests of its country.” Although some countries were strongly opposed to this because the Prohibition Treaty should not permit the right to withdraw, the right to withdraw was finally included, but the original idea of three months was extended to 12 months for the notification to take effect.

Article 18 provides that the implementation of this Treaty shall not prejudice obligations undertaken with regard to existing international agreements where these obligations are consistent with the Treaty. The first President’s draft stipulated that “this Convention does not affect the right and obligations of the States Parties under the Treaty on the Non-Proliferation of Nuclear Weapons,” and its focus on the NPT was criticized. The UN Secretary-General is designated as the Depositary under Article 19, and the Arabic, Chinese, English, French, Russian, and Spanish texts of this Treaty shall be equally authentic under Article 20.

IV Opposition to the Treaty

1 Arguments against the Treaty

Nuclear-weapons possessing countries and those non-nuclear-weapon states under the nuclear umbrella have been strongly opposed to this Treaty, and deep divisions and confrontations emerged among these states and Treaty-supporting states. The United States, Russia, the United Kingdom, France, and China, i.e., the five nuclear-weapon states under the NPT, were opposed to the Treaty in their P5 joint statement¹⁶).

The P5 expressed their deep concern with efforts to pursue approaches to nuclear disarmament that disregard the global strategic context. Such efforts will threaten the consensus-based approach that has served for decades to strengthen the NPT regime and enhance the Treaty’s contribution to international security and may negatively affect the prospects for consensus at future NPT Review Conferences. The P5 reiterated a call upon all members of the

16) U.S. Department of State, Joint Statement from the Nuclear-Weapon States at the 2016 Washington D.C. P5 Conference, September 15, 2016. <<http://2009-2017.state.gov/r/pa/prs/2016/09/261994.html>>

international community to engage in an open and constructive dialogue on nuclear disarmament, international security, and stability issues that is inclusive of all states and focused on practical measures leading to a world without nuclear weapons and other weapons of mass destruction.

The United States cited four reasons for opposing the Treaty at the 2016 UN General Assembly¹⁷⁾. First, a treaty banning nuclear weapons will not lead to any further reductions because it will not include the states that possess nuclear weapons, Second, a ban treaty would undermine existing nonproliferation and disarmament regime. It risks creating an unbridgeable divide between states, polarizing the political environment on nuclear disarmament, and effectively limiting any future prospect for achieving consensus. Third, verification regimes are one of the key components of successful nuclear disarmament and nonproliferation regime. Finally, a ban treaty runs the risk of undermining regional security. It is unrealistic to ask non-nuclear weapon states and nuclear weapon states alike to reject their current security arrangements without addressing the underlying security concerns.

The most direct and strongest opposition to the Treaty is a non-paper¹⁸⁾ sent to NATO non-nuclear member states on October 17, 2016, which states that we feel efforts to negotiate an immediate ban on nuclear weapons or to delegitimize nuclear deterrence are fundamentally at odds with NATO's basic policies on deterrence and our shared security interests. The United States called on all allies and partners to vote against negotiations on a nuclear weapons ban treaty, and not to merely abstain. In addition, if negotiations did commence, the United States would ask allies and partners to refrain from joining them. The United States stated at least nine of the elements suggested in the open-ended working group (OEWG) Synthesis Report could have a direct impact on the U.S. ability to meet its NATO and Asia/Pacific extended deterrence commitment and the ability of their allies and partners to engage in joint defense operations with the United States and other nuclear-weapon states.

The United States, the United Kingdom, and France explained their reasons for opposition that a ban on nuclear weapons was liable to undermine the review

17) Statement by Ambassador Robert A. Wood, Delegation of the United States of America, 71st UNGA First Committee, October 14, 2016. <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/statements/14Oct_USA.pdf>

18) United States Non-Paper: "Defense Impacts of Potential United Nations General Assembly Nuclear Weapons Ban Treaty", Note by the Secretary, 17 October 2016. <http://www.icanw/wp-content/uploads/2016/10/NATO_OCT2016.pdf>

process of the NPT by rendering consensus impossible, thereby creating a far less secure world. This proposed ban failed to take into account the requisite security considerations and would not eliminate nuclear weapons. It contravened a consensus-based approach, and this would deepen the divide among NPT States Parties. France, the United Kingdom, and the United States believed that a step-by-step approach was the only way to combine the imperatives of disarmament and the maintenance of global security¹⁹⁾.

