

# FILLING THE GAP

## REPORT ON THE THIRD CONFERENCE ON THE HUMANITARIAN IMPACT OF NUCLEAR WEAPONS

Vienna, Austria  
8–9 December 2014

VIENNA CONFERENCE ON  
THE HUMANITARIAN IMPACT  
OF NUCLEAR WEAPONS  
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Reaching Critical Will is the disarmament programme of the Women's International League for Peace and Freedom (WILPF), the oldest women's peace organization in the world. Reaching Critical Will works on issues related to disarmament and arms control of many different weapon systems; militarism and military spending; and gendered aspects of the impact of weapons and of disarmament processes.

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# FILLING THE GAP

Ray Acheson

*Law stands on hollow ground where a solid moral conviction is absent. On the contrary, a gap in law is often just a mirror through which we are impelled to gaze into our own ambivalent souls. And so it is the case with nuclear weapons. – Dr. Nobuo Hayashi, University of Oslo*

The intersection of law and morality became a central theme at the third conference on the humanitarian impact of nuclear weapons (HINW). Following the previous two conferences in Oslo and Nayarit in providing irrefutable evidence about the devastating consequences and risks of the use of nuclear weapons, the Vienna conference went on to explore the corresponding normative framework governing these weapons. The “inescapable conclusions” noted by the Austrian government in its Pledge at the end of the conference included the conviction that nuclear weapons raise profound moral and ethical questions that go beyond debates about their legality and that efforts are needed now to stigmatise, prohibit, and eliminate these weapons of terror. These conclusions provide the basis for the Austrian Pledge to “fill the legal gap” for prohibiting and eliminating nuclear weapons. They also provide the framework for all states and civil society to move forward from this resounding turning point in the history of the nuclear weapons debate.

## **The legal gap**

In his presentation during the final panel at the Vienna conference, philosopher Nobuo Hayashi noted what many states and the International Campaign to Abolish Nuclear Weapons (ICAN) have highlighted before: that the law does not address the legality of nuclear weapons in the way it does biological and chemical weapons. “It is as though we can strangle this beast from all directions,” remarked Hayashi, “but not quite strike directly at its heart.”

Some states, such as Ireland, have repeatedly questioned this distinction among the weapons of mass destruction (WMD). Why should nuclear weapons be viewed as somehow more “necessary,” “legitimate,” or “justifiable” than other WMD, asked the Irish delegation. “Is that because of a belief in their value as a deterrent? Then why has this deterrent failed to prevent conflicts breaking out in various regions in which the parties directly or indirectly involved have nuclear weapons in their arsenals?”

Nuclear deterrence took a hit at the Vienna conference, with most states reiterating long-held views that nuclear weapons bring insecurity and instability, not safety and protection. Only a handful of states argued that nuclear weapons provide some “security benefit”



Photo by Marko Kovic © ICAN

that must be taken into account when considering legal or policy options. Yet despite the consistent and overwhelming objections to the concept and practice of nuclear deterrence, human society has still failed to establish law prohibiting and setting out a framework for the elimination of nuclear weapons the same way it has for biological and chemical weapons. Why?

It is not because nuclear weapons have some sort of inherent, magical value that other WMD do not have. It has much more to do with the way nuclear weapons are positioned within the political-military-academic-industrial nexus than anything else. Any “magic” these weapons are perceived to possess has been falsely granted to them by those who benefit from them materially or politically. But like all magic, the illusion can be unmasked and its power taken away.

### ***The moral gap***

An important step in unveiling the truth about nuclear weapons could be through unleashing our “moral imagination”. Dr. Hayashi suggested that we have been imprisoned by arguments for or against nuclear weapons that are built on an “ethics of outcome”. That is, we tend to look at the consequences of the use of nuclear weapons and decide whether or not the ends justify the means. Instead, we might start looking at the suffering nuclear weapons cause as

“suffering *per se*, rather than suffering that is necessary or unnecessary for this or that purpose.”

