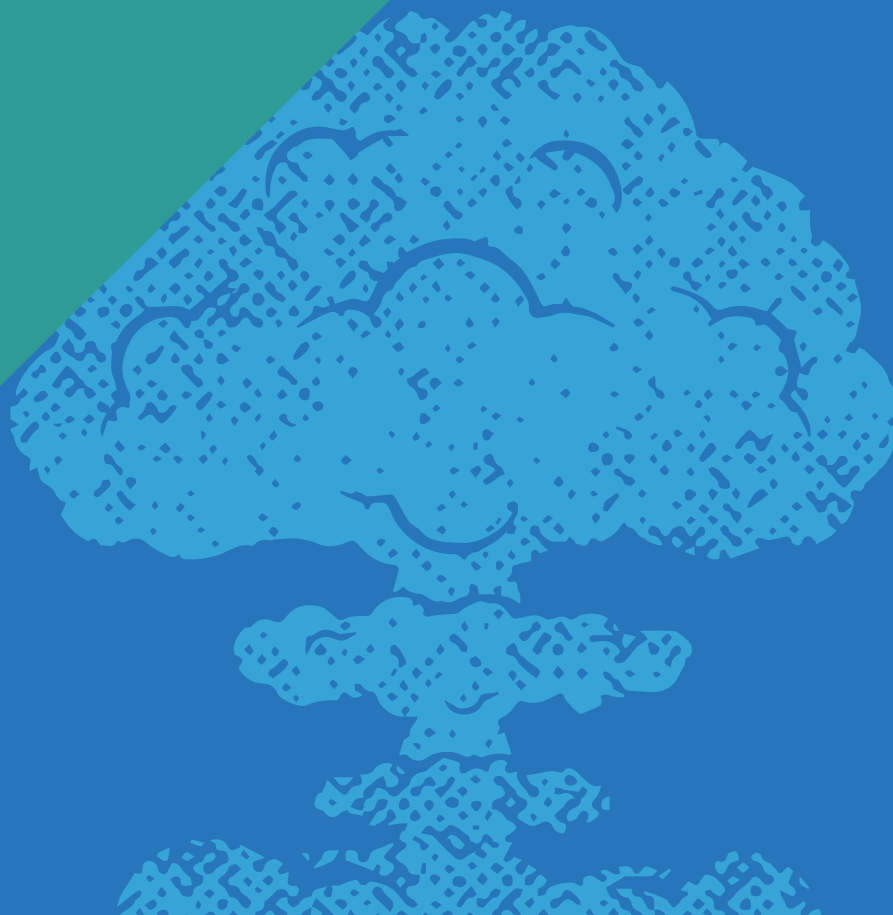


# I SKUGGAN AV MAKTEN

SKUGGUTREDNING TILL

*Utredning av konsekvenserna av ett svenskt tillträde  
till kärnvapenförbudskonventionen*



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**SVENSKA LÄKARE  
MOT KÄRNVAPEN**  
*Nobels fredspris 1985*

INTERNATIONELLA KVINNOFÖRBUNDET FÖR  
**FRED & FRIHET** 

Utgiven av Svenska Läkare mot Kärnvapen och Internationella Kvinnoförbundet för Fred och Frihet, IKFF.

Tillsammans driver organisationerna ICAN, International Campaign to Abolish Nuclear Weapons, i Sverige.  
ICAN tilldelades Nobels fredspris 2017.

Ansvarig utgivare: Malin Nilsson och Josefin Lind  
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Grafisk form: Gabriel Holmbom

2018

# INNEHÅLLSFÖRTECKNING

<b>FÖRORD</b>	<b>4</b>
<b>SETSUKO THURLOW</b> - The Reason Why We Need to Eliminate Nuclear Weapons	<b>6</b>
<b>BONNIE DOCHERTY</b> - The Treaty on the Prohibition on Nuclear Weapons and its Compatibility with Sweden's Security Arrangements	<b>8</b>
<b>STUART MASLEN</b> - The Treaty on the Prohibition of Nuclear Weapons : Implications for Sweden's Imports and Export of Nuclear Material and Items	<b>14</b>
<b>TREASA DUNWORTH</b> - Memorandum on the Treaty on the Prohibition on Nuclear Weapons	<b>18</b>
<b>EIRINI GIORGOU</b> - Safeguards Provisions in the Treaty on the Prohibition of Nuclear Weapons	<b>21</b>
<b>PETER HERBY</b> - Treaty on the Prohibition of Nuclear Weapons: The role of Meetings of States Parties and Review Conferences	<b>24</b>
<b>ERIN HUNT</b> - The Sustainable Development Goals and the Treaty on the Prohibition of Nuclear Weapons	<b>27</b>
<b>ABID RAJA</b> - Atomvapenförbudet er i samsvar med liberale prinsipper	<b>30</b>
<b>EMMA ROSENGREN</b> - En feministisk reflektion om kärnvapenedrustning och förändring	<b>32</b>
<b>HANS BLIX</b> - Ratificering av FN:s förbud mot kärnvapen	<b>37</b>
<b>ROLF EKÉUS</b> - Avskräckning – det största hindret mot kärnvapenedrustning	<b>39</b>
<b>MAJ BRITT THEORIN</b> - Ratificera kärnvapenavtalet	<b>41</b>

# FÖRORD

**– Jag har väntat på den här dagen i över sju decennier. Detta är början på slutet för kärnvapnen.**

SETSUKO THURLOW, KÄRNVAPENÖVERLEVARE,  
FN DEN 7 JULI 2017.

Den 7 juli 2017 antogs FN:s konvention om kärnvapenförbud av 122 stater, däribland Sverige. Veckor av intensiva förhandlingar var äntligen över och jublet som utbröt bland civilsamhälle, överlevare och diplomater var öronbedövande. "Äntligen har demokratin kommit till kärnvapenedrustningen", sa förhandlingarnas ordförande, ambassadör Elayne Whyte från Costa Rica. Efter en lång kamp, med hårt arbete från en stor skara människor hade historia skrivits. Vi hade uppnått det många sagt till oss var omöjligt.

Några av civilsamhällets viktigaste uppgifter är att bilda opinion, lyfta fram expertis och erfarenheter, ta fram och sprida kunskap samt att skapa samhällsengagemang kring politiska frågor. Med hjälp av dessa verktyg verkar civilsamhället även för att påverka den politik som partier, riksdag och regering bedriver. Civilsamhället besitter en kompetens som, tack vare kontinuerligt engagemang, parlamentariker men även tjänstepersoner många gånger saknar. Medan parlamentariker och tjänstepersoner byts ut står ak-

törer i civilsamhället kvar och följer processer under lång tid, ofta över decennier.

I början av hösten 2017 rasade en intensiv debatt i svensk media om kärnvapenkonventionen. Vi blev glada över intresset i frågan, som var betydligt svälare innan konventionens antagande, men debatten var också full av missförstånd, feltolkningar och okunskap. När vi fick beskedet att regeringen tillsatte "Utredning av konsekvenserna av ett svenskt tillträde till kärnvapenförbudskonventionen" ställde vi oss frågan: Hur kan vi säkerställa att den expertis och de perspektiv som olika aktörer inom civilsamhället kan bidra med kommer utredare, politiker och tjänstepersoner tillhanda? Vi beslutade oss därför för att sammanställa en skuggutredning.

I skuggutredningen vill vi besvara frågor och missförstånd som florerat i debatten. Vi vill också bidra med ny forskning och vara med och påverka uttolkningen av avtalet, vars process vi följt och deltagit i sedan dag ett. Vi var i rummet när konventionstexten debatterades mellan staterna och utvecklades, vi gav ändringsförslag och lyssnade till staternas intentioner och ser därför att vi kan bidra med en breddad och fördjupad diskussion.

Arbetet med denna skuggutredning har varit såväl intensivt som givande. Vi har fått oerhört god respons från de experter och forskare som vi har tillfrågat och de har visat stor entusiasm inför att bidra

med sitt kunnande. Vi har även mötts av nyfikenhet hos engagerade debattörer, experter, tjänstepersoner och politiker vilket visar att behovet av att samla och tillgängliggöra kunskap är stort.

Vi är hedrade och stolta över att kunna bidra med expertis från personer som på olika sätt och med olika perspektiv varit involverade i kärnvapenfrågan och förbudsprocessen under många år. Vi har bland annat en text från Harvard Law School som går igenom Sveriges militära samarbeten och hur de relaterar till kärnvapenkonventionen. De konstaterar att inga av dagens samarbeten står i konflikt med konventionen. Vi har även en genomgång av de garantier och kontrollförpliktelser som finns i kärnvapenkonventionen skriven av International Committee of the Red Cross som fastslår att de förpliktelser som finns är i paritet med de som finns i icke-spridningsavtalet och är både robusta och tillförlitliga. Vidare finns till exempel en feministisk analys av motståndet mot konventionen i den svenska debatten samt en genomgång av hur statspartsmöten till konventioner är avgörande för vidare uttolkning av avtal. Att delta skapar möjligheten för stater att påverka.

Tack till alla författare som bidragit med kloka ord. Vi hoppas att denna rapport kommer att bli läst och begrudad och inte minst använd, av civilsamhälle, forskare, tjänstepersoner, politiker och alla som har ett intresse av att verka för en bättre värld. En värld fri från kärnvapen.



Josefin Lind, generalsekreterare  
Svenska Läkare mot Kärnvapen



Malin Nilsson, generalsekreterare  
Internationella Kvinnoförbundet för  
Fred och Frihet

# THE REASON WHY WE NEED TO ELIMINATE NUCLEAR WEAPONS

## Setsuko Thurlow

- Hiroshima survivor
- Activist
- Leading figure in the International Campaign to Abolish Nuclear Weapons, ICAN

August 2018

**Like many people across the world, I am horrified by the continued modernization and proliferation of nuclear weapons as well as the yawning gap in leadership from nuclear weapon countries to curb this earth destroying technology. In June this year, two erratic leaders of two nuclear-armed states met in Singapore. Little more than vague language about future actions has thus far resulted from the Trump-Kim summit, although the de-nuclearization of the Korean Peninsula and the cessation of joint military exercises between the US, South Korea and Japan are important steps to garner peace and stability in the region.**

What was not discussed at the Singapore Summit was the denuclearization of other nuclear-armed states, and so the threat of nuclear weapons use by accident or design continues to cast its long shadow over our one shared world.

I know this threat all too well as a survivor of Hiroshima.

I was a 13-year-old schoolgirl, when I witnessed my hometown blinded by the flash, flattened by the super-hurricane like blast, burned in the heat of 4000 degrees Celsius and contaminated by the radiation of one atomic bomb. A bright summer morning turned to dark twilight with smoke and dust rising

in the mushroom cloud, dead and injured covering the ground, begging desperately for water and receiving no medical care at all. A rapidly spreading firestorm and foul stench of burnt flesh filled the air. Miraculously, I was rescued from the rubble of a collapsed building, about 1.8 kilometers from Ground Zero. Most of my classmates in the same room were burned alive. I can still hear their voices calling their mothers and God for help.

Within that single flash of light, my beloved Hiroshima became a place of desolation, with heaps of skeletons and blackened corpses everywhere. Of a population of 360,000 — largely non-combatants, women, children and elderly — most became victims of the indiscriminate massacre of the atomic bombing.

It has been 73 years since the destruction of Hiroshima and Nagasaki; and yet, people are still dying from the delayed effects of the atomic bombing, considered crude by today's standard for mass destruction.

Because I was given a chance to live, and because I intimately understand the reality of the nuclear threat, I have spent my entire life working for disarmament. Unfortunately, we hibakusha (atomic bomb survivors) do not have much time left. But great things are happening if we can seize the moment.

For the first time in more than seven decades after Hiroshima and Nagasaki, the majority of the world's nations have voted to adopt a prohibition treaty on nuclear weapons. For the first time in the history of the atomic age, nuclear weapons have been declared illegal. The Treaty on the Prohibition of Nuclear Weapons, TPNW, prohibits the development, production, possession, testing, use and threat of use of nuclear weapons. On 7 July 2017 at the United Nations in New York the treaty was adopted by 122 member states that have categorically rejected nuclear weapons. Sweden was one of the majority that voted in favor of this new legally binding instrument.

I have personally met the Prime Minister Mr. Stefan Löfven and Foreign Minister Ms. Margot Wallström, both of whom promised me that they would work hard for disarmament and that Sweden would play an important role. Swedish parliamentarians must also show their support, in representing the people's will to broker peace and sanity in the world. Now is the time to step to that role in the form of signing the TPNW, and beginning a process to make nuclear disarmament a reality.

Most experts agree that nuclear weapons are more dangerous now than at any point in our history due to a wide variety of risks including: geopolitical saber rattling, human error, computer failure, complex systems failure, increasing radioactive contamination in the environment and its toll on public and environmental health, as well as the global famine and climate chaos that would ensue should a limited use of nuclear weapons occur. And given the bravado of certain nuclear-armed states, providing little comfort in intelligence or de-escalation, some experts fear we may stumble into a nuclear war by accident.

Thus, we have a moral imperative to act now without delay, to abolish nuclear arsenals, in order to ensure a safe and just world for future generations. I trust that Sweden will join in this effort by formally signing and ratifying the TPNW. I further trust that Sweden, with her history as a humanitarian nation, will not bow to bullying from the Trump Administration to abandon the treaty, but rather stand by her word and play a pivotal role in declaring nuclear weap-

ons illegal. The majority of the world's nations have stated their commitment to finally draw a close to the nuclear arms race. Our choice is abolition or annihilation. I am confident that Sweden will choose the right side of history and proudly join the Treaty on the Prohibition of Nuclear Weapons, as a matter of principle that the world has come to expect from such a model democracy.

# THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS AND ITS COMPATIBILITY WITH SWEDEN'S SECURITY ARRANGEMENTS

## Bonnie Docherty

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Sweden participated actively in last year's negotiations of the Treaty on the Prohibition of Nuclear Weapons (TPNW), and on July 7, 2017, it joined 121 other states in voting to adopt this groundbreaking instrument. Given the country's historically strong support for nuclear non-proliferation and disarmament, Sweden should now advance the treaty's objectives and expedite its entry into force by joining as soon as possible.

To inform its decision about whether to join the TPNW, Sweden has appointed an inquiry chair to "analyse the content of the Treaty and the consequences of Swedish accession."<sup>1</sup> The chair's tasks include examining the impacts on Sweden's defense policy cooperation and its obligations under other treaties and agreements.<sup>2</sup>

This paper demonstrates the compatibility of Sweden's existing security arrangements with the TPNW. If it joined the TPNW, Sweden could not assist allies with prohibited activities involving nuclear weapons. It could, however, maintain its relationships with the North Atlantic Treaty Organization (NATO) and the Europe-

an Union (EU), and continue to participate in joint military operations without contravening the TPNW.

