

NUCLEAR DISARMAMENT

A Critical Assessment

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NUCLEAR ETHICS AND THE BAN TREATY

Brad Roberts

Ethics are at the core of the debate about nuclear weapons and nuclear disarmament. This follows from the special moral repugnance that attaches to nuclear weapons, given their uniquely destructive character and potentially dire consequences of their use, humanitarian and otherwise. That repugnance is perhaps best reflected in the iconic statement of the so-called father of the bomb, J. Robert Oppenheimer, on the occasion of the July 1945 Trinity test of the very first atomic weapon: "I am become Death, the destroyer of worlds."¹ He is remembered also for the equally iconic "physicists have known sin," in a speech two years after the bombings of Hiroshima and Nagasaki.²

But moral opprobrium has not resulted in political consensus about nuclear weapons policy, as amply demonstrated by the variety of views about nuclear weapons, nuclear deterrence, and nuclear disarmament. These differences have been brought back into discussion by the Treaty on the Prohibition of Nuclear Weapons (TPNW) and the requirement now in national capitals to consider ratification and entry into force. The International Campaign to Abolish Nuclear Weapons (ICAN) has made many strong claims on its behalf, including moral ones. Indeed, ICAN has made a strong case that the TPNW is itself a moral imperative.

Is ICAN correct? Is the Ban a moral imperative? Does the Ban offer a credible way forward to resolve the moral issues associated with nuclear weapons from their very creation?

To examine these questions, this chapter proceeds as follows. It begins with a review of the moral perspectives of ban advocates. It then assesses the moral claims for the Ban in the context of different ethical frameworks. This includes, but is not limited to, a consideration of its likely effectiveness in creating the conditions necessary for disarmament. The chapter draws on historical experience in the interwar period (the 1920s and the 1930s) and in the post-World War II period for additional perspective. It concludes with arguments about the moral obligations

falling on those concerned with the foreseeable consequences of the nuclear policy for which they advocate.³

This analysis is informed by two cautionary notes struck by Oppenheimer, now largely forgotten. In commenting on the disarmament movement of the time, he argued in 1957 that

These people want heaven and earth too. They are not in any way talking about deep ethical dilemmas because they deny that there are such dilemmas. They say that if we behave in a nice way, we will never get into any trouble. But that is not ethics.

Oppenheimer also provided an important elaboration on the comment that physicists have known sin:

I didn't mean by that the deaths that were caused as a result of our work. I meant that we had known the sin of pride ... We had turned to [affect] ... the course of man's history. We had the pride of thinking we knew what was good for man.⁴

The lessons are obvious: in our discourse on nuclear ethics, let us be careful to distinguish moral reasoning from simple moralizing, while being mindful also of the risks of hubris.

The moral perspective of ban advocates

The Ban is many things to many people. It is a statement of growing impatience with the progress of the nuclear weapon states (NWS) in fulfilling their Non-Proliferation Treaty (NPT) disarmament obligations. It is an expression of agency by those who have so far felt powerless to reduce the risk of nuclear war (which could be expected to have damaging effects spilling across their borders). It is a triumph for a handful of non-nuclear weapon states (NNWS), principally Austria, Mexico, Norway, South Africa, and Switzerland, and hundreds of non-governmental organizations (NGOs), who found common cause in creating a new treaty. And for ICAN, it is a tool for pressuring and shaming the so-called outlier states to abandon an outdated way of thinking about nuclear weapons and security more generally so that nuclear weapons finally lose all legitimacy.⁵

But is it also a moral imperative? The claim that it is flows logically from moral arguments often made by those opposed to nuclear weapons: that nuclear weapons are inherently immoral, given the unavoidable humanitarian consequences of their use, and that reliance upon them for deterrence is thus morally objectionable. As ICAN Executive Director Beatrice Fihn has argued, "The case for prohibiting nuclear weapons is clear: they are by nature inhumane and indiscriminate."⁶ And simply: "their existence is immoral."⁷

Despite the certainty with which Ms. Fihn makes her case, the issue in fact generates a good deal of debate among competing perspectives. Experts have long debated whether the employment of nuclear weapons is morally unacceptable “under any circumstances” (the language in the ban) or whether there may be “extreme circumstances of self defense, in which the very survival of a state would be at stake” in which their threatened employment is morally defensible. This issue divides the expert community—as reflected in the fact that the International Court of Justice could not overcome its deep division in its 1996 advisory opinion on the legality of nuclear weapons.⁸

Experts have also debated the argument that deterrence has not worked, will not work, and is thus not morally defensible. This topic lends itself to historical investigation, which reveals a mixed picture. As one broad review concluded after the Cold War, there is “a mass of contradictory evidence.”⁹ On the one hand, there is a good deal of hard evidence that the presence of nuclear weapons had both a direct effect on political-military crises during the Cold War and a generally restraining effect on modes of thinking and broader political-military strategies. On the other hand, the evidence is also clear that nuclear deterrence is not fully reliable and involves huge risks.