He drew upon the shift in thinking about torture as a precedent for this approach, arguing that “most of us now agree that torture is a moral wrong in itself, and that under no circumstances do outcome-based claims ever justify it.” Fittingly, the CIA torture report was released in the United States the same day Dr. Hayashi gave his presentation in Vienna. The massive outcry in the US and beyond indicates that despite continued justifications by certain elements, the findings have been condemned as abhorrent and unacceptable by the vast majority of the world.

Would the reaction be the same if nuclear weapons were to be used again today? While the users might claim they had the right and the responsibility to wreak the havoc and devastation promised by nuclear weapons, would the rest of the world really accept it?

Lithuania’s delegation remarked that the testimonies of survivors have become a powerful moral deterrent against any use of nuclear weapons. The voices of survivors from Australia, Japan, Kazakhstan, the Marshall Islands, and the United States at the Vienna conference indeed could not be denied. Even the US delegation, after a rather callous delay, thanked those who brought personal testimonies to the conference.

But will these voices deter? Will they deter use? Can they deter the threat of use? Possession? Speaking at the ICAN Civil Society Forum the weekend before the Vienna conference, investigative journalist Eric Schlosser described nuclear deterrence as a “psychological threat to annihilate the population of another country.” If we cannot conceive of accepting the use of nuclear weapons and the suffering it will bring, how can we accept the ongoing practice of nuclear deterrence? How can we accept that the use of these weapons is written into “security” doctrines of states? That they are deployed, on alert, ready to use? That they still exist, in any hands?

### ***“We don’t do that anymore”***

“Indiscriminate weapons get banned,” declared ICAN in its statement to the Vienna conference. “We have done it before with other weapon systems, including biological and chemical weapons.” It is what human societies do to protect themselves. We no longer tolerate many of the technologies or practices of violence upon which we previously relied.

Categorically prohibiting nuclear weapons—for everyone, under all circumstances—is the logical outcome of the examination of the risks and consequences of the



Photo by Marko Kovic © ICAN





Photo by Marko Kovic © ICAN

use of nuclear weapons. It is the logical progression of the law regulating nuclear weapons, including the Non-Proliferation Treaty (NPT) and the Comprehensive Test Ban Treaty, as well as other WMD, including the Chemical Weapons Convention and Biological and Toxin Weapons Convention. It is the logical conclusion of a moral assessment of the human and environmental suffering that would be caused by any use of nuclear weapons. It is a meaningful, feasible, achievable option that can be negotiated now and that would have wide-ranging normative and practical impacts.

We need to fill the legal gap when it comes to nuclear weapons, and the best way to fill it in the current context is with a treaty that prohibit and sets out a framework for the elimination of these weapons. But we cannot just fill this gap with law alone. One of the biggest challenges with nuclear weapons is that existing law is being circumvented. If the NPT was being implemented, we would not have nuclear sharing arrangements and the nuclear-armed states parties would be engaged in multilateral negotiations for the elimination of their arsenals. To give the law power and resilience we must also fill the gap with morality, compassion, responsibility, and accountability.

Vienna gave us a starting point. It gave us a Pledge to pursue a legal prohibition on nuclear weapons. But it also gave us a way forward in reconstructing how we think about and approach nuclear weapons. It is the most exciting opportunity we have to deal with these weapons once and for all. We must seize it and ban nuclear weapons now.

**Statements and presentations from governments, international organisations, and civil society are available at**

**[www.reachingcriticalwill.org](http://www.reachingcriticalwill.org)**

**A full list of participants and official programme from the conference are also available online.**

# HIGHLIGHTS FROM THE CONFERENCE

Mia Gandenberger and Ray Acheson

Full presentations from speakers and interventions made from the floor are available online at [www.reachingcriticalwill.org](http://www.reachingcriticalwill.org). The following are some of the brief highlights from the conference:

