

What After the Adoption of the UN Nuclear Weapons Ban Treaty 联合国通过全球禁止核武器条约之后该何去何从

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UTRECHT, The Netherlands (IDN) - It's nearly impossible to believe: nuclear weapons are banned. Outlawed. Making their way to where they belong, the dustbin of history. Since July 7 2017, that is a new reality. There is now a treaty that makes it illegal to make, have, get or use nuclear weapons. But what's the next step for the nuclear ban? [P 13]

荷兰·乌得勒支(IDN) - 禁止核武器，把与核武器有关的应用与交易列为非法活动，从而进一步把核武器推进历史的垃圾桶。这似乎是一个难以让人相信的核裁军进程。然而，从今年7月起，这成为了新的现实。现在，我们拥有了一个把制造，应用，购买，销售等都列为非法活动的禁核条约。我们现在所面对的问题是：这一新的禁核条约出台之后，下一步该何去何从？

The treaty itself provides the first answer. It will open for signature on September 20 at the UN headquarters in New York. From then on the treaty will remain open for signature and States will begin the national processes to ratify. Three months after the fiftieth State has ratified, the treaty will enter into force and become binding on all those who have ratified it.

禁核条约本身或许就是第一个答案。今年9月20日，相关各成员国将在位于纽约的联合国总部进行签字仪式。各成员国应启动国家立法程序批准该协议。在这之后，其余国家如有意愿也可以签署并加入该协议。该条约规定从第50个成员国批准此协议后的第三个月起，条约将会强制生效，并实现对各签署国的法律约束力。

In principle, even before a treaty enters into force, it can have a normative effect. Think of the Comprehensive Nuclear-Test-Ban Treaty (CTBT); it's over 20 years since it first opened for signature and it hasn't entered into force. Yet anytime any country plans a nuclear weapons test – or as in the case of North Korea – carries it out, the world reacts, condemns it, and imposes sanctions. Building that norm around what the nuclear ban treaty prohibits is the next step.

原则上讲，即使在正式生效之前，该条约也具有一定的法律规范效应。比如“全面禁止核试验条约”(CTBT)。该条约从开放签字之日起已长达20余年，时至今日此条约也并未产生相应的强制法律约束力。然而，即使缺乏强制性法律约束力，当一国试图计划或启动核试验(例如北朝鲜)之时，各国也能对其行为进行谴责并实施相关制裁。像这样构建与禁核条约相关的常识应是继出台新禁核条约后的下一个目标。

For decades, efforts to change the way we talk about nuclear weapons – to brand them as immoral and illegitimate – have been going on. Now, a new tool exists that codifies their illegitimacy, adds clout to the efforts to change the debate. Now, when we talk about nuclear weapons activities we can talk about them as prohibited by an international treaty.

In what ways can this new prohibition have an impact? How can the treaty be leveraged to eradicate nuclear weapons from the planet?

在过去数十载的时间里我们致力于把核武器标榜为“非法非道德”的事物。这一努力持续至今。现在，我们有了一个新的工具为我们助力。“联合国禁核条约”的签署成为我们证明核武器非法的另一利器。这意味着今后当我们谈论有关核武器的话题的时候，我们终于能够指出与之相关的活动是明确被国际条约及法律所禁止的。这项新的禁核条约将会产生怎样的影响？怎样才能利用这一条约促使核武器从地球上消失？

National legislation 国家立法

States will be responsible for putting in place national legislation to ratify the treaty. Article 5 of the Treaty requires legal, administrative and other measures including penal sanctions to prevent and suppress activity prohibited by the treaty. In developing national implementation legislation, States have the possibility to further elaborate the provisions of the treaty, and incorporate components to develop and codify their understanding of the treaty, to build on its stigmatizing power. This could include prohibiting financing of nuclear weapon producing companies.

