



Closing the NPT-TPNW Gap: What Can NATO Umbrella States Do?

The **Disarmament** Working Group

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This paper makes the case for North Atlantic Treaty allies under the nuclear umbrella to rethink their position regarding the Treaty on the Prohibition of Nuclear Weapons (the TPNW). It examines the concerns that NATO states often raise concerning the TPNW, particularly regarding its relationship with the Nuclear Non-Proliferation Treaty (the NPT), the instrument widely regarded as the nuclear regime's cornerstone. The paper makes recommendations to enable NATO's non-nuclear weapons states (NNWS) to overcome or mitigate those concerns, and proposes a range of bridge-building actions to help close the growing gap in the international community between TPNW signatories and nuclear allies.

It is crucial that NATO NNWS take such steps. Since the first NPT Review Conference, non-nuclear weapon states—including NATO members—have voiced their dissatisfaction with the pace of disarmament; the TPNW's entry into force can be seen as a direct result of that. Status quo policies have proved ineffective for significant disarmament, while entrenched positions and heated rhetoric threaten the success of the

upcoming Tenth NPT Review Conference. An irreversible erosion of the nuclear regime is possible, an outcome which would be in no one's interest.

NATO NNWS are in a special position to undertake bridge-building activities, being well-placed to broker dialogue between their nuclear allies and the growing international community supportive of the TPNW. However, NATO countries –individually and collectively– have not been supportive of the treaty to date, stating that it is not only incompatible with the NPT but that it also undermines that instrument's legitimacy and aims.

That narrative of incompatibility has been challenged as inaccurate.³² The TPNW was carefully crafted to build upon and strengthen the NPT's disarmament provisions, making it a vital part of the nuclear regime, and one that is here to stay. Therefore, NATO states must rise to the occasion and engage with the TPNW pragmatically, assuming their responsibility under the NPT regime to advance meaningful dialogue and cooperation on disarmament.

The next three sections examine common concerns about the TPNW around deterrence, legal compatibility with the NPT and the verification framework, offering recommendations on how to move forward in a constructive way.

Fundamental concerns: deterrence versus humanitarian arguments

The fundamental schism regarding the TPNW is grounded in the maintenance of opposing rationales on either side. Nuclear weapons constitute to a large extent NATO's strategic security, providing allies with a deterrent capability.³³ However, neither nuclear deterrence nor nuclear weapons are mentioned in the North Atlantic Treaty.³⁴ NATO's current nuclear policy relies on the 2010 Strategic Concept and the 2012 Deterrence and Defence Posture Review. The former commits allies to the creation of conditions favourable to disarmament, while asserting that as long as nuclear weapons exist, NATO will remain a nuclear alliance. Nevertheless, this "balancing act" approach has lost credibility as NATO's words and actions have been recently skewed towards deterrence.³⁵

The nuclear deterrence NATO relies on faces increasing challenges. First, it provides only a 'negative power' through a security dilemma. As nuclear armed states continuously need to prove their readiness to deploy nuclear weapons, they are viewed as threatening by adversaries, triggering balancing and heightening their populations' vulnerability to a nuclear attack in case of conflict escalation.³⁶ Second, the growing pace of technological change in the nuclear military-industrial complex creates uncertainty and instability, weakening deterrence itself. Third, the shift from a bipolar to a complex multipolar world, with multiple

32 Thomas Hainoczi, "The Relationship between the NPT and the TPNW," *Journal for Peace and Nuclear Disarmament* 3, no.1 (2020): 87-91.

33 Rose Gottemoeller and Steven Hill, "NATO's Current And Future Support For Arms Control, Disarmament And Non-Proliferation", IAI Papers 20, no. 45, 2020, <https://www.iai.it/sites/default/files/iaip2045.pdf>.

34 Steven Hill, "02 NATO nuclear policy," 2021, accessed March 12 2021, <https://www.chathamhouse.org/2021/01/nato-and-treaty-prohibition-nuclear-weapons/02-nato-nuclear-policy>

35 Łukasz Kulesa, "Restoring the Balancing Act: Disarmament and Deterrence in the New Era," in *Europe's Evolving Deterrence Discourse*, eds. Amelia Morgan and Anna Péczeli, Center for Global Security Research Occasional Paper, https://cgsr.llnl.gov/content/assets/docs/CGSR_euro_det_final.pdf.

