

The Humanitarian Initiative and the TPNW ¹

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Introduction

At the 2010 NPT Review Conference state parties agreed by consensus to express their “deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons” ². In the following years, non-nuclear-weapon states and civil society representatives focused increasingly on the humanitarian impact and the risks associated with nuclear weapons. This focus of activities—later referred to as the Humanitarian Initiative—was done primarily through several international conferences where new research on the humanitarian consequences and nuclear risks aspects was presented as well as joint cross-regional statements highlighting the concern about these aspects. The latest iteration of the initiative’s joint statement in 2015 has been subscribed to by 159 states. The Treaty on the Prohibition of Nuclear Weapons (TPNW) builds on the Humanitarian Initiative. It was adopted by 122 states in 2017 and entered into legal force on 22 January 2021. This policy brief outlines the rationale of the Humanitarian Initiative

¹ The points made in this policy brief are developed in a forthcoming publication “The treaty prohibiting nuclear weapons – How it was achieved and why it matters” by Alexander Kmentt, to be published by Routledge. The views expressed in this article are those of the author and do not necessarily reflect the positions of the Austrian Foreign Ministry.

² Extracted from 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, document NPT/CONF.2010/50 (Vol. I), 2010.

which underpins the TPNW and responds to the counternarratives and critiques against the TPNW presented by nuclear-weapon states and nuclear-umbrella states.

1) The Humanitarian TPNW Rationale

The Humanitarian Initiative and the resulting TPNW challenge the parameters of the nuclear weapons discourse. Reframing the nuclear weapons discourse around the humanitarian consequences and risks of nuclear weapons was effective because it countered the nuclear-weapon states' narrative on the security, responsibility and legitimacy of the nuclear status quo. This reframing formed the basis of the Humanitarian Initiative, the Humanitarian Pledge, underpinned the TPNW negotiations and is reiterated in the TPNW's preamble.

The perspective on the global humanitarian consequences, across a wide range of sectors, and the lack of response capability to the human suffering, placed the nuclear weapons issue firmly in a *human security* context. The Humanitarian Initiative promoted a globalist and comprehensive view of security, in juxtaposition to the "state-centred" security arguments of nuclear-weapon states, who stress that nuclear weapons are essential for their and their allies' security. It asserted that states relying on nuclear deterrence defend a narrower and self-serving, but ultimately short-sighted, perspective of security, which comes at the expense of the security of all.

From the *human security* perspective ensues the question of *responsibility*. Can the threat of not only mutually assured destruction between adversaries but also the risk of inflicting global catastrophic humanitarian consequences, possibly threatening all humankind, be considered a responsible policy? Conversely, if nuclear-armed states are apparently trapped in a vicious circle, justifying their own need to have nuclear weapons with the possession of nuclear weapons by other nuclear-armed states, what is then the *responsibility* of non-nuclear-weapon states? The human security arguments about humanitarian consequences and risks of nuclear weapons thus lead to an appeal to the sense of *responsibility* of all states and to a call for action to strengthen the normative framework of the nuclear disarmament and non-proliferation regime.

The focus on the humanitarian consequences and risks of nuclear weapons questions the "normalisation" of nuclear deterrence in the security policy discourse of nuclear-weapon states. It demands a reassessment of what constitutes *responsible* behaviour. This focus raises pertinent questions on the *legitimacy* of the existing nuclear disarmament and non-proliferation regime. The humanitarian arguments reinforced the reasoning that it is the *responsibility* and in the *legitimate security* interest of non-nuclear-weapon states to take matters into their own hands, given the unwillingness or inability of nuclear-weapon states to take more credible steps towards nuclear disarmament. Rather than continue to merely demand disarmament progress from nuclear-weapon states, a prohibition of nuclear weapons emerged as the one concrete action that non-nuclear-weapon states were able to effect themselves.