相关各国应制定国家法规，在国家层面上真正批准改条约。“联合国禁止核武器条约”第五项条款要求：阻止并抑止与核武器相关的活动应该以包括刑事制裁在内的各项合法的行政措施为依据。相关国家在执行国内立法的过程中可以进一步对条约的规定进行阐述以发展和反映本国对于该条约的理解，从而更好地使其服务于禁核目标。这其中就包括了禁止对核武制造商提供金融融资服务。

When designing national legislation the inclusion of a clear prohibition on financing nuclear weapon producing companies will provide clarity about how the financial sector should respond to the prohibition on assistance in Article 1 of the treaty. This signalling function is important to financial institutions. Many in the financial sector now use the Nuclear Non-Proliferation Treaty (NPT) as a reason to keep investing in companies that produce key components for nuclear weapons. They say that it's okay for some countries to keep nuclear weapons, but that has all changed in the new reality.

在制定包括禁止对核武器制造商的融资服务在内的国家法律的过程中，各国政府应明确指出其制定的法律在金融领域内是如何反映条约第一项有关禁止协助核武活动内容的。也就是说该条约的第一项条款对于金融机构而言是重要的导向信号。目前在金融领域，有人以“核不扩散条约”为依据向生产主要核原料的公司进行投资。他们的理由是在“核不扩散条

约”下，一些特定国家拥有核武器是被允许的。然而，新禁核条约的出台使这样的念想化为泡影。

Financial institutions provide crucial and necessary support to companies so that they are able to produce key components for nuclear weapons. Most nuclear-armed states rely on private companies for the production, maintenance and modernization of nuclear weapons. Publicly available documentation shows private companies are involved in the nuclear arsenals of, at least, France, India, Israel, the United Kingdom and the United States.

金融机构能向主要核武器原料的生产商提供必要的协助及金融服务。在大多数的拥核国家，核武器的生产，维护和现代化升级主要是靠私营公司来完成。有公开资料表明，至少在法国，印度，以色列，英国，美国这五个国家，私人公司都直接或间接地参与到了核武器的生产及运营活动中。

(Read: PAX (2016) “Worldwide Investments in Cluster Munitions, a shared responsibility”, available at www.stopexplosiveinvestments.org/report, last viewed 14 June 2017.)

（相关阅读：PAX(2016)“我们共同的责任 - 与世界集束弹药相关的投资报告”，链接：www.stopexplosiveinvestments.org/report，更新阅读：2017年6月14日）

When financial institutions invest in companies associated with nuclear weapon production, they provide the financing that is needed for the projects that are currently making these weapons more likely to be used while increasing their killing capacity. This can be made illegal, and the new treaty ratification process offers the best opportunity to do so.

当金融机构向与核武相关的公司投资或提供金融服务的时候，他们实际上给一些核武项目提供了必要的帮助，而这些核武项目很可能会因为这些资金援助而变得更具有杀伤力和破坏性。这种援助行为应该是不合法的。缔结这一新的禁核条约为我们认定这一行为的非法性提供了最佳契机。

Previous experiences have shown that states are well placed to implement general financing prohibitions in their national contexts. For example, research by PAX shows that 10 states have already adopted national legislation prohibiting investments in cluster munitions[i], understood to be prohibited by the ‘assistance’ provision in the Convention on Cluster Munitions.

之前的经验表明，各国政府能够很好地在国家层面上实施综合有效的金融禁令。例如，一项由PAX提交的研究报告表明已经有10个国家通过了国内立法禁止对集束弹药相关领域进行各种形式的援助。“集束弹药公约”中有关禁止为集束弹药相关的组织提供各种形式的援助这一条款成为各国国内立法的理论基础。

Some states have also already done so for the financing of nuclear weapons. In Australia and New Zealand it is a crime for a person or company to facilitate nuclear weapons manufacture anywhere in the world. In both countries, a company is also prohibited from providing services, including lending money, to another company if it can reasonably suspect that the services provided will contribute to a WMD (weapons of mass destruction) programme. In Switzerland, the Swiss War Materials Act prohibits direct investment in nuclear weapons producers.