## Prohibition on Assistance

Since Sweden neither possesses nuclear weapons nor has been affected by past use and testing, it already complies with the majority of the TPNW's provisions.<sup>3</sup> Sweden's alliances with nuclear armed states and nuclear umbrella states, however, have the potential to implicate Article 1(1)(e), the treaty's prohibition on assistance. That provision prohibits states parties from "assist[ing], encourag[ing] or induc[ing], in any way, anyone to engage in any activity prohibited to a State Party under this Treaty." Prohibited activities include, *inter alia*, developing, testing, producing, stockpiling, transferring, using, and threatening to use.

The prohibition on assistance is a standard component of modern disarmament treaties, including those governing nuclear weapons, other weapons of mass destruction, and conventional weapons.<sup>3</sup> The TPNW's version of the provision copies verbatim the



1993 Chemical Weapons Convention and the 1997 Mine Ban Treaty and is almost identical to the 2008 Convention on Cluster Munitions, all of which Sweden is party to.<sup>5</sup> Because those treaties do not define assist, encourage, or induce, the exact parameters of the prohibition have been subject to different interpretations.<sup>6</sup> Oxford University Press commentaries on the treaties offer guidance for how the prohibition should be understood. Based on an analysis of the text and state positions, the Mine Ban Treaty commentary concludes that to assess whether a particular act contravenes the prohibition on assistance, “[w]hat is critical is the nexus between the actions of a State Party and specific prohibited activities.”<sup>7</sup>

That commentary discusses three types of assistance—logistics, security, and planning—and examines when they run afoul of the Mine Ban Treaty.<sup>8</sup> For example, a state party would violate the treaty if its troops assisted a state not party by fueling trucks carrying antipersonnel landmines or loading such trucks with mines. These activities would be unlawful because they supported a “*specific* operation involving anti-personnel mines.”<sup>9</sup> Similarly, while a state party’s military personnel “should not be required to leave the room” during discussions about the use of mines, they could not lawfully “engage actively in planning for the [mines’] use.”<sup>10</sup> If Sweden joined the TPNW, it could not assist a state not party with comparable activities involving nuclear weapons.

Because of the nexus requirement, however, mere participation in joint military operations with states not party does not fall under the prohibition on assistance. Adopting a widely accepted view, Sweden wrote in 2001 that the relevant provision of the Mine Ban Treaty “ought not to be interpreted so that any kind of participation in a joint military operation with a non-party would be considered as an encouragement to activities” under that treaty. The Oxford University Press commentary on the treaty agrees, saying: “This is clearly correct as there is no nexus between mere participation in such an operation and any specific instance of prohibited activity.”<sup>11</sup> The TPNW should similarly be understood to allow participation in joint military operations when there is no such a nexus.

## Sweden’s Relationship with NATO

Sweden has ties to NATO through multiple programs, including the Partnership for Peace (PfP), the Enhanced Opportunities Partnership, and a Host Nation Support Agreement. It also regularly participates in joint military operations and exercises with NATO forces. The North Atlantic Treaty, which imposes collective security obligations on its members, does not mention nuclear weapons; in policy documents, NATO has described itself as a “nuclear alliance” while pledging to work toward nuclear disarmament.<sup>12</sup> If Sweden joins the TPNW, it will have to ensure that it does not assist, encourage, or induce NATO members with prohibited activities involving nuclear weapons.

Sweden need not abandon its existing relationship with NATO, however. Because it is not itself a member of NATO, it falls outside the “nuclear umbrella,” meaning it does not rely on nuclear armed states’ nuclear weapons for defense. Government officials recently confirmed to civil society representatives in Sweden that there is no cooperation between the United States and Sweden in this regard, there is no US policy to extend the nuclear umbrella to Sweden, and Sweden has no connection to US nuclear weapons in Europe.<sup>13</sup> As a result, Sweden would comply with the TPNW’s implicit prohibition on accepting the protection of a nuclear umbrella. Its multiple partnerships also give it the flexibility to cooperate with NATO and participate in joint military operations in ways that would comply with the TPNW’s prohibition on assistance. Therefore, Sweden should view neither its links to NATO nor the TPNW’s prohibition on assistance as obstacles to joining the new treaty.

### *Partnership for Peace and Euro-Atlantic Partnership Council*

Sweden first established a relationship with NATO when it joined the Partnership for Peace in 1994. According to NATO, this program is designed “to increase stability, diminish threats to peace and build strengthened security relationships between NATO and non-member countries in the Euro-Atlantic area.” The PfP grants significant flexibility to partner states, including Sweden, to determine the nature of their relationships. It allows these states to “develop

an individual relationship with NATO, choosing their own priorities for cooperation.”<sup>14</sup> As a result, Sweden can be part of the PfP without embracing NATO’s position on nuclear weapons or assisting it with nuclear weapons-related activities.

Other PfP states have already concluded that the partnership is compatible with the TPNW. Both Austria, which has ratified the TPNW, and Ireland, which has signed it, participate in the PfP.<sup>15</sup> They, like Sweden, are also members of the associated Euro-Atlantic Partnership Council, a “multilateral forum for dialogue and consultation on political and security-related issues among Allies and partner countries.”<sup>16</sup>

#### ***Enhanced Opportunities Partnership***

In 2014, Sweden became one of only five Enhanced Opportunities Partners. This NATO partnership seeks to promote interoperability among allies. It gives Sweden the opportunity to engage in security consultations, have greater access to information and interoperability programs, and develop closer partnerships during crises and the preparation of operations.<sup>17</sup>

Like the PfP, the Enhanced Opportunities Partnership gives Sweden discretion on matters related to its engagement with NATO. The partnership allows Sweden to develop “a more tailor-made relationship” with NATO.<sup>18</sup> Because Sweden can influence the character of the partnership to ensure it complies with national positions, the arrangement should not interfere with it joining the TPNW.

#### ***Host Nation Support Agreement***

In 2016, Sweden approved another arrangement with NATO when it ratified a Host Nation Support Memorandum of Understanding (originally signed in 2014).<sup>19</sup> The agreement allows NATO to deploy forces and equipment in Sweden, with Sweden’s approval.<sup>20</sup> As the Swedish Parliament was reviewing a draft bill on the Host Nation Agreement, the country’s defense minister made clear that adoption of the bill would not open the door to allowing nuclear weapons on Swedish soil. He said, “I’m under the impression that other member states respect this demand. There will not be any nuclear weapons on Swedish territory.”<sup>21</sup> This position makes Sweden’s role as a host nation

more compatible with the TPNW, which prohibits assisting anyone with the transfer and stockpiling of nuclear weapons.

The host nation agreement does raise questions regarding the transit of nuclear weapons through Swedish territory in certain circumstances. At the time of his comments mentioned above, the defense minister stated that Sweden would not search NATO warships for nuclear weapons.<sup>22</sup> Because the United States has a policy of neither confirming nor denying whether its ships are carrying nuclear weapons, Sweden is unlikely to have knowledge of, or be able to prevent, the entry of nuclear weapons into its waters if it allows access to US ships.<sup>23</sup> Many states and nongovernmental organizations understand past treaties with similar assistance provisions to prohibit knowingly permitting transit as a form of assistance. Under the Mine Ban Treaty, Sweden has taken the position that the treaty prohibits such transit.<sup>24</sup> In the context of the Convention on Cluster Munitions, however, Sweden has argued that transit is not prohibited.<sup>25</sup> While interpreting the TPNW to prohibit transit would best uphold its object and purpose, the legality of allowing transit of nuclear weapons, whether knowingly or unknowingly, was left unresolved by the TPNW’s negotiators. It is thus uncertain whether a state party to the TPNW would contravene the prohibition on assistance if it allowed a vessel that might carry nuclear arms to enter its territory. Almost all treaties contain some interpretive issues that need to be resolved after negotiations. Sweden should not let uncertainty on one point stand in the way of its joining a treaty that is otherwise consistent with its support for nuclear non-proliferation and disarmament.

#### ***Joint Military Operations and Exercises***

The TPNW would allow Sweden to continue participating in joint military operations and exercises with its NATO allies if it becomes a state party. Sweden has participated in numerous NATO-led military operations since 1995. In the 1990s, it contributed troops to the peacekeeping mission in Bosnia and Herzegovina and supported a similar mission in Kosovo. In Afghanistan, it partnered first with the International Security Assistance Force (ISAF) and more recently participated in the Resolute Support Mission “to further train,

assist and advise the Afghan security forces and institutions.”<sup>26</sup> During Operation Unified Protector in 2011, Sweden contributed aircraft to support the no-fly zone in Libya.<sup>27</sup> Since 2013, Sweden has also participated in the NATO Response Force, “a rapid-reaction group” of forces from NATO and NATO-allied countries that can respond to military situations.<sup>28</sup>

Sweden has further engaged with the armed forces of NATO member states through numerous military exercises. For example, at least 19,000 Swedish troops joined more than 1,500 troops from the United States and other countries in Exercise Aurora in 2017. The exercise sought in part to prepare Sweden to provide host nation support under the relevant agreement addressed above.<sup>29</sup> In May 2018, Sweden, Finland, and the United States signed a non-binding agreement designed in part to facilitate future military exercises.<sup>30</sup>

Based on precedent from states’ interpretations of other treaties, mere participation in such joint operations and exercises, even with members of a nuclear alliance, does not constitute a form of assistance. For example, many states parties to the Mine Ban Treaty and Convention on Cluster Munitions, including Sweden, have participated in joint operations with the United States, which has yet to join the instruments.<sup>31</sup> As long as Sweden does not change its activities in a way that would rise to the level of assistance, it could continue to contribute to such operations as a TPNW state party.

## **Sweden’s Relationship with the European Union**

While not a member of NATO, Sweden is party to the Treaty of the European Union, which contains a mutual defense provision. According to Article 42(7), there is an obligation to come to the aid of an attacked EU state. The obligation does not override the “specific character of the security and defence policy” of individual member states.<sup>32</sup> Reference to the “specific character” of domestic policies allows states to “choose means of assistance which are not incompatible with their status or domestic law requirements” including the “policy of military neutrality.”<sup>33</sup> Therefore, Sweden can choose how it fulfills its assistance obligation and is not obligated to assist the use of nuclear weapons if its policy is not

to participate in any nuclear weapons-related activities. Other EU members, Austria and Ireland, have ratified and signed the TPNW, respectively, indicating they do not see the EU Treaty and the TPNW as inconsistent. The Treaty of the European Union should, therefore, not pose an obstacle to Sweden joining the TPNW.

## **Conclusion**

While political considerations are beyond the scope of this paper, from a legal perspective, Sweden’s security arrangements should not be viewed as barriers to its joining the TPNW. If it became party to the new instrument, Sweden could not allow its military involvement with states not party that possess nuclear arms to rise to the level of assistance prohibited by the TPNW, but it could maintain its relations with NATO and the EU and continue to participate in joint operations and exercises. Sweden’s experiences as a party to the Mine Ban Treaty and the Convention on Cluster Munitions have demonstrated its ability to work within such parameters. Taking into account that precedent and a legal analysis of its partnerships with nuclear armed states, Sweden should decide to join the TPNW without hesitation.

## FOOTNOTES:

1. Government Offices of Sweden, "Inquiry into the Consequences of a Possible Swedish Accession to the Treaty on the Prohibition of Nuclear Weapons," October 23, 2017, <http://www.government.se/press-releases/2017/10/inquiry-into-the-consequences-of-a-possible-swedish-accession-to-the-treaty-on-the-prohibition-of-nuclear-weapons/> (accessed May 13, 2018).
2. *Ibid.*
3. Sweden is also largely compliant with the TPNW due to its obligations as a non-nuclear weapon state party to the 1968 Nuclear Non-Proliferation Treaty.
4. For a list of disarmament agreements with similar provisions, see Walter Krutzsch, Eric Myjer, and Ralf Trapp, eds., *The Chemical Weapons Convention: A Commentary* (Oxford: Oxford University Press, 2014), p. 67, n. 22.
5. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention), adopted January 13, 1993, entered into force April 29, 1997, art. 1(1)(d); Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Mine Ban Treaty), adopted September 18, 1997, entered into force March 1, 1999, art. 1(1)(c); Convention on Cluster Munitions, adopted May 30, 2008, entered into force August 1, 2010, art. 1(1)(c).
6. Stuart Casey-Maslen, *Commentaries on Arms Control Treaties Volume 1: The Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction* (Oxford: Oxford University Press, 2015), para. 1.53.
7. *Ibid.*, para. 1.71.
8. *Ibid.*, para. 1.57.
9. *Ibid.*, para. 1.58.
10. *Ibid.*, para. 1.60.
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12. North Atlantic Treaty, adopted April 4, 1949, entered into force August 24, 1949; "Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organisation," adopted November 19-20, 2010, para. 17.
13. Communication from representatives of the International Campaign to Abolish Nuclear Weapons on their meeting with Swedish Minister of Defence Peter Hultqvist and his officials, March 28, 2018.
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17. NATO, "Partnership Interoperability Initiative," June 7, 2017, [https://www.nato.int/cps/ic/natohq/topics\\_132726.htm](https://www.nato.int/cps/ic/natohq/topics_132726.htm) (accessed May 16, 2018).
18. *Ibid.*; Mission of Finland to NATO, "Finland Continues as Enhanced Opportunities Partner," November 17, 2017, <http://www.finlandnato.org/public/default.aspx?contentid=369003&nodeid=39170&culture=en-US> (accessed May 16, 2018).
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20. "Government Keen on NATO Forces in Sweden," *The Local*, August 27, 2014, <https://www.thelocal.se/20140827/swedish-government-to-allow-nato-to-deploy-troops> (accessed May 16, 2018).
21. "NATO Agreement Won't Bring Nuclear Weapons to Sweden," *Eye on the Arctic*, March 1, 2016, <http://www.rcinet.ca/eye-on-the-arctic/2016/03/01/nato-agreement-wont-bring-nuclear-weapons-to-sweden/> (accessed May 16, 2018).
22. *Ibid.*

**23.** Terje Maloy, "Directed against Russia: 'Aurora', the Largest Military Exercise in Sweden in 20 years, Aligns Sweden Even Closer with NATO," *Global Research*, July 28, 2017, <https://www.globalresearch.ca/directed-against-russia-aurora-the-largest-military-exercise-in-sweden-in-20-years-aligns-sweden-even-closer-with-nato/5601267> (accessed May 16, 2018).

**24.** Landmine and Cluster Munition Monitor, "Landmine Monitor 2004: Sweden," <http://archives.the-monitor.org/index.php/publications/display?url=lm/2004/sweden.html#-Heading16187> (accessed May 17, 2018).