2) The Counternarrative

In relation to the TPNW, a number of counternarratives have been and continue to be presented by nuclear-weapon states and nuclear-umbrella states. Closer analysis shows that the **broad range of procedural and substantive criticisms** of the TPNW are relatively easy to counter, do not stand up to scrutiny and/or **cannot be substantiated**. Rather, they are the expressions of a **politically motivated counternarrative** from those states who object to the Humanitarian Initiative and the TPNW, because of the challenge they present to the nuclear status quo and a particular interpretation of what the NPT represents in terms of obligations and commitments.

Deflection

The nuclear-weapon states have shown very limited engagement on the actual issue of humanitarian consequences of nuclear weapons, at no stage going further than a general acknowledgement that these consequences exist and to affirm their resolve to prevent them from materialising. The nuclear-weapon states have not provided answers or commented in any detail on the key Humanitarian Initiative conclusions, arguably due to a lack of valid counterarguments. Such a conversation would inevitably entail admitting that the impact of nuclear weapons explosions affects not only one's own and the adversary's populations, but also the populations of innocent bystander states. It would reveal a willingness to accept these effects on third states and, indeed, on all of humanity, as a "necessary collateral" to maintaining a nuclear deterrence-based notion of security and stability. Whenever the humanitarian consequences and risks were raised, the response of the nuclear-weapon states—and of the nuclear-umbrella states—was to deflect and criticise a possible ban treaty instead.

Distraction and Division

"At best [the TPNW] is a distraction (...). At worst, it will deepen political divisions".³

Given the severity of the humanitarian consequences and risks of nuclear weapons for the entire planet, the "distraction" argument is, per se, highly problematic. Moreover, it is hard to argue that the TPNW distracts from the implementation of other disarmament steps because such steps are not being taken by the nuclear-weapon states. The TPNW is supposed to instil more urgency into—the currently non-existent—nuclear disarmament and facilitate a focus on precisely those necessary steps not implemented.

"Divisions" on this issue have existed since 1945 but today's divisions exist *because* of the loss of credibility in the implementation of NPT Art. VI and not because of initiatives to help remedy this, such as the TPNW. Moreover, the nuclear-weapon states boycotted the humanitarian conferences, the open-ended working group and the treaty negotiations. When nuclear-weapon states do not agree and choose not to engage with a discussion and a process, then—by definition—the discussions and processes, rather than the refusal to

³ Press Statement US Department of State on 7 July 2017, available at <https://2017-2021.state.gov/conclusion-of-un-negotiations-on-a-treaty-to-ban-nuclear-weapons/index.html>

engage with them, must be divisive. Moreover, nuclear-weapon states do not like the TPNW because it is divisive, but it is only divisive because they do not like it. The redundancy of this argument is striking.

Inefficacy

*“(...) it is not realistic to expect that ‘effective’ nuclear disarmament can advance without engaging those States that possess nuclear weapons”.*⁴

The “inefficacy” counterargument is made by states that possess or rely on nuclear weapons, as a reason for not joining the TPNW. In terms of logic, this connection of cause and effect is circular: states with nuclear weapons are not willing to join the TPNW because, in their view, it will not eliminate a single nuclear weapon. Of course, the TPNW cannot eliminate a single weapon in itself, as long as nuclear-weapon states are not joining. But apart from this point of logic, this argument misses the point that a legally binding non-discriminatory prohibition of nuclear weapons creates the legal basis for their elimination and a practical measure towards this objective. This was the case with the Biological as well as the Chemical Weapons Conventions. The pressure and momentum created by the TPNW for progress on nuclear disarmament as well as on non-proliferation, is intended to facilitate reductions of nuclear weapons and establish potential pathways to abandon them, once countries possessing these weapons are ready.

Challenging the legality and the legitimacy of nuclear weapons and nuclear deterrence may not in itself eliminate nuclear weapons, but has the potential to impact current nuclear weapons-related practices and nuclear deterrence. From the point of view of the Humanitarian Initiative, this is exactly why the TPNW is valid.

