

# The NPT, the TPNW and the Future of Arms Control and Disarmament After Ukraine

Report on the Toda Peace Institute and VCDNP International Workshop  
held in Vienna on 24 June 2022

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The Toda Peace Institute, together with the Vienna Centre for Disarmament and Non-Proliferation, convened a one-day international workshop on 24 June 2022 to discuss the scope for progress in nuclear arms control and disarmament, in the aftermath of Russia's invasion of Ukraine. The workshop was held on the day after the States Parties to the Treaty on the Prohibition of Nuclear Weapons (TPNW) reaffirmed their determination 'to realize the complete elimination of nuclear weapons and to chart a path forward for the full and effective implementation of the Treaty'.<sup>1</sup>

## The TPNW Review Meeting and its Achievements

The First Meeting of State Parties (1MSP) to the Treaty on the Prohibition of Nuclear Weapons, held in Vienna from 21-23 June, under the auspices of the United Nations, unanimously agreed a Report on their first Review Meeting and adopted a Declaration and a Draft Action Plan.

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<sup>1</sup> Draft Vienna Declaration of the 1st Meeting of States Parties of the Treaty on the Prohibition of Nuclear Weapons "Our Commitment to a World Free of Nuclear Weapons" [https://documents.unoda.org/wp-content/uploads/2022/06/TPNW.MSP\\_2022.CRP\\_8-Draft-Declaration.pdf](https://documents.unoda.org/wp-content/uploads/2022/06/TPNW.MSP_2022.CRP_8-Draft-Declaration.pdf)

The TPNW States Parties agreed that ‘the establishment of a legally binding prohibition on nuclear weapons constitutes a fundamental step towards the irreversible, verifiable and transparent elimination of nuclear weapons needed for the achievement and maintenance of a world free of nuclear weapons, and hence for the realization of the purposes and principles of the Charter of the United Nations.’<sup>2</sup> And they declared that ‘the catastrophic humanitarian consequences of nuclear weapons cannot be adequately addressed, transcend national borders, pose grave implications for human survival and well-being and are incompatible with respect for the right to life.’<sup>3</sup>

Their Declaration strongly repudiated the doctrines of nuclear deterrence, which ‘are based and rely on the threat of the actual use of nuclear weapons and hence, the risks of the destruction of countless lives, of societies, of nations, and of inflicting global catastrophic consequences.’<sup>4</sup>

Noting the achievement of this historical declaration and action plan by the States Parties, and deeply worried by the negative consequences of the invasion of Ukraine on arms control and disarmament, the workshop convened by the Toda Peace Institute and the Vienna Centre for Disarmament and Non-Proliferation aimed to explore visions of the way forward, building on the TPNW, and on common aspirations to work together for creative solutions.

This First Review Meeting of States Parties had been important for setting out the path forward. Sceptics had been surprised by the seriousness of the enterprise and its substantive focus. The humanitarian framing shifts the context of the debate. It is easier to criticise particular elements of the Treaty, such as its verification and safeguards provisions, than to question the fundamental significance of the humanitarian consequences of nuclear weapons for the international order. Non-nuclear weapon states, parties to the meeting, had realised that nuclear weapons pose an existential threat to their security, and their participation in the TPNW process had overcome their disenfranchisement in security issues and given them agency.

The declaration was one of the strongest statements ever made by states on the threat of nuclear weapons and of the nuclear deterrence doctrines in which they are embedded. It was significant that the TPNW supporting states had been able to agree an Agenda for Action and a way ahead, giving the initiative continuing momentum and significance.

The Latin American countries, in particular, rallied behind the TPNW, with Mexico agreeing to host the next conference, while Argentina will hold the presidency of the NPT. Central America has been the first region collectively to ratify the TPNW. Latin American states see the TPNW as a means of strengthening their voices in nuclear disarmament, building on the Treaty of Tlatelolco. They see no incompatibility between the TPNW and the NPT. However,

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<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid

they see no real prospect of the NPT delivering on the promise of nuclear abolition. They believe the TPNW, on the other hand, offers a way forward.

### **Tasks for the TPNW States**

The nuclear weapons states tried to prevent the TPNW entering into force, and they still seek to disrupt it. The aim of TPNW states is to create legal, political, and humanitarian pressure for progress. If they can demonstrate that larger and larger parts of the international community do not accept the 'nuclear peace' narrative, then the nuclear possessing states may come to have a legitimacy problem. It is a long process of discursive change, but the TPNW cannot be dismissed as an irrelevance.

We do not need ideal security conditions, or a Kantian peace, before nuclear disarmament can take place. But practical security problems require planning and thought. Building on Henry Kissinger et al's 2008 op ed in the Wall Street Journal, "Toward a Nuclear-Free World",<sup>5</sup> we need to develop a security underpinning for a world without nuclear weapons.

