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NUCLEAR WEAPONS AND THE DIALECTIC OF UNIVERSALISM: THE UN CONVENES TO BAN THE BOMB

Kjølsv Egeland / March 8, 2017 / 4

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In late March of this year, a majority of the world's states will meet at the United Nations headquarters in New York City to start negotiations on a nuclear weapons prohibition treaty. It will be a landmark event in international history. Not only have such negotiations never been held before—nuclear weapons remain the only class of weapons of mass destruction (WMD) not explicitly prohibited by international law—the process itself also marks a turning point in multilateral diplomacy.

Emerging as an element of the European “standard of civilization” in the 19th century, the laws of war were meant, in part, to **distinguish** “civilised” Europe from the “uncivilised” rest of the world. As the good news and its missionaries spread to ever more remote corners of the world, Europe's traditional identity marker of Christendom no longer did the trick. In Hegelian terms, the development of the laws of war made it possible for the old European powers to maintain a common identity by negating the uncivilised “Other”.

Peoples deemed unable or unwilling to adhere to the European laws and customs of warfare were declared uncivilised by default. Classification as uncivilised, in turn, meant that the door to full membership of international society was closed; uncivilised polities could not create international law or participate in diplomatic conferences on equal footing with civilised nations. What is more, uncivilised lands could be conquered or otherwise exploited by the morally superior Westerners. And uncivilised peoples, moreover, were **not owed the same standard of conduct** as the civilised. These understandings mostly remained tacit, but were occasionally debated in public settings. At the Hague Conference in 1899, for example, the colonial powers **debated** whether to codify a ban on the use of expanding bullets against the soldiers of “civilised” nations while reserving the continued use of such ammunition against “savages”. For many states in the Global South, the legacy of the nineteenth century is one of collective **humiliation** and shame.

All of this is not to say that the laws of war do not contain **morally good injunctions**. *Ius in*

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bello's fundamental rules of “non-combatant immunity”, proportionality between ends and means, and avoidance of superfluous injury can certainly be defended as ethically pertinent commands (but have also been persuasively [challenged](#)). Over time, moreover, the somewhat racially-steeped origins of the laws of war gave way to their universalist content. After all, the actual rules governing the conduct of hostilities are totally blind both to the warring parties’ identities and even their culpability for the outbreak of conflict.

The distinction between civilised and uncivilised states lives on in contemporary international legal discourse. The [Statute of the International Court of Justice](#)—the closest thing modern international law has to a constitution—identifies as sources of international law not just treaties and customs, but also the “general principles of law recognized by civilized nations.” Originally referring to a distinctly *European* society of states, references to “civilised nations” are today taken to invoke the wider “international community”. The latter is a more inclusive category than the original European one, but is still not exhaustive of all states. States judged to exist outside the international community—a categorisation usually brought on by having an actual or alleged desire to develop WMD—have typically been labelled “rouge” or “bandit” states. (Tellingly, Colonel Gaddafi’s abandonment WMD in 2003 prompted Tony Blair to declare that Libya was now entitled to “[re-join the international community](#)”.) The campaigns for bans on cluster munitions, landmines, incendiary weapons, booby traps, poison gas, and biological weapons all used the binaries of civilised/uncivilised and responsible/irresponsible to bring their message across.

The ongoing campaign to ban nuclear weapons uses similar language. But the unique character of the ongoing movement to ban nuclear weapons is not the ideas by which it is animated, but the identity of its creators. While all the campaigns noted above were developed or at least supported by most European states, the nuclear ban-treaty movement marks the first time an instrument of international humanitarian law is forced into existence against a kicking and screaming European core. The civilising mission of normative stigmatisation has been taken up by those formerly on the receiving end.

This year, strongly opposed by most of the rich, Western world, a nuclear prohibition treaty will be negotiated by the former “savages” and “barbarians” of the Global South. (Admittedly, the ban-treaty project is supported by neutral European states like Austria, Ireland, and Sweden. Yet the vast majority of the ban’s supporters are African, Latin American, and Asia-Pacific states). They claim that the possession and use of nuclear weapons cannot be reconciled with the principles of the laws of war. Almost any conceivable use of nuclear weapons would kill innumerable civilians and cause enormous harm to the natural environment. The use and possession of nuclear weapons, in short, is uncivilised and should be declared illegal.

The ban treaty, if it is adopted, will most likely be made up of a relatively short text declaring the use, possession, and transfer of nuclear weapons unlawful. A prohibition on investment in companies involved in the development of nuclear weapons could also be in the text. But detailed provisions for the physical dismantlement of nuclear warheads and delivery platforms will have to be left for a later date. Negotiating such provisions would ultimately require the attendance and support of the nuclear-armed states, and that, at present, is *not* likely to transpire.

Great Britain, long a standard-bearer of the laws of war, has spent the last few years attempting to derail the ban-treaty initiative. The governments of Belgium, Denmark, France, Germany, Hungary, Italy, Norway, Poland, Portugal, Russia, and Spain support Britain in its opposition to making nuclear weapons illegal, as do Australia, Canada, and the United States. None of them are expected to attend the negotiations. The United Kingdom and her allies argue that nuclear arms are unlike all other weapons. Nuclear weapons, they claim, are not weapons at all but “deterrents”—implements of a system of rational and responsible statecraft beyond the empire of law. Yet from the perspective of most states around the world, the opposition of the nuclear-armed states and their allies to a ban on nuclear weapons looks deeply hypocritical. Proponents of a ban argue that, not only would the use of nuclear weapons contravene the spirit of the general principles of the laws of war, the humanitarian and environmental consequences of nuclear war would not be contained by national borders.



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The ban-treaty movement is in some ways reminiscent of the Haitian revolution of 1791. The latter was ostensibly the first time an enslaved population revolted against its master on behalf of the "universal" values the slavers themselves professed to uphold—a rebellion the philosopher Slavoj Žižek has [called](#) 'one of the greatest events in the history of humanity.' Marching to the tune of the Marseillaise, the Haitian slaves demanded that the slogans of *liberté*, *égalité*, and *fraternité* be taken at face value. The states promoting the nuclear ban treaty are, of course, not enslaved like the Haitians, but both cases share the same moral grammar: a set of universal values is for the first time being leveraged against its creators.

Like the Haitian revolution, which was hushed up by the French authorities for years before Napoleon eventually sent an army to quash it, the nuclear ban-treaty movement has been ignored in public discourse. Since the point of the ban is to shame the United Kingdom and other nuclear-armed nations into reducing and eventually eliminating their WMD, the obvious move for Theresa May and her government is to let the ban treaty negotiations pass by in silence. No attention, no shame. So far, the British media has made the UK government's job easy.

It remains to be seen how long Britain and the other established nuclear powers can snub the ongoing developments in international law. It also remains to be seen whether the ban treaty will have a noticeable impact on efforts to reduce and eliminate nuclear weapons. It is certainly possible that the ban treaty will have less of an impact than its supporters hope. But the changing legal landscape is at any rate significant. It signals that states like Britain no longer enjoy what [Hedley Bull](#) identified as a central component of status as a great power: 'great powers are powers *recognized by others* to have ... special rights and duties'. Britain's special right to possess nuclear weapons, codified by the Nuclear Non-Proliferation Treaty of 1968, is now being withdrawn by the international community. [Kipling](#)—the poet of the empire—springs to mind:

If, drunk with sight of power, we loose
Wild tongues that have not Thee in awe,
Such boastings as the Gentiles use,
Or lesser breeds without the Law—
Lord God of Hosts, be with us yet,
Lest we forget—lest we forget!

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