The TPNW supporters are also implicitly accused of inadvertently playing into the hands of autocracies at the expense of democratic states because the latter will face more civil society pressure. The TPNW is directed against nuclear weapons as such and not against any states or alliances currently relying on them. Certainly, the public discourse in an open society is, by definition, more vibrant, and sometimes very contested. But this argument has nothing to do with the issue of nuclear weapons or the TPNW; it is a natural function of democratic political systems. It is to be expected, and must indeed be hoped for, that democratic systems will have open societal discussions on the issue of nuclear weapons, including the humanitarian consequences and risks associated with them. Democratic states also have more intense discussions on issues such as human rights and climate change. Progress and change on these and other issues are expected to spring more from democratic debates and decision-making processes, than from closed and autocratic political systems.

⁴ Statement by Germany on 22 February 2016, available at [https://www.unog.ch/80256ee600585943.nsf/\(httpPages\)/5ee5df8a4a4bfd97c1257fb60054c6ce?OpenDocument&ExpandSection=3%2C2#_Section3](https://www.unog.ch/80256ee600585943.nsf/(httpPages)/5ee5df8a4a4bfd97c1257fb60054c6ce?OpenDocument&ExpandSection=3%2C2#_Section3)

The TPNW does not take the “security environment” into account

The threat perceptions of non-nuclear-weapon states, stemming from the concern about the humanitarian consequences and risks of nuclear weapons are not merely a *humanitarian* perspective but based on equally valid and pertinent *security* considerations. Contrary to the dominant nuclear-weapon states’ nuclear deterrence views, the non-nuclear-weapon states’ security perspectives regarding nuclear weapons have been expressed for decades but have not been taken into account adequately, rather than the other way around. While opponents of the TPNW are perfectly entitled to their views on security, they neither own the exclusive right to interpret the NPT nor are they the sole arbiter of whose security perspectives are more valid than others.

Proponents of the TPNW have never disputed the difficult security challenges facing the international community today or argued that nuclear disarmament should be seen in isolation from the global security environment. Nor have they advocated the ban as a panacea for achieving a world without nuclear weapons. All disarmament, arms control and non-proliferation efforts, including the eventual elimination of nuclear weapons must inevitably proceed in the face of ongoing security challenges, during times of international crises and some form or another of geopolitical competition. From the perspective of the TPNW, the challenging international security environment, coupled with the continued reliance on nuclear weapons by possessor states, make nuclear disarmament efforts, if anything, even more urgent. The argument that one must wait for a future security environment in which nuclear deterrence is no longer needed as a precondition for nuclear disarmament is disingenuous. There will always be real or perceived security imbalances between states, which, if one follows this line of argument, will provide excuses in perpetuity for not altering the nuclear status quo.

In addition, nuclear disarmament measures, including deep cuts in nuclear arsenals and disarmament verification, are easier and indeed may be only possible when they are based on a strong and comprehensive prohibition of nuclear weapons. States are more likely to eliminate a weapon if this weapon is morally unacceptable and legally prohibited, than in a situation where the alleged “virtues” of these weapons continue to be highlighted at every opportunity. For TPNW supporting states, this logic is compelling and firmly based on security considerations.

Finally, nuclear-weapon states and nuclear-umbrella states do not tire of highlighting that nuclear weapons are *necessary* for their security and have done so in particular to express their opposition to the TPNW. There are, however, many non-nuclear-weapon states who could justifiably claim that their security environment is at least as challenging as the security environment of states “relying” on nuclear weapons. By underscoring the challenging security environment and the *necessity* to keep relying on nuclear weapons because of it, nuclear-weapon states and nuclear-umbrella states only highlight a striking double standard as regards the concept of security.