And while there are many critics of the morality of nuclear deterrence, there are also supporters. And some of those are in communities of faith. As the Anglican Church has argued, “Christians have in good faith found themselves on both sides of the argument.”¹⁰ This is evident in the Catholic Church as well. In 1982, the Catholic Pope spoke in defense of nuclear deterrence from an ethical perspective, while opposing nuclear war and nuclear weapons—a position echoed in 1983 by the United States Conference of Catholic bishops. Since the end of the Cold War, however, the opposite view has grown in influence within the Catholic Church, leading a senior church official to argue in 2014 that “the very possession of nuclear weapons, even for purposes of deterrence, is morally problematic.”¹¹ Accordingly, under Pope Francis, the Catholic Church is lining up behind the argument that “the time has come to embrace the abolition of nuclear weapons.”¹² The Russian Orthodox Church reportedly takes an even stronger pro-nuclear stand, including with a moral argument that such weapons are justified by their utility of “fighting against sin.”¹³

These different perspectives on nuclear ethics illustrate the existence of the “deep ethical dilemmas” to which Oppenheimer referred. To understand his point, a precise definition is needed:

A person or an agent is in a moral dilemma when an agent is in a situation where [the] agent has a strong moral obligation or requirement to adopt each of two alternatives, and neither is [morally] overridden, but the agent cannot adopt both alternatives.¹⁴

In nuclear affairs, Oppenheimer perceived the need to account for a variety of competing moral obligations: to disarm, to deter, to defend against nuclear attack,

to prepare for limited nuclear war, and to credibly extend deterrence to allies. And he used this as a metric to assess the moral claims of his era.

Max Weber's two maxims

To assess whether the ban is a moral imperative, it is useful to turn to the sociologist Max Weber and an essay he wrote a century ago about "politics as a vocation." In discussing ethics as a guide to political action, he made a critical distinction: "all ethically oriented conduct may be guided by one of two fundamentally differing and irreconcilably opposed maxims: conduct can be oriented to an 'ethic of absolute ends' or to an 'ethic of responsibility.'" ¹⁵ The believer in the ethic of absolute ends, in Weber's analysis, "feels 'responsible' only for seeing to it that the flame of pure intentions is not quenched ... [through] acts that can and shall have only exemplary value." The believer in the ethic of responsibility is obliged, in Weber's view, "to give an account of the foreseeable results of one's actions."

There are no better examples of these "opposed maxims" than the Nobel laureate addresses given by Beatrice Fihn and Barack Obama. Ms. Fihn spoke about "fear, freedom, and the future" in emotionally powerful language. Separately she made a case for the "exemplary value" of the ban:

A treaty prohibiting nuclear weapons will not lead to nuclear-armed states eliminating their nuclear arsenals immediately ... The process of negotiating a treaty ... provides a concrete opportunity to rally the public, engage media, and ask for action in parliaments. ¹⁶

In contrast, President Barack Obama spoke about the responsibilities of leadership:

We must begin by acknowledging the hard truth: We will not eradicate violent conflict in our lifetimes. There will be times when nations—acting individually or in concert—will find the use of force not only necessary but morally justified. I make this statement mindful of what Martin Luther King Jr. said in this same ceremony years ago: 'Violence never brings permanent peace. It solves no social problem: it merely creates new and more complicated ones.' ... But as a head of state sworn to protect and defend my nation, I cannot be guided by their examples alone. I face the world—as it is, and cannot stand idle in the face of threats to the American people ... To say that force may sometimes be necessary is not a call to cynicism—it is a recognition of history, the imperfections of man and the limits of reason. ¹⁷

The foreseeable results of the Ban

Judged by the ethic of pure intentions, the Ban is unassailable, as a symbol to keep the flame of disarmament alive. But what if it is judged by the ethic of responsibility and by its foreseeable results? What might those be?

A first and already obvious result is friction in the nonproliferation regime. The Ban and the NPT are essentially parallel regimes with overlapping but not identical goals and obligations. The actual impact of the TPNW on the NPT has been to increase friction in the attempt to sustain and strengthen the nonproliferation regime. This friction seems likely to become more intense in the lead-up to the 2020 NPT review conference and the rising debate about the efficacy and future of the regime on the occasion of its 50th anniversary. State parties to both treaties may seek an NPT negotiating leverage to force disarmament progress by threatening to withdraw from the NPT in favor of the Ban. Although governments supportive of both the NPT and the Ban seem intent on avoiding a confrontation, ICAN and the NGOs appear likely to take an absolutist approach and are already pressing for confrontation. A deeply damaged NPT may emerge from the review conference, thereby dangerously eroding international nuclear order.

A second foreseeable result is the erosion of US extended nuclear deterrence. This derives from the fact that ICAN's campaign of pressure and shame is having a lop-sided impact among states—more on states with open, democratic systems of government and less on authoritarian systems, whose autocratic leaders are not susceptible to the kind of pressure ICAN can exert. It is not surprising that the ICAN network has vastly fewer members in the authoritarian states than in the democratic ones. In fact, many of its members are clustered among US allies under the US nuclear umbrella. ICAN's attack on that umbrella has been explicit and unrelenting.¹⁸ A sustained, high-level effort is underway to pressurize and shame those governments to end nuclear cooperation with the United States.¹⁹

ICAN's success would mean the collapse of NATO's nuclear-sharing arrangements and of extended nuclear deterrence in Europe. This would be an abrupt and damaging turn-around in the decade of effort by allies to strengthen NATO's nuclear deterrence posture and modernize those sharing arrangements. It would send a message of division and weakness to Moscow at a time when President Putin heavily relies on nuclear threats and displays in his strategy to re-make the European security order. It would also reinforce President Trump's assessment that US allies are unwilling to share the burdens. In North-East Asia, a collapse of US extended deterrence could have similar repercussions, by signaling a lack of American commitment to the region and the need for its allies there to provide for their own deterrence. The result could be a new wave of proliferation. Implementation of the Ban by US allies would sever what Rose Gottemoeller has characterized as the "profound link between non-proliferation and extended deterrence."²⁰

What potential consequences might attach to the other end of the lop-sided equation? That is, what impact might the Ban have on the perceptions and actions of leaders in Moscow, Beijing, Pyongyang, and Tehran? The common view among Ban supporters appears to be "little or none," given that those leaders are not susceptible to the pressure and shaming of NGOs. But this view may be wrong; indeed, profoundly so. Here is a place where historical analogies can be useful.