**25.** Landmine and Cluster Munition Monitor, "Cluster Munition Monitor 2017: Cluster Munition Ban Policy," <http://www.the-monitor.org/en-gb/reports/2017/cluster-munition-monitor-2017/cluster-munition-ban-policy.aspx> (accessed May 16, 2018). The differences in Sweden's interpretations might be attributable to the inclusion in the Convention on Cluster Munitions of Article 21, which addresses states parties' relations with states not party. Civil society and most states that have spoken on the issue argue that Article 21 clarifies but does not qualify the meaning of the prohibition on assistance, but some states contend it creates exceptions to that prohibition.

**26.** NATO, "Relations with Sweden."

**27.** Ibid.

**28.** Ibid.

**29.** U.S. Department of Defense, "U.S. Forces Participate in Swedish Military Exercise," September 19, 2017, <https://www.defense.gov/News/Article/Article/1316420/us-forces-participate-in-swedish-military-exercise/> (accessed May 16, 2018); "French and US Troops Head to Gothenburg as Sweden's Biggest Military Drill in 20 Years Kicks Off," *The Local*, September 12, 2017, <https://www.thelocal.se/20170912/french-and-us-troops-head-to-gothenburg-as-swedens-biggest-military-drill-in-20-years-kicks-off> (accessed May 16, 2018); Maloy, "Directed against Russia," *Global Research*.

**30.** Aaron Mehta, "Finland, Sweden and US Sign Trilateral Agreement, with Eye on Increased Exercises," *Defense News*, May 10, 2018, <https://www.defensenews.com/training-sim/2018/05/09/finland-sweden-and-us-sign-trilateral-agreement-with-eye-on-increased-exercises/> (accessed May 16, 2018).

**31.** The permissibility of such participation is more explicit under the Convention on Cluster Munitions because its Article 21(3) specifies that states parties "may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party."

**32.** Treaty of the European Union, signed February 7, 1992, entered into force November 1, 1993, art. 42(7).

**33.** European Parliament, "The EU's Mutual Assistance Clause," November 2015, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572799/EPRS\\_BRI\(2015\)572799\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572799/EPRS_BRI(2015)572799_EN.pdf) (accessed May 16, 2018), p. 4.

# THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS: IMPLICATIONS FOR SWEDEN'S IMPORTS AND EXPORTS OF NUCLEAR MATERIAL AND ITEMS

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**This paper looks at the international legal implications for Sweden's import and export of nuclear material and dual-use goods if Sweden becomes a state party to the Treaty on the Prohibition of Nuclear Weapons (TPNW). It considers Sweden's existing obligations under the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and how these would remain, unaltered, by adherence to the TPNW. Consideration is given both to certain obligations under Article 1(1) of the TPNW and to its Article 18, whose interpretation is being most closely scrutinised.**

## The NPT

The NPT is the centrepiece of the global nuclear non-proliferation regime. In January 2018, this fact was emphasised by Sweden itself in its statement to the United Nations (UN) Security Council wherein it described the NPT as “the indispensable framework and the cornerstone of global disarmament and non-proliferation”.<sup>1</sup>

The NPT entered into force as binding international law on 5 March 1970. As at 31 May 2018, it had 190 states parties, with only India, Israel, Pakistan, and South Sudan outside the Treaty, along with the

Democratic People's Republic of Korea (DPRK), which had acceded to the treaty in 1985, but then announced its withdrawal in controversial manner in 2003.<sup>2</sup>

Under Article I of the NPT, the five nuclear-weapon states parties (the P5) undertake “not to transfer to any recipient whatsoever” any nuclear explosive devices and “not in any way to assist, encourage, or induce” any non-nuclear-weapon state “to manufacture or otherwise acquire” any such devices. This is a very broad undertaking.

In accordance with Article II of the NPT, non-nuclear-weapon states parties, which of course include Sweden, undertake not to receive the transfer of nuclear weapons or other nuclear explosive devices from any transferor whatsoever, or of control over such weapons or devices directly, or indirectly. They further undertake not to manufacture or otherwise acquire such weapons or devices, and not to seek or receive any assistance in their manufacture.

Under Article III(1), each non-nuclear-weapon state party undertakes to accept safeguards in an agreement with the International Atomic Energy Agency (IAEA) “for the exclusive purpose of verification of the fulfilment” of its NPT treaty obligations. This is required “with a view to preventing diversion of nu-



clear energy from peaceful uses to nuclear weapons or other nuclear explosive devices". It is further stipulated in paragraph 1 that the requisite safeguards "shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere". Under paragraph 3 of Article III, all states parties are obligated not to provide source or special fissionable material or related equipment or material unless it is subject to the IAEA safeguards.

Potentially, a major gap in the drafting of NPT is that an explicit prohibition on transferring nuclear material for the production of nuclear weapons or other nuclear explosive devices is imposed only with respect to any non-nuclear weapon state. A non-nuclear-weapon state party may therefore, it would appear, transfer such material to the P5, unless customary international law has since crystallised to prevent such a transfer.

Thus, under a generally accepted interpretation of the NPT, Sweden would not be prevented from supplying two nuclear-armed European Union (EU) allies — France and the United Kingdom — with source or special fissionable material, even where they have knowledge that the material would be used for such production.<sup>3</sup> It is not known whether Sweden is knowingly supplying either state with such material. Supplying source or special fissionable material for peaceful purposes, however, to any state party to the NPT remains lawful. Sweden may also lawfully procure so-called "dual-use" items as long as they are not intended for, nor used in, the manufacture of nuclear weapons or other nuclear explosive devices.

## The TPNW

On 7 July 2017, the TPNW was adopted at the UN Diplomatic Conference by 122 votes (including that of Sweden) to 1 (the Netherlands), with 1 state abstaining (Singapore). The Treaty will enter into force once 50 states have adhered to it (as of writing, ten signatory states had ratified the treaty).

Under Article 1(1) of the TPNW, each state party undertakes never under any circumstances: to acquire nuclear weapons or other nuclear explosive devices;

to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly; and to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a state party under the TPNW.<sup>4</sup>

With respect to the prohibitions on assisting, encouraging, or inducing prohibited activities in Article 1(1)(e) of the TPNW, this is nothing new in disarmament law. Indeed, a prohibition on complicit action by states parties has been a standard clause in global disarmament treaties since the 1972 Biological Weapons Convention. It is found in Article I of the 1992 Chemical Weapons Convention, and in the respective Article 1 of both the 1997 Anti-Personnel Mine Ban Convention and the 2008 Convention on Cluster Munitions.

The notion of prohibited assistance by a state is well known under public international law as it pertains to state responsibility. Article 16 of the International Law Commission's 2001 draft articles on the Responsibility of States for Internationally Wrongful Acts provides that:

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) that State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State.

In its judgment of 2007 in the case brought by Bosnia and Herzegovina against Serbia and Montenegro alleging responsibility for genocide, the International Court of Justice (ICJ) found that Article 16 represented customary international law, and is therefore binding upon every state.<sup>5</sup>

With respect to the prohibition on assistance, the question of intent inevitably arises. It is not necessary that the state providing assistance intend, by the aid or assistance given, to facilitate the occurrence of the wrongful conduct. The wording of Article 16 refers to "knowledge of the circumstances of the internation-

ally wrongful act". This threshold is further evidenced by the views of the ICJ on such assistance. In its 2007 judgment in the Genocide case, the Court declared that:

there is no doubt that the conduct of an organ or a person furnishing aid or assistance to a perpetrator of the crime of genocide cannot be treated as complicity in genocide *unless at the least that organ or person acted knowingly*, that is to say, in particular, was aware of the specific intent ... of the principal perpetrator.<sup>6</sup>

This is the correct test for complicity under international law: to be internationally responsible, a state assisting another party (the assistor) to commit an internationally wrongful act (the assistee), must at least be aware of the assistee's intent to engage in a prohibited activity. This is the same standard that applies in relation to activities prohibited under Article 1(1)(e) of the 2017 Treaty. Thus, for instance, providing technical or material or financial assistance for the enrichment of uranium-235 to weapons-grade purity or the equivalent reprocessing of plutonium, where the future use of this fissile material in nuclear weapons is known by the assistor, would certainly qualify as prohibited assistance.

Just as is the case with respect to its international legal obligations under the NPT, therefore, as a state party to the TPNW Sweden would be precluded from supplying or acquiring nuclear material for the production of nuclear weapons or other nuclear explosive devices. But the provision in Article 1(1)(e) also includes obligations not to supply nuclear-armed EU allies France and the United Kingdom (and, of course, China, Russia, and the United States) with nuclear material where it has knowledge that it would be used for the production of nuclear weapons. Supplying source or special fissionable material for peaceful purposes remains lawful under the TPNW.<sup>7</sup> Sweden may also procure so-called "dual-use" items as long as they are not intended for, nor used in, the manufacture of nuclear weapons or other nuclear explosive devices.

Under Article 18 of the TPNW, it is stipulated that the implementation of the Treaty "shall not prejudice obligations undertaken by States Parties with regard to existing international agreements, to which they are

party, where those obligations are consistent with the Treaty". Article 18 is based on a corresponding provision in Article 26(1) of the 2013 Arms Trade Treaty (ATT) (to which Sweden is party), the intent of which was to ensure that states parties to that Treaty could adopt, or be party to, treaties and other agreements that govern trade in conventional arms and ammunition, but that they could not lawfully implement any provisions in these other agreements that were inconsistent with their obligations under the ATT.

Thus, for example, an ATT state party could not implement an obligation in any other treaty or agreement that absolutely required the export of conventional arms to an ally — potentially even where they would be used to commit war crimes — without assessing carefully the risks and where necessary refraining from authorising the export, as this would contravene its obligations under the ATT. This applies to Sweden, as it does to every other state party to the ATT that is a member of the European Union, notwithstanding the 2008 Lisbon Treaty.

Much has been made of Article 18, with one state (the Netherlands) going so far as to argue during the negotiations that it "weakens" the NPT.<sup>8</sup> This is legally and politically incorrect. Indeed, the wording of Article 1(1)(b) and (c) of the TPNW is taken from Article I and Article II of the NPT, respectively. Hence, in both treaties there is an undertaking not to "Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly".

With respect to the obligation never under any circumstances to transfer "to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly", in the NPT this is an obligation only upon the five nuclear-weapons states, whereas Article 1(1)(b) of the TPNW applies to all its states parties. The same applies to the prohibitions imposed on assisting any prohibited activities in both the NPT and the TPNW. Thus, the TPNW fills in gaps in the NPT and strengthens the non-proliferation regime.

Article 18 of the TPNW does not prevent a state from adhering to any other treaty, including a bilateral accord, which existed prior to the adoption of the 2017 Treaty. The key words are "consistent with". What these words mean here is that obligations upon states par-



ties to other treaties to which they are party, and that are less restrictive than the TPNW, cannot supersede those set out in the 2017 Treaty. In other words, a state party to another legally binding agreement on nuclear weapons cannot use its adherence to that agreement as an argument, much less a legal basis, to undercut the obligations it accepts by ratifying or acceding to the TPNW. Of course, “consistent with” does not imply “identical to”. A state party to the TPNW could therefore ratify and respect the NPT, the 1963 Partial Test-Ban Treaty, and the 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT). None of these requires action that would contravene the 2017 Treaty.

In many ways, therefore, Article 18 is little more than a statement of common sense. A state party to 1996 Amended Protocol II to the UN Convention on Certain Conventional Weapons that was also party to the 1997 Anti-Personnel Mine Ban Convention could not sustain in law the argument that because the Protocol allows the use of certain anti-personnel mines in specific instances, this somehow modified the comprehensive prohibition on use under the 1997 Convention.

Article 26 of the 1969 Vienna Convention on the Law of Treaties (VCLT) stipulates that every treaty in force is binding upon the parties to it and must be performed by them in good faith. Thus, none of the five nuclear-weapon states under the NPT could lawfully retain their nuclear weapons if ever they adhere to the TPNW (reservations being prohibited by its Article 17). This is consistent with Article 30 of the VCLT, which concerns the application of successive treaties relating to the same subject matter. Sweden, however, could adhere to the TPNW and would not need to amend its conduct or policies, except insofar as it is knowingly supplying an NPT nuclear-weapon state with source or special fissionable material for the production of nuclear weapons, in order to comply with its provisions.

## FOOTNOTES:

- 1 “Statement by Sweden at the UN Security Council Briefing on Non-proliferation of Weapons of Mass Destruction: Confidence Building Measures”, National statement delivered by Ambassador Olof Skoog on behalf of Sweden at the UN Security Council Briefing on Non-proliferation of Weapons of Mass Destruction: Confidence Building Measures, 18 January 2018, New York, at: <https://goo.gl/oypNwa>.
- 2 The United Nations Office for Disarmament Affairs (UNODA) has observed that on 10 January 2003, the DPRK “announced its withdrawal from the Treaty in a public statement. States parties to the Treaty continue to express divergent views regarding the status of the DPRK under the NPT.” UNODA, “Democratic People’s Republic of Korea: Accession to Treaty on the Non-Proliferation of Nuclear Weapons (NPT)”, at: <https://goo.gl/HYyVQd>.
- 3 Whether, though, this would allow a supplier state to comply with Article VI “in good faith” may be open to question.
- 4 Art. 1(1)(a), (b), and (e), TPNW, respectively.
- 5 *ICJ, Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 26 February 2007, §420.
- 6 *Ibid.*, §421 [added emphasis].
- 7 In the twenty-first preambular paragraph of the TPNW, states parties emphasize that “nothing” in the Treaty “shall be interpreted as affecting the inalienable right of its States Parties to develop research, production and use of nuclear energy for peaceful purposes without discrimination”.
- 8 Remarks of the Netherlands in plenary, Second Session of the UN Diplomatic Conference, New York, 27 June 2017.

# MEMORANDUM ON THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

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**This memorandum sets out my legal opinions regarding the relationship between the Treaty on the Prohibition of Nuclear Weapons (TPNW), the Nuclear Non Proliferation Treaty (NPT) and the Comprehensive Test Ban Treaty (CTBT). I understand that this relationship is being discussed in the context of Sweden joining the TPNW.**

## **All three treaties form part of the same “nuclear weapons law” mosaic**

The starting point is to understand that the three treaties, while separate and independent from each other, are all important parts of the overall mosaic of what we might call “nuclear weapons law”. The NPT was concerned with preventing the spread, or proliferation, of nuclear weapons. The CTBT was concerned with testing nuclear weapons. The newest of the treaties, and the most ambitious in scope, creates a legally binding prohibition on nuclear weapons, with the aim of contributing to a world free of nuclear weapons. You will see this stated in preambular paragraph 15 of the treaty. While the three treaties deal with different aspects of nuclear weapons, it is important to realise that they all point in the same essential direction – to manage the problem of nuclear weapons.

## **The legal seeds of the TPNW can be found in the NPT**

The treaties are connected in a second way. Article VI of the NPT contains the legal seeds of the TPNW. It says:

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective control.