The TPNW undermines the NPT

Firstly, the states at the forefront of this process have been among the strongest supporters of the NPT and enjoy an unblemished record of implementation. They are all longstanding promoters of various initiatives in support of nuclear disarmament and non-proliferation. For example, to accuse Ireland, which is considered to have invented the NPT, or South Africa, which actually disarmed its nuclear weapons and joined the NPT as a non-nuclear-weapon state, of undermining the NPT must be considered grossly confrontational. This is exacerbated by the fact that these accusations come primarily from those states whose own lacklustre NPT implementation records were the reason why the Humanitarian Initiative and the TPNW process were initiated in the first place. In fact, the negotiations of the TPNW were marked by the utmost care to make the TPNW a new legal instrument in line with the existing disarmament and non-proliferation regime. The treaty explicitly and structurally fits into the framework created by the NPT and constitutes a necessary measure for the implementation of its Article VI. This is a disingenuous accusation.

Secondly, as stated above, nuclear-weapon states assert the need to keep nuclear weapons for their security. Promoting the *value* of nuclear weapons encourages proliferation. One can even argue that such promotion is, in fact, an act of proliferation. It may not be proliferation in its literal sense, but it is nevertheless the proliferation of the *concept* of nuclear weapons as a desirable “guarantee” of security. At a minimum, this runs counter to the spirit of the NPT.

How can the proliferation of nuclear weapons be countered effectively in the long run, while simultaneously stressing their *necessity* and *desirability*? Without strong counterarguments, the view that nuclear weapons are *necessary* will only gain in attractiveness. The TPNW provides an unequivocal counterargument, which the NPT is unable to do, given its discriminatory nature and in-built double standard. By legally prohibiting these weapons and declaring them morally indefensible and detrimental to the *undiminished security for all*, the TPNW creates a real taboo against both the possession of nuclear weapons and the practice of nuclear deterrence, thus, providing a crucial contribution to achieving the objective of a world without nuclear weapons to which all NPT states have committed themselves.

At a time when security challenges are on the rise and without credible leadership on nuclear disarmament by states that rely on these weapons, the TPNW provides much needed normative reinforcement of nuclear non-proliferation efforts. It is the double-standard in the NPT and the lacklustre implementation of its Article VI that weakens it, not the TPNW with its new normative standard to redress exactly those weaknesses and strengthen the NPT.

“Safeguards”

The critique against the TPNW safeguards provisions is disingenuous. The TPNW ensures that states maintain, as a minimum, their existing IAEA safeguards obligations. The majority of states have IAEA Additional Protocols in place. Consequently, the TPNW legally secures the Additional Protocol as the current verification, which is a higher standard than the one

stipulated by the NPT. For states that currently do not have an Additional Protocol, the TPNW sets the IAEA Comprehensive Safeguards Agreement as the minimum requirement, the same as in the NPT. The TPNW also explicitly refers to the possibility of strengthening these obligations in the future. Importantly, and omitted by the critiques, the TPNW also goes beyond the NPT in relation to nuclear-armed states. When joining the TPNW, they are obliged to negotiate, conclude, and maintain an adequate Safeguards agreement. Thus, the TPNW provides a partially higher safeguards standard than the NPT, and partially hews as closely as possible to the NPT approach, precisely to avoid diverging from this standard.

3) TPNW Impact: What Does the TPNW Represent?

Democracy

The *human security* focus provided non-nuclear-weapon states with additional arguments with which to oppose nuclear weapons. The possession of these weapons by nine nuclear armed states and the lack of progress on nuclear disarmament pose legitimate security concerns and perceptions of threat also in non-nuclear-weapon states. The reframing of the nuclear weapons discourse in a humanitarian direction made this issue more accessible, for more states, and for a broader set of stakeholders than the usual restricted circle of security policy experts. Given that nuclear weapons are an existential threat to the survival of all humankind, they should not be dealt with as a national security prerogative of a select few states.