Historical analogies: disarmament in the interwar period

After World War I, disarmament was a key pillar of the effort to build a new, enduring peace. But the associated diplomacy had unintended consequences that helped to cripple that effort and which reinforced the drift back to war. Accordingly, this period may hold lessons about the link between disarmament and unintended consequences that are relevant for today. It is important not to overstate the lessons of a different time and circumstance, but it is equally important not to overlook troubling parallels.

This analysis focuses on the impact of two major disarmament projects in the interwar period: (1) the Kellogg-Briand Pact of 1928; and (2) the World Disarmament Conference of 1932. The former was an agreement to renounce war as an instrument of policy. French Foreign Minister Briand asserted that “the treaty will attack ‘the evil at its very root’ by depriving war of ‘its legitimacy.’”²¹ The World Disarmament Conference (WDC) of 1932 was the culmination of the post-war effort to control and eliminate the sources of World War I as they were popularly understood at the time—the commercial interests of arms manufacturers, arms races, and rapidly improving military technologies that had brought us to total war. Neither of these projects had the impact intended by their supporters. Having renounced war, signatories of the Kellogg-Briand Pact all found themselves again at war within a few years. And despite six years of preparation, the WDC “lost momentum and petered out in a morass of trivialities” (in the words of Liddell Hart) and along the way produced a dangerous imbalance of military power.²² Their failures accelerated the drift to war. A few key lessons stand out.

First, in the interwar period, elites in Berlin, Tokyo, and Rome were aggrieved and the Pact deepened their sense of grievance. In Berlin, the Pact was seen as the latest attempt to sustain the unjust settlement of 1918 and to perpetuate German weakness and significantly stoked the sense of humiliation and resentment among German nationalists.²³ In Tokyo, already angered by the failure of the League of Nations to secure Japan’s interests in Manchuria, the Pact intensified “frustration that just as Japan had learned to use the rules of the Old World Order to its advantage, those rules changed.”²⁴ In Rome, Mussolini joked dismissively about the Pact as “an ethereal gesture, backed by nothing.”²⁵

What does this imply for the potential unintended consequences today of the Ban Treaty? It may reinforce the grievances of anti-status quo powers, their opposition to arms control, and their commitment to re-make the international order. Leaders in Moscow, Beijing, Pyongyang, and Tehran are motivated by varied combinations of humiliation, grievance, and resentment and prize military strength, including nuclear strength, as a safeguard of their interests. There is no evidence that Presidents Putin and Xi see the Ban as anything more than “an ethereal gesture,” but if they were to see it becoming a real threat to their nuclear modernization programs, their opposition would likely become much more purposeful.

Second, leadership elites in Berlin, Tokyo, and Rome all saw an opportunity in the WDC to gain material advantage over their enemies while inhibiting their responses by expressing rhetorical commitment to disarmament. WDC participants agreed to an "armaments truce" involving military spending reductions.²⁶ Seizing the opportunity, Germany's leaders took the decision to begin preparing for large-scale mobilization and re-militarization.²⁷ Japan's leaders doubled military spending over the two years of the conference and abandoned naval arms control.²⁸ And Italy's leaders accelerated military modernization. Mussolini argued that "words are very beautiful but rifles, machine guns, ships, and airplanes are much more beautiful."²⁹

Today, leaders in Moscow and Beijing may well prize the Ban's lop-sided impact on the democracies. If ICAN is successful in ending US extended deterrence or in constraining US nuclear force modernization, both Russia and China stand to gain. Over the last decade, Russia has significantly improved its ability to increase its nuclear force, if no successor to the New START Treaty is agreed.

Third, in the interwar period, leadership elites in those capitals drew the lesson that the democracies were unlikely to defend their interests if challenged militarily. The message of restraint that democratic leaders sought to send was received by autocratic leaders as a message of weakness, confusion, and appeasement. Here a good example is from Japan, where both military and civilian leaders discounted the possibility of a naval arms race with the United States, in part because of its disarmament diplomacy.³⁰ As Patrick Glynn has argued, "The search for disarmament made the democracies appear weaker, both to their own leaders and to their enemies, than they actually were."³¹

Today, the polarized public nuclear debate in the democracies may be seen by leaders in Moscow, Beijing, Pyongyang, and Tehran as an affirmation of the division and paralysis they hope for in time of crisis, thereby increasing the risk of crisis and of inadvertent escalation. We should recognize that these leaders are regularly testing the resolve of the United States and its allies to defend their interests, just as in the interwar period.

The past can only be suggestive of the future, as history does not repeat itself. The disarmers of the interwar period set out to strengthen international law and consolidate a norm against war and ended up weakening law and accelerating the drift to war because there was an inadequate basis for either of their initiatives in the existing practices of revisionist states. The disarmament project of the interwar period had the effect of reinforcing the wrong perceptions of, and policy choices by, elites in the revisionist countries. With the Ban Treaty, the disarmers of the twenty-first century have set out on a similar project. No one seems to expect that their efforts will have much near-term impact on the current cast of revisionist leaders. This interwar history suggests otherwise. They too could end up making unanticipated and unwelcome policy choices.