The TPNW states have committed themselves to universalise the argument about humanitarian consequences. The risk of nuclear use is a security threat to non-nuclear states, whose security interests the nuclear weapons states have ignored for years. The argument about humanitarian consequences is not an activist or a moralising argument. It is based on scientific evidence. In contrast, it is argued, the proponents rest their confidence in nuclear deterrence on untested assumptions.

The TPNW states understand how contested an issue this is. They have had to demonstrate the seriousness of their arguments. The humanitarian consequences affect the security of every person on the planet. The TPNW states are developing support for the treaty against the background of explicit nuclear threats by Russia and in a context in which every indicator of arms control and disarmament, apart from the TPNW, is going in the wrong direction. Nuclear weapons discourse is still dominated by traditional arguments. The TPNW supporting states take them seriously, aim to be informed about them, and seek to engage with these arguments.

### **Criticisms of the TPNW**

The nuclear weapons states have been dismissive of the TPNW and are still seeking to undermine it. They argue that the TPNW fails to define nuclear weapons. But neither does the CTBT and other similar treaties. The INF and START treaties did not define warheads. It was wise of the TPNW not to hazard a definition of a nuclear weapon for the purpose of negotiating a legal treaty.

It is argued that the TPNW is not an effective way of implementing nuclear disarmament. However, the NPT is not self-implementing. The nuclear powers would have to implement

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<sup>5</sup> <https://www.wsj.com/articles/SB120036422673589947>

Article 6 for it to become effective. Nuclear weapons free zones are seen as an effective way to prohibit nuclear weapons in a region. The TPNW aims to do the same on a global basis.

The TPNW is criticised for not including the Additional Protocol of the IAEA on verification, but neither the NPT nor the TPNW include technical details of verification. The TPNW member states do accept existing IAEA safeguards and support a technical working group by the IAEA to develop verification standards.

The TPNW is criticised for allowing nuclear-possessing states to join, but in this respect, it is like the Chemical Weapons Convention, allowing states to join first and disarm later.

The TPNW aims to set a new legal norm against the possession of nuclear weapons. It is not a competitor regime to the NPT, but a way of complementing the NPT and seeking implementation of its disarmament commitments. The TPNW has already established a prohibition of nuclear weapons under customary law. This is binding on NPT states as well as on nuclear-possessing and nuclear umbrella states.

### **Precedents in International Law**

The TPNW, like the Kellogg-Briand Pact of 1928 that renounced war as an instrument of national policy, has the capacity to change the discursive rules of the system, creating disincentives for prohibited activities, to which international tribunals can appeal. But the strength of the norm against international war has been weakened by the 'nuclear peace fallacy'. This is the doctrine that nuclear weapons have contributed to the decline in interstate wars. While there may have been a case for this belief in the past, in recent practice, nuclear weapons have emboldened possessor states to go to war, in the belief that their adversaries will be deterred from intervening. Thus, Russia has calculated that NATO will not intervene in Ukraine, because of Russia's nuclear threats. If nuclear weapons provide incentives for aggression by reducing the perceived risk of conventional wars, the 'nuclear peace' dogma is undermined. The TPNW is based on the alternative view that, far from being instruments of peace, nuclear weapons are inhumane weapons of aggression.

### **The Impact of Ukraine**

Ukraine gave up the third largest nuclear arsenal in exchange for a security guarantee and was then attacked by the guarantor state. For many, this has strengthened the view that nuclear weapons are necessary for deterrence. Small and medium powers may draw the lesson that giving up nuclear weapons invites invasion, and securing nuclear weapons is the only means of preserving invulnerability.

In East Asia, people are concluding that nuclear weapons are needed to defend against attack. This is coupled to fears of China. Japan has been talking about nuclear sharing with its allies. The invasion of Ukraine has led to a severe setback in security in the region.

Some western observers argue that nuclear deterrence depends on vital state interests. Because Ukraine is a core national interest for Russia, but not for the United States, Russia has 'deterrence dominance' in the region, as President Obama noted at the time of the annexation of Crimea. However, we still do not know whether deterrence will work in Ukraine, in the larger confrontation between Russia and NATO. As the war drags on, escalation by both sides remains a possibility.

We cannot know whether deterrence will be effective in future circumstances. We do know however what the humanitarian consequences would be if ever deterrence fails. The invasion of Ukraine has brought forth a slew of nuclear threats and has led to a severe degradation in international rhetoric. Red lines have been drawn. In this high-stakes game of bluff and power projection, it is not always clear when they are crossed.

If Ukraine suggests to some the value of nuclear deterrence, to others it shows its limits. Russia's nuclear threats have not stopped the West from helping Ukraine, with weapons, intelligence, and sanctions. Nuclear weapons do not appear to be restricting major states from using conventional forces – rather the opposite. Nuclear weapons are not disincentivising wars of aggression, nor are they creating avenues for peaceful settlement.

