

# Nuclear Disarmament without the Nuclear-Weapon States: The Nuclear Weapon Ban Treaty

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*The 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW) represents a daring act of self-empowerment: nuclear have-nots produced an international disarmament treaty without the involvement of the nuclear-weapon states or their allies. In this essay, we assess how the new treaty relates to the existing nuclear order and its four central norms: constraints on use, political restraint, non-proliferation, and disarmament. We discuss the TPNW's origin in and impact on this contested order. At the heart of contestation are two security concepts: deterrence versus the immediate ban of nuclear arms, which result in fundamentally different ideas on how to pursue the road to "global zero." Whether or not the TPNW and the Treaty on the Non-Proliferation of Nuclear Weapons are compatible depends on how the opponents handle their controversies. The key is to overcome the emotionalized polarization and rediscover a common basis in order to prevent damage to the existing nuclear order and bring forward nuclear disarmament in practice.*

**T**he Treaty on the Prohibition of Nuclear Weapons (TPNW) is the product of more than fifty years of norm contestation regarding disarmament. It is essential to see the Nuclear Weapon Ban Treaty as a dependent variable of the politics surrounding the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). The TPNW has not fallen from heaven and is not the result of malign intentions, but is a consequence of the history of debates on and practices of disarmament since negotiations on the NPT began in the 1960s.

The TPNW, signed in 2017, represents a new approach to nuclear disarmament: rather than being hapless bystanders, the have-nots came together and produced an international disarmament treaty without the nuclear-weapon states (NWS) – the United States, the United Kingdom, France, Russia, and China – or their allies. What looks, for the NWS, like an undesirable intrusion onto their turf represents, for ban supporters, an act of self-empowerment in an area they regard as crucial to their own security and survival.

It is not, as some critics have maintained, preordained by the nature of the TPNW that it will damage the NPT. Whether the two treaties are compatible or not depends on how opponents and proponents of the TPNW handle their controversies. Reasonable policies can create a *modus vivendi*. Antagonistic policies can create incompatibility. Right now, the outcome is indeterminate.

**T**he TPNW debate affects the normative order concerning nuclear weapons. In this essay, we discuss four sets of norms that constitute this order: constraints on use, political restraint, nonproliferation, and disarmament.<sup>1</sup>

We understand norms as shared understandings about appropriate behavior.<sup>2</sup> Norms can be intended for constitutive, regulative, or procedural functions. We deal, however, with the intentional, unintentional, or counterintentional effects that norms have on actors. Norms can express and serve an actor's interest, leading to voluntary compliance on a utilitarian basis, and they can enable and constrain an actor's freedom of action, making compliance more likely without determining it. They can frame and solidify understanding of right and wrong, leading to stable views of appropriate behavior. But they may also provoke resentment and rebellion, expressed in contestation, deviant discourse, and noncompliance including with core norms.<sup>3</sup> "Negative" effects result when a) actors deem norms aversive to their interests or values; b) certain actors apply double standards to compliance and enforcement; c) actors unilaterally prioritize certain norms over others; or d) decision-making procedures are seen as unjust.

Norms concerning nuclear weapons have not emerged by strategic design. They are the product of superpowers' arms racing practices; experiences like the Cuban missile crisis that enhanced efforts to prevent catastrophic nuclear escalation; multilateral negotiations like those on the NPT and bilateral ones like those on SALT (Strategic Arms Limitation Talks) and START (Strategic Arms Reduction Treaty); efforts of the NWS to maintain their reputation as responsible powers; the aspiration of the NWS and their allies to preserve extended deterrence at the lowest possible risk; and the desire of non-nuclear-weapon states (NNWS) to achieve security and risk reduction through (normative) constraints on the NWS and disarmament. Multiple actors and motivations have rendered the nuclear order a patchwork drawing together contradictory impulses, not a coherent whole. The disparate influences of the ideas of deterrence and disarmament show in the four central norms of the order.<sup>4</sup>

The first norm is constraint on use in which deterrers and disarmers both have a significant interest. There is a strong presumption that nuclear use should be avoided (though strategic debates, doctrines, and rhetoric utter occasionally a more cavalier attitude). This norm finds expression in national doctrines like the Chinese and Indian "no-first-use" policies or NATO's "only in the most remote circumstances." It is legally codified in the NWS's security guarantees to

nuclear-weapon-free zones and politically codified in their nationally declared security guarantees to NPT non-nuclear-weapon states, noted by UN Security Council resolutions in 1968 and 1995. It has grown by practice and public discourse into a strong informal norm internalized by decision-makers: the “nuclear taboo,” based, depending on the theoretical perspective, on moral-cultural underpinnings or on tradition-induced reputational concerns.