The Ban balance sheet: losses versus gains

The preceding analysis points to the conclusion that the entry into force of the Ban would have foreseeable results, both intended and unintended, that would be damaging to international nuclear order and indeed to the prospects of nuclear

disarmament. It would deal a blow to the NPT at a critical moment. It could erode, if not collapse, extended nuclear deterrence, thereby increasing the vulnerability of US allies to coercion and possible attack. The Ban could also encourage challenges by those opposed to the regional security orders in which the democracies live as well as weakening international order and international law more generally.

These foreseeable results, intended and not, might be worth accepting if it were also the case that the entry into force of the Ban would actually bring into being the conditions necessary for disarmament. Would it?

In Chapter 6 in this volume James Acton has made the argument that the Ban is not going to achieve the elimination of nuclear weapons. By his argument, the primary requirements cannot be legislated. Instead, they require political debate and accommodation and the creation of the political will to successfully disarm and maintain the peace to follow.

Here is another place where Oppenheimer can be helpful. He played a leading role in the development of what came to be called the Acheson-Lilienthal Plan, which with revisions became the Baruch Plan as proposed by the United States to the United Nations Atomic Energy Commission in June 1946. Under both plans, the United States would have turned over its nuclear weapons to the UN for dismantlement and an international system would have been created to promote peaceful uses of nuclear energy and to monitor compliance. The key distinction between the Acheson-Lilienthal Plan and the Baruch Plan followed from a disagreement about how best to ensure compliance. Acheson-Lilienthal proposed an approach built on bilateral cooperation between the United States and the Soviet Union. The Baruch Plan proposed an approach built on the authority of the United Nations Security Council and the assumption that the permanent members would agree to relinquish their vetoes on nuclear matters. The Baruch Plan was rejected by the Soviet Union and the international community charted a different course, away from disarmament and toward the Cold War arms race.

Taking stock of the situation in September 1947, Oppenheimer expressed his views that "the arguments that were given in the Acheson-Lilienthal report are correct arguments" and that "some day we will want to come back to this."³² A decade later, he did come back, in remarks at a pair of conferences.³³ He made the following key points.

He expressed skepticism that the disarmament project would have gone forward in the late 1940s even if the Soviet Union and Soviet bloc had not opposed it (an opposition he attributed in part to the "institutionalized and pathological secrecy of the Soviet world"). He was "not at all sure that, even if there had been no Communist powers, the affirmative votes would have stood up." He came to see the US proposal as "very radical" and concluded that it would have generated "second and third thoughts," even among its advocates.

Oppenheimer argued that the technical challenges of monitoring peaceful uses had grown substantially in the intervening decade. "It is not possible to do what could have been done then." His conclusion was that "it is not safe to reduce nuclear armament below a level which is large compared to this uncertainty [of

material diversion].” He also argued that “it is not possible ... to do it by inspection alone,” as effective monitoring requires “active management of those enterprises by an agency that is responsible for making sure there are no diversions.”

He also put a clear focus on the necessity of changes to the international political system. He argued that

[Disarmament] is desirable, but only in connection with vast changes in the world, some of which have to do with international cooperative developments, others having to do with the maintenance of international order, and some of which have to do with the establishment of some minimal elements of transnational power.

The rising Cold War and the worldview of the Soviet leadership were obviously key factors in the analysis. As Oppenheimer argued in 1947:

The proposed pattern of control stands in very gross conflict to the present patterns of state power in Russia. The ideological underpinnings of that power, namely the belief in the inevitability of conflict between Russia and the capitalist world, would be repudiated by a cooperation as intense or as intimate as is required by our proposals for the control of atomic energy.³⁴

Oppenheimer also set out some ideas about the nuclear problem that would remain after abolition—the problem of covert nuclear acquisition, followed by nuclear breakout and nuclear aggression. “Disarmament should not be confused with the solution to the problem of nuclear war,” he argued, “and not even much with a solution to the problem of sudden nuclear war.” “Disarmament will not prevent nuclear war ... it may avoid their surprise use, may avoid the massive initial beginning ... but [the construction of weapons] can be done rapidly ... [as] there are no real roadblocks.” He fretted over the growing complexity of the atomic problem and the emergence of the “grim” work of maintaining deterrence even while working for disarmament: “we need to be able to fight limited war, conventionally if we can, limited nuclear war if we must, and we need to be prepared for these things ahead of time.”³⁵

In sum, having come back to the topic of nuclear disarmament in 1957, Oppenheimer concluded pessimistically that “very little of the basis of this [1946 U.S.] proposal remains in the world today.”

This 1957 analysis provides as good a set of metrics as we’re likely to find for our contemporary debate. Three essential requirements follow from the preceding analysis:

1. A technical solution to the monitoring of peaceful uses of nuclear energy and of former military facilities in a manner that provides timely warning of militarily-significant activities.
2. A political-military solution to the problem of nuclear war that would remain in a disarmed world.

3. An international political system that promises to be effective at maintaining international order in the absence of nuclear deterrence and that is rid of regimes that cannot tolerate the intensity and intimacy necessary for disarmament to work.

Using these metrics, how should we assess the disarmament prospect today and the efficacy of the Ban?