Russia was also opposed to the Treaty and stated: “First of all, this kind of a hasty initiative undermines and erodes the existing mechanism for multilateral initiatives in the sphere of nuclear disarmament, and also undermines the NPT. 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. We categorically object to revision of consensus-based provisions of the action plan. Third, from a purely practical standpoint, any initiative to ban or prohibit nuclear weapons appears quite dubious. Without the participation of nuclear powers this conference loses all practical purpose²⁰⁾.”

Twenty-six states, including non-nuclear-weapon states within NATO and Japan, the Republic of Korea, and Australia explained that they have underlined the importance of addressing relevant political, security, and humanitarian considerations, that nuclear disarmament cannot be achieved without taking regional and global security considerations into account, and that such negotiations would only engage non-nuclear weapon states that are already bound by the NPT not to develop nuclear weapons and would likely mirror existing obligations, creating confusion and ambiguity²¹⁾.

2 Analysis of Opposing Arguments

First, the central issue on the debate of the proponents and opponents of the Prohibition Treaty rests on the different opinions on what is the best way or approach to proceed towards a world without nuclear weapons. The most popular traditional methodology has been a step-by-step approach supported by nuclear-

19) France, United Kingdom & United States, Explanation of Vote, 27 October 2016. <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/eov/27Oct_France-et-al.pdf>

20) Russia, Explanation of Vote, 27 October 2016. <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/eov/27Oct_Russia.pdf>

21) General Statement, Germany on behalf of 26 states, 17 10 2016. <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/statements/17Oct_Germany-et-al.pdf>

weapon states, and a progressive building-blocks tactic supported by non-nuclear-weapon states under the nuclear umbrella. The common conditions through these two approaches are that the process towards nuclear disarmament must include the nuclear-weapon states and decisions must be taken by consensus. In addition, they also claim that the process must start gradually from practical and possible measures and nuclear disarmament must accompany verification measures.

Contrary to these approaches, the approach through the Prohibition Treaty argues for the fundamental principles that the participation of nuclear-weapon states is not necessarily indispensable, decisions do not have to be based on consensus, and the Prohibition Treaty will “prohibit” nuclear weapons, and “destruction and verification” will be taken up at later stages. This approach is quite new and completely different from traditional nuclear disarmament approaches. They are completely different and cannot be reconciled.

The approaches particularly argued for by nuclear-weapon states and non-nuclear-weapon states under the nuclear umbrella have not been able to produce any positive outcomes in nuclear disarmament in the past few years. This fact makes their approaches less convincing and less attractive, and this is one of the most important reasons why a new approach towards nuclear disarmament has emerged and gained widespread support.

Second, opponents criticize new approaches because they completely dismiss the issue of security that they think is indispensable in the discussions on nuclear disarmament. The principled position of nuclear-weapon states is that nuclear disarmament only becomes possible when their security is assured. Non-nuclear-weapon states under the nuclear umbrella always argue that not only humanitarian dimensions but also security dimensions must be taken into account to proceed towards nuclear disarmament. These states depend on nuclear weapons for the central part of their national security.

In contrast, the proponents for the Prohibition Treaty want to proceed towards nuclear disarmament based on the only reason that nuclear weapons are inhumane. Their arguments are based on the fact that they do not depend on nuclear weapons for their security, and on their understanding that nuclear weapons would not strengthen national or international security and rather they would risk the security of all. They argue that once nuclear weapons are used, not only the parties to a conflict but also all states in the world would suffer, and the security of all of humanity would be undermined.

Third, the opponents argue that the Prohibition Treaty would severely weaken the NPT regime, which is the current basic system for nuclear disarmament and

non-proliferation. The NPT has 193 States Parties, which only excludes India, Pakistan, Israel, and North Korea, and constitutes a fundamental regime on nuclear weapons in the international society. The NPT has a discriminatory nature as it permits the five states to have nuclear weapons but prohibits all other states from possessing them, but it includes the obligation to pursue in good faith negotiations for nuclear disarmament. As a result, the NPT is generally estimated as an extremely important treaty for international peace and security.

A concern was expressed at an earlier time of the discussion that radical proponent states of the Prohibition Treaty would join the Treaty and collectively withdraw from the NPT, as the obligations to non-nuclear-weapon states were almost the same in both treaties. A collective withdrawal would reduce the number of States Parties to the NPT and as a result the reputation and significance of the NPT would be radically reduced and the NPT would be undermined. The existence itself of the NPT might be doubted and the obligations on non-proliferation in particular would radically be weakened.