36 Benoît Pelopidas, "Having the bomb'- Rethinking power in a context of global nuclear vulnerability," CERISCOPE Power, 2013, <http://ceriscope.sciences-po.fr/puissance/content/part1/avoir-la-bombe-repenser-la-puissance-dans-un-contexte-de-vulnerabilite-nucleaire-globale>.

nuclear weapon states that hold different views and alliances, adds another component of instability. Nuclear deterrence, thus, should not be considered to be a reliable basis for state security.

Taking this unreliability into consideration, the TPNW emphasises humanitarian drivers for disarmament. A humanitarian framing removes barriers to diplomatic action by delegitimizing nuclear weapons' value and prestige, and asserting the unacceptability of the harm they cause on legal, moral and political grounds. The TPNW thus supplements the current nuclear regime by providing the missing legal framework that prevents and remediates the human suffering caused by these indiscriminate weapons.

It is worth remembering that many NATO NNWS face growing domestic pressure from public opinion favouring their accession to the TPNW.³⁷ Already, over fifty former governmental leaders from NATO member-states have supported the treaty.³⁸ Moreover, as the TPNW prohibits investments in nuclear weapons manufacturing, NATO NNWS could utilise the opportunity to make sure taxpayers' money and other investments from their country are allocated to healthcare, education, and other social development activities rather than to nuclear weapons manufacturing.³⁹

NATO NNWS are not ready to dismiss their nuclear deterrent rationale, but they can still take steps to rebalance their strategy in support of disarmament.

Recommendations

- **NATO NNWS states should recognize the TPNW as part of the larger nuclear disarmament framework and participate as observers in the upcoming Meeting of States Parties to the TPNW.** Progressing nuclear disarmament in light of the unacceptable harm caused by nuclear weapons requires all states to further the normative implications of the TPNW through discursive recognition. By participating as observers in its meetings, they will show willingness to engage in diplomatic dialogue.
- **NATO NNWS states should refrain from blocking references to the TPNW in the outcome document of the Tenth NPT Review Conference.** In doing so, they avoid circumventing the will of the many States Parties traditionally excluded from influencing outcomes. Maintaining the narrative that the TPNW undermines the NPT will only lead to growing frustrations, further entrenching divides and stymying progress on disarmament overall. As the TPNW has now entered into force, it ought to be recognised as part of international law.
- **NATO NNWS must call to halt investments in nuclear arsenals and redirect funds towards remediation.** Financial institutions and other organisations in these countries should immediately halt investments in modernisation and development of their allies' nuclear arsenals and capabilities. States should redirect funds to the remediation actions stipulated under the TPNW, whether they intend to become States Parties or not. This will show commitment to disarmament and humanitarian efforts, and appropriately recognise all victims.

Legal concerns: compatibility between the NPT and TPNW

37 International Campaign to Abolish Nuclear Weapons (ICAN), "NATO Public Opinion on Nuclear Weapons," 2021, last modified April 5, 2021, https://www.icanw.org/nato_poll_2021.

38 R Gladstone, "Former World Leaders Urge Ratification of Nuclear Arms Ban Treaty". The New York Times, September 20, 2020, <https://www.nytimes.com/2020/09/20/world/treaty-nuclear-arms-united-nations.html>.

39 International Campaign to Abolish Nuclear Weapons (ICAN) and PAX, "Producing mass destruction: Private companies and the nuclear weapons industry," *Don't Bank the Bomb Report*, 2019, accessed April 5, 2021, https://www.dontbankonthebomb.com/2019_producers-report-final/.

A second set of arguments NATO allies raise in critique of the TPNW focuses on its legal incompatibility with the NPT.

The NPT regime supports an integrated system of treaties underpinning its three pillars of disarmament, peaceful uses of nuclear technology and non-proliferation. For example, NPT Article VII allows states to conclude regional treaties for Nuclear Weapon Free Zones, potentially facilitating progress towards both non-proliferation and disarmament. The obligations laid out in NPT Article VI to engage in negotiations that will lead to disarmament also require additional instruments for implementation. The TPNW is an ideal addition to that legal architecture, representing a concrete step towards fulfilling Article VI. It seeks to reinforce the Article by unequivocally promoting and fast-tracking nuclear disarmament and plugging the NPT's unjustifiable "legal gap" that allows some states to maintain their nuclear weapons indefinitely.