Thus, the Humanitarian Initiative and the TPNW represent a *democratic shift* in the nuclear weapons debate. Also, non-nuclear-weapon states were prepared to pursue their interests through the UN General Assembly, the central democratic body of the United Nations, and seek a mandate for the TPNW negotiations and conclude this Treaty. Moreover, the unequivocal TPNW prohibition of nuclear weapons, containing no exceptions for any actor, are a further manifestation of the demand for a more egalitarian approach to nuclear weapons.

The rationale for nuclear disarmament

How can nuclear disarmament be an urgent priority when nuclear-armed states deem their nuclear weapons essential for international peace and security? As long as this is the case, it is difficult to see these states wanting to take transformative steps to move away from relying on these weapons. Hence nuclear disarmament is mired in an unsolvable contradiction, managed conceptually only by viewing nuclear disarmament as an aspirational goal, achievable in an as yet wholly undefined international security environment in a distant future.

The reasons why a norm-setting approach to prohibiting nuclear weapons emerged as a viable route forward for a majority of states are twofold: Firstly, it was the only potentially transformational step achievable without the engagement of the nuclear-armed states. Secondly, it emerged precisely because nuclear-weapon states were themselves unable or

unwilling to demonstrate a sense of urgency or leadership for nuclear disarmament, let alone formulate any vision of how a world without nuclear weapons could be achieved.

The adoption of the TPNW is, thus, a legally binding *clarification* on the part of the non-nuclear-weapon states that nuclear disarmament *is* an urgent priority and that the implementation of NPT disarmament obligations and commitments by the nuclear-weapon states has been far from satisfactory or credible. Obfuscation of this fact and the issuing of aspirational affirmations regarding nuclear disarmament will no longer be satisfactory.

Challenging nuclear deterrence

The TPNW is a particular legal response to the evidence on the humanitarian consequences and risks of nuclear weapons. One can agree or disagree with the legal dimension of the TPNW. However, as the findings on the consequences of nuclear explosions and nuclear risks are based on empirically demonstrable facts, they should be considered seriously in any cost-benefit analysis underpinning prevailing assumptions on nuclear deterrence. The breadth of consequences and the risks of nuclear weapons should be weighed against the posited security benefit of nuclear weapons. What is the *balance of probability* between the belief that nuclear weapons deter and prevent large-scale wars and the knowledge that deterrence, including nuclear deterrence, can fail causing measurable humanitarian and other consequences? A focus on humanitarian consequences and risks of nuclear weapons challenges the assumptions that underpin nuclear deterrence.

If the short-, mid- and long-term consequences of nuclear weapon explosions and the interrelationship of these consequences are not only grave, but graver than previously realised and not yet fully understood, does this impact the nuclear deterrence cost-benefit analysis? What is the impact of these graver humanitarian consequences on the credibility of nuclear deterrence? At what stage and at which level of impact on the economy, public health, migratory movements, and food security, or an aggregate combination of such consequences, would the deterrence equation start to change? What in terms of humanitarian consequences is acceptable and for whom? Are there objective criteria to gauge this and can they be assessed? How exactly do the nuclear-armed states integrate the humanitarian consequences on their own population, the presumptive opponent's population and on the rest of the world, innocent bystanders to this conflict, into their nuclear deterrence calculations?

Moreover, how exactly do nuclear planners weigh a military target against collateral damage and what are the parameters for this, for example in the case of a major city? Given the probable transboundary consequences of nuclear weapons use, how are the International Humanitarian Law principles of distinction and proportionality applied vis-à-vis populations, including in third countries that are not party to the conflict? What about the responsibility and the ability to clean up after an accident or use of nuclear weapons and to provide compensation? To what extent is this responsibility included in the decision-making process and in nuclear doctrines in nuclear-armed states? Once these issues are discussed in concrete terms—here the humanitarian consequences and the question of the legality of nuclear weapons use naturally converge—the rationalisation of nuclear deterrence and the balance of arguments may shift significantly.