The question of whether deterrence works can ultimately never be settled. It could only be settled by falsification and the world cannot afford to test the doctrine to destruction. We have to weigh the risks and consequences of relying on deterrence, and the risk that it may break down, against the risks and consequences of alternative security scenarios. It is dogmatic to assert that deterrence will always work. Instead, it is helpful to shift the discussion towards a weighing up of risks, including the risks of the catastrophic consequences if deterrence fails.

### **The TPNW and the NPT**

The TPNW has been the most significant development in arms control since the NPT. The NPT has been a central pillar in the arms control architecture, but it may be reaching its limits as an instrument of disarmament. If the nuclear weapons states will not give up their nuclear weapons, it is not clear what the non-nuclear weapons states have to lose from leaving the NPT.

The boundaries between nuclear weapons and other weapons have become blurred in recent years, and Ukraine has changed the discourse on nuclear weapons. As the bipolar Cold War pattern has given way to multiple interlinked chains of nuclear threat, traditional means of managing strategic stability among nuclear-armed states are breaking down.

Inaction on Article 6 has created mounting frustration, and non-nuclear weapons states have been determined to seize the initiative. The TPNW is an effort to complete the NPT agenda. Drawing on the precedent of the Ottawa Convention banning anti-personnel land mines, the non-nuclear weapons states used the General Assembly as a forum, thereby democratising the nuclear debate. The NPT had masked the unwillingness of NPT members to do without extended deterrence. The TPNW forces them to address the issue head-on. In order to fold the nuclear umbrella, states sheltering under extended deterrence need to be

convinced that it may be more of a danger to them than a deterrent. The TPNW states believe they are making the realist argument, based on facts and evidence, while in their view those who cling to the belief that nuclear deterrence will always hold exhibit wishful thinking.

### **NATO, AUKUS and the Global Order**

In recent months, NATO has expanded its focus from Europe to the whole world. From a European standpoint, NATO is seen as an alliance of the world's leading democracies, that reflects their interests. But from the point of view of countries that have experienced colonialism, the perception is different. NATO contains every major colonial country. It is regarded as promoting colonial interests, for example, in the AUKUS project, which has created much resentment in Asia. By enabling the proliferation of naval nuclear propulsion, the AUKUS powers are opening a Pandora's Box. This technology is not prohibited by the NPT, but it should be considered at the NPT Review. It is a limitation of the NPT that the three nuclear states in Asia lie outside the NPT.

Western countries are losing their ability to set the agenda and manage the institutions of global governance. The rising powers are demanding a say. China's rise represents a return to the traditional historical pattern. But China has no tradition of working as one great power among many. Similarly, the US has no tradition of working equally with powers.

The centre of normative gravity in the international system has always lain with the UN General Assembly. The TPNW reflects a shift in agency and legitimacy from the Security Council to the General Assembly. It is an open question whether the human family will fall victim to the Thucydidean trap or use our creativity to find a way out of it. But the TPNW represents a way of transforming and reframing the global order.

Not surprisingly, this has led to contestation. The NATO states have declared that they 'reject any attempt to delegitimise nuclear deterrence.' The US has explicitly justified the modernisation of its nuclear bomber force as a means to strengthen extended deterrence.

There have been signs of cracks in the NATO edifice. The Netherlands participated in the TPNW conference. Belgium made a positive reference to it. Norway decided to be an observer. And so did Germany, which made a very positive statement at the First States Parties Meeting on the TPNW. It acknowledged that it relied on nuclear deterrence as a major bulwark of German and European security. But it also expressed support for the TPNW as a desirable destination and was willing to work with TPNW states parties on verification and other issues

But there has been less interest in arms control and disarmament since the Russian invasion of Ukraine. Sweden and Finland have decided to join NATO. Defence budgets are rising. Germany is buying the F35, a nuclear-capable plane. The UK is again being prepared to host US nuclear weapons in its military bunkers at RAF Lakenheath. Surveys suggest there is public support for nuclear weapons. The mainstream media have ignored the TPNW.

Countries under the nuclear umbrella need to be convinced that the risks of living with nuclear deterrence are worse than the risks of giving it up. When Austria called for a resolution enjoining all states to stigmatise and prohibit nuclear weapons, the nuclear umbrella states were opposed. Forced to choose between robust disarmament and reliance on deterrence, they chose deterrence.

It is open to NATO members to join the TPNW, but the gulf between TPNW supporters and opponents has not been bridged.