It is important to note that the TPNW does not preclude NPT membership for States Parties. It makes clear that existing obligations under the NPT are neither nullified nor relativised by accession to the TPNW.⁴⁰ Rather, the TPNW adds immediate disarmament obligations for states parties, acknowledging the lack of progress to date.

The TPNW expressly supports the "full and effective implementation" of the NPT, which it describes as the "cornerstone of the nuclear disarmament and non-proliferation regime."⁴¹ It thus acknowledges the significance and primacy of the NPT. Moreover, that primacy –given the complementarity between the instruments– is in fact in no way challenged by TPNW Article 18, in either a textual or spiritual sense, as a common line of critique inaccurately suggests. Instead, Article 18 affirms and entrenches complementary and the mutual reinforcement of instruments promoting disarmament.

Thus, the treaties are neither incompatible nor in conflict. Rather, the TPNW advances the disarmament regime in support of the NPT, and constitutes a significant step in achieving a world free of nuclear weapons. There is, however, room for NATO NNWS to enhance dialogue concerning the role of the TPNW in disarmament, and clarify their legal concerns regarding the manner in which the NPT and the TPNW interact.

Recommendations

- **NATO NNWS should promote a forum to increase dialogue on legal concerns with TPNW leaders.** NATO members should help revive or create a forum similar to the Nuclear Security Summits from 2010-2016. This forum must include a dedicated workstream investigating the compatibility of the TPNW and the NPT, and developing practical methods for streamlining and integrating the agreements into the disarmament work of NATO. The forum would also present an opportunity to capitalise on the Humanitarian Initiative, share victims' testimonies, promote intergenerational dialogue, and include elected officials, academia and civil society.
- **NATO NNWS should further involve their legislative bodies in exploring legal arguments challenging the TPNW.** Countries could follow the examples of Germany or the Netherlands, where legislative bodies have investigated or mandated a further exploration of TPNW legal compatibility.⁴² This discussion in

⁴⁰ German Parliament, "Report on the Legal Relationship between the Treaty on the Prohibition of Nuclear Weapons and the Non-Proliferation Treaty," 19 Jan. 2021.

⁴¹ United Nations General Assembly (UNGA), Text of the Treaty on the Prohibition of the Nuclear Weapons, accessed April 5, 2021, <http://undocs.org/A/CONF.229/2017/8>.

⁴² International Campaign to Abolish Nuclear Weapons (ICAN), "New cross-party working group to support TPNW in German Parliament," September 2019, accessed April 5, 2021, https://www.icanw.org/new_cross_party_working_group_to_support_tpnw_in_german_parliament;

public forums contributes to increasing democracy and transparency in the formulation of public policies.

- **NATO NNWS should start crafting interpretative declarations to the TPNW.** States could draft their declarations in advance so as to be prepared if and when ready to accede to the treaty. These interpretative declarations could respond to language that appears ambiguous and/or incompatible with their existing obligations, so long as the declarations are not in principle reservations and do not operate to defeat the object and purpose of the treaty

Verification concerns: appropriateness of the TPNW framework

A third set of arguments promulgated in critique of the TPNW concern its verification framework.

Regarding non-proliferation, the TPNW reinforces the significance of the International Atomic Energy Agency (IAEA) and mandates the implementation by every state party of a comprehensive safeguards agreement, establishing concrete temporal limits to do so. However, the treaty's critics point out that it did not make the IAEA Additional Protocol a mandatory component of these safeguards agreements. Since it remains a voluntary measure under the NPT as well, this does not demonstrate a lack of compatibility or undermining of the NPT. It rather shows that the TPNW authors (like the NPT members) had to settle on what was already agreed by all states as a minimum common standard.

When it comes to disarmament, critics of the TPNW dwell on the fact that it does not contain any specific measures to ensure a verified and irreversible elimination of nuclear weapons. Without doubt, the inclusion of robust verification elements in any prohibition treaty is crucial to maintaining its effectiveness. Nonetheless, the TPNW could not and would not impose any measures. It leaves the development of a verification regime for a future when nuclear armed states are ready to engage in such discussions, most likely through follow-on agreements undertaken in equitable settings between one or several nuclear armed states.

Article 4 of the TPNW offers two pathways for the verification of disarmament, depending on the state's disarmament status on joining. This is subject to verification under a "competent international authority", over which planning and dialogue continue. The IAEA is the most suitable choice here, but to take on this role its mandate needs to be modified first by its member states. These deliberations have to include both parties and non-parties to the TPNW, highlighting the need for a coordinated approach.