Over the years, the States Parties to the NPT have repeatedly affirmed this legal obligation to pursue nuclear disarmament obligations in good faith. Sweden has joined in all these affirmations.<sup>1</sup> The International Court of Justice has also expressed the view that there exists an “obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control”.<sup>2</sup>

The TPNW is the first meaningful step taken towards nuclear disarmament in that it puts in place a comprehensive prohibition against nuclear weapons and,

in Article 4, provides pathways for nuclear possessor states to work towards nuclear disarmament. The TPNW then is a partial implementation of Article VI of the NPT.

### **The CTBT and the NPT have co-existed for twenty years without disrupting each other**

It is a common feature of contemporary international law to have two or more treaties dealing with the same subject matter. For example, the right to life in the European Convention on Human Rights and in the International Covenant on Civil and Political Rights co-exist happily and in fact reinforce each other. The law of treaties is clear that where there are different parties to the two treaties (as it nearly always the case with a large multi-lateral treaty), the later treaty does not affect or disrupt the existing treaty relationships.

When the CTBT was negotiated and concluded, there was no suggestion that it disrupted or weakened the NPT and in fact, it did not. Rather, by putting in place a comprehensive ban on nuclear tests, it acted to strengthen the NPT which was concerned to prevent nuclear weapons proliferation. While the CTBT is not formally in force, there is in place a de facto monitoring system in operation around the world.<sup>3</sup>

### **The TPNW does not disrupt or weaken either the NPT or the CTBT**

The relationship between the TPNW and the existing treaties on nuclear weapons was carefully discussed during the negotiations. General treaty law, as explained above, already provides that the TPNW cannot affect or disrupt existing treaty relationships unless all the states parties for each treaty are identical. Thus, had the treaty remained silent, the situation would be that the TPNW cannot change the legal obligations of states parties to the NPT or the CTBT (or any other treaty).

However, because of the importance of the point, there was agreement among the negotiating states to specifically address the issue in the new treaty text. The outcome was Article 18 which is entitled “Relationship with other agreements” and provides:

The implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing international agreements, to which they are party, where those obligations are consistent with the Treaty.

This text was a negotiated compromise and the Swedish delegation took the position that it would have been preferable to have not included the final eight words of this text.<sup>4</sup> To understand the point, it is necessary to look more closely at one of the fundamental disagreements among the states parties to the NPT.

At the time that the NPT was concluded, there were five states in the world which has successfully tested a nuclear weapon. These were the United States, the USSR, China, France and the United Kingdom (referred to as the Nuclear Weapons States or ‘NWS’). A key aim of the NPT was to stop any further states from acquiring nuclear weapons technology – in other words, and as its name suggests, it was a non-proliferation treaty. That is, states that were not already nuclear-capable foreswore the nuclear-weapons option (this is found in Article II of the NPT). However, in return for this obligation, they would have non-discriminatory access to trade and technology in the nuclear field for peaceful purposes (this is found in Article IV of the treaty). Finally, in Article VI, which I have mentioned above, all states (nuclear possessors and non-possessors) promised to negotiate in good faith towards, inter alia, nuclear disarmament. This arrangement is the defining feature of the NPT and is known today as its “grand bargain”.

Today, there are 191 States Parties to the NPT – still with the same five states acknowledged as possessing nuclear weapons.<sup>5</sup> Because the NPT acknowledged the *fact* of nuclear weapons’ possession by the NWS, it is sometimes argued by those states that the treaty confers a *right* of possession. This is incorrect on the face of the treaty text itself, as well as on the intention of the vast majority of states joining the treaty which were giving up their sovereign right to develop nuclear weapons which they would otherwise have had at that time at least. As time has gone on, and there has been no progress on the disarmament pillar of the grand bargain, the non-possessor states have become increasingly concerned at what they perceive as the

imbalance in the NPT. In large part, the move to negotiate the TPNW arose to address this imbalance.

This debate lies behind the formulation of Article 18. The last eight words were included as part of the compromise in the negotiations, as many states were concerned to ensure that the TPNW could not be read as bestowing any indefinite right of possession of nuclear weapons. Those states also wanted to ensure that this treaty was not to be treated as an inferior treaty to the NPT, but rather that it was complementary to the NPT. However, other states (including Sweden) expressed concerns that those eight words set this treaty higher than the NPT and that therefore there was a risk of undermining the NPT.

In my view, Article 18 as ultimately formulated does not pose a risk to the NPT (or any other nuclear weapons related treaty, including the CTBT) for several reasons. First, the treaty text as a whole can be seen as an effort to implement the NPT itself, in that it advances the law against nuclear weapons. This is explicitly mentioned in the preamble to the TPNW (preambular paragraph 18), which reaffirms the NPT as “the cornerstone of the nuclear disarmament and non-proliferation regime”. But it is also a point repeatedly made by negotiating states throughout the negotiation of the treaty. Thus, the text of the treaty and the clear intentions of the negotiating states is to strengthen and implement the NPT, not to disrupt or weaken it.

Second, the formulation of the last eight words is based on the earlier language of Article 26 of the Arms Trade Treaty 2013 (ATT) – a treaty that has attracted broad support (and Sweden is a State Party). The aim of Article 26 was to ensure that the ATT did not itself become undermined by any other agreements governing trade in conventional weapons. Its aim was not to disrupt or weaken other treaties, but simply to make it clear that the rules set out in the ATT should not be undermined by other treaties or agreements. Similarly, with the TPNW, Article 18 ensures that its absolute prohibition on nuclear weapons cannot be read down so as to condone or allow for any asserted right of possession of nuclear weapons arising from the NPT. It does not purport to weaken the NPT, it simply emphasises that its own provisions must not be read down.

## FOOTNOTES:

1 See for example, Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document UN Doc. NPT/CONF.1995/32 (Part I), annex, Decision 3 (5 May 1995); Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, UN Doc. NPT/CONF.2000/28 (Parts I and II), 13-15 (19 May 2000); Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, UN Doc NPTCONF.2010/50 (Vol I), 20 (18 June 2010).

2 Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996, para. 105(2)(f).

3 Although 183 states have signed the CTBT, and 166 of those have ratified the treaty, it is still not in force. This is because the treaty provides a list of 44 specific states which must ratify the treaty before it can legally enter into force. Eight of those states have not taken that step: China, North Korea, Egypt, India, Iran, Israel, Pakistan and the USA.

4 Sweden, Explanation of Vote, 7 July 2017.

5 It is also relevant to note here that the non-possessor states are subject to international verification procedures implemented by the International Atomic Energy Agency to ensure their compliance with their non-proliferation obligations. Today, four other states have nuclear weapons (Pakistan, India, Israel and North Korea).

# SAFEGUARDS PROVISIONS IN THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

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**This text is a shorter version from its original article that was published on arms control law website on 11 April 2018.<sup>1</sup>**

**Since its adoption by 122 states on 7 July 2017, the Treaty on the Prohibition of Nuclear Weapons (TPNW) has frequently been made the target of criticism as regards its Safeguards provisions. The following provides an analysis of these clauses as contained in the Treaty's Articles 3 and 4, outlines the main arguments that have been leveled against the Treaty in this regard, and responds to these.**

### **Constructive (and de-constructive) criticism**

The TPNW's Safeguards provisions are undoubtedly imperfect. Limited negotiation time, lack of expertise and at times a strong divergence of views resulted in what has been called a conservative, weak, vague and even ambiguous text. The main arguments of the TPNW critics will be addressed below in an attempt to evaluate to what extent they hold true and, where possible, to identify the reasons that led to apparent or actual shortcomings in the Treaty text.

### **“The TPNW weakens the existing Safeguards regime”**

The TPNW has been accused of weakening the existing Safeguards regime by (a) not imposing as a prerequisite for ratification or accession the existence of a Safeguards agreement and (b) by not using the AP as the minimum ('golden') standard in this respect.

Under the NPT the conclusion of a CSA is mandatory for non-nuclear-weapon States Parties (as per Article III), whereas the conclusion of an AP is optional. Valid arguments were thus made by states that establishing the AP as the minimum acceptable standard in the TPNW would mean changing the former's nature from optional to mandatory, something that would exceed the mandate of the Negotiating Conference.

In reality, the TPNW takes the same approach as the NPT, imposing upon (non-nuclear-weapon) States Parties the direct obligation to negotiate and agree a Safeguards agreement. Moreover, the Treaty goes beyond the NPT, by obliging States Parties to maintain, as a minimum, their existing Safeguards standards, thus making the AP mandatory for states that are bound by it when the TPNW enters into force.

The TPNW goes beyond the NPT also with regard to nuclear possessor States Parties, by imposing on them a direct obligation to negotiate, conclude and maintain an adequate Safeguards agreement. Currently nuclear-weapon States are under no such obligation under the NPT, although they do have voluntary arrangements in place regarding safeguards for some of their nuclear material.

**“The TPNW’s Safeguards provisions are vague and lack specificity.”**

As regards states not possessing nuclear weapons, the Safeguards standard is clear, insofar as it refers to INFCIRC/153 (Corrected), i.e. the model CSA. This argument therefore refers mainly to the Safeguards clauses contained in Article 4, which are applicable to nuclear possessor States Parties.

In this respect the text is indeed vague – and legitimately so. Indeed, it would have been neither possible nor appropriate to set one single standard a priori and applicable to all nuclear possessor states, irrespective of differences among nuclear arsenals and of possible future developments in such arsenals prior to the entry into force of the TPNW for the state(s) in question. Moreover, creating a new Safeguards standard would have clearly exceeded the mandate of the Negotiating Conference, in addition to being perceived as infringing upon the authority of the IAEA.

**“The Treaty sets two different Safeguards standards. This discrimination is counterproductive...”**

...the argument goes, as it is not conducive to confidence-building and thus to complete, verifiable and irreversible disarmament. The loophole identified regards states not possessing nuclear weapons after 7 July 2017 that do not have an AP in force at the time of entry into force of the Treaty – these are not obliged by the TPNW to adopt one, whereas states having possessed nuclear weapons after the cut-off date are required to adopt Safeguards equivalent in scope and purpose to those of a CSA plus AP.

It is also argued that *this differentiated treatment contradicts the NPT*, in particular Action 30 (agreed in the Final Document of the 2000 Review Conference and

reaffirmed at the 2010 Review Conference), which provides that when nuclear weapons have been eliminated the highest standard of Safeguards applied by the IAEA – currently *CSA plus AP* – should be applied universally to all states.

It can validly be argued that what is currently stalling progress on nuclear disarmament is not the reluctance of a small number of states to adopt APs (for which they have no obligation), but the failure of nuclear-weapon states to implement their commitments under the NPT. It is also logical to argue that differentiated Safeguards standards are warranted considering how much easier it would be for a state having possessed nuclear weapons to conceal or re-acquire nuclear weapon-grade material and relevant technology, or to divert material to non-peaceful uses and/or to convert nuclear facilities, compared to a state that was not previously in possession of such weapons.

**Let’s end with some universally acknowledged truths**

One – the TPNW is not, and was never meant to be, a Comprehensive Nuclear Weapons Convention. What principally distinguishes the former from the latter model is the existence of provisions, including obligations, related to the verification of the complete and irreversible elimination of nuclear weapons. These are indispensable for achieving and maintaining a world free of nuclear weapons – however, whether one likes it or not, this was not the role envisaged for the TPNW by its drafters.

Two – equally indispensable for a nuclear-free status quo are Safeguards capable of ensuring that any material and activity resulting in or involving nuclear energy is put to exclusively peaceful uses. Safeguards should be applied universally. The NPT sets the minimum standard for Safeguards applicable today, but states not party to the NPT are practically under no Safeguards obligations.

And three – when it comes to nuclear disarmament, there is no magic bullet. The road to global zero requires consistency, determination, good faith, and above all political will. The TPNW is not the end of the road, but a significant (and unprecedented) step in

the right direction. As such, further steps, measures, building blocks or whatever else we may wish to call them will be needed to reach the destination.

The TPNW is now a reality. Despite its shortcomings, it shook the stagnating waters of nuclear disarmament. Instead of engaging in futile debates in favour or against it, states should join forces to maintain, and strengthen, this momentum. The fact remains, a solid majority of non-nuclear weapon states have made one additional effort towards the implementation of the NPT's Article VI. It's about time the nuclear-weapon states did the same – they have dozens of unimplemented undertakings and commitments to choose from.

The problem is, we may be running out of time.

#### **FOOTNOTES:**

1 To read the full article go to; <https://armscontrollaw.com/2018/04/11/safeguards-provisions-in-the-treaty-on-the-prohibition-of-nuclear-weapons>.



# TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS: THE ROLE OF MEETINGS OF STATES PARTIES AND REVIEW CONFERENCES

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**The evolution of science means that treaty regimes also need to respond to new weapon technologies that may undermine their core norms. This collective monitoring and response is achieved inter alia through Meetings of States Parties and Review Conferences. The Treaty on the Prohibition of Nuclear Weapons contains core provisions that the majority of States have called for since the founding of the United Nations. But it also foresees it's own further development including (1) the naming of an international authority to negotiate verification arrangements, (2) the establishment of deadlines for nuclear weapons removal and (3) "other measures", including additional protocols, for the verified elimination of nuclear weapons. Only States Parties can participate in the adoption of these important measures.**

Arms control and disarmament treaties are living organisms. While their fundamental norms remain constant over time they also reflect the context in which they were negotiated, the limits of what could be achieved at a given historical moment, the priorities of negotiating States and current understanding of the types of weapons technology being covered. Their health and effectiveness require monitoring technological innovations and other treaty implementation

challenges and, if needed, the development by State Parties of subsequent understandings, clarifications or additional protocols. For this reason most modern multilateral disarmament treaties provide for meetings of their State Parties as well as periodic review conferences to take stock of long-term trends and to adapt to new circumstances.

The 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW) was a major step forward for the global disarmament regime governing weapons of mass destruction. By adding nuclear weapons to existing global bans on chemical and biological weapons the treaty establishes a global norm making clear that nuclear weapons are unacceptable, and now also illegal for States Parties, on humanitarian, moral and legal grounds. It fills a "legal gap" in international law through a comprehensive prohibition on all core activities involving nuclear weapons: use, development, production, acquisition, transfer and stationing. It also prohibits assisting anyone to conduct such prohibited acts.

The TPNW establishes the normative foundations and legal-humanitarian rationale for nuclear disarmament. In doing so it provides the "goal post" against which all incremental steps towards a nuclear-free world can be measured. However, it intentionally



leaves certain crucial elements open to elaboration through future meetings of States Parties. These elements include:

(1) Designating a competent international authority (most likely the IAEA) to negotiate on behalf of States Parties a regime to verify “the irreversible elimination of nuclear-weapons programs, including the elimination or irreversible conversion of all nuclear-weapons-related facilities” (art. 4.6),

(2) Establishing deadlines for the removal of any weapons stationed on the territory of a State Party and for the destruction of nuclear weapons by any State Party possessing them (articles 4.2 & 4.4), and,

(3) Receiving and reviewing declarations concerning a State’s nuclear weapons status and of progress towards and completion of destruction of such weapons (articles 2.2 & 4.5).