## Overall

- In addition to panels examining the effects of nuclear weapons explosions and testing, the risks for deliberate or accidental use, and the challenges of responding, the third conference also saw a discussion of the existing legal framework and gaps with regard to nuclear weapons development, use, possession, and stockpiling.
- This new element also explored views on the ethics and morality of nuclear weapons, including a deontological perspective, which suggests looking at the inherent immorality of nuclear weapons rather than the moral status of its consequences.
- The conference also featured testimony from survivors of nuclear weapons use and testing, which, as the Chair's summary said, "exemplified the unspeakable suffering caused to ordinary citizens by nuclear weapons."
- The great majority of those taking the floor welcomed the presentation of new information and testimonies of survivors and called for tangible progress on nuclear disarmament based on these findings.
- The overwhelming majority of participants condemned the possession of nuclear weapons and insisted that they must never be used again under any circumstances.
- Many states highlighted the active role civil society has played in the context of the conferences on the humanitarian impact of nuclear weapons.

## New instrument to prohibit nuclear weapons

- 29 states called for negotiations of a legally-binding instrument to prohibit or ban nuclear weapons, including Chad, Colombia, Comoros, Congo, Costa Rica, Cuba, Egypt, El Salvador, Guinea Bissau, Jamaica, Kenya, Libya, Malawi, Malaysia, Mali, Mexico, Mongolia, Nicaragua, Qatar, Saint Vincent and the Grenadines, Samoa, Senegal, Timor-Leste, Togo, Uganda, Uruguay, Yemen, Zambia, and Zimbabwe
- Other actors joined this call, including the International Campaign to Abolish Nuclear Weapons (ICAN), the Inter-Parliamentary Union, Wildfire, Pope Francis, and Hiroshima survivor Setsuko Thurlow.
- Austria, Bangladesh, Philippines, Switzerland, and the International Committee of the Red Cross (ICRC) noted that there is a legal deficit when it comes to nuclear weapons and highlighted the need for prohibition.
- In this context, Austria pledged to pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons (see "Outcomes" below).
- Brazil, Burundi, Ireland, New Zealand, Niger, South Africa, and Thailand also noted the need for new legal instruments on nuclear weapons, but did not specify their preferred option for moving forward.
- Thailand thought states might draw experiences from the Mine Ban Treaty in developing a new instrument.
- Kazakhstan believed the Vienna Conference would greatly contribute to the "further promotion of the humanitarian issue in the context of a nuclear weapons ban."

## 158 states participated in the Vienna conference on the humanitarian impact of nuclear weapons

*Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Ethiopia, Finland, Georgia, Germany, Ghana, Greece, Guatemala, Guinea Bissau, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao PDR, Latvia, Lebanon, Lesotho, Libya, Liechtenstein, Lithuania, Luxembourg, FYR Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Slovakia, Slovenia, Somalia, South Africa, South Sudan, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Syria, Tanzania, Thailand, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zambia, and Zimbabwe*



- Belgium, Canada, Czech Republic, Germany, and Turkey expressed concerns about the effectiveness of a ban on nuclear weapons.

### **Other suggestions**

- Ecuador, Ghana, Guatemala, Indonesia, Pakistan, Venezuela, and Viet Nam noted that their preference is for the prohibition and elimination of nuclear weapons through a treaty that involves the nuclear-armed states and/or provides immediately for time-lines and verification, such as a nuclear weapons convention.
- Iran suggested that all states declare that the possession and use or threat of use of nuclear weapons is illegal and in contravention to international law.
- Advancing nuclear disarmament through a so-called step-by-step or building blocks approach was the preferred option for Australia, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, India, Italy, Japan, Latvia, Lithuania, Netherlands, Poland, Republic of Korea, Slovakia, Spain, Turkey, United Kingdom, and United States.
- Some states, including Australia, Bulgaria, Netherlands, Pakistan, Poland, Spain, and the United Kingdom, called for consideration of security concerns of states in moving ahead on nuclear disarmament.
- New Zealand inquired after a more detailed elaboration of these security concerns, while Algeria, South Africa, Sweden, and others called for an approach to nuclear disarmament that puts human security first.
- Sweden called for the mainstreaming of the humanitarian perspective on nuclear weapons into other areas of work, including human security, climate change, human rights, gender, health, and sustainable development.
- Ireland highlighted that the New Agenda Coalition will be taking forward discussions on effective measures for nuclear disarmament at the 2015 NPT Review Conference.