The technical solution is not proximate. To be sure, there is a great deal more technical proficiency in the international system than six decades ago, with a robust and capable International Atomic Energy Agency. Moreover, the challenge hasn't grown as expected in 1947, in the sense that the global embrace of both nuclear energy and nuclear weapons has not occurred. But military programs continue to operate without the international supervision proposed in 1946. Denial and deception techniques and activities have been practiced, popularized, and proliferated. The writ of the IAEA remains modest relative to the role it would play in a disarmed world. The advanced safeguards called for over the last two decades remain incompletely implemented. In addition, there are today many more potential proliferation pathways, many more skilled scientists and engineers, much more experience in operating clandestine programs, and an abundance of militarily-sensitive nuclear technologies and materials dispersed globally.

What does the Ban contribute to making that technical solution more proximate? It provides no answer, requiring only that signatories engage in negotiations with a "competent authority" yet to be defined or designated. Ban supporters have argued that these problems can be solved by the nuclear weapon states when they join the Treaty. This sets aside the requirement—and responsibility—of non-weapon states to join in the solution.

And to the second requirement: is there a political-military solution to the problem of nuclear war that would remain in a disarmed world? This too is not proximate. A disarmed world would be vulnerable to break-out by a willful challenger and to the agenda that such a state might then try to pursue. For over a century, policymakers have struggled to find a solution to the problem of non-compliance and aggression by revisionist states. They have come to understand the separate challenges of technically assessing, authoritatively attributing, and convincingly enforcing relevant international agreements. But the track record is hardly reassuring as it includes the failure of the League of Nations, the paralysis of the United Nations Security Council (UNSC) through the Cold War, and, since the Cold War, the mixed record of the international system in dealing with treaty violations by, among others, Iraq, Libya, Iran, North Korea, Russia, and most recently Syria.

What does the Ban contribute to making that political-military solution more proximate? The Treaty repeats standard language that complaints about non-compliance will be the subject of consultations among concerned parties and can be taken to the UNSC if not otherwise resolved. As North Korea's behavior has amply demonstrated over the past two decades, consultations among concerned

parties can be an excellent way to buy time. In a world in which the Ban is implemented, the problems of sudden war and of sudden nuclear war would remain and a disarmed Security Council would lack the military means to deter or respond to aggression.

And to the third requirement: an international political system that does not generate demands for nuclear deterrence, that promises to be effective at maintaining international order, and that is rid of regimes that cannot tolerate the intensity and intimacy necessary for disarmament to work. A senior advisory group to the US Congress cautioned in 2009 that nuclear disarmament would require “a fundamental transformation of the international political system.”³⁶ Has it transformed enough?

The patterns of power and behavior in the international political system have changed in various dramatic respects over the intervening six decades but the present patterns seem at least as uncongenial to nuclear disarmament as the patterns of the 1950s. Of course, the Cold War has ended and the Soviet Union and the Warsaw Pact have collapsed. And international conflict has continued its steady decline in frequency and intensity, a trend in evidence since the end of World War II. But relations among the major powers have not settled into a new footing of mutual security and confidence; instead, competition, rivalry, and even fear and resentment are drivers of national strategies. Russia and China are both led by elites who have declared their opposition to regional orders backed by the United States and who are highly motivated not to be subject to coercion by the United States. They see nuclear weapons as useful for deterring nuclear attack but also for the larger purposes of their national strategies—to prevent coercion, to expand freedom of maneuver, to re-make regional orders, and to claim their place as major powers in the global multipolar system. And of course a few regional actors have become nuclear actors, who also attach value to nuclear weapons for the purposes of deterrence but also for larger national purposes. Although few communist states remain, the “present patterns of state power” in many states are such that there is continued opposition in many capitals to the transparency necessary for effective disarmament (witness the slow pace of implementing advanced safeguards); indeed, many societies have reacted to the intensity and intimacy of globalization by becoming less open.

What does the Ban contribute to the effort to create the necessary political conditions in the international system? It takes no apparent interest in the topic. And a few of its chief advocates express antipathy to the project. Ms. Fihn has also spoken dismissively about the insistence of the NWS on creating the right conditions for disarmament, casting it as a delaying tactic and justifying confrontation “to force the issue.”³⁷ She has asserted that the Ban is the “solution to the North Korea situation ... [and] solves all these other problems too.”³⁸ Other Ban supporters argue that there has been too much realism guiding US. nuclear policy.³⁹

An historical perspective can again be useful in providing context and perspective. For this debate about conditions, the experience of the interwar period offers two additional lessons. The first lesson bears on the debate about how much realism should guide disarmament policy. The interwar period vividly illustrates the

danger in policy approaches that are divorced from a changing reality. The historian E.H. Carr offers a stinging assessment of the consequences of trying to fit old answers to new problems in the interwar period:

A rapid succession of events forced upon all serious thinkers a reconsideration of premises which were becoming more and more divorced from reality ... The breakdown of the 1930s was too overwhelming to be explained merely in terms of individual action or inaction. Its downfall involved the bankruptcy of the postulates on which it was based ... The characteristic feature of the crisis of the twenty years between 1919 and 1939 was the abrupt descent from the visionary hopes of the first decade to the grim despair of the second, from a utopia which took little account of reality to a reality from which every element of utopia was rigorously excluded.⁴⁰

The disarmament movement of the interwar period made a number of claims that proved not to be true. One was that war had lost its legitimacy. As Harvard historian Ernest May has argued,

Understanding of Hitler's aims and policies was clouded ... by a general inability to believe that any national leader might actually want another Great War; a desire and need to push away the very possibility of such war, given the intensity of public antipathy to the prospect, and need to negotiate, within parliamentary systems, agreed appreciations concerning Germany and other nations.⁴¹