### **Implications for East Asia**

Russia's invasion of Ukraine has been condemned as violating the basic principles of the UN Charter. In Japan, the invasion has prompted particularly strong concern, because of fears that China might take similar action against Taiwan. The fact that nuclear-armed Russia attacked non-nuclear Ukraine has led to the reaction that in such a Hobbesian world, nuclear weapons are necessary. Consequently, those who have nuclear weapons are even more determined to hold on to them, and countries with security concerns are thinking about obtaining nuclear weapons. In this way, the Ukraine war has been a severe setback to hopes for nuclear disarmament and non-proliferation.

In order to rebuild nuclear disarmament, arms control and non-proliferation, the stalled START talks should be restarted, and nonstrategic nuclear weapons should be included. There is an urgent need for restraint in the deployment of short- and medium-range nuclear capable missiles in Europe and Asia.

The Chinese nuclear build-up needs to be addressed. One suggestion is that if China's stockpile were to reach half of the US and Russian levels, the latter would declare themselves no longer bound by START limits. A no-first-use declaration specifically over Taiwan should be considered. New states need to be discouraged from becoming nuclear, and the taboo against nuclear weapons needs to be strengthened.

### **The TPNW and the Nuclear World Order**

The dread of nuclear weapons as terrible and fearful has not changed. This nuclear taboo accompanies two other pillars of today's arms control architecture: the non-proliferation norm and the commitment to strategic stability and risk reduction. Nuclear arms control agreements, including the NPT, gave a legal basis for non-proliferation and nuclear stability. But until the TPNW, there was no legal basis for the taboo against nuclear weapons. In an ideal world, one would combine the taboo against nuclear weapons with strategic stability and restraint of proliferation. But keeping the taboo in force is the most important goal.

The rules, norms and institutions governing relations between states are breaking down. Great powers have become increasingly assertive. Sanctions have proliferated, at the expense of security cooperation. International relations have become more turbulent and more adversarial. Stockholm-type confidence building measures cannot succeed in such circumstances. They worked during periods of disarmament but were based on a readiness

to cooperate which no longer exists. Arms control is stalled, though arms control thinking is still present in the foreign ministries of the major states. Risk reduction and non-proliferation remain on the radar, but the NPT has become an exercise in damage limitation. For non-nuclear NATO members, conventional non-nuclear defences are the best bet. The Swedes, for example, have agreed to join NATO, but have no desire to base nuclear weapons on their territory. Unfortunately, as most of Europe, including eastern Europe, has been absorbed into NATO, the credibility of defence and deterrence by non-nuclear means has been degraded. Even though NATO is conventionally superior, simulated NATO exercises suggest that the use of conventional defences would end up in nuclear escalation. The case for conventional defence postures is stronger than before, but reliance on nuclear weapons and nuclear rearmament is the order of the day in Europe. This suggests that humanitarian norms and traditional military thinking on conventional defences could come together to support the TPNW.

### The Way Ahead

In the near term, the supporters of the TPNW seek to universalise support for the Treaty, aiming to convince others of the significance of the humanitarian framing for the security interests of all persons and all states. The Action Plan called on states that have not yet done so to sign and ratify the treaty. The TPNW parties aim to work with other states, the UN, parliamentarians, civil society and a wide range of partners, to make progress towards universal accession.

Participation in the TPNW can contribute to agency and give the non-nuclear weapons states and their peoples a voice in international security discussions. This offers a basis for ongoing efforts to transform the functioning of the UN system and the world order.

The role of parliamentarians and parliaments is crucial in encouraging states to participate in the TPNW process. The Netherlands attended the TPNW because it was mandated by parliament. New Zealand's adoption of a nuclear free status was due to activists working through the Labour Party. Parliamentarians from countries which have not yet become observers (such as Canada) have an important role in calling for their states to become involved. They are bringing about change, one conversation at a time.

Undoubtedly the humanitarian reframing has had an impact. No country has the capacity to cope with the consequences of the use of nuclear weapons. It is in the interests of humanity that nuclear weapons should never be used again, under any circumstances. The only guarantee of non-use is the non-existence of nuclear weapons. This argument needs to be carried forward in all relevant fora.

The assumptions on which nuclear deterrence are based need to be challenged, and the dogma that nuclear deterrence will always be effective should be questioned. The certain knowledge of the humanitarian consequences of nuclear weapons needs to be contrasted with the uncertain assumptions on which deterrence is based.

The use of force remains a problem. Institutional means need to be developed to substitute for war and the purposes that war serves. Reasonable security needs can be met by non-



nuclear means. We still have much to do to develop the institutional and conceptual dimensions of a non-nuclear weapons-based security environment.

The TPNW supporters will stress the complementarity between the TPNW and efforts to strengthen non-proliferation and advance nuclear disarmament at the NPT Review.

Progress on the TPNW hitherto has been possible through civil society and like-minded states working together. They need to continue to do so to further extend and deepen support for the objectives of the TPNW.

## The Author

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