Liechtenstein implements the same legislation.

事实上，一些国家已经就有关核武器的投资与金融活动制定了相关禁令。澳大利亚和新西兰政府规定无论核武器的生产地在何处，只要个人或公司直接或间接协助了核武器的生产，那么该法律实体就会被认定为有罪。这两个国家同时也规定任何公司不得向疑似与大规模杀伤性武器(WMD)有关联的公司提供包括金融借贷在内的各项服务。在瑞士，其国内的“瑞士战争材料法”禁止个人或组织向核武器制造商进行直接投资。列支敦士敦也实施了同样的国内立法。

Implementing a prohibition on financing in the national ratification process as an elaboration of the assistance clause of the nuclear weapons prohibition treaty allows states to consolidate their obligations under other existing prohibitions and restrictions on financing, ranging from the UN Security Council Resolution 1540 to the International Convention for the Suppression of the Financing of Terrorism. Best practices on national implementation could be shared at meetings of states parties and assistance with implementation measures could be asked for and provided, should States choose to do so.

在国内立法过程中融入禁止核武相关金融服务的条款作为对禁核条约中第一条援助条款的补充解释，这样能强化在禁止或限制金融服务领域各国在其他协议框架(包括联合国安理会第1540号决议和抑制恐怖主义融资国际公约)下已承诺的义务。相关各国可在成员国例会上分享最佳实践案例。各国若有需要也可在例会上提出要求，寻求合作。同时也应在其他成员国需要协助的时候提供必要的援助并主动配合。

No profit from illegal weapons

断绝通过非法武器交易而获利的途径

It is important to recognize that existing prohibitions on financing do not restrict purchasing other goods produced by companies that might also be involved in prohibited activities. The same should apply here. In practical terms, a prohibition on financing would apply to all types of

investments and financing, including providing loans, investment banking services (such as underwriting bond or share issuances), and asset management activities such as shareholding.

值得特别注意的一点是，现存的各项金融禁令并没有限制人们购买疑似与核武交易相关公司所生产的其余产品。新的禁核条约中也有与之相同的规定。在实践中，金融禁令涵盖了各种类型的投资以及金融服务，包括提供贷款，投资银行服务(例如承销债券或股票保险)，以及包括持有股份在内的资产管理活动。

A prohibition on financing does not require a boycott of nuclear weapon producing companies; it only prohibits investing in them. Financing and investing are done with the intention of making a profit. Investing in the producer of nuclear weapons is therefore not only a form of assistance for the production of these weapons, it also means profiting from an activity that is prohibited because of its inhumane consequences.

金融禁令并不意味着对核武器制造商进行贸易抵制，它只起到禁止外部对其进行投资的作用。外部组织或个人对核武器制造商进行融资和投资是因为有利可图。因此，对核武器制造商进行投资不仅仅是支援核武生产的一种形式，它还意味着从非法活动中获利。正因为这种不人道的非法活动可能会给人类带来难以估量的灾难，所以才会被法律明令禁止。

What next?

下一步，何去何从？

When thinking about what comes next for the Nuclear Prohibition Treaty, bringing it into force and encouraging good national ratification legislation is a distinct path forward. Along the way, it will be necessary to clearly identify and describe prohibited acts as illegal, and to elaborate the assistance provision to stop financial institutions from profiting from nuclear weapons production. The majority of the world's governments have unquestioningly rejected nuclear weapons, and now we need to work to give that rejection more teeth. [IDN-InDepthNews – 17 July 2016]

当考虑禁核条约签署过后该做什么这一问题的时候，答案显然是使其产生法律强制力并推动其国内立法程序。然而，在立法的过程中，清晰明确地划分，定义哪些是被明令禁止的非法行为是十分必要的。此外，还应对援助条款进行详实地阐释说明以阻止金融机构从中获利。如今在世界范围内绝大多数政府都对“反对核武器”这一议题没有异议。现在，我们应该行动起来，以切实行动推动世界无核化进程。