The Nuclear Ban Treaty and 2018 Disarmament Forums: An Initial Impact Assessment

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ABSTRACT

The July 2017 UN Treaty on the Prohibition of Nuclear Weapons (TPNW) will come into force when 50 UN Member States ratify it. The new treaty has been condemned by nuclear weapon states on the grounds of its claimed adverse impacts on Non-Proliferation Treaty (NPT), and for not taking account of progress through step-by-step incremental measures. Supporters of the new treaty, including 122 UN Member states, have been concerned about the lack of substantive nuclear disarmament progress as envisaged under Article VI of the NPT. This study analyses the arguments for and against the new treaty in the context of recent 2018 NPT and Conference on Disarmament (CD) sessions, and regional nuclear disarmament arrangements. It draws upon the discussions and debates at the Geneva 23 April–4 May 2018 NPT Preparatory Committee, and positions taken in the 2018 CD sessions, to assess immediate and potential longer-term impacts of the TPNW. The roles of regional measures nuclear-weapon-free zones (NWFZs) and weapon-of-mass-destruction-free zones (WMDFZs) are also considered in the context of the TPNW and the NPT. The study argues that the TPNW, through its normative delegitimation and stigmatisation of nuclear weapons, is already creating a discernible impetus for substantive nuclear disarmament within and beyond the NPT and CD forums, despite the present resistance mounted by the nine nuclear-armed states.

Introduction

On 7 July 2017, a majority of UN Member States took the historic step of adopting a treaty aimed at universally banning nuclear weapons (UNODA 2017). The Treaty on the Prohibition of Nuclear Weapons (TPNW) followed a series of three international conferences focusing on the humanitarian impacts of nuclear weapons,1 and two Open-Ended Working Group (OEWG) sessions, including one in 2013 and one in 2016 (Unga and Assembly 2016). Implementing an OEWG recommendation, the United

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1The most important of these conferences was the 2014 Vienna Conference on the Humanitarian Impact of Nuclear Weapons hosted by the Austrian Government and attended by 158 states and a wide range of non-government organisations, including the Red Cross and Red Crescent, https://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-terrorism/vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/ (accessed 3 December 2017). Previous conferences on the humanitarian impacts were in Oslo (March 2013) and Nayarit (February 2014).

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Nations General Assembly (UNGA) convened a 2017 New York “Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards their Total Elimination” (UNGA 2017). This was aimed at achieving a comparable mechanism for prohibition of nuclear weapons to those for two other kinds of weapon of mass destruction, the Chemical Weapon and Biological Weapon Conventions.

While the NPT-recognised nuclear-armed states (the United States, the United Kingdom, France, Russia, China) vigorously opposed and boycotted the 2017 TPNW negotiations, the participating States voted 122 votes to 1 (with 1 abstention) in support of the new treaty. It was opened for signature on September 20 2017, and as at August 2018 has been signed by 60 states (UNODA 2018). It will come into force after 50 ratifications.

Under its first article, the TPNW bans the development, testing, producing, acquiring, stockpiling, and use (or threatening of use), of nuclear weapons. It also seeks to ban nuclear weapon transfers, assistance to others in engaging in prohibited nuclear weapon activities, and permitting the stationing or deployment of nuclear weapons in treaty members’ territories or any place under their control (UNODA 2018). Other provisions require the application of International Atomic Energy Agency (IAEA) safeguards on signatories, special arrangements for dismantling and eliminating nuclear weapon activities in countries that possess nuclear weapons before ratifying the treaty, and obligations to assist victims of nuclear weapon testing and undertake environmental remediation (UNODA 2017).

The impetus for the new TPNW developed out of frustration on the part of many non-nuclear members of the 1968 Non Proliferation Treaty. Non-nuclear-weapon states (NNWS) argue that while they have kept their side of the bargain in not acquiring nuclear weapons, the five NPT-recognized nuclear-armed states (China, France, Russia, United Kingdom and United States) are showing no substantive signs over recent years of moving towards nuclear disarmament and elimination, as required under the NPT’s Article VI. This article requires that “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament” (NPT 1968). The TPNW initiative was galvanised by the three international conferences on the humanitarian impact of nuclear weapons. These presented overwhelming evidence that even a “limited” nuclear exchange would have worldwide humanitarian impacts in terms of millions of deaths and injuries, and global impacts on health, the environment, climate and food security. International concern was intensified by an increasing awareness that any hostilities involving the current nine nuclear-armed states (the NPT-recognized five plus Israel, India, Pakistan and North Korea) would create catastrophic impacts for all countries.

The NNWS’ frustration was fuelled further by the fact that all nine of the existing nuclear-armed states, so far from moving towards “effective measures” on nuclear disarmament, were demonstrably moving in the opposite direction from commitments previously undertaken at NPT Review Conferences. In particular, the major nuclear powers were engaged in modernizing their existing arsenals, and even, in some

\(^2\)For an overview of the humanitarian consequences, see Helfand (2013).
instances, developing new kinds of nuclear-capable weapons (the United States, Russia) (Kristensen 2017; Kile 2017), or, in the case of India, Pakistan, Israel and North Korea, expanding their nuclear arsenals (Kyle and Kristensen 2017).

Non-nuclear UN Member States in the Middle East were particularly concerned that the consensus decision of the 2010 NPT Review to convene a conference to establish a weapon-of-mass-destruction-free-zone (WMDFZ) in the Middle East was postponed indefinitely by the United States. The United States was widely perceived by Arab states to be responding to concerns raised by Israel, a non-NPT-member nuclear-armed regional state. At the 2015 NPT Review Conference, the failure to agree on a final document foundered on US and UK refusal to be excluded as convenors for the MEWMDFZ Conference because they believed the Arab States would convene it despite potential objections from Israel (Rauf 2016).

The following study will focus on the early impact of the new UN Prohibition Treaty within such global non-proliferation and disarmament forums as the Non Proliferation Treaty, the UN First Committee, and the Conference on Disarmament (CD); and on regional nuclear disarmament measures and approaches, particularly in the case of regional and single-state nuclear-weapon-free-zones (NWFZs).

In the context of sharp criticism from some of the nuclear-armed states, both before and after the 2017 TPNW was negotiated, that the new treaty would in some way undermine a hypothesized “step-by-step” nuclear disarmament approach agreed and undertaken as part of the obligations and review processes of the Non Proliferation Treaty, the study will seek to examine whether in principle, or in subsequent fact (during the relatively short period that the treaty has been negotiated), the TPNW has indeed had a negative impact; or whether, on balance, as nuclear prohibition proponents have argued, the TPNW served as a means to exert greater normative pressure on all states to pursue nuclear abolition goals and NPT action strategies more strenuously. It will seek to compare the assumptions and positions of both critics and proponents, and examine recent developments in the 2018 NPT PrepCom Conference and the on-going sessions of the CD to assess initial potential impacts of the new treaty within the NPT and related nuclear disarmament forums.

**TPNW Aims and Underpinning Theoretical Assumptions**

The aims of the new treaty are evident in both its preamble and in its key provisions. Its Article 1 prohibits not only nuclear possession by any party but also receiving transfer or control of nuclear weapons (directly or indirectly, from any other country), allowing stationing of nuclear weapons by any other country, and assisting or encouraging any other country in nuclear weapon activities. Its provisions are aimed at universally applying international humanitarian law against indiscriminate or disproportional attacks on populations as a consequence of nuclear weapons; and seek to prevent horizontal and vertical nuclear proliferation in the form of assistance to other countries to acquire nuclear weapons, or deployment of nuclear weapons overseas by those countries currently in possession of them (UNODA 2018). The Preamble notes how these aims are consistent with, and help to implement, a number of other wider UN aims, including UN General Assembly resolutions calling for nuclear weapon elimination and the need for compliance with international humanitarian law.
Compared to the NPT, one of the key new implications of the TPNW is the normative principle that any possession of nuclear weapons is unjustified since the “catastrophic consequences of nuclear weapons cannot be adequately addressed, transcend national boundaries, pose grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations, and have a disproportionate impact on women and girls, including as a result of ionizing radiation”. By comparison, the NPT allows transitional current possession of nuclear weapons by five NPT-recognized powers (China, France, Russia, the United Kingdom and the United States) pending negotiated nuclear disarmament under Article VI.

