

Where Next for the TPNW?

Report on an Online Meeting Convened by the Toda Peace Institute and the Norwegian Institute of International Affairs, 8 December 2020.

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The Treaty for the Prohibition of Nuclear Weapons (the TPNW, or the Ban Treaty) entered into force on 22 January 2021. So far, the nuclear-weapons states and the nuclear-umbrella states have dismissed its significance, but there are signs of dissent in the chorus of rejection. Canada has dropped its opposition to the Treaty, and 56 former leaders of 22 umbrella states published an open letter in support of the Treaty. In the light of these developments, the Toda Peace Institute and the Norwegian Institute of International Affairs (NUPI) convened an online meeting of experts and policymakers to discuss the way ahead for the Treaty.

The meeting heard a perspective from a TPNW supporting state, a UN point of view, and a position from an umbrella state. The following discussion examined the role of nuclear allies, the scope for building a regime of verification measures around the TPNW, and whether the differences between TPNW supporters and nuclear-weapons and umbrella states are best met by bridge building or by contentious engagement.

A View from a TPNW Signatory State

The TPNW has faced a barrage of criticisms, for not being serious, not being effective, and not taking security into account. From the point of view of the TPNW signatories, these criticisms have no validity and deflect from the critique of nuclear deterrence. The TPNW is a serious undertaking, by states that have legitimate concerns about human security and have acted out of serious motivations. The TPNW aims to take a new approach, inspired by the success of the Ottawa Convention on landmines and the Convention on Cluster Weapons. The aim is to re-frame the discourse around nuclear weapons by focussing on the humanitarian consequences of the use of nuclear weapons and on their climatic and environmental risks, challenging the notion that nuclear deterrence is a responsible policy. Nuclear deterrence relies on the credibility of use. But how can the risk of inflicting permanent damage on the populations of nuclear and non-nuclear states be considered responsible? It is the responsibility of states without nuclear weapons to question the legitimacy of the status quo and to demand urgent progress on disarmament commitments which have not been fulfilled.

The nuclear-weapons states have failed to engage with the human security discourse. They acknowledge the damaging humanitarian consequences if nuclear weapons are used but accept these risks as a necessary corollary of deterrence. But the more we know about the collateral damage arising from the use of nuclear weapons, the clearer it is that any use would violate the principles of distinction and proportionality that are enshrined in international humanitarian law.

The argument that the TPNW is a distraction from other steps towards disarmament is not credible because these steps are not taking place. The argument that the TPNW is divisive misses the point that it is the failure of the nuclear-weapons states to implement their commitments that has created this division.

The argument that the TPNW is ineffective ignores the purpose of the Treaty, which is to set a clear legal norm. Verification and steps towards nuclear disarmament are more likely if nuclear weapons are seen as unacceptable.

The argument that TPNW signatories do not take security into account misses the point that non-nuclear states have security concerns arising from the existence of nuclear weapons. All disarmament steps have to contend with a challenging international security environment, but this makes the need for progress in disarmament all the greater. Nuclear-weapons states cannot be the sole arbiters of whose security concerns are important.

Nuclear-weapons states see nuclear disarmament as a goal for the far distant future that is not realistic now. For the non-nuclear states, setting a clear prohibition norm is an action that non-nuclear weapons states can take now, that can be consequential.

The criticism that the TPNW is undermining the Non-Proliferation Treaty (NPT) fails to account for the fact that leading supporters of the TPNW, such as Ireland, South Africa, have also been leaders in the NPT, and have a clean record in implementation of the Treaty, unlike

the nuclear-weapons states. The TPNW reinforces the NPT by strengthening the taboo against nuclear weapons, which is crucial for non-proliferation.

Given that the global risks of nuclear weapons use are shared, nuclear weapons cannot be considered solely from the point of view of the national security policies of the nuclear-weapons states. The TPNW represents a call made through the General Assembly for a more democratic approach to the risks of maintaining nuclear deterrence. The legally binding prohibition of nuclear weapons requires the nuclear-weapons states to re-assess their positions.