Significantly, the Treaty also empowers meetings of its States Parties to agree upon and adopt further “(m)asures for the verified, time-bound and irreversible elimination of nuclear-weapon programmes, including additional protocols to this Treaty” (art. 8.1b).

The fact that the TPNW foresees the future development of provisions to ensure the verification of the elimination of nuclear weapons and their production programs should be considered a strength and not a weakness. Nuclear-armed States that have the greatest technical capacity to elaborate detailed destruction provisions and verification mechanisms did not participate in the treaty’s negotiation and yet the treaty leaves the door open to their future adherence and to their active role in the negotiation of such provisions. It is also foreseeable that one or more would negotiate among themselves and bring the resulting agreement to the States Parties for their consideration. This was undoubtedly the best result achievable within the negotiating context.

Had States not possessing such weapons attempted to negotiate such provisions the result would almost certainly have been criticized as not being technically appropriate or well founded and thus could have constituted an obstacle to future adherence by States

possessing nuclear weapons. Rather, the door was left open to them and an important role assigned to future meetings of States Parties. It is also important to note that the mandate of the negotiating conference, based on UN General Assembly resolution 71/258 of 23 December 2016 was “to negotiate a legally binding instrument to *prohibit* nuclear weapons, leading *towards* their total elimination” (emphasis added) and not to negotiate a nuclear disarmament destruction or verification regime.

Meetings of States Parties and Review Conferences have historically played a role in strengthening treaty regimes and advancing common understanding of core obligations. The most notable example is the Biological and Toxin Weapons Convention (BTWC). Like the TPNW, it did not contain provisions to verify the destruction of stockpiles of prohibited weapons. However, unlike the TPNW, it did not even require State Parties to have or to adopt agreements with an international authority (like the IAEA) to verify compliance with core provisions.

Successive meetings of States Parties and Review Conferences of the BTWC over several decades have attempted to strengthen the convention regime through a variety of measures. These initiatives have included successes, failures and attempts to overcome the failures. They include (1) agreements on politically binding confidence-building measures through which States demonstrate compliance with the BTWC through declarations, scientific contacts and information exchange, (2) unsuccessful efforts from 1992 to 2001 to negotiate a legally binding verification protocol, and (3) 15 years of generally productive intergovernmental work since 2003 focused on practical measures to prevent hostile uses of biology, strengthen national implementation and control measures, respond to suspicious outbreaks of disease and promote codes of conduct for those working in the life sciences. The work since 2003 reflects the capacity of States Parties to adapt creatively to the failure of protocol negotiations, rapid developments in the life sciences and the post Cold War security environment. Another significant contribution was the clarification by the 1996 Review Conference that “although “use” is not explicitly prohibited under Article I of the BTWC<sup>1</sup>, it is still considered to be a violation of the convention”.

Internationally negotiated treaties, particularly on weapons, are never perfect. They reflect a complex blend of moral, legal and political imperatives, technical and security interests and an understanding of the technology (whether weapons or verification related) of the time. Meetings of States Parties and Review Conferences provide States Parties with the opportunity and responsibility to strengthen and to adapt the treaty regime to new circumstances while preserving its core objectives. The TPNW specifically foresees actions by States Parties to facilitate the adherence of nuclear weapon States.

Decisions on adherence to the TPNW or other treaties should be based on agreement with their core provisions and the core legal and moral norms they contain and not on demands for perfection. And on a commitment to strengthening these norms through their universalization and by shaping additional provisions - steps that can only be done by States Parties.

#### **FOOTNOTES:**

1 When the BWC was negotiated in 1971 it was considered that the use prohibition contained in the 1925 Geneva Protocol was adequate. However, given different legal views on the Protocol's prohibitions and different sets of States Parties further clarity was considered important.

# THE SUSTAINABLE DEVELOPMENT GOALS AND THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

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**As a leader on sustainable development, Sweden should sign and ratify the Treaty on the Prohibition of Nuclear Weapons. As a state party to the Treaty, Sweden would contribute to eliminating nuclear weapons and strengthen its role as a development leader. The goals of Sweden's foreign policy cannot be met without efforts to address the two existential threats facing humanity - climate change and nuclear weapons.**

Climate change is happening slowly and could be mitigated, but the damage from nuclear weapons will be immediate and irreversible. A single nuclear weapon detonated in a major city would kill millions and continue to cause harm to people and the environment for decades. The humanitarian community knows that no relief efforts will be possible in the face of a nuclear detonation, no state, agency or international organization has the capacity to respond to the devastation caused by a nuclear weapon.<sup>1</sup> A limited nuclear exchange is predicted to result in a global famine that would kill two billion people due to the soot deposited in the atmosphere. That soot would alter temperatures and decrease food production around the world. Costs would skyrocket and the most vulnerable people who are already malnourished or food insecure would no longer be able to afford food. As food prices increase and famine sets in, people will be forced to migrate to survive thus increasing pressure on the few areas still able to produce food.<sup>2</sup>

While Sweden is taking significant steps to address climate change, efforts to address the threat posed by nuclear weapons have been less ambitious. This lack of action is particularly problematic because nuclear weapons also hamper other global efforts like the Sustainable Development Goals (SDGs). As a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity, the SDGs set an ambitious and inclusive agenda for development. All states have committed to working towards these targets by 2030 and Sweden strives to be a leader in sustainable development. However, the use, development or possession of nuclear weapons or the reliance on nuclear deterrence is completely incompatible with a commitment to the SDGs.

### **Nuclear Weapons: Sustainable Threats**

Even if nuclear weapons are never used again, their continued existence hinders the achievement of the SDGs. Currently, billions of dollars are being poured in the production, development and modernization of nuclear weapons. For example, it is estimated that the United States alone will spend approximately USD 348 billion on its nuclear arsenal over the next decade. That is about USD 35 billion a year or USD 95 million a day.<sup>3</sup> And this is just one out of 9 nuclear weapons possessors, which all are modernizing and investing in their nuclear weapons. Investment in nuclear weapons is not limited to the governments of nuclear armed states. Financial institutions in 24

different countries made more than USD 525 billion available to publicly held nuclear weapon producing companies between 2014 and 2017.<sup>4</sup>

In contrast to the vast sums of money being sunk into nuclear weapons, the amount of money spent on achieving the SDGs is quite modest. Net official development assistance by members of the Organisation for Economic Co-operation and Development (OECD) Development Assistance Committee was merely USD 146.6 billion in 2017 with Sweden's official development assistance standing at USD 5.5 billion.<sup>5</sup> The OECD Development Assistance Committee includes 29 states compared to the nine nuclear armed states.

The world needs more investment in sustainable development if we are going to reach the Sustainable Development Goals. The World Health Organization reports that "achieving the SDG health targets would require new investments increasing over time from an initial US\$ 134 billion annually to \$371 billion by 2030."<sup>6</sup> All SDGs will require additional investments but some of those funds are currently being squandered on nuclear weapons. Even if they are not used again, nuclear weapons have a negative impact on global progress towards the SDGs by diverting much needed funding.

### A Tool for Sustainable Development

These threats to global progress have not gone unnoticed. The impact of nuclear weapons on sustainable development and humanity was one of the motivators of the Humanitarian Initiative on Nuclear Weapons meetings which eventually lead to the negotiation of the Treaty on the Prohibition of Nuclear Weapons (TPNW) in 2017. The TPNW's preamble recognizes that the catastrophic consequences of nuclear weapons "pose grave implications for [...] the environment, socioeconomic development, the global economy, food security and the health of current and future generations." To truly achieve the goals on the 2030 Agenda, Sweden should sign and ratify the TPNW as soon as possible.

The Treaty is grounded in humanitarian concerns about nuclear weapons and therefore is strongly related to the SDGs. Its focus on human security with strong provisions on gender equality and indigenous

rights ensures that the Treaty is in line with a feminist foreign policy and Sweden's position as leader on sustainable development.

The 2030 Agenda is a long term project so it possible that the specific SDGs prioritized by Sweden will change with governments and policies but what will remain constant is the contributions the TPNW can make to the achievement of these goals. As a leading force for sustainable development, Sweden will see its work strengthened by the universalization and ratification of the TPNW.

The General Obligations in Article 1 of the Treaty outline the core prohibitions of the treaty including prohibitions on production, transfer, stockpiling, testing and use. Since these prohibitions are aimed at preventing future nuclear weapons explosions and related casualties, humanitarian harm and environmental harm, a number of SDGs have direct connections. In particular, **SDG 3** "Ensure healthy lives and promote well-being for all at all ages," **SDG 6** "Ensure availability and sustainable management of water and sanitation for all," **SDG 14** "Conserve and sustainably use the oceans, seas and marine resources for sustainable development" and **SDG 15** "Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss" are especially relevant to the prohibition of the use or testing of nuclear weapons. In addition, new international humanitarian law furthers SDG 16.

The prohibition on developing, producing, and manufacturing nuclear weapons in Article 1(a) will begin to limit the resources (financial and scientific) devoted to nuclear arsenals while the prohibition on assistance with those actions will limit private sector investment in nuclear weapons producers. As discussed above, a reduction in spending on nuclear weapons could allow more funding and research to be devoted to the Sustainable Development Goals. It is possible that prohibiting the development, production and manufacturing of nuclear weapons will contribute to progress on a number of SDGs including **SDG 1** "End poverty in all its forms everywhere", **SDG 2** "End hunger, achieve food security and improved nutrition and promote sustainable agriculture" and **SDG 10** "Reduce inequality within and among countries" in particular.

Furthermore, shifting funds from the production and maintenance of nuclear weapons could easily contribute to **SDG 17** “*Partnership for the Goals*” which includes a specific target on mobilizing “additional financial resources for developing countries from multiple sources.”

The positive obligations outlined in Articles 6 and 7 of the Treaty when implemented will have the most direct impact on the realization of the SDGs. When implemented, Article 6(1) on assistance to individuals affected by nuclear weapons use or testing will have a direct impact on SDG 16 regarding Peace, Justice and Strong Institutions by filling the legal gap in regard to nuclear weapons and by promoting the rights of those affected. Obligations concerning assistance to individuals affected by nuclear weapons use and testing will further contribute to the achievement of SDG 3 on Good Health and Well-Being, especially due to the principle of non-discrimination in the text. Assistance that is implemented in an age- and gender-sensitive manner can contribute to SDG 5 on gender equality by addressing the current health impacts of nuclear weapons detonations which disproportionately affect women and girls.<sup>7</sup>

Article 6(2) on environmental remediation will contribute to the realization of a number of Sustainable Development Goals. The implementation of environmental remediation provisions in the prohibition treaty will have the greatest impact on SDGs 14 on Life below Water and 15 on Life on Land as attempts to clean up contamination on land and in the oceans may restore damaged ecosystems or at minimum mitigate the ongoing damage to these ecosystems. There is significant evidence that contamination from the use and testing of nuclear weapons has had an impact on land and marine flora and fauna in addition to rendering wide stretches of land inaccessible. If land can be made safe for sustainable use, environmental remediation may contribute to realizing the targets of SDG 2 on hunger, food security and sustainable agriculture. Environmental remediation will also have an impact on SDG 3 on Good Health and Well-Being as well as SDG 6 regarding Clean Water and Sanitation. Finally, Article 7’s provisions on international cooperation echo **SDG 17** (*Strengthen the means of implementation and revitalize the global partnership for sustainable development*).

## Conclusion

The continued existence of nuclear weapons threatens global progress toward the Sustainable Development Goals. Nuclear weapons must be eliminated in order to truly make progress towards the SDGs. Recent history has shown that the best way to eliminate a weapon is to prohibit it first. If Sweden is truly committed to the SDGs and a Feminist Foreign Policy then it should take meaningful steps towards the elimination of nuclear weapons starting with signing and ratifying the Treaty on the Prohibition of Nuclear Weapons.

## FOOTNOTES:

- 1 Government of Austria, “Vienna Conference on the Humanitarian Impact of Nuclear Weapons 8 to 9 December 2014 Report and Summary of Findings of the Conference” [https://www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14\\_Chair\\_s\\_Summary.pdf](https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14_Chair_s_Summary.pdf).
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- 7 Dimmen, Anne Guro, “Gendered Impacts: The humanitarian impacts of nuclear weapons”, ILPI and UNIDIR, December 2014, <http://nwp.ilpi.org/wp-content/uploads/2014/12/No-5-Gendered-impacts.pdf>.

# ATOMVÅPENFORBUDET ER I SAMSVAR MED LIBERALE PRINSIPPER

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**I dag er det allment akseptert at atomvåpen har uakseptable humanitære konsekvenser, og alle er enige om at målet er en verden fri for atomvåpen. Venstre mener at et forbud mot atomvåpen er et viktig skritt på veien dit. Så lenge atomvåpen anses som legitime stridsmidler, vil ikke presset på å kvitte seg med dem bli tilstrekkelig stort.**

Venstre bygger sin ideologi på den sosiale liberalismen. Sentralt i denne ideologien er tanken om at dagens generasjon ikke har rett til å frarøve våre barn og barnebarn den friheten og ressursene vi i dag kan nyte godt av. Selv en regional krig der atomvåpen blir brukt vil kunne true livsgrunnlaget på kloden gjennom de katastrofale ødeleggelsene det vil medføre. Derfor er forbudet mot atomvåpen helt i tråd med Venstres grunnleggende ideologiske prinsipper.

Da atomvåpenforbudet ble vedtatt i FN 7. juli 2017, ble et viktig hull i folkeretten dekket. Andre inhumane våpen som særlig rammer sivile, som landminer, klasevåpen, kjemiske og biologiske våpen, er forbudt for lengst. Atomvåpen har lenge vært det eneste masseødeleggelsesvåpenet som ikke er underlagt et internasjonalt forbud. Når et stort flertall av FNs medlemsland nå har vedtatt en traktat som forbyr atomvåpen, er det sendt et kraftfullt signal om at også atomvåpen anses som uakseptable og illegitime.

Ingen statsleder ville finne på å skryte av at de har kjemiske eller biologiske våpen. Slike våpen er for-

bundet med stigma. Atomvåpen har imidlertid blitt behandlet som et unntak, og har lenge blitt ansett som et tegn på makt og et statussymbol for flere land. Hensikten med et forbud er å utvikle en norm som gjør det belastende å tilegne seg atomvåpen og true med å bruke dem i et forkjøpsangrep. Ingen har illusjoner om at dette betyr at atomvåpen vil forsvinne så snart forbudet trer i kraft. Derimot mener vi at den vil bidra til å skape en ny normativ standard, og at stadig flere stater vil støtte opp om et slik forbud. Det igjen vil øke presset for nedrustning.