Another key difference is that, even in the case of non-nuclear-weapon member states, the NPT lacks any provision against the stationing of nuclear weapons by external nuclear states in non-nuclear-weapon states territories. There are currently 150 US tactical (B61-3 and B61-4) nuclear weapons deployed in five European countries (Belgium, Germany, Italy, the Netherlands, and Turkey) (Kristensen 2017).

There have already been several important scholarly studies seeking to analyse and explain some of the key theoretical assumptions underpinning the new treaty, particularly in the context of differences with the assumptions and provisions of the NPT.

Thakur makes the case that the NPT’s “normative authority” on nuclear disarmament progress has been critically undermined by three factors (Thakur 2017). Firstly, it is limited in its impact by only including five of the current nine nuclear-armed states. The other four such nuclear-armed states remain unconstrained by the NPT Article VI obligation to move towards nuclear disarmament. Secondly, the indefinite 1995 extension of the NPT was agreed on the basis of a package that included such further multilateral agreements at the Comprehensive Test Ban Treaty (CTBT), a Fissile Materials Cut-Off Treaty (FMCT), and the convening of a Middle East WMD-Free Zone conference. Yet, of these initiatives, only the CTBT has been implemented, and even in the case of the CTBT, six (the United States, China, India, Pakistan, Israel and North Korea) of the nine nuclear-armed states have not as yet ratified it. Thirdly, Thakur argues, the “legal strength” of the NPT Article VI remains “weak” since the nuclear disarmament negotiations and actions that might have indicated a willingness to implement that article failed to be substantively advanced, even under the Obama Administration, with the 2015 NPT Review Conference failing to agree on an outcome document, and the current Trump Administration’s National Security Council arguing that the disarmament obligations under the NPT were vague and weak compared to its non-proliferation provisions. Reviewing the normative implications of humanitarian law and the International Court of Justice difficulty in identifying any situation under which use of nuclear weapons could be justified, Thakur argues that, in contrast to the NPT, the key role of the TPNW will be to “reshape the global normative milieu: the prevailing cluster of laws (international, humanitarian, and human rights), norms, rules, practices and discourse that shape how we think about and act in relation to nuclear weapons”. More specifically, Thakur argues that, while not having an instant impact on nuclear weapon abolition, the TPNW will “lessen their attractiveness and change the incentive structures for states that possess them and others that rely on extended nuclear deterrence”.

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In studies written both before and after the 2017 negotiation of the Treaty, Ritchie argues that such a treaty plays a critical role in delegitimizing nuclear weapons (Ritchie 2013; Ritchie and Egeland 2018). Distinguishing between “legal legitimacy” (the exercise of power in compliance with existing law) and “moral legitimacy” (the rational moral and political principles that underpin laws and their relationship to social norms), Ritchie argues and provides empirical evidence from official statements, that the NPT has functionally served to legitimize current possession of nuclear weapons by the five NPT-recognized nuclear powers despite its Article VI obligation for those powers to negotiate elimination of their nuclear weapons. Noting the state-centred and exceptionalist rationalizations to which the nuclear powers constantly resort, together with the claimed legitimacy afforded by the NPT, Ritchie further draws upon Beetham’s analysis of legitimacy to conclude that the process of delegitimization can take several forms. These include: the occurrence of actions that breach legal rules as illegitimate; the development of a “legitimacy deficit” under which existing rules cease to be justified under shared norms; and “negative legitimacy” under which public consent or agreement is withdrawn. In the case of the TPNW, all three kinds of delegitimation are in evidence, particularly as a result of the discourse on the humanitarian impact of nuclear weapons. In a further study, following on the 2017 TPNW adoption, Ritchie and Egeland argue that the successful negotiation of the treaty represents a form of “productive power” exercised by transnational advocacy networks (TAN) in mobilizing normative pressure against nuclear weapons amongst like-minded forces and governments (Ritchie and Egeland 2018).

The role of transnational advocacy networks, particularly the International Campaign to Abolish Nuclear Weapons and the International Committee of the Red Cross, is further explicated by Borrie, Spies and Wan, who identify and analyse the emergence of the new humanitarian discourse and norms as applied to nuclear weapons in the three successive 2013–2014 Intergovernmental Conferences in Oslo, Nayarit and Vienna; and note that, unlike the chemical and biological weapon prohibition conventions, the nuclear possessor states have reacted more strongly to seek to counter the normative challenges posed to their continued possession of nuclear weapons (Borrie, Spies, and Wan 2018).

Another recent analysis focusing on the stigmatization and delegitimation roles of the TPNW is provided by Mitsuru Kurosawa (Kurosawa 2018). Comparing the two processes, Kurosawa defines stigmatization in terms of moral or ethical unacceptability while delegitimation can be thought of as the diminishment or reduction in the legitimacy, prestige or authority of a policy or practice. In relation to the TPNW, he argues that its rationale depends primarily on the stigmatization process, given the TPNW focus on the indiscriminate and catastrophic humanitarian consequences of nuclear weapons. On the other hand, delegitimation approaches tend to underpin other currently pursued nuclear disarmament measures seeking commitments to reduce the role of nuclear weapons in national security postures, reducing stockpiles, pledging non-first-use and de-alerting. In Kurosawa’s view, the two processes of stigmatization and delegitimation are complementary in efforts to achieve a nuclear-weapon-free world. He notes, however, that in the current absence of support for the TPNW from
the nine nuclear weapon states, delegitimation-oriented initiatives on nuclear weapon policies are particularly important to pursue in tandem with the TPNW.

**Arguments For and Against the New Treaty: NPT NWS Arguments versus NNWS Arguments**

On the day that the Nuclear Weapon Prohibition Treaty was concluded on July 7 2017, the three Western NPT-recognised nuclear powers, the United States, the United Kingdom and France, issued a joint statement declaring that they “do not intend to sign, ratify or ever become party to it”, adding that they “would not accept any claim that this treaty reflects or in any way contributes to the development of customary international law” (United States, United Kingdom and France 2017). In support of this stance, they argued that “a purported ban on nuclear weapons that does not address the security concerns that continue to make nuclear deterrence necessary cannot result in the elimination of a single nuclear weapon and will not enhance any country’s security, nor international peace and security”. At the same time, the three states declared that they “reiterate… our continued commitment to the Treaty on the Non-Proliferation of Nuclear Weapons” and “reaffirm our determination to safeguard and further promote its authority, universality and effectiveness”.

Their collective emphasis on security and deterrence was prefigured in an earlier “United States Non-Paper” circulated to its NATO fellow members on October 17 2016 (United States Mission to Nato 2016). This paper called upon allies participating in the OEWG to “vote ‘no’ on any vote at the UN First Committee on starting negotiations for a nuclear ban treaty”, arguing that nuclear capabilities and deterrence were key elements in NATO’s overall strategy, and that “efforts to negotiate an immediate ban on nuclear weapons or to delegitimize nuclear deterrence are fundamentally at odds with NATO’s basic policies on deterrence and our shared security interests”. The US paper claimed that supporters of the ban treaty were seeking “to shift the focus from the proven step-by-step approach to nuclear disarmament, in keeping with our NPT commitments, to one that aims to stigmatize nuclear weapons and nuclear deterrence…”. In support of the argument that the treaty would adversely constrain NATO’s military capability, it drew attention to a number of prohibitions that might adversely affect NATO, including prohibitions on nuclear weapons subcritical tests, stockpiling, transfer, transit, use or threat of use, nuclear war planning, nuclear weapon targeting, stationing, direct or indirect assistance in nuclear activities, criminalization of support for any prohibited activity, and nuclear deterrence doctrines. The paper emphasized the role of US forward-based nuclear weapons in Europe, and continuing support at the 2016 NATO Warsaw Summit for including nuclear capabilities in NATO’s military posture.

These initial US and NATO statements reflected a traditional security orientation to nuclear weapons possession as a guarantee of national security for the relevant states. The statements did not engage with the wider issues of transnational nuclear weapon humanitarian impacts and global human security risks as identified by non-nuclear states and civil society supporters of the TPNW, particularly those states that do not belong to military alliances with nuclear-armed states. Nor did the US and NATO statements engage with the short, medium and long-term risks of accidental or
miscalculated nuclear conflict if nuclear weapons are retained, particularly in the light of increasing cyber-warfare capabilities, including amongst non-state-actors.