A UN Perspective

According to Article 6 of the NPT, nuclear disarmament is a responsibility of “each of the Parties to the Treaty”, not just the nuclear-weapons states. However, the nuclear-weapons states have reinterpreted the NPT bargain by defining it as about non-proliferation only, rather than non-proliferation and disarmament. Their original position that they were entitled to hold nuclear weapons temporarily has shifted to a view that their right to hold nuclear weapons is legitimate and enduring.

The debate between the proponents and opponents of the TPNW is reminiscent of the debate over the UN’s principle of Responsibility to Protect. Originally intervention was justified in terms of the rights and privileges of the intervening powers. By redefining sovereignty in terms of responsibility, the UN reasserted the limitations and restraints which accompany the international community’s recognition of sovereignty. Similarly, under the Ban Treaty, the sovereignty of states is subject to the limitations and restraints which the international community expects of responsible states.

The geopolitical centre of gravity in the UN is the Security Council, but the normative centre of gravity has always been the General Assembly, with universal membership underpinning its legitimacy. The majority of states in the General Assembly are non-nuclear. Through the TPNW they are asserting themselves against the united opposition of the P5. This has not happened before. It represents a significant democratic shift at the UN. The responsibility argument recalibrates the relationship between the General Assembly and the Security Council. In this way the TPNW ties in with the Responsibility to Protect.

The Ban Treaty is drafted as a universal treaty, which applies to all states on the same terms. This gives it greater relevance in some regions than the NPT, which applies only to signatory states. In the Asia Pacific, China is the only nuclear-weapons state still in the NPT. India and Pakistan never signed it, and North Korea defected from it. All four of these states are non-signatories of the CTBT. Yet this is a region with four potential nuclear flashpoints (China-India, India-Pakistan, US-China, and the Korean peninsula). Some of the conflicts in the region have involved recent military action, including India-China (with soldiers killed) and India-Pakistan (with planes shot down). At present China, whose nuclear capabilities are far below those of the United States, stands outside the arms control framework. The Ban Treaty offers an existing legal construct for regulating nuclear weapons in this region, where the NPT has little relevance.

A View from an Umbrella State

The umbrella states are torn between a 'realpolitik' view of nuclear weapons and the normative legal view. In the realpolitik view, power relations between the states constitute a 'pre-legal' order. Norms and international law can apply to secondary issues but not to the geopolitical structure which is based on power. In the normative view, since all states are potentially affected by the humanitarian consequences of nuclear weapons, the international community has a legal system and can force the nuclear states to disarm.

Umbrella states face the political reality that if they accept the protection that the nuclear umbrella confers, they have to accept the means by which the protection is offered.

In order to move beyond that, umbrella states could form a group of 'Friends of the Ban', committing themselves to becoming observers of TPNW meetings. They could play a bridging role between nuclear-weapons states and the majority of non-nuclear states. This would be relevant if there were a programme of steps, with which the umbrella states could become increasingly compliant. There is a need for steps to bridge the legal and normative imperative with the continuing reality of realpolitik.

The Role of Nuclear Allies

Umbrella states that wish to engage seriously in bridge-building with TPNW supporting states could declare that they accept that a system based on nuclear deterrence is not sustainable in the long run, and that they too wish to contribute to a dialogue about how to move away from it. NATO states could play a leading role here. NATO's Strategic Concept commits the alliance to 'the goal of creating the conditions for a world without nuclear weapons', though it also states that 'as long as nuclear weapons exist, NATO will remain a nuclear alliance'. A move by NATO away from support for deterrence would go a long way towards creating the conditions needed.

Article 5 of the NATO Charter mentions the right of self-defence under Article 51 of the UN Charter. This right is subject to the framework of international humanitarian law, and therefore any commitment to collective self-defence under the Charter must respect the conditions under which it must be exercised.