Norge hadde en sentral rolle i oppstarten av det humanitære initiativet på atomvåpenområdet, og prosessen som ledet fram til at atomvåpenforbudet ble vedtatt. Kunnskapen om atomvåpens reelle konsekvenser og den store sikkerhetstrusselen de innebærer, gjorde at stadig flere innså at et forbud var nødvendig. Likevel valgte Norge å stå utenfor forbudsforhandlingene, og vi har så langt ikke underskrevet forbudstraktaten. Venstre mener Norge bør underskrive og ratifisere denne traktaten.

Norge har – i likhet med Sverige – en lang tradisjon for internasjonalt arbeid for fred og nedrustning. Vi har over tid bygd oss opp en kompetanse på internasjonale initiativer som det er viktig å forvalte. Støtte til atomvåpenforbudet er en naturlig fortsettelse av dette engasjementet. Ved å ratifisere atomvåpenforbudet, vil Norge styrke sin posisjon til å påvirke andre land i å fremme atomnedrustning og ikkespredning.



Venstre definerer NATO som en av grunnpilarene i norsk sikkerhets- og forsvarspolitik. Derfor har vi alltid argumentert for at norsk tiltredelse i atomvåpenforbudet ikke må gå på tvers av våre internasjonale forpliktelser innad i alliansen. Vi mener dette er mulig å få til gjennom politisk lederskap og dialog med andre NATO-land. Å undertegne atomvåpenforbudet vil ikke si at Norge trekker seg fra alliansens strategiske rammeverk. Å støtte et forbud som skaper ny dynamikk og fart i nedrustningsarbeidet, og som øker presset på balansert og gjensidig nedrustning, handler nettopp om å legge forholdene til rette for en atomvåpenfri verden.

Venstre mener at en norsk beslutning om å tiltre atomvåpenforbudspakten og NATO-medlemskap er fullt ut forenelig. Dette til tross for at Norge ville være det første NATO-landet som ville følge forbudssporet. Vi vil understreke at det i dag ikke er NATO-alliansens defensive atomvåpenpolitikk som utgjør en trussel for bruk av atomvåpen i dagens ustabile verden. Faren for atomopprustning utover de opprinnelige atomvåpenmaktene, samt trusselen fra ikke-statlige aktører med atomvåpen utgjør en reell trussel mot verdensfreden. At Norge støtter et atomvåpenforbud vil som sådan støtte opp under ikkespredningsarbeidet, et uttalt mål også for forsvarsalliansen NATO.

Ikkespredningsavtalen har lenge vært det sentrale rammeverket for nedrustning. Avtalen forplikter atomvåpenstater til å ruste ned og avskaffe atomvåpen, og har vært det mest konkrete bidraget til nedrustning siden den først ble ratifisert. Samtidig er det mye som fortsatt gjenstår, og vi mener at atomvåpenforbudet er et viktig, nytt instrument. Atomvåpenforbudet skaper ny dynamikk i diskusjonene om å ruste ned og avvike atomvåpen. Forbudstraktaten er altså en oppfølging av ikkespredningsavtalen, som utfyller og forsterker den. FNs generalsekretær Antonio Guterres har framhevet atomvåpenforbudets betydning og understreket at forbudet er fullt kompatibelt med ikkespredningsavtalen.

I en tid hvor atomvåpenstater moderniserer og oppgraderer sine våpenarsenaler og truer med atomkrig, er det særlig viktig at vi bidrar til å holde fokus på nedrustning. Klar støtte til forbudet bidrar til å stigmatisere atomvåpen og forsterke presset på atomvåpenstatene til å forsterke innsatsen for gjensidig og balansert nedrustning.

# EN FEMINISTISK REFLEKTION OM KÄRNVAPEN- NEDRUSTNING OCH FÖRÄNDRING

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**Få saker verkar cementera konservativa uppfattningar om genus så mycket som säkerhetspolitik. När Sveriges utrikesminister Margot Wallström (S) lät meddela att hon ville ansluta Sverige till ett internationellt förbud mot kärnvapen – ett förbud som den svenska regeringen varit med och förhandlat fram – drabbades konservativa debattörer av kollektiv hysteri. Än värre blev det när det blev känt att Donald Trumps försvarsminister hotat försvarsminister Peter Hultqvist att ett svenskt undertecknande av kärnvapenförbudet kunde komma att riskera framtida relationer med Nato. I den här artikeln ges en feministisk reflektion om hur vi kan förstå motståndet mot kärnvapenedrustning och vurmandet för det manliga beskyddets logik.**

Den 7 juli 2017 enades en majoritet av FN:s medlemsstater om ett förbud mot kärnvapen, trots att kärnvapenstaterna inte deltog i förhandlingarna. Sveriges utrikesminister Margot Wallström meddelade strax därpå att den svenska regeringen skulle utreda konsekvenserna av en svensk anslutning till förbudet, med sikte på ratificering.<sup>1</sup> Detta öppnade upp för en intensiv debatt. Även om utrikesministern fick stöd från organisationer i det civila samhället, som några månader senare fick Nobels fredspris för sina insatser,<sup>2</sup> mötte hon massiv misstro och kritik. Som feministisk forskare om internationella relationer, med fokus på svensk säkerhetspolitik, nedrustning och kärnvap-

en under det kalla kriget, slog det mig hur kritiken mot Wallström ljuder som ett eko av misogynra röster från den svenska kärnvapendebatten på 1950-talet. I den här artikeln använder jag mediedebatten om kärnvapenförbudet som empirisk lins för att resonera kring hur kärnvapen och nedrustning kan förstås utifrån ett feministiskt perspektiv.<sup>3</sup>

## Återblick

Kärnvapen har en särskild plats i svensk säkerhetspolitisk historia. Samma år som USA bombade de japanska städerna Hiroshima och Nagasaki påbörjades kärnvapenforskning i Sverige. Programmet var dock hemligt, och först i början av 1950-talet kom frågan att nå en bredare allmänhet och en intensiv debatt tog fart.<sup>4</sup> Bland de främsta förespråkarna fanns Överbefälhavare Nils Swedlund. Högerpartiet var också positiva, Liberalerna var försiktigt positiva och Centerpartiet intog en avvaktande hållning. Regeringspartiet Socialdemokraterna var djupt splittrat. 1958 bildades Aktionsgruppen mot svensk atombomb (AMSA), som tillsammans med det socialdemokratiska kvinnoförbundet (SSKF) under ledning av Inga Thorsson, som ofta beskrivs som motståndarsidans ledare, drev en intensiv kampanj mot svenska kärnvapen.<sup>5</sup>

Trots att feministisk forskning har vunnit mark inom en rad akademiska discipliner råder brist på forskning om genus och kärnvapen, både i Sverige och interna-



tionellt. Den svenska forskning som är relevant i sammanhanget berör framförallt frågor om kärnvapen, politiskt aktörskap och kön. Historikern Anna-Greta Nilsson Hoadley menar att SSKF:s handlingsutrymme var begränsat och att de mötte starkt internt motstånd.<sup>6</sup> Historikern Gunnel Karlsson förklarar att detta motstånd uppstod för att de agerade som kvinnor inom ett område som tidigare varit förbehållet män - försvarspolitik.<sup>7</sup> Ett exempel på detta var reaktionerna som följde när Thorsson i februari 1956 informerade partistyrelsen att SSKF var mot svensk kärnvapenanskaffning. Per Edvin Sköld anklagade henne för att föra "ett mera affektivt än ett genomtänkt argument". Statsminister Tage Erlander vädjade till Thorsson att ändra uppfattning, och riksdagsledamot Ragnar Lassinantti sade sig tro "att liksom i så många andra kritiska situationer kvinnorna även i denna fråga kommer att följa karlarna". Enligt honom fanns det ingen anledning att "gå på två linjer".<sup>8</sup> Vad dessa reaktioner visar är att Thorsson framställdes som mer känslös än rationell, att det var hon som skulle ändra ståndpunkt, att den manliga normen skulle hållas intakt. I en rapport skriven för *Weapons of Mass Destruction Commission* argumenterar tre genusforskare att kärnvapen förväntas diskuteras på ett "rationellt" sätt. Den rationella logiken är enligt dem kopplad till en maskulin identitet, medan motsatsen, att ge uttryck för känslor, förknippas med en feminin identitet. Givet ett maskulint tolkningsföreträde och en nedvärdering av det som förknippas med kvinnor, avfärdas och ignoreras argument som avviker från den rationella logiken.<sup>9</sup>

Allteftersom debatten om de svenska kärnvapnen fortlöpte la motståndarna fokus vid de internationella förhandlingar om nedrustning som den svenska regeringen var engagerad i. Detta var i en tid då formella förhandlingar om förbud mot spridning av kärnvapen var i sin linda.<sup>10</sup> Det dröjde dock fram till 1968, då Sverige skrev under icke-spridningsavtalet om kärnvapen (NPT) som de svenska kärnvapenplanerna helt övergavs. När Sverige skrev under NPT var det som historikern Karl Molin skriver "den odisciplinerade oppositionen som 'fick rätt'".<sup>11</sup> Nedrustning kom att bli en central del i den aktiva utrikespolitik som tog form under statsminister Olof Palme. Det var först efter det kalla krigets slut som engagemanget klingade av. När Wallström tillträdde som utrikesminister och deklarerade en feministisk utrikespolitik uppstod dock möjlighet för detta att ändras. Wallström tillsatte en särskild

delegation om folkrätt och nedrustning på UD, med representation från såväl försvarsdepartementet och försvarsmakten som akademien och civila samhällets organisationer. Jag tolkar det som en intention att återigen prioritera nedrustning inom den svenska utrikespolitiken.

## Den farliga naiviteten

Tillbaka till 2017. I sin vilja att ansluta Sverige till kärnvapenförbudet placerade Wallström frågan i en historisk kontext av aktivt nedrustningsengagemang: "Sedan vi tillträdde har regeringen återigen placerat Sverige i centrum för det globala nedrustningsarbetet. Samtidigt som vi bygger upp vår egen konventionella militära kapacitet och utökar mellanstatliga samarbeten så är vi medvetna om betydelsen av dialog, diplomati och arbete för fred. En kärnvapenfri värld uppnås inte med naivitet eller passivitet utan genom en balansgång mellan pragmatism och tydliga ideal."<sup>12</sup> Här ryms en historisk hänvisning till den nedrustningspolitik som tidigare har drivits. Hon betonar också att detta inte ska tolkas som naivt eller passivt. Reaktionerna lät dock inte vänta på sig. "Margot Wallström är naiv om kärnvapen". Så löd rubriken för Expressens ledare den 29 augusti 2017. I ljuset av Nordkoreas missilttest ses Wallström som "världsfrånvänd" när hon vill ansluta Sverige till kärnvapenförbudet.<sup>13</sup> Moderaternas delegationsledare i Europaparlamentet Gunnar Hökmark använde liknande vokabulär i ett debattinlägg i Aftonbladet. Förutom att vara naiv menade han att Wallström var världsfrånvänd, och i sin naivitet farlig.<sup>14</sup> Kristdemokraterna Mikael Oscarsson och Sofia Damm skrev att "Den internationella maktbalansen riskerar att hotas av en naivitet kring kärnvapen och en krass, säkerhetspolitisk verklighet."<sup>15</sup> Ledaren i Sydsvenskan slog fast att "Landets säkerhet måste gå före en visserligen vacker men orealistisk vision."<sup>16</sup> Naiv, världsfrånvänd och orealistisk, det är så Wallström beskrivs.

Feministiska forskare har visat att begrepp som naiv och orealistisk historiskt har kopplats samman med att vara kvinna, ett feminiserat attribut förenat med känsla. Att vara realistisk å andra sidan kopplas till naivitetens motsats, till det rationella och förnuftiga. Dessa begrepp har knutits samman med att vara man, och kan ses som maskulint kodade i sin användning över tid. På liknande sätt finns en historisk uppdelning mellan det som ses som "mjukt" och "hårt". Det mjuka

knys samman med känsla och femininitet, det hårda med förnuft och maskulinitet. Det finns ingen nödvändig konsekvens i detta, utan det kan ses som ett generaliserat och förenklat mönster. Dessa föreställningar är dock etablerade. I ett försvar av regeringens inställning till kärnvapenförbudet skriver Olov Abrahamsson vid Norrländska Socialdemokraten: "Svensk utrikes-, säkerhets-, och försvarspolitik handlar inte om antingen-eller utan om både-och. Den måste rymma både mjukt (som arbetet för fred, diplomatiska lösningar och kärnvapenedrustning) och hårt (som att stärka det egna försvaret och utveckla militära samarbeten med andra länder)."<sup>17</sup> I sitt försvar av Wallströms linje återstärker han kopplingarna mellan kärnvapenedrustning och mjukhet å ena sidan, och försvar och hårdhet å andra sidan. Dessa associationer fanns innan Wallström skrev sitt debattinlägg, och de reproducerades i reaktionerna som följde.

Vad är det då som kritikerna är så rädda för? Den huvudsakliga farhågan i det undersökta materialet handlar om Sveriges möjlighet att samarbeta med/gå med i den militära försvarsorganisationen Nato. Wallström argumenterade i sitt första debattinlägg att förbudet inte skulle påverka relationerna med USA. Dock fick ett brev från USA:s försvarsminister James Mattis till Sveriges försvarsminister Peter Hultqvist kritikerna att hävda motsatsen. Enligt SvD varnar Mattis för att "ett svenskt-amerikanskt samarbete på försvarsområdet försvåras om regeringen skriver på konventionen."<sup>18</sup> I ett debattinlägg skriver de moderata debattörerna Karin Enström och Hans Wallmark: "Kärnvapenedrustning är viktig men vi har under en längre tid varnat för att konventionen om förbud av kärnvapen riskerar att skada Sveriges relationer. Bland annat uppges det finnas ett brev från USA:s försvarsminister James Mattis som bekräftar våra farhågor. Enligt media kommer den svenska relationen till Nato och viktiga länder att påverkas negativt om Sverige undertecknar konventionen." Vidare menar de: "I en orolig omvärld måste Sveriges säkerhet stärkas. Då gäller det att värna vårt lands handlingsfrihet."<sup>19</sup> Även om de ser kärnvapenedrustning som ett viktigt mål, finns det annat som är överordnat. Sveriges möjlighet att vara med i Nato, och att därigenom ta del av en beskyddsdoktrin förankrad i kärnvapeninnehav, verkar vara ett överordnat mål. När kärnvapenivrvarna på 1950-talet argumenterade för att behålla kärnvapenprogrammet framhöll de just handlingsfrihet som ett

huvudargument. Sverige skulle behålla möjligheten att skaffa kärnvapen om så krävdes. Idag är handlingsfriheten att gå med i Nato det som dominerar. Det paradoxala i att bibehålla handlingsfriheten och samtidigt basera det egna agerandet på uttalanden av ett annat lands regeringsrepresentant förblir oproblematiserat.