In the case of the initial statement of the United States, the United Kingdom and France, there appeared to be a tension between their pledge of “continued commitment” to the NPT and their declaration that they would not “ever become party to” the TPNW. Nuclear disarmament, as obligated under the TPNW, would seem to be the required aim of the “good faith” negotiations under Article VI of the NPT. For the Western nuclear powers to suggest that they would never join the TPNW appears tantamount to saying they would never abandon their nuclear weapons, something that would seriously undermine the original “bargain” on which non-nuclear-weapon-states agreed to join the NPT in the first place.

As against these arguments, non-nuclear-state and civil society proponents of the TPNW stressed: (1) the humanitarian and environmental consequences of nuclear weapon use on all countries’ regional and global security; (2) the slowdown, if not total halt, in the step-by-step disarmament initiatives previously agreed at the NPT Review Conferences of 1995, 2000 and 2010; and (3) the accumulating empirical evidence of the risks of accidental and miscalculated nuclear war under existing nuclear postures and deterrence doctrines (Docherty 2018; Acheson 2018; Ruff 2018).

**TPNW Impacts and Issues at the 2018 NPT PrepCom Conference**

The 23 April–4 May 2018 NPT Preparatory Committee (PrepCom) represented a key international forum for registering the initial impact of the TPNW nine months after its adoption in July 2017. Although most advocates and supporters of the TPNW anticipated that its normative role would not necessarily be discernible immediately but would take some years to exert influence on nuclear-weapon-possessor states, it could be expected that some delegates would seek to draw on the new prohibition treaty for applying moral or legal pressure on the TPNW-boycotting nuclear-weapon-states and their non-nuclear military allies. At the same time, it was also a test of whether the TPNW would prove terminally “divisive” rather than acting as a complementary reinforcement of nuclear disarmament approaches being pursued through the NPT.

Certainly no NPT party has so far withdrawn from the NPT since the opening of the TPNW for signature. NPT nuclear-armed States continued to voice their commitment to the NPT, although in the case of the United States and some of its non-nuclear alliance partners there was a greater emphasis on its commitment to the non-proliferation aspects and strategies of the NPT compared to the Article VI nuclear disarmament aspects. In the case of (mainly non-aligned) non-nuclear states not encumbered by military alliances with nuclear-weapon-states, there were no statements that suggested a break with their commitments under the NPT or a view that the TPNW was anything but complementary to the NPT. Many, indeed, contended that the TPNW was actually an “effective” path to disarmament as envisaged under the NPT’s Article VI.

The relative positions of the NPT parties at the April–May 2018 NPT PrepCom may be assessed by considering four groupings within the NPT: firstly, the five nuclear-weapon-states recognised as such under the NPT: China, France, Russia, United Kingdom and United State; secondly, their non-nuclear-weapon state military allies in
NATO, the ANZUS Alliance and other bilateral or multilateral security arrangements (with some of these states explicitly claiming to rely on extended nuclear deterrence); thirdly, the non-nuclear-weapon states who supported the TPNW and are generally not allied with any of the nuclear weapon states; and fourthly, the inputs from civil society groups present at the PrepCom.

**Nuclear Weapon States’ Stances at the 2018 NPT PrepCom**

The United States, in its opening PrepCom statement, emphasized the non-proliferation value of the treaty, with particular attention to North Korean nuclear weapons and Iran’s long-term proliferation risk, and the “security” challenges constraining nuclear disarmament. In particular, the United States noted “the actions of those states that are expanding and modernizing their nuclear stockpiles, threatening their neighbours, like the Russian Government, and violating their arms control obligations”, and sought agreement on “creating conditions” for further progress through “easing of international tension and the strengthening of trust between States” (Ford 2018). The statement concluded that the NPT “provided a bulwark against nuclear weapons proliferation that continues to provide every State Party with profound security benefits”. In a further statement, the United States declined to offer universal unconditional legally binding negative security assurances to NNWS but emphasized that its 2018 Nuclear Posture Review (NPR) reaffirmed its assurance that “The United States will not use or threaten to use nuclear weapons against non-nuclear weapons states that are party to the NPT and in compliance with nuclear non-proliferation obligations”. The United States further denied that its 2018 Nuclear Posture Review expanded the role of nuclear weapons; rather it would only use nuclear weapons “in extreme circumstances”, defined as including “significant non-nuclear strategic attacks” on “US, allied or partner civilian population or infrastructure, and attacks on US or allied nuclear forces, their command and control, or warning and attack assessment capabilities”. In one of two working papers submitted, the United States promoted a “Conditions for Nuclear Disarmament (CCND)” approach oriented to “efforts to ease conflicts and rivalries that lead to continued reliance on nuclear weapons and nuclear deterrence”, which it viewed as relevant to meeting its Article VI obligations. The US Statements and Working Papers did not specifically address the implications of the new TPNW, or the challenges of addressing the issues posed by those nuclear-armed countries outside the framework and legal obligations of either the NPT or current UN Security Council resolutions, such as Israel, India and Pakistan.

The United Kingdom, similarly placed great stress on the non-proliferation challenges facing the NPT, particularly in the case of North Korea, but argued that the Iran nuclear deal (the Joint Comprehensive Plan of Action, JCPOA) does represent an important contribution. The United Kingdom expressed support for nuclear weapon free zones, and the process for providing negative security assurances to members of such zones. As in the case of the United States, it did not specifically refer to the TPNW but was concerned to emphasize that multilateral disarmament was best achieved through “a negotiated step-by-step approach, within existing frameworks” (United Kingdom 2018).
France shared the position taken by the wider European Union but was concerned to argue that it was fully compliant with Article VI in that it was pursuing “a progressive and pragmatic approach” through a number of unilateral measures, including de-targeting, dismantling of fissile material production facilities, one-third reduction in airborne and sea-based nuclear forces, dismantling of its Pacific test site, ratification of the CTBT, and offering negative security assurances to NPT states in compliance with their non-proliferation obligations (France 2018). However, France was keen to explain its opposition to the TPNW, arguing that the treaty failed to consider “the role that nuclear deterrence continues to play in preserving international security and stability, including in Europe and Asia”. It suggested that the TPNW “could undermine the NPT as the cornerstone of the international non-proliferation regime by creating an alternative and contrary standard”. In support of this argument, the French statement noted that the TPNW does not have the same obligation of general and complete disarmament and therefore could contribute to conventional arms races. It went on to argue that since “it is exclusively based on a humanitarian, and in fact largely moralistic approach, this Treaty deepens divisions and tends to undermine the very foundations of multilateralism, namely dialogue and cooperation with a view to reaching consensus”, and declared that the TPNW “does not bind us and does not create new obligations.” Despite going further than the United States and the United Kingdom in explaining the bases of their opposition to the TPNW, the French statement did not engage with the TPNW states’ arguments concerning the wider global and national security concerns associated with use of nuclear weapons, even in a limited nuclear war. Nor did it elaborate on how the NPT was currently constraining conventional arms races, whether on the part of the nuclear-weapon-states or the NNWS. The statement also did not sufficiently elaborate (other than on the issue of conventional weapon disarmament) on how the TPNW creates “an alternative and contrary standard” since the TPNW both references the NPT and appears consistent with the nuclear disarmament aim contained in the NPT’s Article VI.