The vast arsenals that the US holds and its unwillingness to accept a No First Use policy are tied to the nuclear alliances. Even hawks accept that they are unnecessary for the defence of the continental United States. If allies signalled an interest in joining the TPNW, this might build a basis for the US to change its nuclear posture to No First Use. President Biden advocated this when he was Vice President.

The conclusions that flow from international humanitarian law also flow from an international security analysis. In the case of the European umbrella states, the credibility of the nuclear umbrella has always been a key security question. De Gaulle once said the US would never sacrifice Chicago for Paris. The Ban Treaty exposed the contradictions in the positions of some umbrella states which are supporters of disarmament and yet accept nuclear weapons and their modernisation as a platform of their defence. Now that Russia is

inferior to NATO in conventional weapons, a non-nuclear defence offers European states a feasible and less risky alternative to nuclear deterrence.

Adding Verification and Confidence-Building to the TPNW Regime

In order to create a better climate for the TPNW, its signatories should design a verification regime that provides value to nuclear-weapons states and satisfies all parties. This will play a crucial role in influencing how nuclear-weapons states participate in the Treaty. The most consequential decisions after the Treaty enters into force will be the shape of the verification system, its scope, and its institutional mechanisms. Rather than relying on the IAEA, a new institution should be created that would share the task of verification with the IAEA.

The system should be designed to ease tensions between nuclear adversaries that have the potential of leading to nuclear war, prevent the unauthorised use of nuclear weapons, protect nuclear weapons from sabotage and cyber-hacking, and limit the risks of terrorism, unsafe weapons, and proliferation.

The TPNW could be complemented by bilateral and trilateral treaties, aiming at confidence-building and a shift from confrontation to stability. These might cover use of TPNW inspectors to verify progress (especially of sensitive activities like dismantling warheads), controls on nuclear materials, transparency mechanisms, monitoring arrangements, challenge inspections and appropriate export controls.

If the TPNW is to develop into a credible regime after its entry into force, the signatory states must invest in it and resource it properly. It needs to be seen as a going concern before nuclear allies will soften their stance.

Bridge-Building or Contentious Engagement?

The suggestion of a 'Friends of the TPNW' Group might enable more constructive engagement between the TPNW states and umbrella states to make the NPT Review Conference more productive and less confrontational.

To connect the security arguments with the legal and normative arguments, some see a need for bridge-building from both sides. Members of the new Biden Administration are likely to care about No First Use, negative security guarantees, preserving arms control and reducing the stockpiles of tactical nuclear weapons. Developing a system of verification and confidence-building instruments may be a good way to connect the security and humanitarian arguments.

Others see the main purpose of the Ban Treaty as to stigmatise nuclear weapons. Rather than bridge building, they urge contentious engagement with the nuclear-weapons states. The role of public opinion is important here, and there appears to be considerably more support for the Ban Treaty among the public in the nuclear weapons and umbrella states than in their governments. This gives scope for political mobilisation.

Shifting policy priorities within nuclear-weapons states and umbrella states requires a politics of persuasion that works within states, between states and at the level of the system of states. This should not be seen as a two-party contest. There is room for multi-stakeholder dialogues and agonistic discussions that can identify areas of disagreement and of common ground, and move the process forward at the systemic, inter-state and domestic levels.

Further Reading

The Toda Peace Institute has published a range of Briefing Papers that contributed to the discussion in this meeting. These are available on its website at [Policy Briefs on Cooperative Security, Arms Control and Disarmament | Toda Peace Institute](#).

Relevant papers include:

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| 64 | Hugh Miall | Arms Control and World Order: Report on the Toda Peace Institute International Workshop held in Vienna, 13-15 October 2019 |
| 92 | Thomas Shea | On Creating the TPNW Verification System |
| 98 | Sverre Lodgaard | The Nuclear Umbrella Revisited |
| 100 | Vladimir Baranovsky | The TPNW: Russia's Perspectives |

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