The norm is doubly contested. Nuclear strategists argue the utility and possibility of nuclear use for political and military purposes. And in contrast, there are advocates for stronger constraints (such as unconditional, treaty-based universal security guarantees and codification of no-first-use) up to the demand to guarantee nonuse through the complete elimination of nuclear weapons and renunciation of nuclear deterrence as illegitimate.

The second norm, political restraint, is even more diffuse. It prescribes behavior minimizing the risk of nuclear escalation. It concerns doctrines and strategies, nuclear rhetoric, policies by nuclear weapons possessors toward neighbors, crisis avoidance and management, armament policies supporting strategic stability, and a viable balance of forces – key principles of nuclear arms control. The function of this norm is to prevent the strategy/practice of nuclear deterrence from getting out of control. Political restraint has been codified in the NPT preamble, which calls for the easing of tension and strengthening of trust in order to facilitate nuclear disarmament, refraining from the threat and use of force against the territorial integrity and independence of other states. Codification is found in several U.S.-Soviet agreements in the early 1970s, the “Basic Principles” that aim at preventing dangerous crises, the “Agreement on the Prevention of Nuclear War,” and the “Incidents at Sea Agreement,” deemed so useful by U.S. admirals that they dissuaded Reagan’s Secretary of Defense Caspar Weinberger from scrapping it.<sup>5</sup> This norm underlies the suggestion by the U.S. government to explore a security environment conducive to nuclear disarmament.

The norm has not been contested in principle, but is frequently ignored by great powers’ policies and armament practices. Contention comes from two angles. First, proponents of national superiority and territorial expansion loathe political restraint. Mutual accusations of trespassing normative thresholds (such as during the Iraq War or Ukraine crisis) have constituted important instances of applicatory contestation.<sup>6</sup> Ironically, the NWS that have called for political restraint as a condition for disarmament have themselves contributed the most to an unfavorable security environment. Second, contesters refuse any conditionality between environment and disarmament.

The third norm of renunciation/nonproliferation (as enshrined in the NPT) proscribes for states not possessing nuclear weapons the pursuit of them in any way. Contestation rages over the limits this norm imposes on the peaceful uses of nuclear energy, the intrusiveness of verification, or the strictness of nuclear-related

export controls. Also contested is the conditionality of such restrictions on parallel progress in disarmament.<sup>7</sup>

The fourth norm is nuclear disarmament, which can include everything from arms control and arms reduction to elimination, prohibition, and stigmatization. The (vague) codification in Article VI of the NPT was the essential condition for the NNWS to agree to the codification of the nonproliferation norm; its confirmation and specification to require the Comprehensive Nuclear-Test-Ban Treaty (CTBT), negotiation on a fissile material cut-off, and further systematic reductions of the nuclear arsenals was the quid pro quo for many NNWS to accept indefinite extension of the NPT in 1995.<sup>8</sup> The weight of disarmament, disarmament strategy, timing, conditionality, and the state of compliance have all been contested.

These norms constituting a global nuclear order are all interrelated to a certain extent. Such linkages may lead to conflicts and tensions between the norms, such as when states ascribe different relative priority to individual norms. The fiercest front of contestation lies between nonproliferation and nuclear disarmament. The NWS (except China) regard nonproliferation as the treaty's overarching goal and superior to disarmament (and peaceful uses), while most NNWS, particularly those from the nonaligned movement, emphasize the equality of these norms.<sup>9</sup> These differences sometimes result in playing the norms against each other, in particular, with regard to perceived unequal compliance: the NNWS demand equivalent compliance concerning all pillars as a condition for further nonproliferation measures.

Yet clustering norms into a package may conversely facilitate normative development and make individual norms more resilient to challenges.<sup>10</sup> Demands for strengthening a particular norm (such as verification) might endow less powerful parties with leverage to demand reciprocal strengthening of other norms (such as specified disarmament steps). Concessions on one issue will be granted only in return for concessions elsewhere, like the indefinite extension of the NPT in 1995 in exchange for an enhanced review process, the "principles and objectives for nuclear non-proliferation and disarmament" decision, and the Middle East resolution.