The Russian Federation, for its part, affirmed its continuing support for the NPT as providing “a solid foundation for settlement of the most complicated problems in the area of nuclear non-proliferation” (Russian Federation 2018). As in the case of the United Kingdom, the Russian Federation noted the importance of JCPOA in containing proliferation in the Middle East. The Russian statement further highlighted the threats posed by “unrestricted deployment of global missile defence system” and the failure of the United States to ratify the CTBT, and denied that it was itself violating the INF Treaty. The statement went on to explain Russia’s opposition to the TPNW: “This initiative makes no contribution to the advancement towards the noble goal declared. Quite on the contrary it threatens the very existence and efficiency of our fundamental Non-Proliferation Treaty”. In the Russian view, the NPT Article VI nuclear disarmament obligations are tied also to the obligations towards general and complete disarmament, and therefore the TPNW is departing from the NPT principles in that it envisages nuclear disarmament irrespective of general and complete disarmament. This is a similar position to that argued by France, and apparently assumes that non-nuclear-weapon NPT states might or would cease their membership of the NPT and thereby no longer be obligated to also move towards general and complete disarmament.
China highlighted the need for security assurances to non-nuclear-weapon states, arguing that would “reduce their motivation to pursue nuclear weapons” and that this was “an important measure to prevent nuclear weapons proliferation... rather than a one-way benefaction given by nuclear-weapon States to non-nuclear-weapon States” (Chinese Delegation 2018). China also argued for promoting non-first-use of nuclear weapons, and that nuclear-weapon-states should “diminish the role played by nuclear weapons in their national security policies, abandon the nuclear deterrence policy based on first use of nuclear weapons and refrain from listing any country as target of nuclear strikes or from targeting the nuclear weapons under their control at any country”. In one of several working papers, China has argued, like the other four NPT-recognised nuclear powers, for a “step-by-step manner within existing disarmament negotiation mechanisms”, including the NPT, CTBT and CD rather than through the TPNW (China 2018). The Chinese stance appears to be in tension with the previous long-standing impasse at the CD, the failure of six nuclear-weapon-states (including China) to ratify the CTBT, the failure to progress many of the key agreed NPT action plan steps, and the fact that there are four nuclear powers who stand outside the NPT.

**Stances of Non-Nuclear-Weapon States Allied to Nuclear-Weapon States**

There are several groupings of non-nuclear-weapon states that have military alliance relationships with one or other of the nuclear-armed states. These include: European States and Canada that are members of the North Atlantic Treaty Organization (NATO); Australia, Japan, the Philippines and South Korea, all of whom have alliance relationships to the United States; and some Central Asia states that are party to the Tashkent Collective Security Treaty with the Russian Federation.

In the case of NATO-member European states, some have longed hosted US and/or NATO-assigned nuclear weapons. A European Union PrepCom statement articulated some of the common positions of these states on both the NPT and the TPNW (European Union 2018). The statement pledged that the EU and its member states are “committed to upholding the NPT as a key multilateral instrument for reinforcing international peace, security and stability”; and to following through on the NPT 2010 Review Conference Action Plan. The EU emphasised the importance of pursuing nuclear disarmament through Article VI, the need for a new START Treaty between the United States and Russia, initiatives on confidence-building, transparency and verification systems, urgent dialogue between Russia and the United States on compliance with the INF Treaty, ratification of the CTBT, commencement of negotiations on an FMCT, and the need to implement the JCPOA Iran agreement in full. The EU Statement did not specifically refer to the TPNW but it was, perhaps, significant that it referred to the NPT as “a” rather than “the” key multilateral instrument for reinforcing international peace, security and stability.

Aside from this EU collective statement, Australia, on behalf of a number of states with alliances or close relations with NATO and the United States from across Europe and other regions, provided their own joint PrepCom statement (Australia 2018). This set out their “common interests in supporting and strengthening the NPT” aimed at “narrowing differences and finding space for compromise in order to advance our shared goal of a world without nuclear weapons”. The statement highlighted the need
for “a progressive approach that takes pragmatic and effective steps, which move us towards achieving and maintaining Global Zero in a safe and secure manner”, arguing that this requires consideration of the “international security environment on prospects for progress, without losing sight of the broader concerns about the risks posed by nuclear weapons”. As an example of the risks, it cited North Korea but did not engage with the wider concerns of TPNW proponents concerning the global humanitarian risks of nuclear war. The statement further distinguished its approach from that of the TPNW in declaring that “No progress on nuclear disarmament is possible without the direct involvement of those possessing nuclear weapons”. This was despite the fact that the UN General Assembly invited all nuclear weapon states to attend the TPNW negotiations but nuclear-armed states declined to attend, despite their NPT Article VI obligations to pursue such negotiations in good faith.

The group of five Nordic countries, Denmark, Finland, Iceland, Norway and Sweden, three of whom are NATO members (Denmark, Norway and Iceland) made a separate statement to the PrepCom that also affirmed their continued commitment to the NPT (Nordic Countries 2018). However, the Nordic group were concerned to emphasise that, while they had different perspectives on the TPNW, they were “united in our concern “at the continued risk for humanity represented by the possibility that nuclear weapons could be used and the catastrophic humanitarian consequences that would result from the use of these weapons””. This referred to a quote from the consensually agreed 2010 NPT Review Conference Final Document. They further emphasised their concerns about nuclear weapon modernization, pressures on the INF Treaty, and advocated a range of partial disarmament measures. The Nordic group concluded that “we have to join forces to maintain and strengthen the relevance of the Treaty and refrain from any action which may undermine it”, and to focus “on what unites us”. Their highlighting of the catastrophic humanitarian consequences of nuclear weapons use, as noted in the consensus 2010 NPT Final Document, suggests that, at least among the Nordic countries, the TPNW focus on the humanitarian impacts of any nuclear use, resonated strongly amongst these states. Indeed, one of the Nordic states, Sweden, also made a separate statement warning of a “deeply worrisome renaissance for nuclear weapons. In words and deeds, nuclear weapon states signal an increased reliance on these uniquely destructive weapons – removing us further from our common goal of a world free of nuclear weapons”.

Japan, for its part, both as an ally of the United States and as a country that has suffered the direct humanitarian consequences of nuclear weapons at Hiroshima and Nagasaki, was concerned to promote “bridge-building” across the divergent views on nuclear disarmament within the NPT (Japan 2018a). It advanced, in a working paper, some specific recommendations from a “Group of Eminent Persons” that Japan had brought together after the 2016 NPT PrepCom (Japan 2018b). Of these recommendations, Japan particularly supported efforts to increase transparency, improved verification systems, and promotion of interactive discussion between nuclear-weapon and non-nuclear-weapon states on some of the “hard questions” relating to threat reduction and addressing security concerns that may accompany any nuclear disarmament process. Japan’s statement did not specifically refer to the TPNW. However, the Eminent Persons Group (EPG) report, which Japan tendered to the 2018 PrepCom, did address the impact and implications of the TPNW and some of its issues and
implications. The EPG Chair’s Summary noted that for proponents, the TPNW “was an expression of unwillingness to be blocked in venues where progress is currently being frustrated by nuclear-armed states”, “demonstrates the political costs of nuclear-armed states’ failure to live up to their NPT commitments regarding disarmament”, and “challenges the notion that nuclear weapons are acceptable armaments”. At the same time, the EPG Chair noted that TPNW opponents were arguing that it would not be effective “precisely because the nuclear-armed states refused to participate or sign the treaty”, and that it fails to “address the security issues which drive nuclear-armed states to rely on nuclear deterrence”, does not adequately address verification and compliance issues, and “risks neglect of the NPT and its review process”. On the latter point, by contrast, the EPG Chair notes that TPNW proponents have argued that the gap between NWS and NNWS has widened over the last decade “due to inadequate implementation of nuclear disarmament obligations/commitments by nuclear-armed states”.

It was in the context of this widening gap between nuclear-weapon and non-nuclear weapon states, that the EPG statement tendered by Japan focused on a “bridge-building” agenda emphasizing the importance of new forms of dialogue, particularly on areas of common ground, such as major statements of “renewed commitment” to public agreement, especially from the NWS, that “nuclear war must never be fought and cannot be won”, that nuclear weapons should not be used for war-fighting, and that international humanitarian law should be respected in all circumstances. In the case of the NPT itself and the forthcoming 2020 NPT Review Conference, the EPG urged the need to: convene the MEWMDFZ conference; resolve the Korean Peninsula nuclear issue; preserve the Iran JCPOA agreement; and adopt a spirit of compromise and understanding by all parties. In relation to possible withdrawals from the NPT, the EPG judged this as a hypothetical possibility (due to increasing dissatisfaction with progress on nuclear disarmament) but thought that this was “unlikely” (Japan 2018b). Over the midterm, the EPG argued for: re-evaluation of the concept of “a minimization point” in levels of nuclear weapons held, together with adoption of no first use doctrines and associated limitations on force deployments; entry into force of the CTBT and negotiation of a FMCT; commitment to freezing on nuclear weapon development and modernization programs; irreversible measures, such as unilateral but mutual dismantlement of nuclear warheads; and measures to reduce the role of nuclear weapons, including finding answers to such “hard questions” as “whether deterrence can be credibly maintained without actually using nuclear weapons”, and what would actually happen if nuclear deterrence fails. In the longer term, the EPG urged continuing commitment to “global security without nuclear weapons”, with renewed thought given to the shape of an international security system, monitoring and verification, and enforcement (Japan 2018b).