Today, many in the West believe that no foreign leader is so motivated by opposition to the existing world order as to risk another major war. Let us hope that this proves to be so, but let us also recognize that it may not. The unipolar moment of the 1990s has given way to something much more challenging and volatile. As one illustration of a different perspective, Matthew Rojansky offers the following cautionary note:

burdened by the collective memory of multiple invasions of Russia and the Soviet Union from the Mongol Horde to Nazi Germany, Russians tend to believe that major power wars happen and cannot be prevented but must be survived ... As the Russian proverb goes, eternal peace lasts only until the next war.⁴²

Another claim that proved untrue in the 1930s was that disarmament had been widely accepted by the international community as a means to secure the peace. In fact, the commitment to disarmament was not universal and the asymmetry of commitment was fully exploited by revisionist regimes. Today, ICAN makes a number of claims about its representation of global forces and the will of the international community. But in an eroding international security system, it is clear

that global forces are fractured and that even the existence of an international community as such is in doubt.

Realism dictates that we see clearly the context in which disarmament is considered. In the seventh decade of the nuclear era it is widely agreed that international change is accelerating, that there has been a renewal of major power rivalry, and that international order is increasingly contested, including by those with a radical vision of a post-secular order. There is little evidence that the Ban supporters have tried to come to terms with these issues.

The other lesson from the interwar disarmament project bears on the debate about the importance of creating the right international political conditions. The interwar period illustrates the futility of seeking disarmament without an orderly international system supported by the major actors. In his famous 1939 assessment of what he called the 20 years' crisis, Martin Wight made this case.

The fundamental political law is that the first condition of justice is an enforced order. It is possible to conceive an unjust order; it is possible to conceive, and even slowly to create, a just order; it is impossible (except for the theoretical anarchist) to conceive a just disorder. This, however, was the direction in which the protagonists of peaceful change set themselves as they dismantled the rude scaffolding of international order set up in 1919.⁴³

Disarmament in the interwar period came to be an end in itself rather than a means to an end. It was pursued in a manner that encouraged the autocracies, weakened the democracies, and encouraged miscalculation. In the words of Walter Lippmann, these projects were

[an] exorbitant folly ... The disarmament movement was ... tragically successful in disarming the nations that believed in disarmament. The net effect was to dissolve the alliance among the victors of the first World War and to reduce them to almost disastrous impotence on the eve of the second World War.⁴⁴

Lippmann concluded that "the story of the disarmament movement is the sorry tale of nations which lost sight of their vital interests, and very nearly emasculated themselves fatally as a result."⁴⁵ The disarmament story of the twenty-first century can only be built on the foundation of a just, durable, and secure peace.

So what conclusions can be drawn about the TPNW balance sheet of foreseeable effects? On the negative side of the ledger are at least two predictable and negative effects: additional pressure on the nonproliferation regime and the possible collapse of US extended deterrence. Additionally on this side of the ledger are some significant unintended consequences in the form of encouragement to challengers to the status quo, incentives for new forms of competition for nuclear advantage, and an increased risk of miscalculation of the willingness of democracies to defend their interests. On the positive side of the ledger is only the value of the Ban as a tool to pressure and shame "outlier states." It does little or nothing to

bring into being the conditions necessary for a just, durable, and secure post-nuclear world.

Moral choice and disarmament policy

With this balance sheet in mind, what moral obligations fall on those who approach nuclear disarmament with a concern for foreseeable effects?

A first obligation is to minimize the Ban's negative effects. The best way to have avoided such effects would have been to avoid the Ban, but this moment has passed. The Ban is obviously here to stay. But it is less obvious that it must enter into force. Better that it stand as a protest vote than as a legal regime competing with the NPT. But entry into force appears likely, so tailored diplomacy is necessary to mitigate specific negative effects among US allies and elsewhere.

A second obligation is to set out a policy agenda that is more promising of positive effects for the nuclear disarmament project. As a starting point, the nuclear weapon states should "come to the table." As one religious leader recently argued in the British Parliament, "our presence at the [disarmament] table is requested ... Will we be there?"⁴⁶ The discussion of the moral dilemmas of nuclear weapons cannot happen without the presence of experts and politicians from among all the stakeholders. By not joining the discussion of humanitarian consequences, the nuclear weapon states sent an unhelpful message that they have no particular sense of responsibility for the global nuclear order. They do.

In fact, those who live by the ethic of responsibility have an obligation to try to re-set the table. The terms of debate about nuclear ethics have so far been set by the disarmament community, which has not brought forward the needed broader discussion. This could usefully encompass the following questions. Are the Oppenheimer conditions the right conditions? Are there plausible strategies to create the necessary conditions? If we can all agree (as we seem to do) that disarmament is not feasible in the near term, what can we agree in the way of interim measures to ensure that nuclear deterrence is safe, secure, and effective so long as it remains? Does the history of disarmament have lessons for today? What next steps are feasible and possible to reduce nuclear dangers?