Norms may also be aligned with widely accepted norms outside the issue area, such as the humanitarian reframing of the disarmament norm.<sup>11</sup> The interrelation between norms, the possibility to prioritize, and linkages to other issue areas give options to actors and make norm decay, stalemate, or strengthening contingent on how actors handle norm conflicts rather than on any supposed essential meaning of the norms.<sup>12</sup>

**T**he TPNW pronounces a categorical prohibition of nuclear weapons in all aspects, from development to possession, deployment to use. It pulls together and sharpens the existing norms of restraint on use, nonprolif-

eration, and disarmament and leaves aside the norm on political restraint. It is incompatible with nuclear deterrence and envisages a state of the world profoundly different from the one when the NPT was negotiated.

The road to the TPNW followed a series of forks.<sup>13</sup> The first was whether to proceed outside traditional venues: the NPT review process and the Conference on Disarmament (CD). There, nuclear disarmament has been under the control of the NWS, notably, the United States and Russia. The *détente* period in the 1970s and the dissolution of the Cold War reawakened hope that the step-by-step approach to disarmament might succeed. The NPT conferences of 1995 and 2000 resulted in agreed disarmament agendas. The refusal of the U.S. Senate to ratify the CTBT was the first setback, followed by much worse experiences: at the 2005 Review Conference (RevCon), the Bush administration, seconded by Russia and France, rejected honoring past agreements because they were made by “another government” and under “other circumstances.” This fateful policy delivered the death knell to a step-by-step disarmament strategy under the auspices of the NPT. It does not represent a failure of the NPT. Rather, arbitrarily scrapping agreements achieved through hard good faith by a change of government or a redefinition of national interest represents a compliance failure by the NWS. It undermines the idea of a process in which the parties agree on measures that are subsequently implemented so that new steps can be negotiated. Dissatisfied actors were quickly grasping the gravity of this experience.

Immediately after the 2005 RevCon, a leading disarmament NGO, International Physicians for the Prohibition of Nuclear War (IPPNW), concluded that the old approach had failed because NWS commitments were unreliable. They considered taking nuclear disarmament out of the NPT and the CD, thereby emulating the Ottawa Process that had quickly produced the prohibition of antipersonnel mines despite great-power opposition. This approach had succeeded because a group of like-minded ban proponents established a negotiation process without vetoes and set a time goal for its conclusion.

The IPPNW’s reasoning attracted other disarmament NGOs and a few disarmament-minded governments. In 2007, the International Campaign to Abolish Nuclear Weapons (ICAN) was founded as an NGO coalition. Some small and medium powers plus NGOs devoted to disarmament and nonproliferation decided to take the initiative from the NWS; this was a response to the NWS practice of treating nuclear disarmament as their exclusive turf without influence by the have-nots. The like-minded actors established control by an Ottawa-like process in which the NWS would not dispose of veto power. The aim was a nuclear weapons convention, analogous to the Chemical Weapons Convention. Some voices at the end of the decade argued for a shorter and simpler ban, but this issue remained undecided. ICAN converged on this option in 2012, and supporting states joined after 2015.

Another fork in the road was the question of the discursive framework for the new approach. Again emulating the Ottawa Process, the campaign deemphasized the (national) security aspects of nuclear weapons and focused on the humanitarian impact of nuclear weapons use as a key reason for prohibition.<sup>14</sup> The support of the International Committee of the Red Cross gave a push to this shift.<sup>15</sup> Groups without a nuclear disarmament record but with experiences in humanitarian disarmament joined the movement. The coalition gained strength and cohesion through several series of informal meetings.

President Obama's policy served as encouragement: the president of the most powerful NWS declared a nuclear-weapon-free world his policy goal. This removed the stigma of irrationalism from the movement. However, Obama's disarmament efforts after the early achievement of New START slowed down, he failed to revive CTBT ratification, and he invested in modernizing the U.S. nuclear arsenal. New arms control initiatives stalled under the double juggernaut of a U.S. Congress controlled by the arms control-averse Republican right wing and the uncooperative policies of Putin's Russia. Hesitant coalition members and an increasing number of NNWS governments accepted that a decisive change was needed.

During the 2010 NPT Review, the successful NWS effort to water down much of the disarmament proposals for the final document reinforced the determination of campaign supporters to move elsewhere. An initiative in the 2012 United Nations General Assembly (UNGA) led to the establishment of an Open-Ended Working Group (OEWG) to explore future disarmament steps. Boycotted by the NWS (but not India and Pakistan), it met for three sessions in 2013. The embargo strengthened the positions of coalition members pleading for progressing without the NWS.