**Stances of Non-Nuclear-Weapon States in Support of the TPNW**

In his 3 May 2018 Factual Summary, the Chair of the 2018 PrepCom sought to clarify the differences in views and stances on the TPNW in two paragraphs, 40 and 41 (NPT PrepCom Chair 2018). The Chair noted that: “a number of states informed about the ratification process and status of this treaty”; that they asserted that it “represented an
effective measure under Article VI of the NPT by creating a legally binding prohibition on nuclear weapons” and “complemented the NPT and was designed to strengthen existing disarmament and nuclear non-proliferation regimes”. By contrast, the Chair noted that other states had expressed their opposition to the TPNW, emphasized the “crucial link between progress on disarmament and the international security environment”, warned that it “would not contribute to the reduction or limitation of nuclear weapons”, argued that it does not “reflect customary international law and thus could bind only its signatures”, and expressed concern that it would “create an alternative and contrary standard to the NPT”.

Two groups of non-nuclear states, the New Agenda Group and the Non-Aligned Group, as well as a number of individual non-nuclear states, made a number of statements strongly supporting the TPNW and arguing for its complementary relationship to the NPT.

The New Agenda Coalition (NAC), comprising Brazil, Egypt, Ireland, Mexico, South Africa and New Zealand, was a key early proponent of the TPNW, arguing at the 2014 NPT PrepCom that such a treaty would be “an effective measure” to implement Article VI, and that such a ban treaty would act “alongside” and “in support of” the NPT. At the 2018 PrepCom, the NAC group reaffirmed support for the need for progress on the 13 “practical steps” on implementing Article VI at the 2000 NPT Review Conference, and noted that it is the responsibility of all states “whether or not they support the Treaty on the Prohibition of Nuclear Weapons, to move forward on implementing their Article VI obligations (New Agenda Coalition 2018a). In a further statement on the last day of the PrepCom, the NAC voiced “deep concern” about “the lack of balance in language referencing the Treaty on the Prohibition of Nuclear Weapons” in the Chair’s May 3rd Factual Summary (New Agenda Coalition 2018b). Commenting on the two paragraphs “dealing with this important treaty”, the NAC noted the lack of reference to the fact that many states supported it, and the characterization of the relationship to the NPT as merely being intended to strengthen the existing disarmament and non-proliferation regime. Rather “it was widely observed at this PrepCom that the TPNW will strengthen the NPT regime” (New Agenda Coalition 2018b).

The Group of Non-Aligned States similarly stressed the importance of progress on the 2000 NPT Review “13 Practical Steps”. It did not specifically mention the TPNW but submitted a working paper on the “elements for a plan of action for the elimination of nuclear weapons” that included as an element in the first 2020–2025 phase, “commencement of negotiations on and conclusion of an international non-discriminatory convention on nuclear weapons” that would including prohibition on such weapons and a single integrated multilateral comprehensive verification system (Non-Aligned Movement 2018). Such a convention obviously shares similar prohibition provisions to the TPNW but would evidently go further in ensuring adequate verification systems. The non-aligned states also voiced concern that the Chair’s Factual Summary did not adequately reflect the urgency of the nuclear disarmament obligations of the NPT, and had a lack of balance in comparing nuclear disarmament progress compared to non-proliferation.

Several individual non-nuclear states also made statements bearing on the relationship between the TPNW and the NPT.
Austria, which hosted the third international conference (Vienna Conference 2014) on the humanitarian impacts of nuclear weapons, argued that the TPNW is “an impressive manifestation of the view of the large majority of the world’s States that nuclear weapons, far from providing security, due to the catastrophic humanitarian consequences of their use, are actually an existential threat for humanity” (Austria 2018a).

In a further statement on the last day of the PrepCom, Austria’s ambassador observed, “Echoing many other states, my country particularly welcomes the contribution to the implementation of Article VI through the adoption of the TPNW. We are encouraged by the broad support for the TPNW expressed during the last days” (Austria 2018b). Austria further noted that “many delegations underlined that security cannot be based on nuclear weapons”, and cited the judgement of the EPG Report tabled by Japan that nuclear deterrence was a dangerous long-term basis for global security, and “encouraged all states to seek a better solution”.

One of the key criticisms levelled by the nuclear powers and some of their allies at the TPNW is, as discussed earlier, that it would weaken the NPT and undermine the whole global non-proliferation regime that the NPT serves to underpin. The claimed risk is that many of current States parties of the NPT could view signing and ratifying the TPNW as an alternative to continued membership of the NPT. From the viewpoint of disarmament advocates, this also would simultaneously mean the loss of at least one important “lever” on the five nuclear-weapon-states who are party to the NPT, namely the threat of withdrawal from the NPT if the NWS do not take seriously their disarmament obligations under Article VI. Middle Eastern Arab countries currently party to the NPT are frequently cited, since they have been amongst the most active in seeking substantive disarmament initiatives under Article VI, especially in the case of the Middle East Zone Free of Weapons of Mass Destruction proposal, and have historically threatened withdrawal from the NPT (and on occasion walked out of NPT PrepCom meetings on this issue). However, there appears no evidence to date of withdrawal intentions on the part of any non-nuclear state. Egypt, a state thought as a possibility for withdrawal from the NPT after its much voiced dissatisfaction with the failure to convene the 2012 MEWMDFZ Conference, did not, in its 2018 national statements, refer specifically to the TPNW, and did not express any intention of withdrawing but rather affirmed that it “believes that is of the utmost importance for States to continue to adhere to the (NPT) Treaty” and called upon “all States parties to make every effort to achieve the universality of the (NPT) Treaty” (Egypt 2018).

It could also be argued that the “lever” on the Nuclear Weapon States potentially exerted by the threat of NPT withdrawal on the part of some non-nuclear-weapon States has not to date been very successful in and of itself in impelling the nuclear-weapon-states to engage in substantive multilateral nuclear disarmament negotiations (as distinct from bilateral reductions in stockpiles), nor in restraining the current wave of nuclear weapon modernization, nor in restraining those nuclear-weapon-states (Israel, India, Pakistan and North Korea) who are outside the NPT and therefore not bound by the NPT Article VI. It could be contended that there is no evidence so far of any exodus from the NPT, and that non-nuclear-weapon-states will continue to be able to engage with the nuclear powers in NPT forums on the necessity of nuclear weapon elimination, drawing upon the stigmatization of nuclear weapons highlighted in the
TPNW. At the same time, outside NPT forums, non-nuclear-weapon states will also be able draw on the TPNW to apply international pressure on the four nuclear-weapon-states remaining outside the NPT.

South Africa, reflecting many African views, said “We welcome and support the Treaty on the Prohibition of Nuclear Weapons as a positive step towards the total elimination of nuclear weapons and a major contribution to the implementation of Article VI of the NPT thereby strengthening its credibility. We are confident this Treaty will enter into force” (South Africa 2018). The South African statement commented critically on the Chair’s Factual Summary, arguing that it “does not factually depict the overwhelming support expressed towards this (TPNW) Treaty and emphasis placed on it by such a large number of states”.

In addition, some 33 civil society groups concerned with nuclear disarmament issues made presentations at the 25/4/18 session, with many referencing the importance and role that the TPNW could play in complementing the NPT.

The International Campaign to Abolish Nuclear Weapons (ICAN), which was awarded the 2017 Nobel Peace Prize for its work in advocating for, and progressing, the negotiations for the TPNW, contended that the treaty “fills a major gap in international law”, set a “new international legal standard”, and that “each new signature and ratification is a small but important step towards a world forever free of the worst weapons of terror” (ICAN 2018).

Speaking on behalf of Mayors for Peace, a network of Mayors across the world, Hiroshima Mayor Kazumi Matsui, voiced their common goal to “protect people from mass destruction”, adding “In this endeavour, we consider it essential to promote the Treaty on the Prohibition of Nuclear Weapons as a significant milestone towards our common goal” (Mayors for Peace 2018).