### **Outcome**

- Some key new findings in the Chair's summary drawn from the substantive sessions included that:
  - Nuclear testing has left a legacy of serious health and environmental consequences;
  - The risk of a nuclear weapon explosion either by accident or intention is unacceptable and increasing over time;
  - Nuclear deterrence entails preparing for nuclear war and limiting the role of nuclear weapons to that function does not remove the possibility of their use nor does it address risk of accidental use;

- The capacity to respond to a nuclear weapon explosion is unlikely ever to exist and prevention is the only guarantee;
- International environmental law and international health regulations can pertain to nuclear weapons;
- The suffering caused by nuclear weapons use necessitates both legal and moral appraisals; and
- A comprehensive legal norm universally prohibiting nuclear weapons is currently missing.

- The Chair's summary also reflected the views of states conveyed during the general debate, including that many delegations "expressed support for the negotiation of a new legal instrument prohibiting nuclear weapons constituting an effective measure towards nuclear disarmament as required also by the NPT."
- The summary also noted that the responsibility of such negotiations rests with all states parties of the NPT and that the inability to make progress on some measures is not an excuse to pursue other options.
- In addition to the Chair's summary, Austria presented a Pledge, which calls on states to "identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons" and promises to cooperate with all stakeholders to achieve this goal.
- Among other things, the Austrian Pledge also recognises that:
  - The rights and needs of the victims of nuclear weapon use and testing have not yet been adequately addressed;
  - All states share the responsibility to prevent any use of nuclear weapons; and
  - The consequences of nuclear weapons use raise profound moral and ethical questions going beyond debates about the legality of these weapons.
- South Africa announced it is "currently considering options, including our role in any follow-on activities and meetings."

## **Check out the latest hit from Canadian band The Burning Hell**

### **"We Don't Do That Anymore"**

**written exclusively for ICAN  
for the Vienna conference!**

**<https://soundcloud.com/the-burning-hell/we-dont-do-that-anymore>**

# ICAN CIVIL SOCIETY FORUM

Gabriella Irsten

In the two days immediately preceding the third official conference on humanitarian consequences of nuclear weapons hosted by the Austrian government, the International Campaign to Abolish Nuclear Weapons (ICAN) held the largest civil society meeting ever about banning nuclear weapons. With more than 600 participants from 70 countries, representing over 100 different organisations, the ICAN Civil Society Forum programme was packed with a diverse set of actors.

Campaigners, activists, experts, parliamentarians, public figures, and survivors shed their light on the humanitarian effects of nuclear weapons, including their catastrophic consequences for human health, the economy, and the environment. The Forum also offered engaging workshops that provided a deeper understanding of the real consequences of nuclear weapons. These sessions provided information about achievements, skills, challenges, and the present situ-

ation of the initiative to ban nuclear weapons. The people that participated are a true manifestation of the momentum to ban nuclear weapons.

The Forum reaffirmed that civil society has a strong and important role in pushing for a ban treaty. It demonstrated commitment from a range of actors to promoting this approach to nuclear weapons, due to frustration with states stalling on nuclear disarmament. Civil society has, through the humanitarian focus, challenged the acceptability of nuclear weapons and managed to strengthen the notion that nuclear weapons are inhumane weapons of terror.

The important role that civil society plays was highlighted by many speakers at the Forum, in particular governmental representatives. Paul Dewar, Canadian MP, for example, encouraged civil society to put even more pressure on politicians to “do the right thing”.



Photo by Marko Kovic © ICAN





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Gry Larson, former State Secretary of Norwegian Ministry of Foreign Affairs, stressed that without civil society it would have been so much harder for Norway to host the first conference on humanitarian consequences in Oslo in 2013. Breifne O'Reilly, Director for Disarmament and Non-Proliferation, Department of Foreign Affairs and Trade of Ireland also highlighted the great work done by ICAN in motivating governments to achieve a nuclear weapon free world. The Forum concluded with a strong message that a binding treaty is an essential first step in ensuring a nuclear-free world and that civil society is a crucial player in ensuring this.