The ethic of responsibility also points to an obligation to advocate for policies and practices by the nuclear weapon states that are themselves responsible. The nuclear-armed states should exercise restraint in their nuclear policies and postures by various means (bilateral, unilateral, multilateral) so as to ensure that the arms race that finally ended in the 1990s is not unwittingly re-started through a process of increasingly competitive modernization. They should honor their legal commitments. They should provide the transparency necessary for reassurance of others. They should align their military plans with the requirements of the laws of war. They should also lead a serious and sustained effort to maintain the taboo against the employment of nuclear weapons.⁴⁷

Conclusion

Is the Nuclear Ban Treaty a moral imperative? Perhaps it is for those who live by the ethic of pure intentions and who feel responsible primarily for keeping the flame alive. But it is not a moral imperative for those who feel responsible for foreseeable results. It has foreseeable results, both intended and unintended, that are damaging to international order and to international nuclear order. This implies a moral obligation to oppose the Ban and to work to mitigate its consequences.

How might Oppenheimer view the contemporary debate about nuclear ethics? Would he take a more favorable view than in the 1950s? He set a high standard:

There have been crucial moments in which the existence of a public philosophical discourse ... could have made a great difference in the moral climate and the human scope of our times ... I find myself profoundly in anguish over the fact that no ethical discourse of any nobility or weight has been addressed to the problem of atomic weapons.⁴⁸

Is there today an ethical discourse of nobility and weight? In my assessment, Oppenheimer would again be disappointed. To be sure, he would be encouraged by the mobilization of interest and concern about the problem of nuclear weapons. But he would look for evidence that Ban advocates perceive moral dilemmas in the multifaceted nuclear problem and he would find little or none. He would look for a commitment to discourse among dissenting views and he would find instead ICAN's campaign to pressure and shame those with whom it disagrees and other efforts to polarize the debate. He would look for an informed debate about the premises of nuclear policy and would find instead disdain for the discussion of conditions. He would look for realism in our nuclear policies and find the opposition to realism. He would discover little or no interest in the miscalculations and failures of disarmament policies of the past. He would look for humility in the face of human complexity, and instead find a dose of moral rectitude.

In addition, he would likely be disappointed by the ways in which the leading non-nuclear weapon states (NNWS) have unburdened themselves of certain responsibilities. In crafting the Ban, they left for the NWS the hard, long-unsettled questions about how to deal effectively with future compliance and enforcement challenges, as if the answers will matter only to the currently nuclear-armed states. They also weakened the obligation to apply advanced safeguards to their own activities. And a few failed to honor assurances they gave to the NWS that they would oppose turning the humanitarian consequences movement to the disarmament purpose.⁴⁹

Of course these are only conjectures and inferences about what Oppenheimer might say. The central question for us must be whether we are satisfied with the nobility and weight of our ethical discourse about nuclear weapons. We should not be.

Notes

- 1 James A. Hijiya, "The Gita of J. Robert Oppenheimer," *Proceedings of the American Philosophical Society*, Vol. 144 (June 2000), pp. 123–167. I will return periodically to Oppenheimer in this chapter, while recognizing that he is a controversial figure, as his views add useful context. I owe a special debt of gratitude to Michael Day for his encouragement of this project, his invaluable assistance, and his foundational work on Oppenheimer's thinking on nuclear ethics. See Michael A. Day, *The Hope and Vision of J. Robert Oppenheimer* (Singapore: World Scientific, 2016). For a full biography, see Kai Bird and Martin J. Sherwin, *American Prometheus: The Triumph and Tragedy of J. Robert Oppenheimer* (New York: Knopf, 2005).
- 2 Oppenheimer lecture, "Physics in the Contemporary World," MIT University, Cambridge, MA, 1947.
- 3 The author is grateful for comments on drafts of this chapter by participants in the Nobel Institute book project and also by Ivanka Barzashka, Zachary Davis, Michael Day, Lewis Dunn, Richard Moore, Paul Schulte, and Heather Williams. The views expressed here are his personal views and should not be attributed to any institution.
- 4 Quoted in Martin Agronsky, "Dr. Oppenheimer Interview," excerpt from *CBS Evening News* with Walter Cronkite, August 5, 1965.
- 5 William C. Potter, "Disarmament Diplomacy and the Nuclear Ban Treaty," *Survival*, Vol. 59, No. 4 (August–September 2017), pp. 75–108; John Borrie, "Changing the Discourse on Nuclear Weapons: What it Means for Campaigners and Why it's Important." Available at: www.icanw.org/wp-content/uploads/2014/03/CK-3-Changing-the-Discourse-About-Nuclear-Weapons_Borrie.docx; Heather Williams, "A Nuclear Babel: Narratives Around the Treaty on the Prohibition of Nuclear Weapons," *The Nonproliferation Review* (July 2018).
- 6 Beatrice Fihn, "The Logic of Banning Nuclear Weapons," *Survival*, Vol. 59, No. 1 (February–March 2017), p. 44.
- 7 Fihn, Nobel Peace Prize Laureate Lecture, December 10, 2017.
- 8 "Advisory Opinion on the Legality of Nuclear Weapons," International Court of Justice, 1996.
- 9 Jørn Gjelstad and Olav Njolstad, eds., *Nuclear Rivalry and International Order* (Oslo: PRIO, 1996).
- 10 "The Ethics of Nuclear Deterrence," prepared for the General Synod of the Anglican Church of England, York, July 2018, p. 1.
- 11 From a statement by the Holy See's representative to the Vienna Conference on the Humanitarian Impact of Nuclear Weapons, December 8, 2014. See also Michael Nebel and Giovanni Giudetti, "Introduction to the Texts of the Catholic Church Regarding Nuclear Deterrence," in *Nuclear Deterrence: An Ethical Perspective* (Geneva: Caritas in Veritas Foundation, 2015), pp. 35–46.
- 12 *Ibid.*
- 13 John Couretas, "Patriarch Kirill: Russia Needs Nuclear Weapons," *RIA Novosti*, September 11, 2009, and Dimitry Adamsky, *Russian Nuclear Orthodoxy: Religion, Politics, and Strategy* (Stanford University Press, forthcoming).
- 14 The definition draws on the *Cambridge Dictionary of Philosophy* (Cambridge: Cambridge University Press, 1999). See Day, *The Hope and Vision of J. Robert Oppenheimer*, p. 144.
- 15 Max Weber, "Politics as a Vocation," in David Owen and Tracy B. Strong, eds., *The Vocation Lectures* (Indianapolis, IN: Hackett Publishing Company, 2004). With thanks to Paul Schulte.
- 16 Fihn, "The Logic of Banning Nuclear Weapons," p. 47.
- 17 President Barack H. Obama, "A Just and Lasting Peace," Nobel Lecture, Oslo, Norway, December 10, 2009.
- 18 See her previously cited Nobel Prize Acceptance Speech.
- 19 Fihn, "The Logic of Banning Nuclear Weapons," p. 47.