Similarly, the International Physicians for the Prevention of Nuclear War (IPPNW) representative emphasized the catastrophic humanitarian consequences of even a limited use of nuclear weapons, citing the case of an India-Pakistan nuclear exchange in which 100 Hiroshima-sized nuclear bombs would severely disrupt global climate and agriculture over 20 years and produce a famine that could risk starvation for 2 billion people (IPPNW 2018). IPPNW concluded by arguing that “prohibition has preceded elimination with other weapons of mass destruction” and the same applies to nuclear disarmament, and declaring that “We thus add to the voices that have spoken today and call on all states to sign and ratify the Treaty to Prohibit Nuclear Weapons”.

The Stance of Nuclear-Armed States outside the NPT

Four nuclear-armed states, Israel, North Korea, India and Pakistan, stand outside the NPT and are therefore not legally bound by the NPT nuclear disarmament obligations under the NPT Article VI (Kyle and Kristensen 2017). Of these, North Korea, a former party to the NPT, remains under legal constraints not to test and acquire nuclear weapons following a series of UN Security Council binding resolutions. Israel remains an undeclared nuclear weapon state but is widely considered by experts to have developed such weapons. India and Pakistan have openly tested and acquired nuclear weapons.
Under the agreed 2010 NPT Review Final Document Action 23, all parties to the NPT are called upon “to exert all efforts to promote universal adherence to the Treaty, and not to undertake any actions that can negatively affect prospects for the universality of the Treaty” (NPT; Review Conference 2010). In a 2018 PrepCom working paper, Egypt sought to be more specific in calling upon “all States that are not parties to the Treaty to join the Treaty as non-nuclear-weapon States immediately and without conditions to subject their nuclear facilities to comprehensive safeguards agreements with IAEA” (Egypt 2018).

Despite the 2000 NPT Review Action 23, the United States subsequently negotiated a nuclear cooperation deal with India. This can, and has been, construed as negatively affecting India’s prospects of joining the NPT, since part of the bargain involving NPT membership is peaceful nuclear cooperation in return for non-proliferation.

There is little evidence of any impact, as yet, of any TPNW impact on these four “hold-out” nuclear weapon states. All four declined to participate in the TPNW negotiations. Of the four, only North Korea supported the commencement of negotiations on the TPNW.

At the October 2017 First Committee of the UN General Assembly, India stated that the TPNW “does not create any obligations for India, which would continue to be bound solely by the treaties to which it has given its sovereign consent” (India 2017). On a slightly more positive attitude to the TPNW than other nuclear-armed states, however, India did pledge: “we remain willing to work with its signatories in disarmament forums to reduce the role and military utility of nuclear weapons, prohibit their use under any circumstances and to eliminate them globally under international verification”.

Pakistan, in a First Committee statement on 25 October 2017, did not specifically mention by name the TPNW but considered that the solution to the “impasse of the disarmament machinery” related to nuclear disarmament “cannot be found by seeking action outside established forums, especially when pursued on a non-consensus basis and without the participation of all stakeholders”; and argued, in an apparent reference to the TPNW, that “Nor can (a solution to disarmament impasse) be found by reorienting a security-centric discourse into a humanitarian or ethical issue” (Pakistan 2017). Pakistan’s statement concluded by arguing that “only the CD” is the appropriate forum, since this is “where all militarily significant states participate on an equal footing and are able to protect their vital security interests under the consensus rule”. The statement did not acknowledge that the decade-long impasse at the CD in commencing substantive disarmament negotiations was often blocked, under the consensus rule, by Pakistan itself.

Israel clarified its position on the TPNW in a statement at the First Committee on 26 October 2017 focusing specifically on the treaty (Israel 2017). It noted that it had not participated in the TPNW negotiations and had voted against First Committee resolutions relating to them. Israel’s reservations were centred substantively on the treaty’s failure to “give due regard to the security and stability context when drafting disarmament measures. Such endeavours may result in arrangements and agreements which hinder rather than reinforce disarmament processes as well as global and regional security”. Israel “firmly believes that such negotiations should be undertaken in the appropriate forums, under the appropriate rules of procedure, which would not
undermine national security considerations”. The Israeli statement further emphasized that the TPNW “does not create, contribute to the development of, or indicate the existence of customary international law related to the subject of or the content of the treaty”, nor “reflect legal norms” applying to non-parties (Israel 2017). The statement did not explain how undertaking nuclear disarmament negotiations in “the appropriate forums” could be successfully undertaken in one of the main forums for such negotiations, the NPT (under its Article VI provisions), when a nuclear-armed state, such as Israel, is not itself a party to the NPT, and when the other main forum, the Geneva-based CD has long been stymied by the consensus rule under which a single nuclear armed state can block even commencement of a working agenda on disarmament negotiations.

The TPNW, NPT, and Nuclear-Weapon-Free Zones (Nwfzs)

Both the NPT and the TPNW acknowledge the role that regional nuclear-weapon-free zones can, and do, play as geographically-based partial measures contributing to nuclear disarmament. The first such zone in a populated region preceded the 1968 establishment of the NPT. This was the 1967 Latin American Nuclear Weapon Free Zone (Tlatelolco) Treaty, negotiated over a four year period in the aftermath of the 1962 Cuban Missile Crisis that nearly ignited a nuclear war between the United States and Russia. The Tlatelolco Treaty prohibits both proliferation within the Latin American region, and the stationing of nuclear weapons in the region by external nuclear powers. It has now been universally ratified by all Latin American states and underpinned by legally binding negative security guarantees (albeit with some conditions) from all five of the NPT-recognised nuclear-armed-states not to use or threaten to use nuclear weapons against members of the zone.

Article VII of the NPT states that “Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories” (NPT 1968). At the 2018 PrepCom, the Chair’s Factual Summary noted “the importance of establishing further nuclear-weapon-free zones where they did not exist, especially in the Middle East, was endorsed” (NPT PrepCom Chair 2018). Similarly, the TPNW Preamble “reaffirm(s) the conviction that the establishment of the internationally recognized nuclear-weapon-free zones on the basis of arrangements freely arrived at among the States of the region concerned enhances global and regional peace and security, strengthens the nuclear non-proliferation regime and contribute to realizing the objective of nuclear disarmament” (UNODA 2018).

One of the foremost architects of the Tlatelolco Treaty, Mexican diplomat and Nobel Peace laureate, Alfonso Garcia Robles, envisaged that such zones would gradually shrink the areas where nuclear weapons were viewed as a legitimate part of regional security, arguing that “a gradual broadening of the zones of the world from which nuclear weapons are prohibited to a point where the territories of powers which possess these terrible weapons of mass destruction will be something like contaminated islets subject to quarantine” (Robles 1974). Some of Robles’ vision has already been accomplished, with further NWFZs established across the South Pacific (1985 Rarotonga
Treaty), Southeast Asia (1995 Bangkok Treaty), Africa (1996 Pelindaba Treaty), Central Asia (2006 Semipalatinsk Treaty), and the single-state NWFZ of Mongolia, now covering all of the Southern Hemisphere and substantive areas within the Northern Hemisphere.\(^3\)

At the 1995 NPT Review, NPT member states, including the five NPT-recognised nuclear-weapon states, unanimously called for the establishment of a weapon-of-mass-destruction-free-zone in the Middle East, following annual UN General Assembly support for such a zone from 1974 onwards (including in-principle support from Israel from 1980). Agreement on this resolution was viewed as part of the NPT bargain with non-nuclear-weapon states to agree to the indefinite extension of the NPT. The 2010 NPT Review Conference went further to unanimously call for the convening of a conference on the MEWMDFZ proposal by 2012. This was postponed, without a further date set, by the United States on the grounds that “the regional States were unable to reach agreement on mutually acceptable arrangements for a conference owing to conceptual differences regarding the agenda for the conference” (United States 2018). It seems likely that one of the regional states “unable to reach agreement” on the agenda for the MEWMDFZ conference was the non-NPT-member, Israel. At the 2015 NPT Review Conference, the setting of timelines for such a conference became such a central issue that agreement was not reached on a final outcome document.