Meanwhile, the central role and capabilities of ICAN grew.<sup>16</sup> NATO member Norway (under a social democratic government) funded ICAN from 2010 to 2013 (when a conservative government was elected). ICAN grew into a well-organized, global organization with an international steering committee. In 2013, Norway invited ICAN to help prepare a conference in Oslo on the humanitarian consequences of nuclear war. While the organizers did not offer proposals for action, participants assessed the dangers presented by nuclear weapons as requiring action. The second conference in Nayarit, Mexico, that took place in February 2014, highlighted a "legal gap": the failure to prohibit nuclear weapons like biological and chemical weapons, antipersonnel mines, and cluster munitions despite their much higher destructivity. Austria, convener of the third conference in Vienna in December 2014, offered the "humanitarian pledge" to fill this supposed gap.

The failure of the 2015 NPT RevCon led to the next fork in the road. The NWS embargo of the OEWG and the humanitarian conferences (the United Kingdom and the United States attended only the last one) was confirmed by the harsh and arrogant demeanor of the NWS in 2015. The low point was an undiplomatic,

offending attack by the Western NWS and Russia against Swiss diplomat Benno Laggner, chair of Subsidiary Body 1 on nuclear disarmament, who did his best to present an outcome that reflected the two antagonistic positions.<sup>17</sup> In the end-game, the NWS blocked a series of disarmament measures that were agreed upon five years earlier without giving reason. Throughout, the NWS refused to engage with the humanitarian-risk argument either by negating its relevance or by pretending that they were already taking all necessary steps for risk reduction.

After this conference, the preference for negotiating without the NWS – and therefore avoiding compromises that would attract them to participate – won out. Following that, supporters had to strive for a simple ban, not a technical-operative convention; the latter option had become obsolete because it necessitated input from NWS expertise. Consequently, ban supporters used their majority in the UNGA to establish another OEWG, follow its recommendation for a negotiating body, and adopt the treaty text that this body produced. Throughout this process, the NWS were reduced to protesting powerlessly outside the negotiation room, while the have-nots were suddenly in control.

The final fork in the road concerned content, notably whether to improve the NPT or to avoid new obligations on the NNWS that would be necessary if the treaty should provide a solid basis for security in a nuclear-weapon-free world. Controversies concerned prohibiting transit of nuclear weapons through areas under the jurisdiction of parties, setting a verification standard above the NPT's comprehensive safeguards, establishing strict compliance and enforcement in case of suspected noncompliance, ensuring membership of TPNW parties in the NPT, and forsaking withdrawal rights because of the special purpose of the TPNW to grant a nuclear-weapon-free world. Negotiators settled – under self-imposed time pressure and the stubborn resistance of a group of states against stricter rules – for the weaker options, to the dismay of seasoned supporters of the Humanitarian Initiative (HI) like Switzerland or Sweden.<sup>18</sup>

Critics of the ban have characterized it as the result of deep frustration and impatience on the part of the majority of governments and NGOs. Frustration was certainly a powerful motivation; we know today from neuroscientists that emotions influence any decision we take and, after all, reliance on nuclear deterrence is motivated by the strong emotion of fear.<sup>19</sup> Participants productively turned frustration into self-empowerment. Small and middle powers and civil society demonstrated that they could accomplish something in nuclear policy despite its highly asymmetrical power distribution. The resulting emotional satisfaction is certainly motivating, but goes occasionally overboard.

As this narrative shows, actors decided at several forks which direction to choose; they did so on the basis of experiences with and behavior of the NWS, and on the basis of strategic considerations. The adoption of the TPNW and the emphatic and fierce opposition to it by the NWS and their allies remind us that

nuclear policy is not just about controlling dangerous physical items and coolly calculating costs and benefits. The dispute evokes moral antagonisms and involves strong emotions.