There are initiatives that can inform the TPNW's disarmament verification regime. These incorporate the political and technical expertise of both nuclear and non-nuclear weapon states, producing tangible results in terms of procedure and confidence-building.⁴³ They could include the Quad Initiative, the International Partnership for Nuclear Disarmament Verification (IPNDV), UNIDIR's ongoing TPNW verification project, and the UN Group of Governmental Experts on Verification.⁴⁴

Susi Snyder, "Dutch Government: Only politics stands in the way of joining the TPNW," March 8, 2019, <https://nonukes.nl/dutch-government-only-politics-stands-in-the-way-of-joining-the-tpnw/>.

43 QNVP, "Considerations on the role of verification in advancing nuclear disarmament: background paper." Retrieved April 5, 2021, <https://undocs.org/pds?symbol=en/GE-NDV/2018/4>; Laura Rockwood and Thomas E. Shea, "Nuclear Disarmament: The Legacy of the Trilateral Initiative," *Deep Cuts Working Paper*, no. 4 (March 23, 2015), <https://d-nb.info/1069519111/34>.

44 Corey Hinderstein, "International Partnership for Nuclear Disarmament Verification: Laying a Foundation for Future Arms Reductions." *Bulletin of the Atomic Scientists* 74, no. 5 (2018): 305–11; International Partnership on Nuclear Disarmament Verification, "Phase I Summary Report: Creating the Verification Building Blocks for Future Nuclear Disarmament," 2017, accessed April 5, 2021, https://www.ipndv.org/wp-content/uploads/2017/12/IPNDV-Phase-1-Summary-Report_Final.pdf; United Nations General Assembly, "Final Report of the Group of Governmental Experts to Consider the Role of

A non-proliferation and disarmament verification regime is in the making, and requires cooperation. It is in the interest of NATO NNWS to actively participate in shaping it.

Recommendations

- NATO NNWS should continue their outreach efforts on safeguards. These activities should raise awareness about the importance attached to the universal adoption of the IAEA Additional Protocol, at the same time as considering the underlying reasons explaining why some NPT and TPNW States Parties have yet to accept them.
- NATO NNWS should continue participating actively in current multilateral verification initiatives. Combined exercises including both TPNW members and nuclear armed states serve as confidence-building measures and contribute to a common understanding of the possible future implementation of multilateral verification efforts under the TPNW.
- NATO NNWS should support further disarmament verification initiatives as bridge-builders. Based on the assessment of previous disarmament verification initiatives, multiple smaller initiatives, with tailored and equitable membership of working groups, might be better fitted to implement exercises and produce tangible results. Acting as a bridge-building party to increase transparency and accountability, NATO NNWS could mend relations with nuclear-armed states for future verification efforts under the TPNW.

Conclusion

As the TPNW is now a reality, states should not engage in futile debates nor dismiss each other's concerns, but embrace and capitalise on the momentum that it has created to progress nuclear disarmament. NATO umbrella states can be bridge-builders and need to discuss these issues not only in Geneva, New York and Vienna but also with allies in Brussels, working to restore credibility in their disarmament commitments among the TPNW supporters.

A few NATO NNWS have made good efforts and already taken steps in that direction, an example that could be followed by other states in the alliance. The first concrete step they could take would be to moderate their critical rhetoric and engage more closely with debates regarding the humanitarian and environmental consequences of nuclear weapons, as well as their opportunity costs. This policy paper recommends a range of further actions to take in the short and medium term:

- **To rebalance their commitments towards disarmament:** recognise the TPNW as part of the larger nuclear disarmament framework; participate as observers in the upcoming Meeting of States Parties to the TPNW; refrain from blocking references to the TPNW in the NPT Review Conference; call on halting investments in nuclear arsenals; and redirect funds towards remediation.
- **To curb their legal concerns on the compatibility of the NPT and the TPNW:** promote a forum to increase dialogue on legal issues; further involve their legislative bodies in exploring legal arguments to the TPNW; and start crafting interpretative declarations to the TPNW.
- **To build a suitable non-proliferation and disarmament verification regime:** continue their outreach efforts about safeguards; continue participating actively in current multilateral verification initiatives; and support further disarmament verification initiatives as bridge-builders.