At the 2018 NPT PrepCom, the issue of establishment of a MEWMDFZ was again a matter of intense debate, with a reaffirmation of the original 1995 resolution and “strong support” expressed for the convening of the proposed conference. The United States, for its part, issued a Working Paper on the issue, suggesting that, while it continued to support the MEWMDFZ proposal, it believed that it was necessary to establish “regional conditions conducive to a Middle East free of weapons of mass destruction and delivery systems”, and that this was “fundamentally a regional task which must be pursued by the regional States concerned in a cooperative and pragmatic manner, through direct, inclusive and consensus-based dialogue”, an approach similar to that espoused by Israel (United States 2018). As in the case of Pakistan at the CD, this approach may be viewed as a device or rationalization for preventing any multilateral disarmament agreement since a single nuclear-armed state with veto powers under consensus rules can block any progress on negotiations.

The new TPNW may be expected to apply potential normative pressure for NWFZ initiatives within the NPT, including on progress towards a MEWMDFZ but also, potentially, for such zones to be established in South Asia and Northeast Asia. While not specifically cited in the above calls for a MEWMDFZ, or the PrepCom’s general support for NWFZ-establishment in new areas, the TPNW focus on the humanitarian impacts of nuclear weapons may potentially broaden regional interest in establishing such zones as awareness increases that, whatever security benefits are perceived by nuclear weapon possessor states, for other states the catastrophic consequences of nuclear weapon use will be seen as diminishing rather than enhancing their own security. In the case of Latin America, it was precisely the wider transboundary potential impacts of Russian installation of nuclear missiles in Cuba and the threat of

\(^3\)For overviews of the NWFZ treaties already established see Goldblat (2002, 196–219), Hamel-Green (2016, 206–228), Thakur (1998) and Alves and Cipollone (1997).
US nuclear retaliation that concentrated the minds of Latin American leaders on establishing a regional NWFZ.

The TPNW may also serve to strengthen the NPT Article VI action plan and non-proliferation clauses through its Article 1(e) and (f) obligations on treaty parties to “undertake never under any circumstances… (e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this treaty; (f) Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under this treaty” (UNODA 2018). This provision may encourage a number of existing NWFZs to strengthen their existing zone requirements, whether at the national level or through amendment of existing regional NWFZ provisions (Hamel-Green 2018). The South Pacific and African treaties, for example, have less rigorous provisions on such assistance than the Latin American, Southeast Asian and Central Asian NWFZ treaties.

The TPNW may also serve to apply normative pressure on some non-nuclear states who currently host stationing of nuclear weapons within their countries by external nuclear-armed powers to cease such practices, and to make it more feasible for such countries to become part of NWFZ arrangements. One of the weaknesses in the NPT is that it contains no such prohibitions against overseas stationing of nuclear weapons in the territory of non-nuclear-states, and thereby blurs the line on the crucial bargain underpinning the NPT, that is, the agreement to forego nuclear weapons in return for the nuclear weapon states undertaking, under Article VI, to move towards nuclear disarmament. When nuclear weapon states continue to forward deploy nuclear weapons, it appears to contradict commitments to gradually reduce reliance on such weapons, especially in relation to nuclear warfighting as distinct from nuclear deterrence.

**The TPNW and the Conference on Disarmament (CD)**

While the Geneva-based Conference on Disarmament (CD) remains, together with the NPT Review Process and the UN General Assembly First Committee, one of main global forums for multilateral negotiations on disarmament, the CD’s last substantive success on disarmament was the 1996 Comprehensive Test Ban Agreement (CTBT). Since then, the CD has been prevented in almost all ensuing years from even commencing on a substantive working agenda. Under the consensus rule, a handful of countries have for many years prevented the CD from even starting substantive negotiations, despite widespread international support for some partial measures, including the proposed Fissile Material Production Cut-Off Treaty (FMCT).

Unexpectedly, as Marc Finaud observes (Finaud 2018), recent developments at the 2018 sessions of the Conference of Disarmament suggest that the “sleeping beauty” of multilateral disarmament forums may now be coming out of its 22-year-long coma. On 27/3/18, the CD Plenary Meeting, under the presidency of Sri Lankan Ambassador Ravinatha Aryasinha, decided, for the first time in nine years, on a substantive programme of work (Conference on Disarmament 2018). The CD has established “subsidiary bodies” on four core issues: (1) cessation of the arms race and nuclear disarmament; (2) prevention of nuclear war; (3) prevention of an arms race in outer space; and (4) assurances to non-nuclear-weapon states against the use and threat of use
of nuclear weapons. A fifth subsidiary body will consider other issues, including: new types of weapons of mass destruction; radiological weapons; comprehensive disarmament, and transparency. The subsidiary bodies are continuing to meet at time of writing, so progress will not be able to be assessed until late 2018.

However, the very fact that the 65 member states of the CD, including eight nuclear-weapon-states, have agreed unanimously to participate in the subsidiary bodies dealing with nuclear disarmament and prevention of nuclear war, is very much a promising new development. It is all the more surprising given the apparent hostility to multilateral initiatives generally on the part of the Trump Administration in the context of their withdrawal from both the Paris Climate Agreement and the Iran Nuclear Agreement, and the past pattern of one nuclear-weapon state, Pakistan, to block CD commencement on a substantive programme of work. As Finaud asks, is this new procedural development at the CD “the result of the adoption of the Treaty Prohibiting Nuclear Weapons?, and does it “imply more flexible positions on the part of some countries, including those possessing nuclear weapons”?

Certainly, many of the members of the CD were proactive both at the start of the CD proceedings, and more recently in June 2018, in highlighting humanitarian arguments underpinning the TPNW and advocating support for the new Treaty. Mexico, on behalf of all the Latin American and Caribbean states party to the Tlatelolco NWFZ Treaty, argued at the start of the CD proceedings that “prohibition of nuclear weapons is a means to achieve the elimination of nuclear weapons in a transparent, verifiable and irreversible manner within clearly established timeframes; that elimination is the only truly effective guarantee against the use or threat of use of nuclear weapons”; and that “the conclusion of this [TPNW] Treaty is an important step that complements the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)” (Permanent Mission of Mexico, 2018). In June 2018, the biggest regional group within the CD, the G-21 group of non-aligned states, noted the adoption of the TPNW, reaffirmed their support for the total elimination of nuclear weapons, and urged the CD to negotiate “a comprehensive Convention on nuclear weapons to prohibit their possession, development, production, acquisition, testing, stockpiling, transfer, use or threat of use and to provide for their destruction”, mirroring many of the TPNW Article 1(a) provisions (Group of 21 2018).

It seems likely that the humanitarian and delegitimation impetus created by the TPNW may already be having some impact on the CD. While there is as yet no movement on the part of the eight nuclear-weapon-states who are members of the CD, the TPNW moral and transboundary security concerns of the wider international community have, it seems, at least encouraged the nuclear-weapon-states to enter into direct dialogue with non-nuclear-weapon states in the relevant new CD subsidiary bodies dealing with nuclear disarmament. Having boycotted the original TPNW treaty negotiation processes on the grounds that the existing disarmament forums of the NPT and CD were more appropriate and adequate to disarmament negotiations, the nuclear-weapon-states would most certainly have been conspicuously in breach of their NPT Article VI disarmament obligations if they had elected to veto the setting up of the 2018 CD subsidiary bodies on nuclear disarmament and prevention of nuclear war.
Conclusion

Given the postponement of the planned 2018 UN High Level Conference on Nuclear Disarmament planned to take place in New York from 14–18 May and the continued stalemate the CD, the 23 April–4 May 2018 NPT PrepCom represented a key international forum for gauging the impact of the 2017 TPNW on the NPT and assessing its continuing relationship with the NPT.

Proponents of the TPNW did not, as already noted, anticipate that it would necessarily have an immediate impact but rather, through its normative and stigmatizing role, gradually exert an influence on the remaining minority of states relying directly or indirectly on nuclear weapons as part of their national security arrangements. In a 2017 paper discussing the implementation process for the TPNW, Afina, Borrie, Caughley, Ritchie and Wan observe that “the normative effect of the TPNW will depend in part on the number of its States Parties”; and that “the legitimacy of the TPNW’s norms… will need cementing through the translation of the 122 ‘yes’ votes in favour of the treaty into signatories and ratifications up to – and far beyond – the 50 states required for entry into force. Only then will the TPNW begin to take on wider ‘authority’ in global nuclear politics” (Afina, Borrie, Caughley, Ritchie and Wan 2018).