However, the proponents of the Prohibition Treaty have strongly asserted that the NPT is the basis of the current nuclear disarmament and non-proliferation regime, and that the Prohibition Treaty will never confront or conflict with the NPT but rather complement and provide effectiveness to the NPT, particularly to the obligation under Article 6 of the NPT. These positive attitudes have been seen at the UN General Assembly and at the 2017 Preparatory Committee for the 2020 NPT Review Conference. This concern of collective withdrawal seems to have currently disappeared.

A state party to a treaty is bound by the treaty that it ratified from the viewpoint of international law. The States Parties to the NPT are obliged to implement their duties under the NPT and a prospective state party to the Prohibition Treaty is obliged to implement the duties of that Treaty. Although those states that join both treaties would be bound by both treaties, it seems that there would be no conflicts or discrepancies between the two treaties. As a result, it is necessary for a state party to implement its obligations under the treaty to which it is bound for it to proceed towards nuclear disarmament. Parties to the NPT should work hard to never weaken but to strengthen the NPT regime.

Finally, there is a concern that as the Prohibition Treaty was adopted with the affirmative votes of 122 states and other states were strongly opposed to the Treaty, divisions and confrontations between proponents and opponents would become much harder. This problem will continue and may become more severe unless enough efforts are made to reconcile the two positions. The logic that the

Prohibition Treaty is not acceptable because it would make divisions and confrontations between the proponents and opponents is one-sided and will not contribute to reconciliation between the two. We should work harder to reconcile the opposing positions on the premise that the Prohibition Treaty already exists. We must find some compromise to settle this issue although this will be difficult.

V Significance of the Treaty

The Prohibition Treaty will not reduce even one nuclear weapon, and will not invite actual reduction or elimination of nuclear weapons because no nuclear-possessing countries will join the Treaty. The Treaty will not be directly useful for resolving the North Korean nuclear crisis. The opposing countries criticize that this Treaty has no effectiveness for nuclear disarmament from these points of view. The Treaty was initiated by states with no nuclear weapons, and its main purpose was not traditional limitations, or reduction or elimination of nuclear weapons. Their purpose from a longer perspective, was to stigmatize and de-legitimize nuclear weapons to achieve and maintain a world without nuclear weapons.

Gaukhar Mukhatzhanova who followed the Treaty's negotiations and made a comprehensive analysis of these stated that "the impact of the treaty will become evident only over time. The aim is to delegitimize nuclear weapons and make it more difficult for states to continue to rely on nuclear weapons as part of their military and foreign policy strategies."²²⁾

The greatest significance of this Treaty rests on the fact that it has introduced a purely new approach to nuclear disarmament and changed the fundamental framework of the arguments towards nuclear disarmament by adopting the humanitarian approach to nuclear disarmament. The traditional arguments have focused on the aspect of national and military security, which means nuclear weapons are useful for national and military security.

In contrast, the logical framework for the new approach does not focus on national security but the security of humanity, and not military security but a more comprehensive concept of security including climatic and environmental security, social and developmental security, human security, and others. It particularly emphasizes the threat of nuclear weapons against the very survival of humanity.

The background scientific facts on the nature of nuclear weapon detonation were extensively discussed and clarified through three International Conferences

22) Gaukhar Mukhatzhanova, "The Nuclear Weapons Prohibition Treaty: Negotiations and Beyond," *Arms Control Today*, Vol.47, No.7, September 2017, p.12.

on the Humanitarian Impact of Nuclear Weapons. It was made clear that the effects of nuclear weapon detonation would not be constrained by national borders, and no state or international organization would be able to address immediate humanitarian emergencies or provide sufficient support. Even if the intentional use of nuclear weapons by a state may not be very high, the risk of inadvertent use through accidents, miss-operation of computers, cyber-attacks, as well as detonation of nuclear weapons by terrorists, is increasing.

The principal message provided by the new approach in these current situations is that it is in the very interest of humanity that nuclear weapons should not be used again in any circumstances, and that an absolute guarantee for this to occur is to completely eliminate nuclear weapons.

It is not clear whether only this new humanitarian approach could bring about nuclear elimination, or whether nuclear elimination could be possible without taking security dimensions into account. However, the adoption of the Prohibition Treaty clearly explains that the traditional approach based on national and military security has its limits, and the humanitarian approach is worth pursuing. The issue of security must be considered through much wider meanings that focus on the security of humanity instead of traditional narrowly defined security, which means national and military security.