What will the ban's impact be? Ban critics claim that the TPNW weakens verification obligations compared to the NPT.<sup>20</sup> But the TPNW requires its parties to carry the same verification obligations they had under the NPT: at a minimum, comprehensive safeguards. TPNW parties have the Additional Protocol in force and will remain subject to this undertaking as well. Admittedly, the TPNW does not provide for a verification system that could master the security challenges of a nuclear-weapon-free world. Comprehensive safeguards offer no leverage against clandestine nuclear activities, but the Additional Protocol does. In a nuclear-weapon-free world, verification will have to be intrusive and intensive. TPNW negotiators did not want to address verification for lack of expertise. But they established a procedure for the NWS to work out effective verification measures. They could have done the same for the NNWS: like the NPT (Article III.1), the TPNW should contain a binding commitment to enter negotiations on stronger verification measures once a nuclear-weapon-free world is approaching. The same is true for compliance and enforcement procedures needed to maintain security in a nuclear-weapon-free world, which cannot remain entrusted to the UN Security Council: enforcement against illegal nuclear armament must not be subject to a veto. About this, the TPNW says nothing – exactly like the NPT.<sup>21</sup>

Ban critics maintain that TPNW Article 18 “supersedes” the NPT and that this could cause problems of interpretation and ensuing confusion.<sup>22</sup> But this critique assumes that undertakings in the TPNW contradict those in the NPT, which is not the case for the NNWS. The most critical case (overlooked even by ban critics) – the obligation not to transfer nuclear items without International Atomic Energy Agency safeguards (NPT Article III.2), which is not explicitly repeated in the TPNW – is covered by TPNW’s catch-all prohibition of “assistance” for proscribed activities. Ban opponents still have to deliver proof for the “superseding” problem.

Ban critics claim that the TPNW creates and exacerbates fissures in the NPT review process.<sup>23</sup> But, as shown, the ban is the consequence of deep divisions in the NPT community, not their cause. Whether it will deepen these divisions is not determined by its nature, but by how actors handle the ban, and their divisions. After all, ban supporters will have a hard time disrupting the NPT review process as brutally as the Bush administration did in 2005. Ban critics have also not presented convincing arguments for the allegation that the TPNW is a showstopper for nuclear disarmament negotiations; negotiations had stalled years before the ban was negotiated.<sup>24</sup>

Ban critics state that supporters apply an ethics of absolute ends (*Gesinnungsethik*), rather than an ethic of responsibility (evaluating by the consequences).<sup>25</sup> But this is also not correct. The HI was motivated by the horrific consequences of nuclear use, and ban supporters believe future nuclear use has a probability above zero. Ban opponents often share the assessment of catastrophic consequences, but believe that deterrence can reliably prevent use. Both ethics are consequentialist, and both are built on opposite faiths; given the history of past nonuse, with good luck as a major factor, the faith of ban supporters could claim higher plausibility.<sup>26</sup>

Some have voiced concern that the ban might divert energies from strengthening the NPT or, when disarmament stalls, could induce parties to leave the NPT with the pretense that the TPNW is the better treaty. But nothing in the utterances and behavior of leading ban proponents confirms these fears. They are staunch supporters of the NPT and argue the compatibility and mutual strengthening of both treaties. In a situation of a dangerous nuclear arms race and no disarmament, states might possibly consider leaving the NPT, not because of the TPNW, but in order to be free to pursue a national nuclear deterrent.

Ban critics are correct that several TPNW clauses (withdrawal, accession for the NWS, and the nebulous “competent authority” that shall supervise nuclear weapons dismantlement) are unrealistic and impractical.<sup>27</sup> But the accusation that it hurts the NPT is unsubstantiated.

Ban proponents claim to have changed the nuclear discourse from “nuclearism” to “humanitarianism.”<sup>28</sup> But the humanitarian aspect is already in the NPT preamble. It has been articulated by diplomats like Alva Myrdal, Garcia Robles, Inga Thorsson, Miquel Marin Bosch, and Jayantha Dhanapala. It was inserted into the 2000 RevCon final document, a hard-won success of the New Agenda Coalition.<sup>29</sup> What is new is the building of a well-designed political campaign that motivated many to take a stand. However, the deterrence discourse is still alive; nothing proves this fact more clearly than its presence in the decisions by the key humanitarian initiative governments of Norway, Sweden, and Switzerland not to join the ban promptly.<sup>30</sup>

Ban proponents vow to exert strong normative pressure upon the NWS and their allies. ICAN Executive Director Beatrice Fihn has declared that even now, before the TPNW enters into force, “nuclear weapons are illegal.”<sup>31</sup> This perception is incorrect: the treaty will bind only its parties, and its possibility to become customary law is dim: more than 20 percent of UN membership, representing more than 50 percent of the world population and including all P5 states, will not accede to the TPNW and object to it regularly. Thus, the treaty cannot become customary international law because it does not represent the customary practice of virtually the whole international community.