Further, progressive acceptance of a new treaty is obviously influenced by the stance taken by particular governments during their incumbency. Acceptance by specific countries may depend on a change of policy following the coming to power of governments more open to treaty ratification. For example, full acceptance into force of the Latin American Nuclear Weapon Free Zone (Tlatelolco) Treaty by Brazil and Argentina had to wait upon the advent of democratic governments in both countries.

However, even after less than a year since the TPNW was adopted, the 2018 NPT PrepCom proceedings did register some positive impact of the TPNW on the thinking and positions of the various participants.

As referred to in the 2018 NPT Chair’s Factual Summary, “a number of states informed about the ratification process and status” of the TPNW (NPT 2018 PrepCom Chair 2018). As at the time of writing, just after the conclusion of the 2018 NPT PrepCom, already 60 states had become signatories to the TPNW and 14 had ratified it (TPNW 2018). By comparison, in the case of the 1993 Chemical Weapons Convention (CWC) prohibiting chemical weapons and requiring 65 states for entry into force, did not reach the minimum number for entry into force until four years after it was opened for the signature (CWC 1993). It would be reasonable to suppose that the TPNW would also take a comparable length of time to reach the minimum number of ratifications to bring it into force.

As expressed in statements made by some non-nuclear-weapon states at the 2018 NPT PrepCom, there was some evidence that diplomats were drawing upon the TPNW norms in discussion with nuclear-weapon-reliant states. The New Agenda Group referred to the importance of TPNW and to the conviction that it will strengthen the NPT. Austria, “echoing many other states” welcomed the contribution of the TPNW to implementing Article VI and argued that many delegations “underlined that security cannot be based on nuclear weapons”. South Africa, likewise, welcomed the new role that the TPNW would play in relation to Article VI and talked of the “overwhelming
support expressed towards” the TPNW and the “emphasis placed on it by such a large number of states”.

Reflecting the “diplomacy of resistance” on the part of a transnational advocacy networks (TAN) that Ritchie and Egeland have hypothesized as contributing importantly to the successful negotiation of the TPNW, the same TAN was again an important contributor to the 2018 NPT PrepCom, reminding all countries, particularly the nuclear reliant ones, of the key roles of the TPNW in filling a gap in international law, protecting people from mass destruction, and highlighting the catastrophic humanitarian consequences of nuclear war, and calling upon all states to sign and ratify the TPNW.

Even amongst the group of non-nuclear-weapon states currently relying on extended nuclear deterrence as part of alliance relationships with nuclear weapon states, there was some evidence that the TPNW focus on humanitarian impacts and global risks associated with nuclear weapons and nuclear deterrence doctrines was being acknowledged. The five Nordic states (including three members of NATO) were at pains to emphasise that they were “united in our concern at the continued risk for humanity represented by the possibility that nuclear weapons could be used and the catastrophic humanitarian consequences that would result from the use of these weapons”, reminding NPT members that the 2010 NPT Review had agreed on warning about this. Japan, too, as another ally of a nuclear-weapon-state, was concerned to support, and table, some of the recommendations of the Group of Eminent Persons, whose report was clearly aimed at bridging the gap between nuclear-armed-states position on nuclear disarmament and that of the proponents of the TPNW, including the need for greater dialogue on the “hard questions” raised by both sides on the debate over the TPNW.

Since the very negotiation of the TPNW served to highlight the problem of lack of progress on many, if not most, of the various steps and measures that the NPT had agreed on at its 2010 NPT Review, the TPNW could be considered to have acted as an important stimulus to remind all the NPT member states, nuclear and non-nuclear, of the need to pursue more substantive implementation of previously agreed measures. Such measures include particularly: the reduced role of nuclear weapons in national security arrangements; the need for security assurances to non-nuclear states as part of the NPT “bargain”; and the need to establish nuclear-free or weapon-of-mass-destruction free zones in regions afflicted by crisis and existing nuclear proliferation, such as the Middle East and Northeast Asia.

As against the impact and influence of the TPNW in the advocacy and pressure exerted by many non-nuclear states, and even some currently in alliance with nuclear weapon states, the five NPT-recognised nuclear weapon states at the 2018 PrepCom showed little movement in responding to the issues raised by the TPNW, although the vehemence and extremity of their opposition to the TPNW may testify to their anxiety that the TPNW’s normative principles and stigmatization may pose a threat to their nuclear weapon “entitlement”, if not now then in the not too distant future. All were concerned to deny the TPNW’s international law implications, to claim that it undermined nuclear deterrence, to assert that it competed with, diverted from, or actually undermined, the “step-by-step” disarmament measures within the NPT framework, or was “ineffective” since any effective nuclear disarmament measure must involve the nuclear-armed states themselves.
Notably absent in the statements of the nuclear-weapon-states at the 2108 PrepCom was any serious willingness to engage with the wider humanitarian impacts of nuclear weapon use and the continuing risks of accidental or miscalculated nuclear war that deterrence doctrines do not appear to be adequately addressing. In the case of security, there continues to be a focus on the claimed role of nuclear weapons as part of individual national security arrangements without adequate consideration of trans-boundary threats to global security posed by either deliberate, miscalculated or accidental nuclear war.

The issue of the applicability of international law is raised by the nuclear-weapon-states’ insistence that, if they have not signed up to TPNW, they are not bound by it. Yet international law does not necessarily depend on universal assent to a particular treaty. The Chemical Weapon Convention does not have such countries as Israel and North Korea as parties, yet it would be widely regarded as having the status of international law.

In the case of the claim that the TPNW was in some way competing with or undermining the NPT, there seemed no evidence of this at the 2018 PrepCom, with almost all states continuing to commit to working on the agreed NPT action plans, particularly the 2010 NPT Review plans, and no state signalling potential withdrawal from the NPT on the basis of signing and ratifying the TPNW.

Further, while the sessions of the 2018 CD are not concluded at time of writing, it would seem likely that the TPNW has imparted a new sense of urgency about the humanitarian impacts of nuclear war, and served as a catalyst for nuclear weapon states at the CD to agree, for the first time in over two decades, to engage with NNWS on ways forward through the relevant newly-formed CD subsidiary bodies.

There, is, of course, no guarantee that the TPNW will have the intended outcomes that it is seeking, but its proponents have never suggested that it will be sufficient, in and of itself, rather than serving as a catalyst for creating new energy and commitment to pursue a range of disarmament approaches, globally and regionally.

It is perhaps a promising sign that the same transnational advocacy groups that were successful in persuading 122 UN Member States to negotiate the TPNW are pursuing signature and ratification of the treaty with sustained energy, focusing particularly on civil society and grass roots constituencies and educational campaigns to widen public awareness of the catastrophic humanitarian impacts of nuclear weapons. As Thakur (2018) has argued, the TPNW, as a UN treaty resulting from a mandated multilateral conference, “gives authoritative legal underpinning to the civil-society stigmatization of nuclear weapons”. Not only has there been some movement in response to the TPNW in some of the main global disarmament forums but there has also been evidence of the treaty’s effectiveness in stigmatizing nuclear weapons in the form of the movement to seek financial divestment from nuclear weapon related industries. In the first year since the treaty was adopted, there has already been a significant reduction of some 30 institutional investors in nuclear weapon producers. Major investors who have recently divested from nuclear weapon industries include the Norwegian trillion dollar Government Pension Fund Global, Belgium’s KBC Bank, Deutsche Bank, GE Gapital, Vulcan Value Partners, and Blue Cross & Blue Shield (Snyder 2018). Further, civil society advocacy groups, such as ICAN and the ICRC, are not just confining their campaigns to the Western countries but pursuing them in countries across the globe.
At the United Nations level, the UN Secretary-General and Office for Disarmament Affairs has advanced a new Agenda for Disarmament (United Nations Office for Disarmament Affairs 2018) which emphasises that the TPNW will form “an important component of the nuclear disarmament and non-proliferation regime” and “enable States that so choose to subscribe to some of the highest available norms against nuclear weapons”. As part of the new Agenda, the Secretary-General will be pursuing “engagement in formal and informal settings… to help Member States to return to a common vision and path leading to the total elimination of nuclear weapons”. The global impact of civil society and UN advocacy for the TPNW is, of course, already very much in evidence in the large majority of 122 (out of a total 193) UN Member States who have supported the Nuclear Weapon Ban Treaty, and the promising current progress in the signature and ratification processes required to bring it into force.

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