## For more about the ICAN Civil Society Forum:

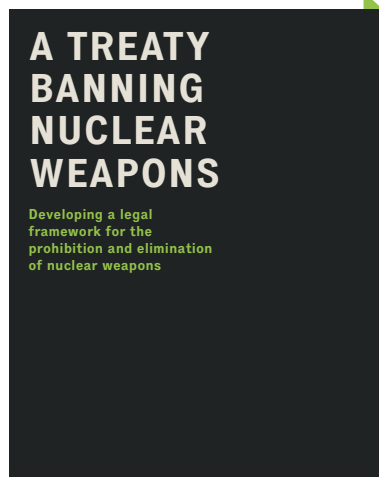
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## ADDITIONAL RESOURCES



### *A treaty banning nuclear weapons: developing a legal framework for the prohibition and elimination of nuclear weapons*

Published by Reaching Critical Will and Article 36

May 2014

Available at [www.reachingcriticalwill.org](http://www.reachingcriticalwill.org)

This paper, published jointly by Reaching Critical Will and Article 36, looks at possible principles and provisions of a treaty banning nuclear weapons; how it could be accomplished; and its potential normative and practical impacts.

### *Banning nuclear weapons: an effective measure for disarmament*

Published by Reaching Critical Will

October 2014

Available at [www.reachingcriticalwill.org](http://www.reachingcriticalwill.org)

This paper explores the effective measures for nuclear disarmament presented by the New Agenda Coalition in its 2014 NPT working paper and argues that in the current context the most effective and achievable measure for nuclear disarmament is a treaty banning nuclear weapons.



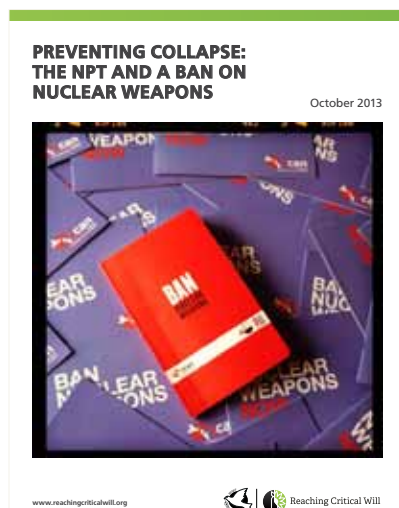
### *Preventing collapse: the NPT and a ban on nuclear weapons*

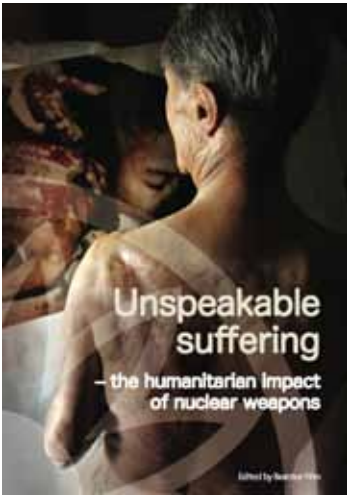
Published by Reaching Critical Will

October 2013

Available at [www.reachingcriticalwill.org](http://www.reachingcriticalwill.org)

This paper examines the complementarity between the NPT and a ban on nuclear weapons. It argues that rather than constituting a challenge to the NPT, a process to ban nuclear weapons that arises from the discussion around the humanitarian impact of nuclear weapons has the potential to prevent the NPT's collapse.





## Unspeakable suffering: the humanitarian impact of nuclear weapons

Published by Reaching Critical Will

February 2013

Available at [www.reachingcriticalwill.org](http://www.reachingcriticalwill.org)

This publication examines the humanitarian impact of nuclear weapons and is aimed for civil society actors, academics, and governments that are interested in approaching weapons negotiations with a humanitarian lens.

## The effects of nuclear weapons under international law

Published by Article 36

December 2014

Available at [www.article36.org](http://www.article36.org)

This paper provides a brief overview of some legal rules and principles relevant for nuclear weapons, with a focus on nuclear disarmament, and rules for the protection of the human person and of the environment.