Ban supporters promote a stigmatization of both nuclear weapons and the governments sticking to deterrence.<sup>32</sup> Normative pressure, they claim, will move

the NWS and their allies one by one into the ban. By the formula “first prohibiting, then eliminating,” this will finally lead to a nuclear-weapon-free world.<sup>33</sup>

However, the ban has changed the world in one important aspect, though not completely. Context is still there. Democracy is under double attack, from rightist populists domestically and from autocratic efforts to undermine it in the global systemic struggle. As civil society needs a democratic environment for its campaigns, ban supporters must consider how far they wish to stigmatize democratic governments and promote cleavages within democratic societies, which feed aims of both right wingers and autocratic NWS. This recognition of context seems to be alien to the ban campaigners’ horizon.

The impact of normative pressure remains uncertain. The TPNW may convince more people that nuclear weapons should be banned and induce young people to engage. But will it move masses to the streets and decide national elections? Nuclear disarmament is but one of many contested political issues and, among global priorities, is dwarfed today by climate change. Bread-and-butter questions have high salience for average citizens. But salience could rise when nuclear dangers become tangible through tensions among great powers and an ensuing arms race.

Normative pressure, then, could become a political factor. But effects in Western NWS (and allies) will differ from those in Russia and China. The tools of ICAN, such as blaming the private financing of nuclear weapons work or persuading city governments and parliaments to embrace the TPNW, meet better opportunities in democracies than in nondemocracies (a factor noted by pro-ban analysts, but without regard for the political consequences).<sup>34</sup> The lists of companies and cities concerned betray a yawning lack of Russian and Chinese names.<sup>35</sup> ICAN tools are ineffective in these NWS. Opportunities for civil society to challenge national security policies in Russia and China are extremely restricted, and those governments exacerbate repression of civil society and control of the Internet systematically. Chinese policies in Sinkiang, Tibet, and the South Chinese Sea and Russian policies in the Caucasus, Ukraine, and Syria do not give the impression that these governments care much for international opinion.

Hypothetically, this might lead to a Russian-Chinese nuclear weapons oligopoly rather than a nuclear-weapon-free world. ICAN and friends must either develop targeted tools to penetrate autocratic NWS or return to step-by-step disarmament – in a negotiation setting involving more nuclear-armed states – rather than achieve a nuclear-weapon-free world by pure normative pressure. Many would argue that a zero-nuclear world is preferable to today’s, but today’s is preferable to an autocratic nuclear weapons oligopoly or any monopoly.

An autocratic nuclear oligopoly is unrealistic because of countervailing processes: NATO governments feeling the asymmetric impact of normative pressure will choose one of two counterstrategies: First, counterstigmatize the ban campaign, evoke the specter of autocratic nuclear blackmail, and enhance nuclear

deterrence (the worst case in this regard would be counterdeploying land-based INF nuclear systems).<sup>36</sup> This may drive millions to the streets, supported by automatic disinformation campaigns. Western societies would be split. As a counterweight to antinuclear protesters, conservatives would “rally around the flag.” In a context of rising tensions and external threat, it is unlikely that majorities in NATO member states would wish to desert the alliance; one has to remember that NATO did not break up in 1983, and there is little reason to suppose that it would be different this time. With no final political success, the campaign would lose momentum, but democratic societies would remain fundamentally divided.

NATO’s second option is to emulate the early 1980s: maintain extended deterrence, but take new disarmament initiatives to pacify the protests. In today’s context, the smartest policy might be to base extended deterrence completely on air- and sea-based systems, remove the vulnerable, purely symbolic B-61 bombs from Europe, and strengthen missile defense in Europe. While not embracing the TPNW, NATO would take a significant, stabilizing nuclear disarmament step, explicitly embracing the disarmament norm. The odds of keeping majorities loyal to the alliance would improve.

**T**he debate on the TPNW highlights fundamentally different beliefs: many states and civil-society actors regard nuclear weapons as inhumane and immoral due to the devastating consequences of nuclear explosions. This perspective discredits nuclear deterrence. The proposition is unconditional and not subject to nuances. Given the danger nuclear weapons present for ban proponents, stigmatization and normative condemnation are key elements of the struggle to promote disarmament.