One of the key contributions of the Humanitarian Initiative is the increased focus on risks associated with the possession of nuclear weapons and the practice of nuclear deterrence *per se*, rather than from the actions of individual states. This provides an aggregated view of the nuclear weapons practices of all nuclear-armed states and the resulting risk for all of humanity. This defines the perspective of non-nuclear-weapon states regarding nuclear risks today.

For non-nuclear-weapon states, the grave humanitarian consequences that would result from nuclear explosions, *are* the risks to which they are exposed, against their will and outside their control. These risks stem from the fact that nine states in the world possess nuclear weapons and have based their security policies on nuclear deterrence. The risks could be realised through deliberate use of nuclear weapons, a miscalculation leading to a nuclear conflict, or indeed any form of accident.

From this perspective, nuclear deterrence is not only seen as a high-risk practice due to the grave consequences of nuclear weapons but also because it is practiced by humans and relies on machines and processes designed by humans. The risks are inherent in possessing and maintaining nuclear weapons. The actions and the behaviour of one state or one leader in a nuclear-armed state may be assessed to be more risk prone than that of another. However, from the TPNW perspective, these differences are not the central issue. The collective nuclear weapons policies and actions of all nuclear-armed states and their allies create an aggregated and interconnected set of global nuclear risks.

Consequently, non-nuclear-weapon states want to reduce the likelihood of any nuclear weapons explosions whether intentional, inadvertent, unintentional or from accidents owing to human or technical reasons. In addition to progress on nuclear disarmament and the elimination of nuclear weapons—evidently the risk reduction gold-standard—they request measures to take nuclear weapons as far away from use or accidents as possible. These, include de-alerting, taking weapons out of operational service, more transparency about postures and actual use scenarios, further reductions of stockpiles, confidence building measures and political and legal steps aimed at strengthening the nuclear disarmament and non-proliferation regime.

This is different to the risk reduction approach which nuclear-weapon states want to pursue. The focus is on “strategic risk reduction”, i.e., countering risks that could undermine nuclear deterrence relationships. Risk reduction measures are geared towards avoiding or managing crisis situations and to achieving a better understanding of the policies and intentions between adversaries, so as to maintain stable and less risky deterrence relationships. In short, the focus of this form of risk reduction is to make nuclear deterrence work better, rather than consider the risks of the practice of nuclear deterrence itself.

Risk reduction measures are considered only insofar as they do not impact the nuclear deterrence calculus. Here one sees the inherent contradiction and conundrum posed by the necessity to maintain nuclear weapons in a manner that demonstrates readiness and resolve to always use them, as required for the credibility of nuclear deterrence, and a more comprehensive approach to risk reduction measures aimed at ensuring that they will never be used, intentionally or unintentionally, or through human or technical error.

Conclusion

The TPNW is, thus, underpinned by an assessment of the humanitarian and other consequences of nuclear weapons explosions and the legality of nuclear weapons use scenarios in a concrete, rather than abstract, manner. Nuclear risks are considered from the perspective of the aggregate risks stemming from the possession of these weapons and the practice of nuclear deterrence by all nuclear-armed states. Scrutiny of the consequences, legality, and risks associated with nuclear weapons, leads to the legal, ethical and rational conclusions contained in the TPNW. These reject arguments that posit the security value of nuclear weapons and/or find wisdom in maintaining the practice of nuclear deterrence.

The Author

Alexander Kmentt is an Austrian career diplomat and the Director of the Department for Disarmament, Arms Control and Non-proliferation in the Austrian Foreign Ministry. He has worked extensively on disarmament and non-proliferation issues and is one of the architects of the initiative on the humanitarian impact of nuclear weapons and the Treaty on the Prohibition of Nuclear Weapons (TPNW). In 2019-20 he was on a sabbatical as a Senior Visiting Research Fellow at King's College, London, after having served as Austrian Permanent Representative to the Political and Security Committee of the European Union since 2016. His book *The Treaty on the Prohibition of Nuclear Weapons: How it was achieved and why it matters* will be published in Spring 2021 by Routledge Taylor & Francis Group.

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