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FURTHER STEPS TO STRENGTHEN THE PROCESS OF NUCLEAR DISARMAMENT

The fact of the development and opening of the Treaty on the Prohibition of Nuclear Weapons (TPNW) for signature is a historic event in the field of nuclear disarmament.

The entry of the TPNW into force will have a tangible impact on the process of nuclear disarmament, placing nuclear weapons de jure off-limits, which in turn will affect many other documents of international law.

The Treaty will gradually make it possible to “squeeze out” of international relations the threat and the very possibility of using nuclear weapons, and thereby bring closer to the common goal of building a world free of nuclear weapons.

At this stage, we believe that the states parties to the Treaty need to take the following priority measures:

- 1.** To ensure the entry of the Treaty into force as soon as possible.
- 2.** To re-initiate a resolution of the UN General Assembly requesting the International Court of Justice to issue an advisory opinion on the legality of the threat or use of nuclear weapons.

In particular, as is known, in paragraph 2B of the relevant opinion of the International Court of Justice dated 8 July 1996, the following is delivered: *“There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such or its application”.*

In clause 2D: *“A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons”.*

In clause 2E: *“It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;*

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake”.

Obviously, this conclusion needs to be revised taking into account the adopted text of the TPNW.

3. States-parties to the Treaty will need to conduct a full audit of their international legal obligations with a view to avoiding a conflict with the new Treaty.

3.1. For instance, questions arise regarding the International Convention for the Suppression of Acts of Nuclear Terrorism, with more than 100 states parties. Out of the states that possess nuclear weapons *de jure* and *de facto*, the United Kingdom, France, the USA, Russia, China and India are parties to this Convention.

Clause 4 of Article 4 of this Convention, in particular, notes that "*This Convention does not address, nor can it be interpreted as addressing, in any way, the issue of the legality of the use or threat of use of nuclear weapons by States*".

This provision can be interpreted as recognition by the states parties to the Convention of the right to use or threaten the use of nuclear weapons by one state against another, which is in direct opposition to the provisions and spirit of the Treaty on the Prohibition of Nuclear Weapons.

It is necessary, in our opinion, to initiate the Conference of states which are parties to the Convention with a view to deleting clause 4 of Article 4 of the Convention.

3.2. States which are parties to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques dated May 18, 1977, need to convene the Conference and recognize that, in accordance with Article 1 of this Convention, nuclear weapons are illegal and should be prohibited.

Thus, Article 1 of the Convention states: "*1. Each State Party to this Convention undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party. 2. Each State Party to this Convention undertakes not to assist, encourage or induce any State, group of States or international organization to engage in activities contrary to the provisions of paragraph 1 of this article*".

Out of the states that possess nuclear weapons *de jure* and *de facto*, the United Kingdom, Russia, the USA, China, India and DPRK are parties to this Convention.

Adoption of the aforementioned priority measures will make it possible to exert effective pressure on the "nuclear five" to fulfill their obligations under Article VI of the NPT and help strengthen and advance the new Treaty on the Prohibition of Nuclear Weapons.



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