In contrast, a minority of states (but representing more than 50 percent of the world population) agrees that nuclear explosions would cause a humanitarian disaster. Still, they regard nuclear deterrence as a morally defensible war-preventing strategy as long as revisionist, adventurous states threaten vital security interests against which only nuclear weapons pose unbearable risks. Only changing this threatening security environment would permit far-reaching disarmament. In this assessment, Western NWS and all other nuclear weapons possessors agree, usually blaming the opponents for the bad “security environment” (United States) or for a lack of “stability and equal security for all” (Russia, China, and France). And in that perspective, transforming the security landscape is a precondition for nuclear disarmament, and the TPNW is regarded as “undermining the existing international security architecture which contributes to the maintenance of international peace and security.”<sup>37</sup> The recent U.S.-led initiative promotes the exploration of ways to make the security environment more disarmament-friendly, but this is seen by ban proponents as a diversionary attempt to conditionalize disarmament, which they regard as an unconditional duty.<sup>38</sup>

These positions are philosophically incompatible and materialize in different ideas on how to pursue “global zero” (step-by-step approach/“creating the environment for disarmament” versus stigmatization/prohibition/elimination) as well as in a seemingly irreconcilable attitude of mutual repudiation. Defense scholar Heather Williams has remarked:

NWS and ban supporters are talking past each other. Ban supporters’ message may be getting lost on target audiences, such as NATO members, whereas NWS will struggle to engage with ban supporters in the context of the NPT. This presents a challenge to the cooperative process that underpins the global nuclear regime.<sup>39</sup>

In extremis, it is presented as a Manichean struggle, good against bad, with no compromises. Ban supporters stigmatize their opponents as inhumane, patriarchal, militaristic, and racist (politely ignoring blatant violations of human rights some of their ban allies commit at home).<sup>40</sup> Ban opponents apply pressure and intimidation toward governments considering signature and ratification.<sup>41</sup> These strategies create a spiral of hostile emotions and deepen divisions. They damage both the NPT and nuclear disarmament. With eighty signatories at the time of writing this essay, thirty-five full parties, and more states in the ratification process, the TPNW will likely enter into force within the next few years, though the decisions by the Swiss and Swedish governments not to join now were a backlash. Critics better learn how to live with the TPNW in order to prevent damaging and unnecessary tensions between the ban and the NPT.

Yet, without moderating their attitudes and trying to resume meaningful communication and even cooperation, neither side will realize its objectives. The best hope may be learning through strategy failure followed by behavioral change: when the pro-ban campaign does not progress as hoped, when the TPNW enters into force despite the frantic intimidation campaign, pundits may reconsider their strategies.

**T**he key is to overcome the emotionalized polarization that sees the opponent as an incarnation of evil, and to realize that values, fears, and desires inscribed into the NPT preamble are still embraced by both sides: averting nuclear use and war, preventing proliferation, stopping the arms race (revived in a multipolar constellation), and investing in nuclear disarmament are subscribed to by all actors in the nonproliferation/disarmament game. This common basis must be rediscovered.

Next, mutual recognition of partnership on a level playing field despite fundamental disagreement must be achieved. Much of the present hostile atmosphere is due to negating the other side’s legitimacy of actorship. This makes cooperation impossible, because adverse emotions will stop it in its tracks. However, any disarmament process needs cooperative partnership or it will not take place. Parties

should reassure each other that, despite fundamental disagreements about strategy, path, timing, and circumstances of nuclear disarmament, they are both looking for ways to bring it closer. Deterrence pundits should admit that nuclear disarmament must eventually lead to a complete prohibition. Ban pundits must admit that whatever impact the ban will have, devising practical steps to work down existing arsenals toward zero will remain inevitable.

On the security environment, the following considerations might mitigate antagonisms.<sup>42</sup> Disarmament – through the lens of Article VI and its interpretation in the 1996 advisory opinion of the International Court of Justice issued at the request of the UNGA – is an unconditional undertaking. (The court voted unanimously that “there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.” The vote did not condition this obligation on any circumstances.) Yet different qualities of international relations hamper or facilitate nuclear disarmament. This is not a malign U.S. invention but a logical proposition that has been inscribed into the NPT preamble and is borne out by history: disarmament succeeded whenever the relationship between the superpowers was in a state of *détente*, and slowed down, stopped, or gave way to additional armament whenever tensions rose.<sup>43</sup> Each time, improving the security environment was helped by disarmament successes. Political relations and the disarmament process did not move sequentially or independently, but in parallel and interdependently. It is thus every NPT party’s, particularly the great powers’, duty to help create a disarmament-favorable environment. Simultaneously, the unconditionality of the disarmament obligation requires defining steps toward disarmament that can already be taken while the study of the environment is still underway.