Föreställningar om genus, vad det betyder att vara kvinna, man eller inget av det skiljer sig åt världen över, i olika tidsepoker och i skilda kontexter. Det verkar dock finnas vissa saker som är svåra att rubba. I min forskning har jag flera gånger förundrats över styrkan i vad statsvetaren Iris Marion Young kallar för "the logic of masculinist protection", det manliga beskyddets logik.<sup>20</sup> Young hävdar att försvarspolitiska doktriner avspeglar konservativa familjeideal. I familjen har mannen historiskt agerat som beskyddare genom att vara huvudsaklig försörjare och garant för familjens säkerhet, och i staten har han agerat som beskyddare genom sin medverkan i armén. Dessa roller spåras till relationella föreställningar om mäns styrka, mod och ansvar, och kvinnors förmodade behov av beskydd. Den starke mannen agerar, den svaga kvinnan är passiv. Han beskyddar henne, hon vill ha hans beskydd. Liknande dikotomier återfinns på flera platser i internationella relationer. De är varken konstanta eller självklara – åtskilliga gånger har de utmanats. Däremot verkar de vara synnerligen benägna att hänga kvar, inte minst i säkerhetspolitiska samtal. Reaktionerna som följer när de utmanas har inte sällan sexistiska och/eller rasistiska undertoner.

### **"Bra så. Nu måste Margot Wallström köras över."**

Medan Wallström pekats ut som naiv, världsfrånvärd och till och med farlig kontrasteras hon också i sin motsats: försvarsminister Peter Hultqvist. Expressens ledare den 29 augusti 2017 skriver: "Försvarsminister Peter Hultqvist har strävsamt stärkt den svenska försvarsförmågan. Anslagen höjs, värdlandsavtalet med Nato har godkänts och Sverige gick vid halvårsskiftet med i elitstyrkan Joint Expeditionary Force. Men naiviteten har inte försvunnit. Samtidigt som Sverige lägger miljarder på inköp av stridsflygplan, u-båtar och luftvärnssystem åker utrikesminister Margot Wallström världen runt och förespråkar nedrustning."<sup>21</sup> Center-stämplade Södermanlands Nyheter skriver i sin ledare: "Om de borgerliga partiernas invändningar är för

svåra att svälja, så bör Wallström åtminstone ta in den skarpa kritiken från försvarsministerns om- råde.”<sup>22</sup> I DN:s ledare kan vi läsa: ”Kanske har Wallström skygglappar, kanske vägrar hon lyssna på försvarsdepartementet. Det är inte första gången hon visar dåligt omdöme. Regeringens chef borde i så fall peka med hela handen.”<sup>23</sup> Mikael Holmström, försvarsvänlig debattör på DN, citerar Jan Björklund: ”Bra så. Nu måste Margot Wallström köras över.”<sup>24</sup> Andra går ännu längre. Under rubriken ”Tänk om även Sverige behöver kärnvapen!” ger sig Lars Ströman vid mediekoncernen MittMedia in i debatten. Rubriken till trots konstaterar han att det var ”klokt” av Sverige att avstå från att skaffa kärnvapen när det begav sig. Samtidigt ser han Natos kärnvapen som nödvändiga för Sveriges säkerhet. ”Sverige behöver inga egna kärnvapen. Men vår säkerhet är beroende av Natos kärnvapen. Försvarsminister Peter Hultqvist är måttligt förtjust i den linje som utrikesminister Margot Wallström bedriver.”<sup>25</sup>

Hultqvist kopplas samman med begrepp som ansvar, försvar och säkerhet. Han, till skillnad från Wallström, tillskrivs det hårda, det rationella, det realistiska. Visst finns det något kittlande illustrativt över att dessa två politiker, en man och en kvinna, framställs så olika. Det blir nästan för enkelt, för tillrättalagt. Eftersom jag är övertygad om att genusidentiteter är föränderliga och inte nödvändigtvis desamma som dominerande uppfattningar om biologiska kroppar blir det nästan provocerande att en man och en kvinna behandlas så stereotyp i termer av genus. Jag brukar i min undervisning prata om detta som förenklade mönster snarare än konstanter. Det handlar nämligen inte om biologiska kroppar. Den amerikanska statsvetaren Zillah Eisenstein lär oss att kön, genus och makt är mer komplicerat än så. I en bok om den amerikanska administrationen under president George W. Bush visar hon hur kvinnors representation på höga politiska nivåer användes för att legitimera imperialistisk politik, med förödande konsekvenser för kvinnors säkerhet. Samtidigt som utnämningen av Condoleezza Rice till utrikesminister kan ses som ett slag för jämställd representation är hennes kön ingen garanti för en antimilitaristisk politik. Snarare drev Rice en utpräglad militariserad linje, som mer bidrog till en imperialistisk agenda än till kvinnors rättigheter. Kvinnor är inte per automatik fredliga, och män är inte krigiska av naturen. I många länder, däribland Sverige, har historiska processer dock bidragit till att skapa en koppling mellan

maskulinitet, rationalitet och försvar, och femininitet, känsla och svaghet. Även om mycket har förändrats sen den svenska kärnvapendebatten på 1950- och 60-talet finns det något som tycks vara intakt. Rädslan för de hotfulla andra, och övertygelsen om att det är just militära medel och det manliga beskyddets logik som kan skydda från olika former av hot, lever vidare.

## Avslutande reflektioner

Den svenska historien rymmer komplexa händelseförlopp. Efter intensiva debatter kantade av misogyna uttalanden då den svenska regeringen övervägde att skaffa kärnvapen på 1950-talet skrotades kärnvapenprogrammet och regeringen slog in på motståndarsidans linje. Istället för att skaffa kärnvapen tog Sverige sikte på kärnvapenedrustning. De som i debatten hade utmålats som naiva, känslobaserade och farliga kunde blicka tillbaka på en kamp som de kom att vinna. Kommer den regering som tillträder efter valet 2018 att våga skriva under kärnvapenförbudet? Kanske är rädslan för USA:s reaktion för stark. Kanske är tilltron till den egna försvarsförmågan så liten, och viljan att beskyddas av Nato så intensiv, att en anslutning till kärnvapenförbudet blir omöjlig. Kanske blir Wallström, med hjälp av krafter från det civila samhället och feministiska politiker i olika läger, vår tids Thorsson i framtida historieböcker. Kanske får den disciplinerade oppositionen rätt igen. Om kärnvapen inte utplånar mänskligheten alltför snart blir det upp till kommande generationers historiker att göra bokslut vad gäller denna fråga.

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# RATIFICERING AV FN:S FÖRBUD MOT KÄRNVAPEN

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Maj 2018

**Traktaten ligger nu på bordet. Staters beslut att underteckna och ratificera brukar ta tid. Det blåser motvind från Pentagon och Nato. Uppenbarligen skapar traktaten mot kärnvapen oro i Nordatlantiska rådet. Rådet yttrade i september att traktaten inte är och inte kan bli sedvanerätt.**

### Hur avancerar processen?

Alla kärnvapenstater är i olika grad emot att ansluta sig. Kina är minst emot, vilket visade sig bland annat vid omröstningen i FN:s generalförsamling hösten 2016 inför förhandlingarna om ett kärnvapenförbud. Även inom Nato finns en viss sympati gentemot traktaten, främst i Norge och i Nederländerna. Norges parlament har röstat igenom ett beslut att utreda huruvida det norska medlemskapet i Nato kan kombineras med att landet blir part i traktaten. Vad gäller Nederländerna var det landets parlamentet som tvingade sin regering att delta i förhandlingarna.

Medvinden kommer främst från Mexiko, Brasilien, Irland, Nya Zeeland och Österrike. I Sverige ligger frågan i långbänk då man vill undvika att detta blir en valfråga. I Finland är det en icke-fråga; man deltog inte i förhandlingarna och är traditionellt inte en aktivistisk nation vad gäller nedrustning.

Ett lite lättköpt argument mot förbudsavtalet lyder: "Om ni vill eliminera kärnvapnen, vad är det då för mening med ett avtal som kärnvapeninnehavarna

förkastar? Det blir bara ett slag i luften!". Men "eliminera" i avtalstexten uttrycker ett mål på lång sikt medan preambeln berättar om det omedelbara syftet, som är att *bidra* till att uppnå en kärnvapenfri värld och att *göra framsteg* mot allmän och fullständig nedrustning. Detta är inga världsfrånvända illusioner utan syftet är tvärtom att bygga ett brett stöd bland världens länder för att delegitimisera kärnvapen.

Kom ihåg Genèveprotokollet mot gas 1925! Det tog många år innan USA ratificerade det. Nu anser alla – även USA – att gasförbudet utgör en bindande sedvanerätt, som till och med gäller vid inbördeskrig. Men visst, det måste medges – att uppnå ett förbud mot kärnvapen är en svårare uppgift än att nå fram till förbud mot biologiska och kemiska vapen, mot minor och splitervapen. Kärnvapnen påverkar den militära balansen. Det gör inte de andra vapenkategorierna.

En annan invändning mot traktaten är följande: "Kärnvapen har bidragit till fred sedan 1945 då det inte har varit ett enda krig mellan kärnvapenmakter. Rädslan för MAD (Mutual Assured Destruction) och ömsesidig utplåning har varit avhållande". Det ligger en sanning i det men det är också ett resultat av tur. Det har flera gånger varit farligt nära kärnvapenkrig. Om inte kärnvapen hade varit så delegitimerande hade de kanske använts.

Nu säger USA att deras kärnvapen inte längre är trovärdiga och att landet behöver "små" kärnvapen. Det



ökar risken för att kärnvapen används och att situationen eskalerar. Slutsatsen är att vi måste deligitimera alla kärnvapen.

Ytterligare en invändning som förts fram mot traktaten är att den skulle underminera NPT, icke-spridningsavtalet, som är en grundpelare i kärnvapenedrustningen.

Men på vilket sätt då? Det finns inget i traktaten som strider mot NPT. Alla som står bakom traktaten är också parter i NPT. Även kärnvapenstaterna kan ansluta sig, om de gör sig av med sina kärnvapen. Den nu framförhandlade traktaten om ett förbud mot kärnvapen visar att NPT har varit otillräckligt. NPT har framgångsrikt bundit och kontrollerat icke-kärnvapenländer men kärnvapenstaterna USA och Ryssland har bara reducerat sina arsenaler av ekonomiska skäl (och moderniserat dem). NPT:s kärnvapenstater använder NPT för att legitimera sina kärnvapeninnehav. Inte på femtio år har de på allvar uppfyllt sina skyldigheter att förhandla om att stoppa kärnvapenkapprustningen och sträva efter nedrustning. Om de drev CTBT (Comprehensive Test Ban Treaty), FMCT (Fissile Material Cut-off Treaty) och START (Strategic Arms Reduction Treaty) vore situationen en annan. USA och Ryssland talar om stegvis nedrustning, men rustar istället upp!

### **Ska Sverige underteckna traktaten?**

Alliansen motsätter sig av naturliga skäl. De önskar ansluta Sverige som medlem till Nato. Även om Nordatlantiska fördraget inte innehåller någon bestämmelse om kärnvapen, förutsätter medlemskap antagligen att man accepterar kärnvapen användning som en möjlig del av Natos strategier. Men finns det i förbudstraktaten något som skulle stå i vägen för samverkan med Nato för en icke-medlem som ingår i "Partnership for Peace"? Det är svårt att tro när man läser texten.

Parterna i traktaten åtar sig bland annat att inte *använda, tillverka, äga eller tillåta stationering av kärnvapen på sina territorier*. (Art. 1:g). Anser man i Nato att samverkan med Sverige kräver att vi ska hålla öppet för stationering av kärnvapen? Det är osannolikt. Såväl Island som Litauen rapporteras ha haft möjlighet att, om man så hade önskat, reservera sig mot att ha kärnvapen på sina territorier både i freds- och krigstid.

Parterna i traktaten åtar sig också att inte *hjälpa, uppmuntra, leda eller engagera sig i verksamhet som är förbjuden enligt traktaten, dvs. att utveckla, testa, tillverka, förvärva, lagra eller transportera kärnvapen* (Art. 1:e och f). Man har svårt att tro att Nato, för att vara villigt att samverka med Sverige i kris eller krig, skulle kräva att vi håller öppet för något av detta. En för Nato kanske viktigare fråga kunde vara en samverkande stats hållning till transit av kärnvapen, genom territorialvatten eller hamn, luftrum eller lufthamn. Traktaten har emellertid ingen bestämmelse härom utan lämnar åt varje part att enskilt avgöra om den vill tillåta sådan transit. Sverige skulle alltså även efter en anslutning ha fri beslutanderätt i den frågan.

Det som kvarstår vad gäller Nato, Sverige och traktaten mot kärnvapen är att Natos generalsekreterare Jens Stoltenberg och USA:s försvarsminister Jim Mattis båda har antytt att en svensk anslutning till traktaten *skulle kunna* medföra "konsekvenser" för samarbetet med Nato. Men kanske handlar det inte om någon enskild förpliktelse i förbudstraktaten som Stoltenberg och Mattis ser som ett hinder för samverkan med Sverige. Kanske handlar det bara om att man generellt vill motverka anslutning till traktaten och utnyttja Sveriges intresse av militär samverkan till att vagt skrämja oss för konsekvenserna om vi ansluter oss? Man säger inte att en svensk anslutning till traktaten skulle minska Natos vilja att samverka och bistå Sverige i ett kris- eller krigsläge. Nej, Sveriges eventuella behov av samverkan i ett sådant läge skulle säkert matchas av ett motsvarande behov hos Nato. Vi försöker inte vara fripassagerare utan har ett eget försvar att sätta in i en krissituation och vi har på ömse håll övat den samverkan vi då vill ha. Vi har ju numera till och med ett världlandsavtal med Nato.

Avslutningsvis, ju fler stater som skriver under och ratificerar traktaten desto starkare blir det tryck den skapar. Kärnvapenstaterna har haft nästan femtio år på sig att förverkliga sina utfästelser i NPT. Idag går de baklänges. Sverige har en lång tradition av att vara med och aktivt skjuta på. Vår anslutning skulle bidra till att öka avtalets tyngd. I ett internationellt perspektiv talar det för underskrift.