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### Article 36

## The effects of nuclear weapons under international law

**Some legal considerations from disarmament, humanitarian and environmental perspectives**

**Prepared ahead of the Vienna Conference on the Humanitarian Impact of Nuclear Weapons, 9-11 December 2014**

Article 36 is a UK-based not-for-profit organisation working to prevent the uncontrolled, unnecessary or unaccountable use of nuclear weapons. [www.article36.org](http://www.article36.org)

Article 36 is a member of the International Steering Group of the International Campaign to Ban Nuclear Weapons (ICAN). [www.ican.org](http://www.ican.org)

**Nuclear weapons under public international law**

Activities involving nuclear weapons are governed by international law. States have placed explicit legal constraints on such activities by way of unilateral undertakings<sup>1</sup> and by concluding bilateral agreements and treaties of regional and global scope. Nuclear weapons threaten the common goals of humanitarian and global justice of the international community, such as human health, human rights and human dignity, the environment and peace. For this reason, international legal norms protecting and promoting these values constrain activities involving nuclear weapons, even if the relevant instruments do not specifically mention nuclear weapons.

The legality of nuclear weapons under customary international law remains controversial. Whether treaties generally only bind the parties to them, the rules of customary international law are binding on all states. The precise content of a customary norm is difficult to determine, however, especially when states hold widely differing opinions on a subject.

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### Article 36

## Banning nuclear weapons without the nuclear armed states

There is growing recognition that a treaty banning nuclear weapons can and should be agreed even without the participation of nuclear armed states. This briefing paper argues that such an instrument would strengthen protection from the humanitarian threat of nuclear weapons by reinforcing norms against them and making them less likely. Simply banning nuclear weapons will not guarantee their elimination, but it will serve as a necessary and practical next step towards a world in which all weapons of mass destruction have been outlawed, and are being eliminated.

At first it seems counterintuitive to think a treaty banning nuclear weapons would be effective without the participation of nuclear armed states. However, the idea of such a treaty is gaining momentum, partly because with some further thought it can be seen to be both achievable and transformational. Achievable because it does not give the nuclear armed states the power to block development (which they otherwise would). Transformational because it will not only ban nuclear weapons, but also ban chemical and biological weapons – both prohibited under international law because of the unacceptable humanitarian consequences that they cause.

“International law won’t uninvent the weapon, but will contribute to accelerating its marginalisation as an instrument of policy or defence. [It] will change ... the calculus of political and military decision-making about acquiring, replacing, keeping, modernising nuclear weapons [and] give the world better tools to prevent the rogues or extremists at the margins from ever getting hold of these weapons of mass destruction.”

Even without the participation of the nuclear armed states, a ban treaty would make the use of nuclear weapons less likely, second work against their further proliferation and strengthen movement towards their complete elimination. It would work through the following mechanisms:

- The legal clarity of such an instrument would increase political pressure for the complete elimination of nuclear weapons.
- A greater stigma against nuclear weapons will increase the political cost of keeping such weapons and reduce the political incentives to acquire such weapons.
- **Reducing investment** in companies profiting from nuclear weapons would reduce commercial pressures to keep these weapons. Nuclear weapons would become even more problematic within the framework of military expenditure and joint exercises.
- **Binding under the framework of the treaty, a more powerful community** will develop, working for the complete elimination of nuclear weapons.

Over time, such forces will bear not only on the few nuclear armed states but also on states that are dependent on their current security policies on their nuclear weapons of others.

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## Banning nuclear weapons without the nuclear-armed states

Published by Article 36

October 2013

Available at [www.article36.org](http://www.article36.org)

This briefing paper argues that a treaty banning nuclear weapons, even without the participation of the nuclear-armed states, would strengthen protection from the humanitarian threat of nuclear weapons by reinforcing norms against them and making their use less likely. Simply banning nuclear weapons will not guarantee their elimination, but it will serve as a necessary and practical next step towards a world in which all weapons of mass destruction have been outlawed, and are being eliminated.

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