Two lines of action ensue: First, engaging in a serious, impartial, and operative exploration of the “benign security environment.” It should *not* be controlled by an NWS, the P5, or states involved in regional conflict.<sup>44</sup> It must identify responsibilities for a deteriorating international environment and must take steps to improve it. The best option may be an independent nongovernmental experts commission appointed by the UN secretary-general.

The second track would seek agreement on specific steps for the next review cycle. Several such steps could be acceptable to “disarmers” as useful movements toward a world without nuclear weapons and to “deterriers” as compatible with the desired degree of deterrence. Such steps could be found in the area of risk reduction. The NWS and allies have an interest in lowering the risk of nuclear war. Ban proponents have an interest in minimizing the risks of use as long as it is not totally eliminated through complete nuclear disarmament. De-alerting, discussions on doctrine, doctrinal constraints on use, transparency, military contacts, hotline agreements among nuclear weapon possessors, “accident measure”

agreements, and notification exercises are options. Agreement will not be easy, as the NWS prefer soft measures and reject changes in alert status and doctrine, which ban proponents demand strongly.

Bringing into force the CTBT would mark progress. For this to happen, opposing senators should finally overcome their atavistic<sup>45</sup> and unscientific aversion against ratification. This means abandoning the policy of unilateral security-seeking and acknowledging the proven success of cooperative security strategies and the capability of the verification system. Moreover, final documents of NPT RevCons offer a rich menu from which some “dishes” could be prioritized. Beyond, there is a multitude of good ideas.<sup>46</sup> The return to a practical agenda, however, must be sealed by the joint pledge that negotiated and agreed commitments (such as in RevCon final documents) cannot be revoked unilaterally but only collectively by a later RevCon.

The TPNW is no catastrophe to the NPT, but compatible with it. It has not divided the NPT community, but is the product of a foundational division that has grown worse since 2005, largely due to NWS policies. The TPNW is not the philosopher’s stone to solve all problems of nuclear disarmament. It gives an impressive normative statement of the majority of UN members and their NGO supporters, and is thereby a tool for arguments and campaigns. As a sovereign assessment of national security interests, it is at least as legitimate as nuclear deterrence. But it will not move operative disarmament or establish new cogent international law. It will not lead to one-sided disarmament of democracies; extended deterrence will most likely not collapse, as some ban critics fear. But it will impact Russia and China only if ban supporters recognize the problem and create effective tools. The TPNW establishes a new normative fact. How it impacts the NPT and Western public opinion is not a matter of physical laws, but of agency: how governments handle security policies and treat their opponents in the disarmament debate, and how campaigners react to policies short of ban membership (the likely case in most if not all NATO countries). A continuation of confrontation and mutual vilification is counterproductive for both sides’ objectives. A sincere common search for ways to carry disarmament forward in practice would not eliminate the controversy, but could achieve two valuable goals: keep the NPT viable and permit some tangible progress in disarmament.

## AUTHORS' NOTE

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## ENDNOTES

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- <sup>9</sup> William Potter and Gaukhar Mukhatzhanova, *Nuclear Politics and the Non-Aligned Movement: Principles vs. Pragmatism* (Abingdon: Routledge, 2012); and Carmen Wunderlich, Andrea Hellmann, Daniel Müller, et al., “Non-Aligned Reformers and Revolutionaries: Egypt, South Africa, Iran, and North Korea,” in *Norm Dynamics in Multilateral Arms Control*, ed. Müller and Wunderlich, 246–295.
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- <sup>35</sup> Don’t Bank on the Bomb, PAX, *Producing Mass Destruction: Private Companies and the Nuclear Weapons Industry* (Utrecht, The Netherlands: PAX, 2019), [https://www.dontbankonthebomb.com/wp-content/uploads/2019/05/2019\\_Producers-Report-FINAL.pdf](https://www.dontbankonthebomb.com/wp-content/uploads/2019/05/2019_Producers-Report-FINAL.pdf).
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- <sup>45</sup> Atavistic here means “The return of a trait or recurrence of previous behavior after a period of absence.” The Free Dictionary, “Atavistic,” <https://www.thefreedictionary.com/atavistic>. This group of senators returned to a policy of unilateral security-seeking after the proven success of cooperative security strategies.
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