# AVSKRÄCKNING - DET STÖRSTA HINDRET MOT KÄRNVAPENNEDRUSTNING

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Maj 2018

**Kärnvapen dödar massivt, både omedelbart och över tid. Den Internationella Domstolen i Haag klargjorde redan år 1996 användning av sådana vapen strider mot internationell rätt i väpnade konflikter och generellt mot principerna i den internationella rätten. Ett kärnvapenkrig kan leda till klimatförändringar som kan hota allt liv på jorden. Skapandet av kärnvapen har för första gången i mänsklighetens historia gjort det möjligt för människan att begå ett kollektivt självmord.**

**Detta förhållande hindrar inte fem stormakter och permanenta medlemmar av FN:s säkerhetsråd samt fyra andra kärnvapenmakter Indien, Pakistan, Nordkorea och Israel, från att hävda en rätt att använda kärnvapen. Skälet för detta, menar innehavarna av kärnvapen, är de behöver dessa vapen för att hota en annan stat med vedergällning i händelse av ett angrepp med kärnvapen från denna stat – detta är den så kallade kärnvapenavskräckningen.**

### Avskräckningsdoktrinen och stormakterna

I första hand handlar det om strategiska kärnvapen, det vill säga vapen med lång räckvidd och enorm förstörelsekraft, typ vätebomber. Ett första anfall (i detta exempel från Ryssland mot USA) skulle med betydande sannolikhet få effekten att eliminera förmågan hos den angripna sidan att slå tillbaka med ett i motsvarande ordning förstörande konsekvenser. Det vill säga USA:s förmåga till ett svarsanfall skulle

alltså redan ha eliminerats eller kraftigt reducerats, och därmed USA:s strategiska avskräckning. Med detta som en möjlig utveckling har USA omstrukturerat dispositionen av sina strategiska kärnvapen så att, i händelse av information om att ett ryskt kärnvapen-anfall var på väg, man kunde inleda ett svarsangrepp innan den egna styrkan förintats. Denna förmåga till angrepp under förvarning "launch on warning" an-ses i dessa tider nödvändig om den strategiska avskräckningsdoktrinen skall vara trovärdig.

En sådan strukturering av den amerikanska respektive ryska strategiska kärnvapenarsenalen innebär samtidigt att risken för kärnvapen-anfall av misstag har ökat radikalt, såsom ett antal incidenter under kalla kriget visat. Särskilt finns det en betydande oro för att ett cyberangrepp skulle kunna lämna vilseledande uppgifter om ett kärnvapenangrepp och leda till ett förtida svarsangrepp.

Det var dessa förhållanden som föranledde fyra amerikanska statsmän och säkerhetsspecialister, George Shultz, Henry Kissinger, Sam Nunn och Bill Perry, att år 2007 deklarerade att avskräckningsdoktrinen var obsolet i vad avsåg de amerikansk-ryska strategiska förbindelserna, även om de inte kunde förneka dess betydelse i andra regionala situationer som Östasien, Sydasien och Mellanöstern.

### Tre variabler på kärnvapenavskräckning

För det första: Till den ömsesidiga stormaktsavskräckningen kommer en så kallad "utsträckt kärnvapenavskräckning" (extended nuclear deterrence). Detta

är ett åtagande av USA gentemot sina militärt allierade stater (NATO-anslutna stater, Japan, Sydkorea och Australien) att ett (ryskt) kärnvapenangrepp mot någon av dem kommer att besvaras med ett amerikanskt nukleärt vedergällningsangrepp. Detta innebär i sin tur en skyldighet för de allierade att tillåta stationering av amerikanska kärnvapen på sina territorier och därmed givetvis en inbjudan till Ryssland att genomföra ett förebyggande kärnvapenangrepp mot allierat territorium. NATO deklarerar sig då också vara en kärnvapenorganisation. Till detta kommer också ett diplomatiskt förbud för de allierade att utan amerikanskt medgivande stödja den internationella Konventionen om ett kärnvapenförbud som antagits av FN:s generalförsamling. I vad avser Japan, Sydkorea och Australien avses med den utsträckta kärnvapenavskräckningen i första hand ett kärnvapenhot från Kina.

För det andra: Ytterligare en dimension av den amerikanska doktrinen för kärnvapenavskräckning flödar från användning av kärnvapen som ett svar på "angrepp med kemiska eller biologiska vapen". USA förbehåller sig sålunda att vid sådana tillfällen överväga första användning av kärnvapen mot angriparen.

För det tredje: Från detta har de båda kärnvapenmakterna USA och Ryssland under de senaste åren gått vidare med att klargöra att man även i andra strategiska eller taktiska lägen kan anse sig föranlåten tillgripa första användning av (taktiska) kärnvapen som avskräckning mot en angripare med konventionell militär överlägsenhet. Denna nya utveckling har ytterligare påskyndats av att NATO, som nu redan är en kärnvapenorganisation, genom den i början av detta år framlagda översynen av sitt kärnvapenprogram, "The Nuclear Posture Review", syftar till att expandera kärnvapnens roll i Europa genom att öka antalet taktiska kärnvapen i framskjutna positioner, vilket givetvis skulle bidra till att göra en första användning av kärnvapen i Europa allt sannolikare. Denna politik skulle riskera att starta en ny kärnvapenkappning och dramatiskt öka riskerna för kärnvapenanvändning och undergräva strävandena att uppnå en kärnvapenfri värld. En utökning av antalet taktiska (mindre) kärnvapen blir i realiteten ett recept för en katastrof eftersom de sänker tröskeln mellan konventionella vapen och kärnvapen i en framtida konflikt i Europa. Det mesta talar för att denna "Nuclear Pos-

ture Review" kommer att realiseras av Trump-administrationen även om en intern amerikansk kritik hävdar att 1. framplacering av kärnvapen i Europa inte skulle vara till någon ytterligare militär nytta och till och med öka riskerna för kärnvapenanvändning i ett krisläge, medan 2. hemsändandet till USA av sådana vapen skulle minska riskerna för möjliga incidenter och minska den politiska instabiliteten, och 3. en sådan hemtagning skulle innebära betydande besparingar för USA.

### **Avskräckningsdoktrinen princip**

Som redan nämnts är det angivna skälet för anskaffning och innehav av kärnvapen enligt avskräckningsdoktrinen att förhindra vapnens användning, detta även om en rationell analys av denna argumentation skulle säga att det bästa sättet att undgå kärnvapenanvändning skulle vara att avskaffa vapnen, att kärnvapenavrusta. Men svaret på detta skulle endast bli att den "andra sidan" i detta läge inte skulle kunna förhindras eller avskräckas från användning av egna kärnvapen.

Ett problem med den nukleära avskräckningsdoktrinen är att den endast kan göras trovärdig om det finns en konkret och praktisk möjlighet att kärnvapen kan användas med kort förberedelse och att det finns en politisk/psykologisk beredskap att så göra och att angreppsmålen har identifierats i förväg. Därtill måste det finnas en moralisk och mental beredskap och vilja att förstöra och omintetgöra människor tillhörande en annan kultur och nation, och då inte endast unga soldater, utan också civila, barn åldringar och deras samhällen, natur och landskap.

Mot denna bakgrund borde det från en humanitär och moralisk utgångspunkt vara självklart för världens nationer att söka ena sig om att verka för en värld fri från kärnvapen. En utgångspunkt borde vara att staterna enar sig om att genom att ansluta sig till konventionen mot kärnvapen olagligförklara/delegitimisera kärnvapnen och därefter fullföljer detta med en serie nedrustnings- och verifikationsåtgärder som leder till ett fullt verifierbart nedrustningsavtal.

Låt inte avskräckningsdoktrinen förhindra en genuin kärnvapenedrustning!



# RATIFICERA KÄRNVAPENAVTALET

## Maj Britt Theorin

- Ansvarig för svensk freds- och nedrustningspolitik 1982–1991

Augusti 2018

Det föreslagna kärnvapenavtalet måste ses i ett historiskt perspektiv. På 1950-talet var tilltron till atomvapen stor framförallt hos de manliga politikerna, "Våra gossar skall inte ha sämre vapen än fienden" var ett argument. Kultursverige och fredsrörelsen, under ledning av Per Anders Fågelström och Inga Thorson i det socialdemokratiska kvinnoförbundet protesterade. En öppen protest inom socialdemokratien var mycket ovanligt och ledde till en utredning där Olof Palme var sekreterare. Olof Palme och Tage Erlander var båda för svenska atomvapen men slutsatsen av utredningen blev "inga svenska atomvapen". Från den dagen har socialdemokratien och Sverige under dess ledning varit bland de främsta i kampen mot kärnvapen. Alva Myrdal, Inga Thorsson, Olof Palme och undertecknad samlade en mycket stor majoritet i FN bakom våra olika förslag för en kärnvapenfri värld. Sverige var en stormakt för fred och mot kärnvapen.

I icke-spridningsavtalet, NPT, förbinder sig kärnvapenmakterna att seriöst förhandla för att avskaffa alla kärnvapen mot att vi andra länder inte skaffar kärnvapen. De har minskat sina kärnvapen men satsar nu för fullt på nya kärnvapen. Ryssland moderniserar sina strategiska kärnvapen. Kina och Ryssland satsar aggressivt på att utveckla mindre och effektivare kärnvapen. USA har beslutat att satsa upp till 1200 nya miljarder dollar under tre decennier på sitt

kärnvapenprogram. Efter 50 år väntar vi fortfarande på att kärnvapenmakterna skall uppfylla sina utfästelser i NPT. Skall vi vänta ytterligare 50 år?

Många initiativ har tagits under årens lopp för att minska och avskaffa kärnvapen. ICAN:s initiativ om ett avtal som förbjuder kärnvapen ledde inte bara till stöd från 122 länder inklusive Sverige, utan också glädjande nog till Nobels fredspris 2017. Avtalets viktigaste funktion är att utgöra ett fortsatt tryck på de nio länder som har kärnvapen att göra sig av med dem. Ett sådant avtal är, tillsammans med de åtta kärnvapenfria zonerna i världen, mycket viktigt för att minska risken att kärnvapenmakterna använder sina kärnvapen. Ett annat initiativ kom tidigare från vetenskapsmän.

Inom Pugwash samlades vetenskapsmän från öst och väst för att överbrygga motsättningarna under det kalla kriget. Joseph Rothblat – den första kärnvapenmotståndaren – tog initiativ till en bok *Är en kärnvapenfri värld önskvärd – möjlig?*, där också jag medverkade. Den kom under ögonen på den australiske premiärministern som i ett telefonsamtal bad mig medverka till ett förslag om en realistisk väg att avskaffa kärnvapen – det som blev Canberra-kommissionen. Efter 9 månaders arbete lämnade vi - de 16 männen och jag - vårt förslag. Tyvärr hade den socialdemokratiska regeringen fallit i Australien, men den irländska regeringen förde fram våra förslag till NPT-konferensen år 2000 i ett 13 punktsprogram. Såväl kärnvapenmakterna som icke-kärnvapensta-

terna ställde sig bakom förslaget. Men någon tidsplan fanns tyvärr inte. Inte heller detta beslut har kärnvapenmakterna levt upp till.

Det är viktigt att påminna sig om att folkopinionen i världen vill bli av med alla kärnvapen. Det visar sig bland annat i stödet för kärnvapenfria zoner. De kärnvapenfria zonerna omfattar 99 % av allt land på södra halvklotet och 74 % av allt land utanför kärnvapenmakterna och begränsar därmed kraftig kärnvapenmakternas möjligheter till ett fritt agerande.

Men åtgärder mot kärnvapen behöver inte begränsas till internationell aktivitet. Vi kan som Kazakstan deklarera oss själva som en kärnvapenfri zon, kanske tillsammans med Finland. Men vi kan också införa en lag som förbjuder kärnvapen på svensk mark. Det finns ingen sådan lag, däremot finns en princip att kärnvapen inte får föras in i Sverige men då kärnvapenmakterna varken bekräftar eller förnekar förekomsten av kärnvapen och detta inte kontrolleras vet varken regering, riksdag eller svenska folket om kärnvapen förs in i Sverige. Därtill kommer att den svenska regeringen själv kan bevilja eller vägra tillstånd att föra in kärnvapen. En sådan förbudslag kan enkelt ske genom ett tillägg till lagen om kärnteknik från 1984.

Från det formella svenska beslutet att inte skaffa svenska atomvapen på 60-talet har inget annat parti agerat för en annan ståndpunkt förrän de senare åren. Frågan om Natomedlemskap har förändrat bilden. Att tro att Sverige genom medlemskap i Nato skall kunna förändra dess uttalade kärnvapenstrategi är med förlov sagt naivt. Allianspartierna har sagt nej till kärnvapenavtalet då det enligt USA och Nato skulle kunna äventyra det säkerhetspolitiska samarbetet. Sverigedemokraterna säger nej till kärnvapenavtalet. De anser att det inte är möjligt utan att stormakterna instämmer i avtalet. Sverige har under 200 år fört en alliansfri och neutral politik och därmed hållit oss undan flera världskrig och aldrig låtit något annat land bestämma vår utrikespolitik. Varför låta det ske nu?

Centerpartiet har under alla år varit klart emot kärnvapen. Så sent som 2014 motionerade Centern i riksdagen: "Tiden är därför mogen för Sverige att tillsammans med likasinnade länder gå vidare och arbeta för en konvention om förbud mot kärnvapen." 122 länder

har i FN röstat för ett sådant förbud. Vad är det som fått Centern att ändra ståndpunkt?

Den socialdemokratiska partikongressen 2017 tog ställning till en serie motioner med följande uttalande: "Efter år av stagnerande arbete för kärnvapenedrustning driver Sverige nu frågan om ett förbud mot kärnvapen. I år inleds viktiga förhandlingar om ett globalt förbud inom ramen för FN. Som ett led i arbetet med att förbjuda kärnvapen globalt måste alla åtgärder övervägas. Såväl lagstiftning som kärnvapenfria zoner kan bli aktuella som ett sätt att implementera ett globalt kärnvapenförbud. Vårt mål är en kärnvapenfri värld".

"Driver nu frågan om ett förbud mot kärnvapen" tydligare kan en politisk ståndpunkt knappast uttryckas. Att detta enligt en Sifoundersökning stöds av 86% av svenska folket ger politikerna det stöd de behöver för att hålla ryggen rak och fortsätta sitt aktiva arbete för en kärnvapenfri värld.

Ratificera kärnvapenavtalet!





## SVENSKA LÄKARE MOT KÄRNVAPEN

*Nobels fredspris 1985*

Svenska Läkare mot Kärnvapen tilldelades Nobels fredspris 1985 tillsammans med den internationella läkarrörelsen mot kärnvapen, IPPNW, för arbetet med att sprida information om de medicinska effekterna av kärnvapen. Svenska Läkare mot Kärnvapen har idag ca 2500 läkare och medicinstudenter som medlemmar. Organisationen sitter sedan 2012 i den internationella styrgruppen för International Campaign to Abolish Nuclear Weapons, ICAN och arbetar både i nationell och internationell fora.

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INTERNATIONELLA KVINNOFÖRBUNDET FÖR

**FRED & FRIHET**



Internationella Kvinnoförbundet för Fred och Frihet, IKFF, är en feministisk fredsorganisation som arbetar för ökat fokus på konfliktförebyggande arbete, FN:s agenda för kvinnor, fred och säkerhet samt nedrustning. IKFF är den svenska sektionen av Women's International League for Peace and Freedom, WILPF. Vi finns i 35 länder runt om i världen på lokal, nationell och internationell nivå med internationella kontor i Genève och New York som arbetar direkt gentemot FN.

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