The second significance that the Prohibition Treaty contributes to is its clear opposition to the current circumstances where no nuclear disarmament measures have been agreed on, the role of nuclear weapons in national security policies has increased, and all nuclear possessing countries are trying to modernize their nuclear weapons and some of them are increasing and strengthening their nuclear arsenals. Their current attitude is completely opposite that of a world without nuclear weapons. The adoption of the Treaty clearly indicates a strong will of objection by proponent states to the current situation that surrounds nuclear weapons.

Nuclear-weapon states and non-nuclear-weapon states under the nuclear umbrella argue that we should proceed by taking a step-by-step approach or a progressive building-block approach, and criticize the Prohibition Treaty. The most important thing that we should be reminded of is that their approaches have not bilaterally borne any fruit in the past several years or multilaterally in the last 20 years. This Treaty is an expression of criticism of the absence of progress in nuclear disarmament despite the obligations under Article 6 of the NPT.

However, the adoption of the Treaty itself will not necessarily solve the criticism of the absence of nuclear disarmament. It will particularly not help solve

short-term issues such as nuclear reduction or the Korean nuclear issue as the purpose of the Prohibition Treaty is long-term and of an abstract nature. It is expected that the adoption of the Treaty will influence the nuclear policy of nuclear possessing states or states under the nuclear umbrella, which would lead to the implementation of Article 6 of the NPT.

VI Challenges to the Treaty

One of the greatest challenges to the Treaty is that a sharp divide and strong confrontation between the Treaty proponents and opponents is emerging as nuclear-weapon states and non-nuclear-weapon states under the nuclear umbrella are harshly opposed to the Treaty. It is very difficult to solve the issue of how to soften and dissolve the confrontation. As those supporting the Treaty will work hard for its signature and ratification, the Treaty may soon enter into force. The Treaty will be implemented among those that ratified it. However, nuclear-weapon states and non-nuclear-weapon states under the nuclear umbrella will not join the Treaty and they are not bound by its obligations.

Each state is bound by the treaty that it has ratified from a legal point of view, and a state party to the Prohibition Treaty must follow the obligations of the NPT as long as it is a state party to the NPT. No legal problems will emerge in this case, as the obligations from each treaty are not conflicting and are almost the same. It is important for each state to implement the obligations that have emerged from each treaty.

The States Parties to the Prohibition Treaty may attach more importance to it from a political point of view, as opponent states attack it and the Prohibition Treaty becomes more equal compared to the NPT. It is necessary for both the proponents and opponents of the Prohibition Treaty to make every effort to relax their confrontations by seriously implementing the obligations of the treaties that they ratified. The supporting countries of the Prohibition Treaty should never take measures that imply they intend to degrade the importance of the NPT.

The second challenge to the Treaty is how the proponents of the Treaty will achieve its purposes. When a treaty enters into force, new obligations imposed by it would generally be implemented for States Parties by taking special activities imposed by the treaty. However, in the case of the Prohibition Treaty, almost all obligations imposed by it have already been imposed by the NPT and there would almost be no new concrete obligations. The principal purpose of the Treaty is to stigmatize, delegitimize, and reduce the value of nuclear weapons in the long term to achieve a world without nuclear weapons.

Therefore, the States Parties to the Prohibition Treaty must work harder to achieve this purpose in the long term. The proponents must remember that their efforts will not end by adopting the Treaty. If they are satisfied with the adoption of the Treaty and do nothing after it is adopted, the purpose of the Treaty will never be achieved. Its opponents would have been working hard to devalue the Treaty or have made it meaningless.

The third challenge claimed by some experts is that this treaty purports to influence public opinions in states and tries to change their national policy on nuclear weapons. However, within democratic states such as the United States, European states, and Japan, public opinion may influence their national policy, whereas China or Russia will have no influence on states, and as a result, democratic states will be in a worse position compared with non-democratic states. These kinds of arguments should be criticized because non-democratic states have been analyzed to be in a better position and the value of democratic systems has been implicitly denied, but it is necessary to respond to these challenges as various experts have asserted such arguments.

The States Parties supporting the Treaty and civil societies that have been energetically working hard for it should respond to this challenge by continuing their activities on stigmatizing nuclear weapons even after this Treaty is adopted and enforced. They should also make greater efforts not only in democratic states but also in undemocratic states to weaken the criticism espoused by some experts. It will be necessary for these proponents to work even harder than before the adoption of the Treaty to achieve the principal purpose and continue their efforts with a much longer timeframe.