- 20 Remarks by NATO Deputy Secretary Rose Gottemoeller during a panel discussion on Perspectives for a World Free from Nuclear Weapons at Vatican City, NATO, November 10, 2017.
- 21 Oona A. Hathaway and Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (New York: Simon & Schuster, 2017), p. x.
- 22 Liddell Hart, *The Liddell Hart Memoirs*, Vol. I, 1895–1938 (New York: Putnam's Sons, 1965), p. 192.
- 23 *Ibid.*, p. 224. See also B.J.C. McKercher, "The Preparatory Commission and the World Disarmament Conference, 1926–1934," in B.J.C. McKercher, ed., *Arms Limitation and Disarmament: Restraints on War, 1899–1939* (Westport, CT: Praeger, 1992), p. 183.
- 24 *Ibid.*, p. 159.
- 25 Hathaway and Shapiro, *The Internationalists*, p. 258.
- 26 Joseph Goldblat, *Arms Control Agreements: A Handbook* (Stockholm: Praeger for SIPRI, 1982), p. 10.
- 27 Edward Bennett, *German Rearmament and the West, 1932–33* (Princeton, NJ: Princeton University Press, 1929).
- 28 Sadao Asada, *From Mahan to Pearl Harbor* (Annapolis, MD: Naval Institute Press, 2006), p. 178.
- 29 Stanley Michalek, *A Primer in Power Politics* (Wilmington, DE: Scholarly Resources Inc., 2001), p. 189.
- 30 *Ibid.*, p. 205.
- 31 Patrick Glynn, *Closing Pandora's Box: Arms Races, Arms Control, and the History of the Cold War* (New York: Basic Books, 1993), pp. 82–83.
- 32 Oppenheimer, "Atomic Energy as a Contemporary Problem" (1947), in R. Oppenheimer, *The Open Mind* (New York: Simon & Schuster, 1955), p. 26.
- 33 For a June 1957 Princeton University conference on NATO, he prepared a paper on "Nuclear Power and International Relations." For a December 1957 Columbia University meeting of the American Assembly on the topic of Atoms for Power: United States Policy in Atomic Energy Development, he prepared a paper on "The Environs of Atomic Power." The latter was published as part of the final report. Both are available from the collections of the manuscript division, U.S. Library of Congress. Except as otherwise indicated, the citations included in the next four paragraphs are all taken from the first of these.
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- 35 Oppenheimer, "The Environs of Atomic Power," pp. 32–33.
- 36 Congressional Commission on the Strategic Posture of the United States, *Report of the Congressional Commission on the Strategic Posture of the United States* (Washington, DC: United States Institute of Peace, 2009).
- 37 As cited in Uri Friedman, "One Person Shouldn't be in Charge of the Fate of the World," *The Atlantic*, November 11, 2017.
- 38 Fihn, "Time to Step off the Nuclear Tightrope," *Financial Times*, January 7, 2018.
- 39 Ward Wilson, "How Nuclear Realists Falsely Frame the Nuclear Debate," *Bulletin of the Atomic Scientists*, May 7, 2015.
- 40 *Ibid.*, pp. 36, 40, 224.
- 41 Ernest R. May, *Strange Victory: Hitler's Conquest of France* (New York: Hill and Wang, 2000), p. 453.
- 42 Matthew Rojansky, "Russia and Strategic Stability," in Elbridge Colby and Michael Gerson, eds., *Strategic Stability: Contending Interpretations* (Carlisle Barracks, PA: U.S. Army War College Press, 2013), p. 305.
- 43 Martin Wight, *Power Politics* (New York: Penguin, 1979), pp. 212–213.
- 44 Walter Lippmann, *U.S. Foreign Policy: Shield of the Republic* (Boston: Little, Brown, and Co., 1943), pp. xii, 55.
- 45 *Ibid.*, p. 57. See also Salvador de Madariaga, *Morning Without Noon, Memoirs* (London: Saxon House, 1973), pp. 31, 48–49.

- 46 Rt. Reverend Stephen Cottrell, the Bishop of Chelmsford, February 20, 2018, House of Lords.
- 47 Sebastian Brixey-William and Paul Ingram, *Responsible Nuclear Sovereignty and the Future of Global Nuclear Order* (London: BASIC, 2018).
- 48 Oppenheimer, "In Keeping of Reason."
- 49 Potter, "Disarmament Diplomacy and the Nuclear Ban Treaty," pp. 82–83.